

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES**

The Natural Resources Board adopts an order to repeal and recreate ch. NR 216 pertaining to storm water discharge permits.
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WT-14-03

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 283.33(8) and (9) and 227.11(2)(a), Stats. Section 283.33(8) and (9), Stats., expressly require the department to promulgate rules for the administration of s. 283.33, Stats., relating to storm water discharge permits, and to establish permit fees based on the costs associated with each type of permit. Section 227.11(2)(a), Stats., expressly confers rule making authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Statutes interpreted: ss. 283.33 and 227.11(2)(a), Stats. Chapter NR 216 is being repealed and recreated in response to US EPA's Phase II storm water regulations (64 FR 68722, December 8, 1999) and amendments to s. 283.33, Stats., contained in 2001 Wisconsin Act 16, which require changes to the Department's storm water discharge permit program in order to comply with the revised federal storm water regulations.

Federal Regulation: Under the Clean Water Act, US EPA's Phase II rule revisions require NPDES permit coverage for storm water discharges from certain regulated small municipal separate storm sewer systems (MS4s) and construction activity disturbing between 1 and 5 acres of land (i.e., small construction activities). US EPA's Phase II regulations also revised the industrial "no exposure" exclusion and the temporary exemption for certain municipally owned industrial facilities under Phase I of the NPDES Storm Water Program.

Summary of the Proposed Rule: Chapter NR 216 establishes criteria defining those storm water discharges needing WPDES storm water permits, as required by s. 283.33, Stats. The goal of this chapter is to minimize the discharge of pollutants carried by storm water runoff from certain industrial facilities, construction sites and municipal separate storm sewer systems. Changes to ch. NR 216 include lowering the construction site permit threshold to one acre of land disturbance from 5 acres and establishing associated permit requirements, defining which municipalities must apply for storm water discharge permits and identifying other municipal discharges that may require permit coverage, establishing new application and permit criteria for municipal storm water discharge permits, and revising the applicability criteria and an exemption for certain industrial facilities to require permit coverage where previously exempted. These revisions will significantly increase the number of municipal separate storm sewer systems and construction sites that must have permit coverage and will also require many industrial facilities to certify that they do not discharge contaminated storm water. The storm water discharge permit fee system is also revised to provide appropriate funding to administer the program.

Similar Rules in Adjacent States: The National Pollutant Discharge Elimination System (NPDES) storm water permit program is a federally required program. Wisconsin, Minnesota, Illinois, Michigan and Iowa each received delegation from US EPA to be the NPDES permitting authority in their respective states. Permitting authorities are required to implement a program that is at least as stringent as the federal storm water program. Illinois EPA is automatically given the authority under Illinois statutes to implement NPDES storm water regulations and therefore did not have to revise its administrative code. Iowa DNR promulgated revised Phase II storm water regulations in 2002. Michigan DEQ revised its storm water regulations in May 2003. Minnesota PCA is drafting its Phase II storm water regulations and intends to public notice them this spring.

Summary of Factual Data and Analytical Methodologies Used in Support of the Rule: The rule is based primarily on the material set out by US EPA in its December 8, 1999 Final Rule, 64 FR 68722 to 68852.

Analysis and Documentation Used in Support of the Agency's Determination Under s. 227.114, Stats., (Small Business Impact): Existing storm water requirements are being extended in accordance with US EPA's Phase II regulations. The department relied on US EPA and on its own experience administering those existing requirements when it determined the rule's effects on small businesses.

SECTION 1. Chapter NR 216 is repealed and recreated to read:

Chapter NR 216
STORM WATER DISCHARGE PERMITS

NR 216.001	Purpose.
NR 216.002	Definitions.
NR 216.003	General permits.
NR 216.004	Noncompliance.
NR 216.005	Long-term storm water maintenance requirements.

Subchapter I – Municipal Storm Water Discharge Permits

NR 216.01	Purpose.
NR 216.02	Permit coverage required.
NR 216.022	Other environmental programs.
NR 216.023	Urbanized area exemption.
NR 216.024	Non-urbanized area exemption.
NR 216.025	Designation criteria.
NR 216.026	Petition for permit coverage.
NR 216.03	Application for permit coverage.
NR 216.04	Issuance of permits.
NR 216.06	Application requirements.
NR 216.065	Permittee responsibility and permit conditions.
NR 216.07	Permit requirements.
NR 216.08	Permit fees.
NR 216.09	Permit reissuance.

Subchapter II – Industrial Storm Water Discharge Permits

NR 216.20	Purpose.
NR 216.21	Applicability and exclusions.
NR 216.22	Application requirements.
NR 216.23	Permit coverage.
NR 216.24	Industry-specific general permits.
NR 216.25	Individual permit.
NR 216.27	Storm water pollution prevention plan.
NR 216.28	Monitoring requirements.
NR 216.29	Compliance and reporting requirements.
NR 216.30	Permit fees.
NR 216.31	Permit coverage transfers.
NR 216.32	Permit termination.

Subchapter III – Construction Site Storm Water Discharge Permits

NR 216.41	Purpose.
NR 216.415	Authorized local program.
NR 216.42	Applicability.
NR 216.43	Notice of intent requirements.
NR 216.44	Notice of intent deadline.
NR 216.45	Incomplete notice of intent and time limit for department decision.
NR 216.455	Proof of permit coverage.
NR 216.456	Responsible party.
NR 216.46	Erosion control plan requirements.
NR 216.47	Storm water management plan requirements.
NR 216.48	Reporting and monitoring requirements.
NR 216.49	Conformance with other applicable regulations.
NR 216.50	Amendments.
NR 216.51	Department actions.
NR 216.52	Use of information.

NR 216.54 Transfers.
NR 216.55 Notice of termination.

NR 216.001 Purpose. The purpose of this chapter is to establish criteria defining those storm water discharges needing WPDES storm water permits, as required by s. 283.33, Stats., and to implement the appropriate performance standards of subchs. III and IV of ch. NR 151. The goal of this chapter is to minimize the discharge of pollutants carried by storm water runoff from certain industrial facilities, construction sites and municipal separate storm sewer systems as identified in this chapter.

NR 216.002 Definitions. For the purposes of this chapter the following definitions are applicable:

Note: Additional definitions may be found in s. NR 205.03.

