

Report to  
Legislative Council Rules Clearinghouse  
NR 216 Wis. Adm. Code  
Natural Resources Board Order No. WT-09-19

Federal Statutes or Regulations That Establish Authority or are Relevant to the Substance of the Proposed Rule

The Clean Water Act, 33 USC §§ 1251 et seq. (1972), established the National Pollution Discharge Elimination System (NPDES) permit program. Under 40 CFR 123.25(a), “[a]ll State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each,” which includes, among other NPDES permit programs, storm water discharge permits under 40 CFR 122.26; general permits under 40 CFR 122.28; and conditions applicable to specified categories of permits under 40 CFR 122.42.

The primary purpose of the proposed rule changes is to address technical inconsistencies with federal requirements and to address recently promulgated federal requirements that state-authorized programs must accommodate. The federal storm water requirements are primarily found in 40 CFR Parts 122, 123, and 127. With the revisions contained in this rule package, department rules will be consistent with the following federal regulations:

- Storm water discharges applicable to state NPDES programs in 40 CFR 122.26;
- NPDES Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule amending 40 CFR 122;
- Permit requirements for regulated small MS4 permits in 40 CFR 122.34;
- Additional conditions for MS4s in 40 CFR 122.42 (c)(2),
- State program requirements in 40 CFR 123.1(g)(1) and 123.25 (a)(4); and
- The NPDES Electronic Reporting Rule in 40 CFR 127.

Court Decisions Directly Relevant

In Environmental Defense Center, et al. v. EPA, 344 F.3d 832 (9<sup>th</sup> Cir. 2003), the Ninth Circuit Court of Appeals remanded the proceedings to EPA requiring the agency to revise its regulations governing small MS4 permits to bring them into compliance with the Clean Water Act.

Description of any Forms (attach copies if available)

No new forms are proposed in this rule. Some forms will require minor updates.

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Submitted on [Leave blank, Emma Esch will insert date when she sends this report to the LCRC.]

