



April 26, 2019

Senator Stephen L. Nass, Senate Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 10 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Representative Joan Ballweg, Assembly Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 210 North, State Capitol  
P.O. Box 8952  
Madison, WI 53708

Subject: Petition for Authorization to Repeal ch. NR 216.42 (4), (4)(Note), (5), (9), and (9)(Note), Wis. Adm. Code

Dear Senator Nass and Representative Ballweg:

On behalf of the Department of Natural Resources (department), I submit this petition for your consideration to authorize the department to repeal ch. NR 216.42 (4), (4) (Note), (5), (9), and (9) (Note), Wis. Adm. Code, relating to applicability, construction sites. A copy of the proposed rule is enclosed. Pursuant to s. 227.26 (4) (b) 1., Stats., the department has determined that the repeal of ch. NR 216.42 (4), (4) (Note), (5), (9), and (9) (Note), Wis. Adm. Code, specified below and in the attached proposed rule order is appropriate since it is unauthorized. The unauthorized code sections and rationale to repeal are as follows:

Repeal s. NR 216.42 (4) and (4) (Note): Commercial buildings

NR 216.42 (4), Wis. Adm. Code, exempts storm water discharges from construction of commercial buildings from direct regulation by the department if those construction sites are regulated in an equivalent manner by the Department of Safety and Professional Services (DSPS). Pursuant to 2013 Wisconsin Act 20, s. 101.1206 (1), Stats., was amended and s. 283.33 (1) (am), Stats., was created to give the department sole authority over erosion control and storm water management at all construction sites with one acre or more of land disturbance, including commercial building sites. Consequently, the exemption provided under ch. NR 216.42 (4), Wis. Adm. Code, is unauthorized.

Repeal s. NR 216.42 (5): Department of Transportation projects

NR 216.42 (5), Wis. Adm. Code, exempts storm water discharges from projects directed and supervised by the Department of Transportation (DOT) from direct regulation by the department if those projects are regulated in an equivalent manner and in compliance with the interagency liaison cooperative agreement. Pursuant to 2015 Wisconsin Act 307, s. 30.2022 (1), Stats., was renumbered to 30.2022 (1m) and amended, and ss. 30.2022 (1g) and 30.2022 (1p), Stats., were created. The collective purpose and effect of these legislative changes was to remove the DOT storm water permit exemption in s. 30.2022 (1), Stats. Additionally, pursuant to 2015 Wisconsin Act 307, s. 283.33 (4m), Stats., was created to direct the department to develop and issue a general permit by June 30, 2018, specifically that authorizes the DOT to discharge storm water from the site of a transportation activity. The department issued the construction site storm water general permit for the DOT as required under s. 283.33 (4m), Stats., on April 2, 2018. Given these events, the exemption provided to DOT under ch. NR 216.42 (5), Wis. Adm. Code, is unauthorized.

Repeal s. NR 216.42 (9) and (9) (Note): One- and two-family dwellings

NR 216.42 (9), Wis. Adm. Code, exempts storm water discharges from construction of one- and two-family dwellings from direct regulation by the department if those construction sites are regulated in an equivalent manner by the DSPS. Pursuant to 2013 Wisconsin Act 20, s. 101.653 (8), Stats., and s. 283.33 (1) (am), Stats., were created to give the department sole authority over erosion control and storm water management at all construction sites with one acre or more of land disturbance, including one- and two-family dwellings. Consequently, the exemption provided under ch. NR 216.42 (9), Wis. Adm. Code, is unauthorized.

Thank you for your consideration of this request.

Sincerely,

Preston D. Cole  
Secretary  
Department of Natural Resources

Encl.