(1) “Best management practices” or “BMPs” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

(2) “Construction site” means an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is one acre or more. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.

(3) “Contaminated storm water” means storm water that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in s. NR 216.27 (3) (e).

(4) “Department” means the department of natural resources.

(5) “Discharge” has the meaning given it in s. 283.01(4), Stats.

(6) “Discharge of pollutant” or “discharge of pollutants” has the meaning given it in s. 283.01(5), Stats.

(7) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

(8) “Final stabilization” means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

(9) “General WPDES permit” or “general permit” means a permit for the discharge of pollutants issued by the department under s. 283.35, Stats.

(10) “Great Lakes areas of concern” means geographic areas that are severely degraded within the Great Lakes basin that include areas within the lower Fox river and Green Bay, Menominee river, Sheboygan river, St. Louis river and bay and the Milwaukee estuary.

(11) “Illicit discharge” means any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire fighting, diverted stream

flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.

(12) “Impaired water” means a waterbody impaired in whole or in part and listed by the department pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7, for not meeting a water quality standard, including a water quality standard for a specific substance or the waterbody’s designated use.

(13) “Infiltration system” means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

(14) “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in storm water runoff and lead to increased soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(15) “Landowner” means any person holding fee title, an easement or other interest in property that allows the person to undertake land disturbing construction activity on the property.

(16) “Major outfall” means a municipal separate storm sewer system outfall that meets one of the following criteria:

(a) A single pipe with an inside diameter of 36 inches or more, or from an equivalent conveyance (cross sectional area of 1,018 inch²) which is associated with a drainage area of more than 50 acres.

(b) A municipal separate storm sewer system that receives storm water runoff from lands zoned for industrial activity that is associated with a drainage area of more than 2 acres or from other lands with 2 or more acres of industrial activity, but not land zoned for industrial activity that does not have any industrial activity present is not classified as a major outfall under this paragraph.

(17) “Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

(a) Owned or operated by a municipality.

(b) Designed or used for collecting or conveying storm water.

(c) Which is not a combined sewer conveying both sanitary and storm water.

(d) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

(18) “Municipality” means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.

(19) “Outfall” means the point at which storm water is discharged to waters of the state or to a storm sewer.

(20) "Permittee" means a person who has applied for and received WPDES permit coverage for storm water discharge under this chapter.

(21) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

(22) "Point source" means a discernible, confined and discrete conveyance of storm water for which a permit is required under s. 283.33, Stats.

(23) "Pollutant" has the meaning given it in s. 283.01(13), Stats.

(24) "Pollution" has the meaning given it in s. 283.01(14), Stats.

(25) "Pollution prevention" means taking measures to eliminate or reduce pollution.

(26) "Section 313 water priority chemical" means a chemical or chemical category which is all of the following:

(a) Listed at 40 CFR 372.65 pursuant to 42 USC 11023.

(b) Present at or above threshold levels at a facility subject to EPCRA s. 313 reporting requirements.

(c) Listed in appendix D of 40 CFR 122 on either table II, table III or table V or is listed as a hazardous substance pursuant to 33 USC 1321 (b) (2) (A) of the clean water act at 40 CFR 116.4.

(27) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

(28) "SIC" means standard industrial classification. SIC codes cited in this chapter are from the 1987 edition of the *Standard Industrial Classification Manual*.

(29) "Significant contributor" means a person who discharges to waters of the state pollutants that contribute to or have the reasonable potential to contribute to an exceedence of a water quality standard.

(30) "Significant materials" means materials related to industrial activity that may contaminate storm water, including: raw materials; fuels; materials such as solvents, detergents and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under 42 USC 9601 to 9675; any chemical the facility is required to report pursuant to 42 USC 11023; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Note: 42 USC 9601 to 9675 is also known as the comprehensive environmental response, compensation and liability act (CERCLA). 42 USC 11023 is also known as the emergency planning and community right-to-know act (EPCRA), or as section 313 of title III of the superfund amendments and reauthorization act (SARA) of 1986.

(31) "Source area controls" means best management practices intended to prevent storm water runoff from contacting materials that can potentially contaminate it or if contact occurs, to reduce pollutants at the source of contamination.

(32) "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.

(33) "Storm water" means runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

(34) “Storm water outfall” means the point where a municipal separate storm sewer system discharges to waters of the state, or leaves one municipality and enters another.

(35) “SWPPP” means storm water pollution prevention plan.

(36) “TMDL” has the meaning given it in 40 CFR 130.2(i).

(37) “Treatment BMP” means a storm water treatment system, works or practice that is designed to reduce or remove pollutants from contaminated storm water.

(38) “Urbanized area” means a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people, as determined by the U.S. bureau of the census based on the latest decennial federal census.

(39) “Urban storm water planning area” means the boundary defined by a municipality that serves as the appropriate planning area for the abatement of storm water runoff pollution into waters of the state.

(40) “Waters of the state” has the meaning given it in s. 283.01(20), Stats.

(41) “Working day” means any day except Saturday and Sunday and holidays designated in s. 230.35(4)(a), Stats.

(42) “WPDES permit” means a Wisconsin pollutant discharge elimination system permit issued pursuant to ch. 283, Stats.

NR 216.003 General permits. (1) **CONDITIONS AND DURATION.** In addition to the terms and conditions listed under this chapter, if a storm water discharge general permit is issued, it may require compliance with the terms and conditions identified in s. NR 205.08. The term of the permit shall be the maximum period of time provided by federal law.

Note: A maximum time period of 5 years is allowed under federal law.

(2) **LIMITED COVERAGE OF GENERAL PERMITS.** Under s. 283.35, Stats., the department may issue a general permit that applies only to certain classes or categories of storm water discharges, or only to storm water discharges located in a designated area of the state, or both. Any limitation of the coverage of a general storm water discharge permit shall be stated in the permit. When the department receives a notice of intent or application for general permit coverage, it shall determine whether the discharge is for a class or category of storm water discharge that is covered by a general permit and is located within an area of the state to which the general permit applies. If the discharge is for a class or category that requires permit coverage but is not covered by a general permit or is for a discharge located outside of the area to which a general permit applies, the department shall treat the notice of intent or application as an application for an individual WPDES permit, and the landowner shall obtain an individual WPDES permit under this chapter for the discharge.

NR 216.004 Noncompliance. (1) Any act of noncompliance with the provisions of any storm water discharge permit issued under this chapter is a violation of the permit and is grounds for enforcement action or denial of continued coverage under a general permit.

(2) Permittees shall submit reports of noncompliance with requirements contained in a compliance schedule of the permit in writing within 14 days after the compliance schedule deadline. Reports of noncompliance shall include: a description of the noncompliance; its cause; the steps taken or planned to reduce, eliminate and

prevent reoccurrence of the noncompliance; and the effect of the noncompliance on the permittee's ability to meet remaining deadlines.

(3) The permittee shall immediately notify the department in accordance with ch. NR 706, in the event that a spill or accidental release of any hazardous material or substance results in the discharge of pollutants to waters of the state or creates a condition that may contaminate storm water discharged to waters of the state. The department shall be notified via the 24-hour toll-free spill hotline.

Note: The department's 24-hour toll-free spill hotline is 1-800-943-0003.

(4) The permittee shall take all reasonable steps to minimize or prevent any adverse impacts on the waters of the state resulting from noncompliance with a storm water discharge permit.

NR 216.005 Long-term storm water maintenance requirements. The long-term storm water management practices installed by the landowner in accordance with a storm water management plan shall be maintained in accordance with the long-term maintenance agreement submitted to the department pursuant to s. NR 216.47(5).

Note: Pursuant to the requirements to maintain the long-term storm water management practices in accordance with ss. NR 151.12 and 151.24, the department may take enforcement action under this section and s. 281.98, Stats., against a landowner for not maintaining long-term storm water management practices.

Subchapter I — Municipal Storm Water Discharge Permits

NR 216.01 Purpose. The purpose of this subchapter is to identify municipalities that are required to obtain WPDES municipal storm water permits, and to establish the application and permit requirements for municipal storm water discharge permits, as required by s. 283.33, Stats. The goal of this subchapter is to address storm water quality concerns associated with urban runoff and prevent to the maximum extent practicable the discharge of pollutants from municipal separate storm sewer systems as identified in s. NR 216.02. The department shall consider other environmental problems facing municipalities and emphasize cost effective best management practices when determining what is practicable.

NR 216.02 Permit coverage required. The following owners or operators of municipal separate storm sewer systems shall obtain coverage under a WPDES municipal storm water permit under this subchapter:

Note: A city, village or town is not responsible for a county, state and federally operated MS4 that lies within its jurisdiction.

(1) **OWNERS AND OPERATORS OF MUNICIPAL SEPARATE STORM SEWER SYSTEMS SERVING POPULATIONS OF 100,000 OR MORE.** The owner or operator of a municipal separate storm sewer system serving incorporated areas with a population of 100,000 or more as determined by the 1990 decennial census.

(2) **PREVIOUSLY NOTIFIED OWNERS OR OPERATORS OF MUNICIPAL SEPARATE STORM SEWER SYSTEMS.** The owner or operator of a municipal separate storm sewer system notified in writing by the department prior to the effective date of this section...[revisor insert date] to obtain a WPDES municipal storm water permit.

(3) URBANIZED AREAS. Unless exempted pursuant to s. NR 216.023, the owner or operator of a municipal separate storm sewer system within an urbanized area as defined by the U.S. bureau of the census.

Note: The U.S. bureau of the census redefines urbanized areas based on each decennial census. Other owners or operators of municipal separate storm sewer systems that are not cities, villages, towns or counties may also be required under s. NR 216.025 to obtain a permit. U.S. EPA lists the following municipalities as being within a 2000 decennial census urbanized area:

Algoma town
Allouez village
Altoona city
Anson town
Appleton city
Ashwaubenon village
Bayside village
Bellevue town
Beloit city
Beloit town
Bergen town
Big Bend village
Black Wolf town
Blooming Grove town
Bristol town (Dane county)
Bristol town (Kenosha county)
Brookfield city
Brookfield town
Brown county
Brown Deer village
Brunswick town
Buchanan town
Burke town
Butler village
Caledonia town
Calumet county
Campbell town
Cedarburg city
Cedarburg town
Chenequa village
Chippewa county
Chippewa Falls city
Combined Locks village
Cottage Grove town
Cottage Grove village
Cudahy city
Dane county

De Pere city
De Pere town
De Forest village
Delafield city
Delafield town
Douglas county
Dousman village
Dunkirk town
Dunn town
Eagle Point town
Eau Claire city
Eau Claire county
Elm Grove village
Elmwood Park village
Empire town
Fitchburg city
Fond du Lac city
Fond du Lac county
Fox Point village
Franklin city
Friendship town
Genesee town
Germantown town
Germantown village
Glendale city
Grafton town
Grafton village
Grand Chute town
Green Bay city
Greendale village
Greenfield city
Greenville town
Hales Corners village
Hallie town
Harmony town
Harrison town
Hartland village
Herman town
Hobart town
Holland town
Holmen village
Howard village
Howards Grove village
Janesville city
Janesville town
Kaukauna city

Kenosha city
Kenosha county
Kimberly village
Knowlton town
Kohler village
Kronenwetter village
La Crosse city
La Crosse county
La Prairie town
Lafayette town
Lake Hallie village
Lake Lac La Belle village
Lannon village
Lawrence town
Ledgeview town
Lima town
Lisbon town
Little Chute village
Madison city
Madison town
Maine town
Maple Bluff village
Marathon county
McFarland village
Medary town
Menasha city
Menasha town
Menomonee Falls village
Mequon city
Merton town
Merton village
Middleton city
Middleton town
Milton city
Milwaukee city
Milwaukee county
Monona city
Mosel town
Mosinee city
Mount Pleasant town
Muskego city
Nashotah village
Neenah city
Neenah town
Nekimi town
New Berlin city

North Bay village
North Fond du Lac village
North Prairie village
Oak Creek city
Oconomowoc city
Oconomowoc Lake village
Oconomowoc town
Oliver village
Omro town
Onalaska city
Onalaska town
Oshkosh city
Oshkosh town
Ottawa town
Outagamie county
Ozaukee county
Paddock Lake village
Pewaukee city
Pewaukee village
Pittsfield town
Pleasant Prairie village
Pleasant Springs town
Racine city
Racine county
Randall town
Rib Mountain town
Richfield town
River Hills village
Rock county
Rock town
Rothschild village
Salem town
Saukville town
Saukville village
Schofield city
Scott town
Seymour town
Sheboygan city
Sheboygan county
Sheboygan Falls city
Sheboygan Falls town
Sheboygan town
Shelby town
Shorewood Hills village
Shorewood village
Silver Lake village

