

Report From Agency

REPORT TO LEGISLATURE

NR 216, Wis. Adm. Code

Board Order No. WT-09-19
Clearinghouse Rule No. 21-027

Basis and Purpose of the Proposed Rule

Chapter NR 216, Wis. Adm. Code, Storm Water Discharge Permits, establishes the criteria under which municipalities, industrial facilities, and construction site owners must obtain coverage under a Wisconsin Pollutant Discharge Elimination System (WPDES) storm water discharge permit pursuant to s. 283.33, Wis. Stats., and federal regulations established under the federal Clean Water Act. Furthermore, ch. NR 216 specifies the permit requirements and implementation of the appropriate performance standards of subchs. III and IV of ch. NR 151, Wis. Adm. Code, Runoff Management.

The purpose of the rule amendment is to address the omissions or deviations from federal storm water requirements as identified by the U.S. Environmental Protection Agency (USEPA) Region 5 by letter to the department dated July 18, 2011; update the references to the non-agricultural and transportation facility performance standards in ch. NR 151; codify other federal storm water requirements that have become effective since the previous promulgation of amendments to NR 216; any additional rule changes that are necessary and reasonably related to those listed above; and other changes as necessary to be consistent and in compliance with s. 283.33, Wis. Stats., and other relevant state statutes or federal requirements.

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.

Summary of Public Comments

See attached “Responses to Comments, WT-09-19 Chapter NR 216, Wis. Adm. Code Storm Water Discharge Permits July 2021.”

Modifications Made

The following modifications to the board order were made in response to public comment:

1. Sections NR 216.006 (4) and (5) were conditioned to limit required electronic submittals to that needed to satisfy EPA reporting requirements.
2. Sections NR 216.031 (1) (e) and 216.032 (h) (8) were clarified to require only other relevant information.
3. Section NR 216.07 (8) (j) was changed to require a list of planned modifications to storm water best management practices and programs.
4. Section NR 216.21 (2) (b) (7) was clarified so that recycled material used during construction is not included in ‘industrial waste’ for the purposes of industrial storm water permit requirements.

5. Proposed ss. NR 216.27 (3) (cm) and 216.47 (7) related to identification of wetland hydrologic impacts were removed.
6. In s. NR 216.29, instead of eliminating submittal of a Storm Water Pollution Prevention Plan (SWPPP) Summary form as originally proposed, industrial storm water applicants may submit either the SWPPP for their facility or the SWPPP summary form.
7. Section NR 216.31 was modified to indicate that a new application is required if the current permittee's signature cannot be obtained for permit coverage transfer.
8. Section NR 216.10 (6) (b) (2) was amended to require an authorized local program to provide an application for construction permit coverage at least 14 working days prior to presumptive approval.
9. A note was added to s. NR 216.42 (1) to draw attention to the requirements for a common plan of development.
10. The drainage district exemption proposed for s. NR 216.42 (3m) was renumbered par. (8m) and modified per EPA comment regarding consistency with the Clean Water Act.
11. The proposed construction site permit applications fees in s. NR 216.43 (2) were reduced in response to public comment.

Appearances at the Public Hearing

Fifty persons attended the public hearing, held via Zoom on April 20, 2021, including 9 department staff. Of the non-department attendees, fourteen persons completed hearing appearance forms. Three registrants indicated that they were in support of the proposal and the balance indicated 'as interest may appear' or did not indicate a position. No registrants indicated that they were opposed to the rule proposal. Jim Bertolacini, a retired department employee, spoke in favor of the code revision. Mr. Bertolacini specifically spoke in favor of revisions related to electronic permitting, addressing EPA issues identified in 2011, construction fee updates, and revisions to the authorized local program.

Changes to Rule Analysis and Fiscal Estimate

Changes to the Rule Analysis included:

1. The plain language analysis was updated to reflect the removal of the wetland hydrology evaluation sections and the reinstatement of the SWPPP summary form option.
2. The plain language analysis was modified to explain the purpose for the changes made to the drainage district exemption was in response to EPA comment.
3. The effect on small business section was amended to reflect changes made to the economic impact assessment in response to public comment.

Changes to the economic impact assessment included:

1. Elimination of s. NR 216.27 (3) (cm) regarding wetland hydrology reduced total industrial subchapter costs by \$146,500.
2. Modification of the drainage district exemption in response to EPA comment increased estimated costs by \$1,800.
3. Elimination of s. NR 216.42 (7) regarding wetland hydrology reduced construction subchapter costs by \$141,300.
4. Reduction in construction permit application fees in s. NR 216.43 (2) reduced construction subchapter costs by \$316,300. Reduced fees also resulted in reductions to costs associated with after-the-fact application fees and projects, where the extent of amendments warrant a new application.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style, and placement in Administrative Code, as well as clarity, grammar, punctuation, and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for a comment on s. NR 216.47 (7) as the section has been eliminated in response to public comment.

Final Regulatory Flexibility Analysis

The rule may have an economic impact on small businesses, as defined in s. 227.114 (1), Wis. Stats. This rule's net impact on small business is expected to be Level 2. This includes \$2,400 in postage savings due to electronic permitting, \$30,200 in costs to industrial permittees with small businesses to update storm water pollution prevention plans, and \$84,200 in increased construction site permit fees and additional information required with the permit application. These values reflect a decrease in economic impacts to small businesses of \$93,200 as a result of changes made to the board order in response to public comments.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.