

George E. Meyer  
Secretary

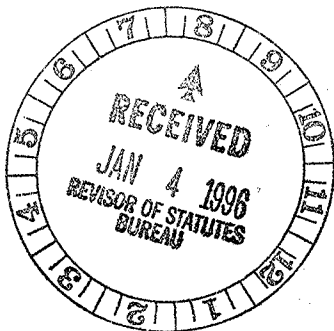
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )      SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WW-6-94 was duly approved and adopted by this Department on October 26, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 13<sup>th</sup> day of December, 1995.

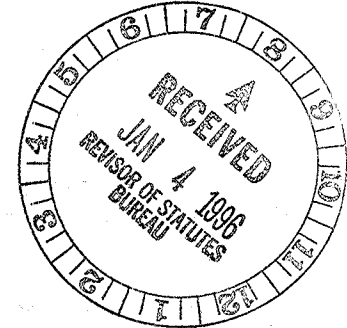
*George E. Meyer*  
George E. Meyer, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING AND CREATING RULES

IN THE MATTER of renumbering ss. NR 203.01(2), (4), (5) and (6); and amending ss. NR 203.01(5) and (6), 203.02(1), 203.03(1), (2), (3) and (4)(a), 203.04, 203.05(1)(c), (2)(a) and (5), 203.06(2)(l) and (3), 203.08, 203.10(1), (3)(a), (b) and (g), 203.13(2)(g), (3)(c) and (i), 203.14, 203.15(1)(a) and (b) and (2), 203.16(2) and 203.18(2)(d) and (f) and (3); and creating s. NR 203.015, Wis. Adm. Code, pertaining to changes to notice procedures and holding public informational hearings for nonsubstantive WPDES permit modifications.

WW-6-94



Analysis Prepared by Department of Natural Resources

Statutory authority: s. 227.11(2)(a), Stats.  
Statutes interpreted: s. 147.03(2d), (a) to (g), and (2h), Stats.

For nonsubstantive Wisconsin Pollutant Discharge Elimination System (WPDES) permit changes, the requirements in ch. NR 203 make it necessary to go through notice procedures under all conditions and hold a mandatory public informational hearing under certain conditions. Section 147.03, Stats., has been amended to exempt specific types of WPDES permit modifications from the notice procedures and the requirement to hold mandatory public informational hearings. The modifications to ch. NR 203 allow the Department to make certain nonsubstantive WPDES permit modifications, with the consent of the permittee, without notice or holding a public informational hearing. These nonsubstantive changes include:

1. Correcting typographical errors,
2. Requiring more frequent monitoring or reporting by the permittee,
3. Changing an interim compliance date in a schedule of compliance to a date that is not more than 120 days after the date specified in the existing permit if the change does not delay attainment of final compliance,
4. Reflecting a change in the owner or operator of a facility if the Department determines that no other change in the permit is necessary and if the current and new owners or operators submit to the Department a written agreement that specifies a date for the new owner or operator to assume responsibility for compliance with the permit and liability for violations of the permit,
5. Changing construction schedules for a new source if the change does not affect the permittee's obligation to have required pollution control equipment installed and in operation before beginning discharge,
6. Eliminating a point source from a permit if the discharge from that point source terminates and that termination does not cause the discharge of pollutants from other point sources to exceed permit limits,
7. Incorporating into a permit a condition of a publicly owned treatment works pretreatment program that has been approved by the Department,
8. Revoking a permit issued under s. 147.02 or 147.021, Stats.

SECTION 1. NR 203.01(2), (4), (5) and (6) are renumbered NR 203.01(4), (2), (6) and (5), respectively, and (5) and (6), as renumbered, are amended to read:

NR 203.01(5) U.S.E.P.A. US EPA means United States environmental protection agency.

(6) W.P.D.E.S. WPDES means Wisconsin pollutant discharge elimination system.

SECTION 2. NR 203.015 is created to read:

NR 203.015 EXCEPTIONS. The department may, with the consent of the permittee, revoke or modify a permit issued under s. 147.02 or 147.021, Stats., without following the notice procedures outlined in subch. I or without holding a public informational hearing as outlined in subch. II. Modification actions which qualify for this exception include:

- (a) Correcting a typographical error.
- (b) Requiring more frequent monitoring or reporting by the permittee.
- (c) Changing an interim compliance date in a schedule of compliance to a date that is not more than 120 days after the date specified in the existing permit if the change does not delay attainment of final compliance.
- (d) Reflecting a change in the owner or operator of a facility if the department determines that no other change in the permit is necessary and if the current and new owners or operators submit to the department a written agreement that specifies a date for the new owner to assume responsibility for compliance with the permit and liability for violations of the permit.
- (e) Changing the construction schedule for a new source if the change does not affect the permittee's obligation to have required pollution control equipment installed and in operation before beginning to discharge.
- (f) Eliminating a point source from a permit if the discharge from that point source terminates and that termination does not cause the discharge of pollutants from other point sources to exceed permit limits.
- (g) Incorporating into a permit a condition of a publicly owned treatment works pretreatment program that has been approved by the department.

SECTION 3. NR 203.02(1) is amended to read:

NR 203.02(1) INTENT. Public notice of the receipt of a completed permit application is intended to inform interested and potentially interested members of the public of a completed application, the tentative determination to issue or deny the permit as required in s. 147.09, Stats., and the public's right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a particular permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Public notice procedures for the issuance of general permits are contained in s. NR 205.08.

SECTION 4. NR 203.03(1), (2), (3) and (4)(a) are amended to read:

NR 203.03(1) INTENT. The intent for proved completed permit application to government agencies is to inform interested and potentially interested federal, state, and local government agencies of a completed application, the tentative determination to issue or deny the permit, and their right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a particular permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Notification to government agencies of the proposed issuance of general permits shall be in accordance with s. NR 205.08.

- (2) FORM. Form shall be the same as for public notice in s. NR 203.02(2).
- (3) CONTENT. All government agency notices shall contain a copy of the public notice as described in s. NR 203.02, a copy of the fact sheet where available as described in s. NR 201.01, and a cover

letter stating the purpose of the notice, the 30 day period for submitting comments and for requesting a public hearing pursuant to s. 147.13, Stats. In addition, the ~~United States Environmental Protection Agency~~ US EPA shall ~~always~~ receive a copy of the draft permit and be provided a comment period not to exceed 90 days unless it agrees to a shorter comment period.

(4)(a) ~~United States Environmental Protection Agency~~ US EPA.

SECTION 5. NR 203.04 is amended to read:

NR 203.04 INTENT AND SCOPE. The regulations in this chapter prescribe the policies and procedures to be followed in issuing the notice of and the conducting of a public informational hearing and deciding the final determination as to whether to issue or deny a permit authorizing discharges into the waters of the state of Wisconsin. A public informational hearing, either mandatory or discretionary on the department, is to give all interested persons an additional opportunity to make a statement with respect to a proposed permit or permit application and to have such statements considered in the final determination. Exceptions to the requirements for holding a public informational hearing are provided in s. NR 203.015. The promulgation of the regulations in this chapter is by authority of ss. 147.13(1) (e) and (2) (b), Stats.

SECTION 6. NR 203.05(1)(c), (2)(a) and (5) are amended to read:

NR 203.05(1)(c) A federal agency other than the ~~U.S.E.P.A.~~ US EPA.

(2)(a) If requested by the ~~U.S.E.P.A.~~ US EPA.

(5) FILING ADDRESS. All requests or petitions for a public informational hearing shall be served by delivery or mail added to the Department of Natural Resources, ~~W.P.D.E.S.~~ WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707.

SECTION 7. NR 203.06(2)(1) and (3) are amended to read:

NR 203.06(2)(1) If it ~~should be~~ is necessary to allow less than 30 days' notice prior to a hearing, a statement of the reasons for such shorter time period.

(3) CIRCULATION AND NOTIFICATION. Circulation and notification shall be the same as for public notice in s. NR 203.02 and government notice in s. NR 203.03.

SECTION 8. NR 203.08 is amended to read:

NR 203.08 PERSONS ENTITLED TO PARTICIPATE IN PUBLIC INFORMATIONAL HEARINGS. In addition to the applicants named in the public notice of hearing, any interested members of the public or representatives of government agencies may participate in a public informational hearing with respect to the issuance of the proposed permit subject to any restrictions ~~set forth~~ in s. NR 203.10. Persons and government agencies participating need not be represented by legal counsel.

SECTION 9. NR 203.10(1), (3)(a), (b) and (g) are amended to read:

NR 203.10(1) NONCONTESTED CASE. Public informational hearings held pursuant to this chapter are not contested cases ~~under~~ as defined in s. 227.01 (2) (3), Stats.

(3)(a) Regardless of specific requirements of this subsection the hearing examiner may, in his or her discretion, utilize ~~such~~ procedures as may be necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided ~~such~~ the measures are consistent with broad public participation in the hearing.

(b) The hearing examiner will open the hearing and make a concise statement of the scope and purpose of the hearing and shall state what procedures will be used during the course of the hearing. The hearing examiner shall explain the method of notification of the final decision to grant or deny a permit and the methods by which ~~said~~ the decision may be reviewed in a public adjudicatory hearing.

(g) Persons proposing to make oral statements at a hearing may be scheduled at times certain by the hearing examiner when necessary to ensure maximum participation and allotment of adequate time for oral statement. ~~Such advanced~~ Advanced oral statement scheduling shall may not be a bar to unscheduled oral or written statements at the hearing.

SECTION 10. NR 203.13(2)(g), (3)(c) and (i) are amended to read:

NR 203.13(2)(g) A statement of any significant changes which have been made from terms and conditions ~~set forth~~ in the draft permit.

(3)(c) ~~United States Environmental Protection Agency~~ US EPA.

(i) All individuals and groups upon request or on a formal department mailing list. Requests to be placed on the mailing list shall be directed to the Department of Natural Resources, ~~W.P.D.E.S.~~ WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707.

SECTION 11. NR 203.14 is amended to read:

NR 203.14 INTENT. The purpose of this subchapter is to provide adequate procedures to insure as broad a degree of public participation in administrative adjudication of ~~W.P.D.E.S.~~ WPDES permits and their conditions as is consistent with procedural due process to ~~said~~ the parties involved in the proceedings.

SECTION 12. NR 203.15(1)(a) and (b) and (2) are amended to read:

NR 203.15(1)(a) The denial, modification, suspension or revocation of a ~~W.P.D.E.S.~~ WPDES permit pursuant to ~~ss. s.~~ s. 147.02, 147.021, 147.023 or 147.03, Stats.

(b) The reasonableness of or necessity for any term or conditions of any issued or modified ~~W.P.D.E.S.~~ WPDES permit.

(2) If the hearing is a contested case pursuant to s. 227.01(2) ~~(3)~~, Stats., the rules ~~set forth~~ in ch. NR 2, will be applicable to the extent that they are not in conflict with the ~~below stated~~ specific procedures in this subchapter for ~~W.P.D.E.S.~~ WPDES adjudicatory hearings.

SECTION 13. NR 203.16(2) is amended to read:

NR 203.16(2) The petition ~~must~~ shall be filed within 60 days after notice of any action, which is reviewable under this section, is issued by the department.

SECTION 14. NR 203.18(2)(d) and (f) and (3) are amended to read:

NR 203.18(2)(d) If applicable, the name of the waterway to which the discharge is to be made, a general statement of the location of ~~such~~ the proposed discharge, and a statement whether ~~such~~ the discharge is a new or existing discharge.

(f) If applicable, a brief statement that a public notice of a completed permit application had been issued, including date of ~~such~~ issuance.

(3) CIRCULATION OF NOTICE. The notice of hearing shall be circulated pursuant to the provisions of ss. NR 203.02(4) and NR 203.03(4), at least 30 days prior to the hearing. If it ~~should be~~ is necessary to allow less than 30 days' notice prior to a hearing, the hearing notice shall state the reasons for the shorter time period.

The foregoing rule was approved and adopted by the State of Wisconsin Department of Natural Resources on October 26, 1995.

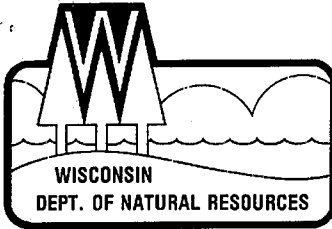
The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin 13th, December 1995

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E Meyer  
George E. Meyer, Secretary

(SEAL)



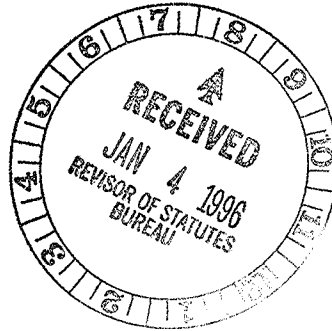
George E. Meyer  
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December 13, 1995

Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
131 West Wilson Street - Suite 800  
Madison, WI



Dear *Gary* Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WW-6-94. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

*George E. Meyer*  
George E. Meyer  
Secretary

Enc.