Somers town (Kenosha county)
South Milwaukee city
Springfield town
St. Francis city
Stettin town
Stoughton city
Sturtevant village
Suamico town
Summit town
Sun Prairie city
Superior city
Superior village
Sussex village
Taycheedah town
Thiensville village
Tilden town
Turtle town
Twin Lakes village
Union town
Vandenbroek town
Vernon town
Verona city
Vinland town
Wales village
Washington county
Washington town
Waukesha city
Waukesha county
Waukesha town
Waunakee village
Wausau city
Wauwatosa city
West Allis city
West Milwaukee village
Weston village
Westport town
Wheatland town
Wheaton town
Whitefish Bay village
Wilson town
Wind Point village
Windsor town
Winnebago county

(4) MUNICIPAL SEPARATE STORM SEWER SYSTEMS SERVING OVER 10,000. An owner or operator of a municipal separate storm sewer system serving a population of 10,000 or more and a population density of 1,000 or more per square mile, as determined by the U.S. bureau of the census based on the latest decennial census unless it is exempted under s. NR 216.024.

NR 216.022 Other environmental programs. The department may determine that a municipal separate storm sewer system is in compliance with permit coverage required under s. 283.33, Stats., and will not be required to hold a permit under s. 283.33, Stats., where the storm water discharge is in compliance with a memorandum of understanding with another agency of the state that implements rules that are equivalent to this subchapter and that include storm water control requirements that are at least as stringent as this subchapter requires.

NR 216.023 Urbanized area exemption. The department may waive the requirement to obtain permit coverage under this subchapter for a municipal separate storm sewer system within an urbanized area listed under s. NR 216.02(3) that meets all of the following:

(1) The owner or operator of the system is not otherwise required to obtain permit coverage pursuant to s. NR 216.02(2).

(2) The system serves a population less than 1,000.

(3) The system is not contributing substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated under this subchapter.

(4) If the system discharges a pollutant that has been identified as a cause of impairment of any water body to which it discharges, storm water controls must not be needed based on wasteload allocations that are part of an U.S. EPA approved or established TMDL that addresses any pollutant of concern.

Note: The department has a list of impaired waters with pollutants of concern available on its website. If an MS4 is exempted from permit coverage under this section, the owner or operator does not need to satisfy the exemption requirements of s. NR 216.024.

NR 216.024 Non-urbanized area exemption. (1) The owner or operator of a municipal separate storm sewer system required to have permit coverage under s. NR 216.02(4) may request that its municipal separate storm sewer system be exempted by the department from the requirement to obtain permit coverage under this subchapter. This request shall demonstrate all of the following:

(a) The municipal separate storm sewer system is not required to have permit coverage pursuant to s. NR 216.02(1), (2) or (3);

(b) The municipal separate storm sewer system receives runoff from less than 320 total acres from any combination of the following land uses including all pervious and impervious land covers such as roof tops, parking lots, roads, sidewalks and grassed areas:

1. Commercial.

2. Industrial.

3. Institutional.

4. Residential with greater than 4.0 homes per acre.

(c) The rate of population growth of the area served by the municipal separate storm sewer system is less than 10% between the 2 most recent decennial censuses as determined by the U.S. bureau of the census.

(d) The municipal separate storm sewer system does not discharge directly into any outstanding resource water listed under s. NR 102.10, exceptional resource water listed under s. NR 102.11, a cold water stream as listed under s. NR 102.04(3)(a), Great Lakes area of concern pursuant to 33 USC 1268 or a wetland in an area of special natural resource interest as specified in s. NR 103.04.

(e) If the system discharges a pollutant that has been identified as a cause of impairment of any water body to which it discharges, storm water controls must not be needed based on wasteload allocations that are part of an U.S. EPA approved or established TMDL that addresses any pollutant of concern.

(2) An exemption request under this section shall be made by the owner or operator of the municipal separate storm sewer system within 90 days of the department letter notifying the owner or operator to apply for permit coverage under this subchapter. The department letter shall indicate that the owner or operator has 90 days to submit an exemption request pursuant to this section. The exemption request shall be submitted to the department together with the application required under s. NR 216.03.

(3) The department shall exempt the owner or operator of a municipal separate storm sewer system from the requirement to obtain permit coverage under this subchapter for requests that comply with subs. (1) and (2), unless either of the following occurs:

(a) The department has site-specific information that the municipal separate storm sewer system has a physical, chemical or biological impact that threatens or impairs the designated uses of waters of the state.

(b) The department has determined that controls are needed on the municipal separate storm sewer system based on wasteload allocations that are part of an U.S. EPA approved or established TMDL or equivalent analysis that addresses the pollutants of concern.

NR 216.025 Designation criteria. The department may require the owner or operator of any municipal separate storm sewer system to obtain permit coverage under this subchapter if the system meets any of the following:

(1) It serves an area contiguous to an area served by a municipal separate storm sewer system that is required to have permit coverage under this subchapter and it receives runoff from 320 or more total acres from any combination of the following land uses including all pervious and impervious land covers such as roof tops, parking lots, roads, sidewalks and grassed areas:

(a) Commercial.

(b) Industrial.

(c) Institutional.

(d) Residential with greater than 4.0 homes per acre.

(2) The department has site-specific information that the municipal separate storm sewer system has a physical, chemical or biological impact that threatens or impairs the designated uses of waters of the state.

(3) The department determines that controls are needed on the municipal separate storm sewer system based on wasteload allocations that are part of an U.S. EPA approved or established TMDL or equivalent analysis that addresses the pollutants of concern.

NR 216.026 Petition for permit coverage. Any person may petition the department to evaluate a municipal separate storm sewer for the need to obtain permit coverage using the criteria under s. NR 216.025. The

petition shall contain relevant information to assist the department in this evaluation in accordance with the criteria contained in s. NR 216.025. In response to a petition, the department may perform an evaluation of the municipal separate storm sewer system for which the petition is received.

NR 216.03 Application for permit coverage. (1) The owner or operator of a municipal separate storm sewer system identified as needing a permit under s. NR 216.02 shall submit an application to the department within 90 days of a department letter notifying the owner or operator that a permit application is required. The application shall be submitted on forms made available from the department.

Note: Under 40 CFR 122.33(c)(1), the owner or operator of a municipal separate storm sewer system listed under s. NR 216.02(3) was required to apply for permit coverage by March 10, 2003. Notice of intent forms may be obtained from the department by writing to the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at (608) 267-7694.

(2) The owner or operator of a municipal separate storm sewer system identified as needing a permit under s. NR 216.02 shall submit a permit application to the department requesting to be covered by one of the following methods:

(a) Under a general permit.

(b) Under an individual permit by themselves or as a co-applicant.

(c) If the application for individual permit coverage includes one or more co-applicants then all of the following apply:

1. All owners or operators of municipal separate storm sewer systems that are interested in obtaining coverage under the permit shall be listed.

2. The expected benefits of having individual permit coverage shall be described in the application.

(d) One application may be submitted by multiple owners or operators of municipal separate storm sewer systems when requesting to be covered as co-applicants under an individual permit.

NR 216.04 Issuance of permits. The department shall determine whether a general permit or an individual permit will be used to authorize coverage for each applicant, group of co-applicants or regional authority. The department may exclude co-applicants from coverage under an individual permit, and instead issue a separate individual permit to an excluded co-applicant if coverage is necessary to ensure compliance with this subchapter.

NR 216.06 Application requirements. Municipalities subject to the requirements of this subchapter shall apply for a storm water discharge permit by submitting the necessary application information to the department. The municipal storm water discharge permit application shall include all of the following:

(1) GENERAL INFORMATION. The applicant's name, address, telephone number of contact person and status as a government entity.

(2) MINIMUM CONTROL MEASURE INFORMATION. Descriptions of the minimum control measures that the applicant intends to implement to comply with all of the following permit requirements:

(a) *Public education and outreach.* A public education and outreach program pursuant s. NR 216.07(1).

(b) *Public involvement and participation.* A public involvement and participation program pursuant to s. NR 216.07(2).

(c) *Illicit discharge detection and elimination.* An illicit discharge detection and elimination program pursuant to s. NR 216.07(3), including a list of existing legal authorities to enforce this program.

(d) *Construction site pollution control.* A program to reduce pollutants in runoff from construction sites pursuant to s. NR 216.07(4).

(e) *Post-construction site storm water management.* A program to reduce pollutants in runoff from new development and redevelopment sites after construction pursuant to s. NR 216.07(5).

(f) *Pollution prevention.* A pollution prevention program for municipal operation and maintenance areas pursuant to s. NR 216.07(6)(a).

(3) **STORM SEWER SYSTEM MAP.** A description of a municipal separate storm sewer system map that the applicant intends to use to comply with s. NR 216.07(7).

NR 216.065 Permittee responsibility and permit conditions. (1) **CO-PERMITTEES.** For a group of co-permittees, a single co-permittee is responsible only for permit conditions relating to discharges from the municipal separate storm sewer systems for which it is the owner or operator.

(2) **CONDITIONS.** Permits may specify different conditions for different discharges covered by a permit, including distinctive management programs for different storm water drainage areas.

NR 216.07 Permit requirements. The department shall issue permits using the information provided by the applicant and other pertinent information when developing permit conditions. Permits shall, at a minimum, require all of the following:

(1) **PUBLIC EDUCATION AND OUTREACH.** (a) A public education and outreach program to distribute materials to the public or conduct equivalent public outreach to increase awareness of storm water impacts on waters of the state. The program shall at a minimum be designed to achieve all of the following:

1. Promote detection and elimination of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewer systems.

2. Inform and educate the public to facilitate the proper management of materials and encourage the public to change their behavior that may cause storm water pollution from sources including automobiles, pets, household hazardous waste and household practices.

3. Promote beneficial onsite reuse of leaves and grass clippings and proper use of lawn and garden fertilizers and pesticides.

4. Promote the management of stream banks and shorelines by riparian landowners to minimize erosion, and restore and enhance the ecological values of the waterway.

5. Promote infiltration of residential storm water runoff from rooftop downspouts, driveways and sidewalks.

(b) A program that includes elements to achieve all of the following:

1. Inform and educate those responsible for the design, installation or maintenance of construction site erosion control and storm water management practices on how to design, install and maintain the practices.

2. Target businesses and activities that may pose a storm water contamination concern, and where appropriate, educate specific audiences such as lawn care companies and restaurants on methods of storm water pollution prevention.

3. Promote environmentally sensitive land development designs by developers and designers.

Note: The public education and outreach program should be tailored, using a mix of locally appropriate strategies to educate the general public and target specific audiences likely to have significant storm water impacts.

(2) PUBLIC INVOLVEMENT AND PARTICIPATION. A program to notify the public of activities required by the municipal storm water discharge permit required under this subchapter and to encourage input and participation from the public regarding these activities. The implementation of this program shall comply with all applicable state and local public notice requirements.

(3) ILLICIT DISCHARGE DETECTION AND ELIMINATION. A program to detect and remove illicit discharges and improper disposal of wastes into the municipal separate storm sewer system, or require the discharger to obtain a separate WPDES permit. The program shall include all of the following:

(a) To the extent authorized by law, measures to effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions.

(b) A strategy to address all types of illicit discharges. In addition, non-storm water discharges or flows such as landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, fire fighting and discharges authorized under a WPDES permit shall be included in the strategy if identified by the municipality as significant sources of pollutants to waters of the state.

(c) Procedures to conduct on-going field screening activities during the term of the permit, including locations of storm sewers that will be evaluated.

(d) Procedures to be followed to investigate portions of the municipal separate storm sewer system that, based on the results of field screening or other information, indicate a reasonable potential for containing illicit discharges or other sources of non-storm water. Procedures may include sampling for the parameters listed within par. (i), testing with fluorometric dyes or conducting inspections inside storm sewers where safety and other considerations allow. The department shall be given advanced notice of the time and location of dye testing within a MS4.

Note: The dye may be reported to the department by concerned citizens as an illicit discharge. Prior notification will prevent false alarms.

(e) Procedures to immediately investigate reports of illicit discharges to its MS4, including cooperation with the department, in order to locate and eliminate illicit discharges.

(f) Procedures for immediate notification of the department in accordance with ch. NR 706, of a spill or release of a hazardous substance, into or from a MS4.

Note: The department shall be notified via the 24-hour toll-free spill hotline at 1-800-943-0003.

(g) Procedures to prevent, contain and respond to spills that may enter the municipal separate storm sewer system.

(h) Appropriate measures to eliminate any leakage or discharge from sanitary conveyance systems into municipal separate storm sewer systems.

(i) A field screening analysis for illicit connections and illicit discharges at all major outfalls, plus any additional selected field-screening points designated by the municipality or the department. At a minimum, a screening analysis shall include a narrative description of visual observations made during dry weather periods. If any flow is observed, field analysis shall be conducted to determine the presence of illicit discharges. All field analysis shall include a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum, and a description of the flow rate as well as any other relevant observations regarding the potential presence of non-storm water discharges. In addition, the field analysis shall include sampling for pH, total chlorine, total copper, total phenol and detergents unless the permittee obtains concurrence from the department to perform alternative sampling that is more effective to detect illicit discharges such as with ammonia, potassium or bacteria. The field screening points shall be established using the following:

1. Field screening points shall, where possible, be located downstream of any sources of suspected illegal or illicit activity.

2. Field screening points shall be located where practicable at the farthest manhole or other accessible location downstream in the system. Safety of personnel and accessibility of the location shall be considered in making this determination.

3. Consideration shall be given to hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area and land use types.

(4) CONSTRUCTION SITE POLLUTANT CONTROL. Except for construction sites that are exempted under s. NR 216.42 (2) to (11), a program to implement and maintain erosion and sediment control best management practices to reduce pollutants in storm water runoff from construction sites with one acre or more of land disturbance, and sites of less than one acre if they are part of a larger common plan of development or sale. This program shall encompass any adjacent developing areas that are planned to have a minimum density of 500 people per square mile, the urbanized area and developing areas whose runoff will connect to the MS4. The program shall include all of the following:

(a) The implementation and enforcement of a legal authority to comply with ss. NR 151.11 and 151.23, as well as sanctions to ensure compliance, to the extent authorized by law.

Note: Section NR 151.11 applies to construction sites that are not transportation facilities and s. NR 151.23 applies to transportation facility construction sites.

(b) Procedures for site planning which incorporate consideration of potential water quality impacts.

(c) Requirements for erosion and sediment control best management practices.

(d) Procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, the characteristics of soil and receiving water quality.

(e) Requirements for construction site operators to manage waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site so as to minimize adverse impacts to water quality.

(f) Procedures for receipt and consideration of information submitted by the public.

(5) POST-CONSTRUCTION SITE STORM WATER MANAGEMENT. A program to develop, implement and enforce controls on discharges from new development and redevelopment projects that disturb one

acre or more of land, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4. This program shall encompass any adjacent developing areas that are planned to have a minimum density of 500 people per square mile, the urbanized area and developing areas whose runoff will connect to the MS4. The program shall include all of the following:

(a) The implementation and enforcement of a legal authority to comply with ss. NR 151.12 and 151.24.

Note: Section NR 151.12 applies to construction sites that are not transportation facilities and s. NR 151.24 applies to transportation facility construction sites.

(b) Procedures for site planning which incorporate consideration of potential water quality impacts.

(c) Requirements for source area control and regional best management practices.

(d) Procedures for inspecting and enforcing maintenance of best management practices.

(6) POLLUTION PREVENTION. (a) A storm water management program and an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff. This program shall achieve compliance with the developed urban area performance standards of s. NR 151.13(2) for those areas that were not subject to the post-construction performance standards of s. NR 151.12 or 151.24. The total suspended solids control requirements of s. NR 151.13(2)(b)1.b. and s. NR 151.(2)(b)2. may be achieved on a regional basis across an urban area or on an individual basis. The program shall include all of the following activities:

1. Installation and maintenance of source area controls and regional best management practices.

2. Roadway maintenance including street sweeping and de-icer management.

3. If appropriate, collection and management of leaf and grass clippings.

4. Management of municipal garages, storage areas and other municipal sources of pollution.

5. Management of the application of lawn and garden fertilizers on municipally controlled properties in accordance with s. NR 151.13(1)(b)3.

6. Inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions.

7. Adequate legal authority to require compliance with conditions in ordinances, permits, contracts or orders.

(b) An assessment of the actions taken under this subsection shall be conducted. The assessment shall include a pollutant-loading analysis using a model such as SLAMM, P8 or equivalent methodology that is approved by the department. At a minimum, a pollutant-loading analysis shall be conducted for total suspended solids and phosphorus. The department may require other parameters on a case-by-case basis.

Note: The department believes that computer modeling is the most efficient and cost effective method for calculating pollutant loads. Pollutant loading models such as SLAMM, P8 or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids. Information on how to access SLAMM and P8 is available at <http://www.dnr.state.wi.us/org/water/wm/nps/models/SLAMM.htm> or contact the storm water program in the bureau of watershed management at (608) 267-7694.

The pollutant-loading analysis may be limited to pollutants generated within the municipality.

(7) **STORM SEWER SYSTEM MAP.** A sufficiently sized and detailed map with a scale suited for the level of detail depicting the following information:

(a) Identification and outline of the storm water drainage basins, the watersheds and municipal separate storm sewer systems. Other major municipal, government or privately owned storm water conveyance systems lying within, but not owned or operated by the permittee shall also be identified.

(b) A boundary defining the final urban storm water planning area and all municipal borders in the area.

(c) A list and location of all municipal storm sewer system outfalls discharging to waters of the state.

Indicate the pipe size and identify those outfalls, which are considered major outfalls.

(d) The location and permit number of any discharge to the municipal separate storm sewer system that has been issued a WPDES permit, or has filed a permit application with the department.

(e) The location of major structural controls for storm water discharges including retention basins, detention basins and major infiltration devices.

(f) Identification of publicly owned parks, recreational areas and other open lands.

(g) The location of publicly owned public works facilities.

(h) Other potential sources of pollutants.

(8) **ANNUAL REPORT.** For the permittee's first permit term of 5 years, submission of an annual report to the department. After the term of the first permit, the department may reduce annual reporting frequency but annual reports shall be filed in the 2nd and 4th years of the subsequent permit terms. The municipal governing body, interest groups and the general public shall be encouraged to review and comment on the annual report in accordance with sub. (2). The annual report shall include the following information:

(a) The status of implementing the permit requirements and compliance with permit schedules.

(b) A summary of activities to comply with sub. (6).

(c) A fiscal analysis which includes the annual expenditures and budget for the reporting year, and the budget for the next year.

(d) A summary of the number and nature of enforcement actions, and inspections conducted to comply with the required legal authorities.

(e) Identification of water quality improvements or degradation.

(9) **SCHEDULE OF COMPLIANCE.** A compliance schedule for the permittee to fully develop, implement and enforce the requirements of this subchapter within 5 years after initial permit coverage is granted.

NR 216.08 Permit fees. A storm water discharge permit fee shall be paid annually by each permittee under this subchapter, and by each permittee whose WPDES permit incorporates storm water management requirements under this subchapter. Permit fees are due by June 30th each year. The fees shall be assessed according to the following schedule:

(1) For city or village owned or operated municipal separate storm sewer systems, an annual permit fee shall be based on the total municipal population as reported by the latest U.S. bureau of the census decennial census. The population residing within an area served by a combined sewer outfall may not be included in determining the total municipal population for purposes of establishing the annual permit fee. For town owned or operated

municipal separate storm sewer systems, an annual permit fee shall be based on the population within the urbanized area as defined by the U.S. census bureau. The annual permit fees are listed in Table 1.

Table 1

Population	Annual Fee
400,000 or greater	\$25,000
200,000 to 399,999	\$20,000
100,000 to 199,999	\$12,000
75,000 to 99,999	\$10,000
50,000 to 74,999	\$8,000
40,000 to 49,999	\$7,500
35,000 to 39,999	\$6,500
30,000 to 34,999	\$5,000
25,000 to 29,999	\$4,000
15,000 to 24,999	\$3,000
12,500 to 14,999	\$2,000
10,000 to 12,499	\$1,500
6,000 to 9,999	\$1,000
2,000 to 5,999	\$500
1,000 to 1,999	\$250
100 to 999	\$50
Less than 100	Zero

(2) For any other owner or operator of a municipal separate storm sewer system including county, state and federal systems, the fee shall be \$500.

Note: The annual permit fee is the same regardless of whether the municipal separate storm sewer system is covered under a general permit or an individual permit alone or with co-permittees. Municipal permit fees were established in order to administer the municipal permit program pursuant to s. 283.33(9)(b), Stats.

NR 216.09 Permit reissuance. In order to remain covered after the expiration date of a permit issued pursuant to this subchapter, a permittee shall reapply to the department at least 180 days prior to the expiration date of the permit for continued coverage under a reissued permit. If the permit is not reissued by the time the existing permit expires, the existing permit remains in effect. To reapply for permit coverage, a permittee shall send a letter to the department that includes proposed changes to the storm sewer system map, storm water management program and any other relevant change.

Subchapter II — Industrial Storm Water Discharge Permits

NR 216.20 Purpose. This subchapter establishes criteria for identifying industrial discharges that require a WPDES storm water permit, application requirements, permit requirements and permit fees, as required by s. 283.33, Stats.

NR 216.21 Applicability and exclusions. (1) POINT SOURCES. This subchapter applies to point sources which discharge storm water associated with industrial activity to the waters of the state, either directly or via a separate storm sewer system.

(2) CATEGORIES. This subchapter applies to discharges originating from the industrial facilities belonging to categories identified in pars. (a) and (b).

(a) Tier 1 categories include all of the following:

1. Heavy manufacturers defined by their primary Standard Industrial Classification (SIC) Code, which represents the primary income-producing activity at the facility, listed in Table 1:

Table 1

Tier 1 Heavy Manufacturers

SIC	Description
2400-2499	Lumber & Wood Products
2600-2699	Paper & Allied Products
2800-2899	Chemicals & Allied Products
2900-2999	Petroleum Refining & Related Industries
3110-3119	Leather Tanning & Finishing
3200-3299	Stone, Clay, Glass & Concrete Products
3300-3399	Primary Metal Industries
3441	Fabricated Structural Metal
3730-3739	Ship & Boat Bldg. & Repair

Note: Facilities in SIC Codes 2434, 2650-2659, 2670-2679, 2830-2839, 2850-2859, 2951, 3230-3239, 3271-3273 are included in s. NR 216.21(2)(b).

2. Facilities involved in the recycling of materials such as metal scrap yards, battery reclaimers, salvage yards and automobile junk yards, including those classified in SIC Codes 5015 and 5093.

3. Facilities with bulk storage piles for coal, metallic and non-metallic minerals and ores, and scrap not otherwise covered under this subchapter, such as those associated with freight transportation, SIC Code 4400-4499, and wholesale trade, SIC Code 5052.

(b) Tier 2 categories include all of the following:

1. Manufacturing facilities defined by Table 2, not including their access roads and rail lines:

Table 2

Tier 2 Light Manufacturers

SIC	Description
2000-2099	Food & Kindred Products
2100-2199	Tobacco Products
2200-2299	Textile Mill Products
2300-2399	Apparel & Other Textile Products
2434	Wood Kitchen Cabinets
2500-2599	Furniture & Fixtures
2650-2659	Paperboard Containers & Boxes

2670-2679	Misc. Converted Paper Products
2700-2799	Printing, Publishing, & Allied Industries
2830-2839	Drugs
2850-2859	Paints & Allied Products
3000-3099	Rubber & Misc. Plastics Products
3100-3199	Leather & Leather Products
3230-3239	Products of Purchased Glass
3400-3499	Fabricated Metal Products
3500-3599	Industrial & Commercial Machinery & Computer Equipment
3600-3699	Electronic & Other Electrical Equipment & Components
3700-3799	Transportation Equipment
3800-3899	Instruments & Related Products
3900-3999	Misc. Manufacturing Industries
4221	Farm Product Warehousing & Storage
4222	Refrigerated Warehousing & Storage
4225	General Warehousing & Storage

Note: Facilities in SIC Codes 3110-3119, 3441 and 3730-3739 are included in s. NR 216.21 (2) (a) 1.

