

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
SS-16-08

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2), 281.19(1), 283.31, 283.55(1), 299.11 and 299.15(2), Stats., interpreting ss. 283.31, 283.55(1), 299.11 and 299.15(2), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 219, Wis. Adm. Code, relating to analytical methods used for Wisconsin Pollutant Discharge Elimination System (WPDES) compliance monitoring. The proposed rule incorporates revisions to the federal regulations and adds methods developed by U.S. EPA and approved by their Alternate Test Procedure program.

Rule analysis

The analytical methods contained in 40 CFR Part 136, which are used by laboratories in support of WPDES compliance monitoring, have not been substantively updated in several years. Many of the methods that were deleted by EPA were originally published twenty or more years ago. Use of newer laboratory instruments and methods have been hindered by the lack of inclusion in the Federal rule. In March of 2007, EPA published updated analytical test methods. The proposed rule revisions to ch. NR 219 incorporate these updated methods for the WPDES permit program.

The department is also incorporating methods that have been approved through the Office of Water's Alternative Test Procedure program, including the luminescence technique for dissolved oxygen, and selected methods from the 21st Edition of "Standard Methods for the Examination of Water and Wastewater". The tables also include updated references from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, Updates III and IV", the "2007 Annual Book of Standards" from ASTM and developed by instrument manufacturers.

The maximum holding time requirement for some tests, as listed in Table F, has been clarified. The current language, "analyze immediately", has been interpreted to mean within 15 minutes or less of sample collection. This has been clarified in the federal rule so that the holding time for these tests is now "analyze within 15 minutes". Other changes to this table include identification of holding times for the various matrices that require dioxins and furan analysis, and allowing metals samples to be transported to a laboratory without pH adjustment. Preservation requirements for available and total cyanide have been expanded to describe procedures that are recommended for removal or suppression of known cyanide interferences.

This proposal also changes language in s. NR 219.04 (2) and (3) to make this language consistent with the thermal preservation requirements contained in Table F.

Summary of, and Comparison with, Existing or Proposed Federal Regulations

The federal counterpart to this rule is 40 CFR 136. On March 12, 2007, EPA published "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures; Final Rule". In addition, on March 26, 2007, EPA published the "Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge; Final Rule." The proposed revisions to ch. NR 219 incorporate these changes and are consistent with the federal regulations.

Comparison with Rules in Adjacent States

The States of Illinois, Iowa, Michigan and Minnesota have wastewater programs delegated to them from the U.S. Environmental Protection Agency. The Illinois laboratory certification program

required laboratories to update their scope of accreditation to incorporate the revisions starting June 1, 2007. The IL Environmental Protection Agency did not require rulemaking to address these updates. The Iowa Department of Natural Resources incorporated the changes at 40 CFR 136 in rulemaking initiated in November 2007; the changes were effective January 9, 2008. The State of Michigan does not certify laboratories that perform analyses of wastewater. The Minnesota laboratory certification program allowed laboratories to use the analytical methods listed in the federal rules on the effective dates, April 11 and 25, 2007, respectively. Minnesota's program limits analytical methods to those from the 20th and 21st Editions and on-line version of "Standard Methods for the Examination of Water and Wastewater", and limits ASTM methods to the most-recently published version. All other sources of analytical methods were incorporated as described in the federal rule. MN Department of Public Health did not require rulemaking to address these updates.

Summary of Factual Data and Analytical Methodologies

This proposed rule revision brings Wisconsin up to date with the current federal rules that establish analytical test methods.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

Many of the analytical methods that are being deleted have been replaced with methods that are nearly identical. The quality control requirements for analyses are established in ch. NR 149; these will not change with updating methods tables. For several analyses, newer methods and techniques have been added. It is possible for a laboratory to change the analytical method it uses and not incur additional costs or, in some cases, actually reduce costs.

The requirements imposed upon small business include following approved analytical methods listed in the rule. There are no reporting requirements in NR 219. The small businesses that will likely be impacted by this rule are commercial laboratories certified under ch. NR 149. The vast majority of these laboratories likely follow approved analytical methods that are being maintained in this chapter. The certification status for each small business that is currently certified for oil and grease was examined to determine whether they would require to change their procedures. Only one laboratory will be required to change their procedure for oil and grease analyses, if they choose to maintain their ability to perform these analyses. All other small business laboratories already hold certification for both oil and grease methods.

This proposal does not change the frequency of analytical testing, nor does it address any change in reporting, schedule or deadline requirements. Consequently, the impacts to small businesses will be minimal.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Certified commercial laboratories
- b. Description of reporting and bookkeeping procedures required: Laboratories are required to use approved analytical methods for analyses. There are no specific bookkeeping requirements.
- c. Description of professional skills required: The rule requires levels of professional skills commensurate with the complexity of the tests performed by a laboratory, the breadth of operations, and the degree of sophistication of the analytical instrumentation used. Analyses covered by the rule are performed by personnel with a wide spectrum of credentials, from wastewater operators and laboratory technicians with a basic high school science education to degreed chemists, biologists and other scientists. The rule does not specifically require academic degrees or a minimum number of years of experience for those involved in its implementation.

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

August 27, 2008

Wednesday

9:00 a.m.

Video conference participation will be available at:
Room 8F, State Office Building, 101 E. Wilson Street, Madison
Room 211, Telecomm & Distance Learning Resources Communications
Arts Center, UW-Stevens Point, 1101 Reserve Street, Stevens Point

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Diane Drinkman at (608) 264-8950 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Diane Drinkman, Bureau of Science Services, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 29, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Drinkman.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary