

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WY-14-19

Relating to: Revisions to ch. NR 211 related to regulation of wastewater discharges from dental offices to sanitary sewers

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

EPA published the proposed federal Dental Office rule – 40 CFR 441 – in October of 2014 and the final rule on June 14, 2017 (see: <https://www.epa.gov/eg/dental-effluent-guidelines> and its link to 40 CFR 441). This rule regulates certain wastewater discharges from dental offices to publicly owned treatment works (POTWs), also known as municipal wastewater treatment plants. The Department is required by s. 283.11 (1), Stat., to publish a rule with the same standards.

The rule's pretreatment standards apply to dental offices that place or remove dental amalgam, i.e., metal dental fillings, from patients' teeth and regulate the wastewater discharges from those activities. These standards require subject offices to install, operate and maintain rule-compliant solids separators to treat all amalgam process wastewater and to comply with two best management practices which will reduce the discharge of amalgam waste to a POTW. Existing dental offices in Wisconsin subject to the rule must comply with these requirements by July 14, 2020 and submit a One-Time Compliance Report to DNR or their local municipal pretreatment program if located in one, by October 12, 2020. The report must provide certain basic information about the facility along with a certification that it does or does not place or remove amalgam and, if applicable, that the facility will continue to operate and maintain a rule-compliant separator and implement the two best management practices. New dental offices subject to the rule, which began discharging to a POTW after July 14, 2017, must comply with the standards as of that date and submit a One-Time Compliance Report within 90 days of introducing wastewater to a POTW.

Though this new rule will not likely become effective before the federal final compliance date for dental offices of October 12, 2020, the Department is authorized to implement and enforce the federal dental rule, according to s. NR 211.34, Wis. Adm. Code, after it publishes a notice in the Wisconsin Administrative Register of the Department's intent to adopt the federal rule's standards into Wisconsin Administrative Code. Section NR 211.34 also requires the Department to adopt these standards and requirements into Wisconsin Administrative Code as soon as possible after promulgation of the related federal regulation.

In addition to adopting the Dental Office rule, this rule also seeks to correct an issue relating to implementation of rules promulgated in ch. NR 211 Wis. Admin. Code which authorize use of facility-specific pretreatment requirements. EPA requires that facility-specific accommodations and requirements

be implemented in a manner which is equivalent to a Permit. The Department recently determined that for industries which discharge to a POTW which does not have an approved program, the Department's current mechanism for notifying a facility of the requirements may not meet all permit requirements. With this rule, the Department will clarify that for industries which have discharges subject to facility-specific pretreatment requirements and which discharge to a POTW without an approved program, the Department may issue a permit for implementing these facility-specific pretreatment requirements.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Since November 1, 2002, the Department has required municipal wastewater treatment plants with alternative mercury effluent limits to implement a mercury pollutant minimization program (PMP), as defined in NR 106.04 (5), to reduce their discharges of mercury. Municipal PMPs for mercury require mercury source reduction activities from dental, medical, school and industrial facilities discharging to the POTW. Dental facilities must report to the municipality which best management practices (BMPs) they have implemented and which are scheduled. Many of these BMPs are required by the proposed rule.

The proposed rule would regulate discharges from dental offices in municipalities without mercury PMPs for the first time.

No policy alternatives are available as the Department is required by s. 283.11 (1), Stat., to publish a state rule that complies with and does not exceed the requirements in the corresponding federal rule.

The Department's additional proposed corrective language will clarify that it may issue permits for facilities with facility-specific pretreatment requirements in order to implement those requirements in an EPA-approved manner.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department is required by s. 283.11 (1), Stat., to promulgate by rule pretreatment standards for any category of point sources established by the U.S. EPA and for which that agency has promulgated pretreatment standards for any pollutant. The federal dental office rule (40 CFR 441) contains pretreatment standards for the pollutants contained in dental amalgam wastewater discharged from dental offices.

The Department's corrective language allowing it to issue permits for facilities with facility-specific pretreatment requirements and which discharge to a POTW without an approved program is authorized under s. 283.31. The Department may issue a permit to a point source discharge under s. 283.31 "on condition that such discharges will meet ... pretreatment standards." s. 283.31(3) Wis. Stat.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Department estimates that up to 400 hours of state employee time will be needed to complete the promulgation of the proposed rule and additional rule language.

6. List with description of all entities that may be affected by the proposed rule:

Facilities where the practice of dentistry is performed, including, but not limited to, institutions, permanent or temporary offices, clinics, home offices, and facilities owned and operated by federal, state or local governments, that discharge wastewater to a publicly owned treatment works (POTW).

The proposed additional rule language would also affect 20 – 40 pretreatment facilities with facility-specific pretreatment requirements.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

As required by s. 283.11 (2), Stat., the new rule shall comply with and not exceed the requirements of the corresponding federal dental rule, 40 CFR 441.

The proposed additional rule language would enable the Department to implement facility-specific pretreatment requirements in an EPA-approved manner at facilities with facility-specific pretreatment requirements which are not located in the state's 27 largest municipalities which are already authorized by ch. NR 211.235 to issue permits containing such requirements.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

This state rulemaking effort will simply adopt the already-effective federal regulations. The total economic impact of the new rule and additional corrective language is estimated to be approximately \$420,000 per year, the majority of which (\$400,000) is due to adopting the federal dental rule. Below is a discussion of the expected impacts of the already-effective federal rule.

Many dental offices are small businesses and may incur minor costs as a result of complying with existing federal requirements which this rule incorporates. Small businesses are those which are independently owned and operated and are not dominant in their field, and which employ 25 or fewer full-time employees or which have gross annual sales of less than \$5,000,000.

The U.S. EPA estimated in 2016 the annual average cost to purchase, install and maintain one compliant wastewater solids separator over a 10-year period was \$800. Wisconsin has approximately 1000 dental offices providing dental services from 3500 licensed dentists.

According to U.S. EPA estimates, approximately 50% of all dental offices in Wisconsin have not yet installed a rule-compliant separator. Nearly all of these offices (approximately 500) are located in municipalities without required mercury pollutant minimization programs as described in item 3 above. Additionally the captured wastewater solids, containing mercury amalgam, may require management under RCRA hazardous waste regulations and may have associated costs.

The above estimated costs (approximately \$400,000 per year, cumulatively, for 50% of dental offices over a 10-year period) will likely be incurred from full implementation of the existing federal dental rule. Since the proposed rule will incorporate - without exceeding - existing federal requirements into a state rule, no additional economic impact (\$0) is anticipated from implementation of the proposed rule.

The Wisconsin Dental Association has informed its members of the federal dental office rule and promoted amalgam separators for the last seven years.

The proposed additional rule language contains facility-specific cost-saving measures which would reduce environmental compliance costs for those facilities receiving them.

The Department currently regulates 137 pretreatment facilities under NR 211, Wis. Adm. Code and estimates 30% of these may be impacted by the new corrective action, with an annual cost of \$500 per facility or \$20,000 total, annually.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding one public hearing in the month of July 2020. The hearing will be held in Madison, WI. The impact of this rule on dental offices is expected to be minor and the federal dental office rule has been well publicized by dental associations.

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