2. Transportation facilities defined by Table 3 that have vehicle maintenance shops, equipment cleaning operations or airport de-icing operations. This subchapter only applies to those portions of these facilities that are involved in vehicle maintenance including rehabilitation, mechanical repairs, painting, fueling, lubrication and associated parking areas, involved in cleaning operations or de-icing operations, or that are listed as source areas under s. NR 216.27(3)(e):

Table 3

Tier 2 Transportation Facilities

SIC	Description
4000-4099	Railroad Transportation
4100-4199	Local & Interurban Passenger Transit
4200-4299	Trucking & Warehousing
4300-4399	U.S. Postal Service
4400-4499	Water Transportation
4500-4599	Transportation By Air
5171	Petroleum Bulk Stations & Terminals

Note: Facilities in SIC Codes 4221, 4222 and 4225 are included in s. NR 216.21(2)(b)1.

3. a. Facilities defined by Table 4, including active and inactive mining operations and oil and gas exploration, production, processing or treatment operations or transmission facilities. This subchapter only applies

where storm water runoff has come into contact with any overburden, raw material, intermediate product, finished product, by-product or waste material located on the site of the operations.

Table 4

Tier 2 Mining, Oil and Gas Operations

SIC	Description
1000-1099	Metal Mining
1200-1299	Coal Mining
1300-1399	Oil & Gas Extraction
1400-1499	Non-metallic Minerals, except fuels

b. This subchapter does not apply to non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990; nor to coal mining operations released from the performance bond issued to the facility by the appropriate surface mining control and reclamation act authority under 30 USC 1201 et seq. and 16 USC 470 et seq. Production, processing or treatment operations or transmission facilities associated with oil and gas extraction are included only if there has been a discharge of storm water containing a quantity of a pollutant reportable pursuant to 40 CFR 110.64, 40 CFR 117.21 or 40 CFR 302.6, or if a storm water discharge contributed to a violation of a water quality standard.

4. Facilities subject to storm water effluent limitation guidelines, new or existing source performance standards or toxic pollutant effluent standards under 33 USC 1251, 1311, 1314 (b) and (c), 1316(b) and (c), 1317(b) and (c), 1326(c), except those facilities classified as a Tier 1 pursuant to s. NR 216.21(2)(a).

5. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one million gallons per day or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 33 USC 1345.

6. Hazardous waste treatment, storage and disposal facilities, including those operating under a license under s. 291.25, Stats.

7. Landfills, land application sites and open dumps that receive or have received any industrial waste from any of the facilities identified in this section, including those subject to regulation under subtitle D of the resource conservation and recovery act, 42 USC 6901 et seq., or ch. 289, Stats.

8. All steam electric power generating facilities, including coal handling sites but not including off-site transformer or electric substations.

9. Facilities described in SIC code 2951 for asphalt paving mixes and block, and facilities described in SIC codes 3271, 3272 and 3273 for cement products.

10. Facilities previously classified as tier 1 dischargers that are subsequently classified as tier 2 under s. NR 216.23 (3).

11. Discharges determined by the department to be significant contributors of pollutants to waters of the state.

(3) **CONDITIONAL NO EXPOSURE EXCLUSION.** (a) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to storm water, and the discharger satisfies the conditions in pars. (b) to (e). "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to storm water. Industrial materials or activities include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products or waste products. Material handling activities include the storage, loading and unloading, transportation or conveyance of any raw material, intermediate product, final product or waste product.

(b) *Qualification.* To qualify for this exclusion, the operator of the discharge shall do all of the following:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to storm water.
2. Complete and sign, in accordance with s. NR 216.22 (7), a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in par. (c).
3. Submit an initial "no exposure" certification to the department within 6 months after the effective date of this section...[revisor insert date] using U.S. EPA NPDES Form 3510-11 or on a form available from the department. The "no exposure" form shall be mailed to: Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921.

Note: U.S. EPA published a guidance document entitled Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On "No Exposure" of Industrial Activities to Storm Water, EPA 833 -B-00-001, dated June 2000. This guidance and the federal NPDES Form 3510-11 is accessible online at:

<http://cfpub1.epa.gov/npdes/stormwater/exposure.cfm>. Department storm water forms are available at the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/publications.htm>.

4. Submit the signed certification to the department once every 5 years.
5. Allow the department to inspect the facility to determine compliance with the "no exposure" conditions.
6. Allow the department to make any "no exposure" inspection reports available to the public upon request.
7. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(c) *Industrial materials and activities not requiring storm resistant shelter.* To qualify for this exclusion, storm resistant shelter is not required for any of the following:

1. Drums, barrels, tanks and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves.
2. Adequately maintained vehicles used in material handling.
3. Final products, other than products that would be mobilized in storm water such as rock salt.

(d) *Limitations.* 1. This conditional exclusion from the requirement to obtain a permit under this subchapter is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water

that would otherwise be "no exposure" discharges, individual permit requirements may be adjusted by the department accordingly.

2. If circumstances change and industrial materials or activities become exposed to storm water, the conditions for this exclusion no longer apply. The discharge then becomes subject to enforcement as an unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances shall submit a notice of intent to the department 14 or more working days prior to the change of circumstances and in accordance with s. NR 216.22.

Note: A facility that has claimed a condition of "no exposure" should routinely inspect its facility to verify that it continues to operate in a condition of "no exposure".

3. Notwithstanding the provisions of this subsection, the department retains the authority to require permit authorization and deny this exclusion upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an exceedence of an applicable water quality standard, including designated uses.

(e) *Certification.* The "no exposure" certification shall include all of the following information, at a minimum, to aid the department in determining if the facility qualifies for the "no exposure" exclusion:

1. The legal name, address and phone number of the discharger.
2. The facility name, address and the county name where the facility is located.
3. The certification shall indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:
 - a. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water.
 - b. Materials or residuals on the ground or in storm water inlets from spills and leaks.
 - c. Materials or products from past industrial activity.
 - d. Material handling equipment, except adequately maintained vehicles.
 - e. Materials or products during loading and unloading or transporting activities.
 - f. Materials or products stored outdoors, except final products intended for outside use such as new cars, where exposure to storm water does not result in the discharge of pollutants.
 - g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks and similar containers.
 - h. Materials or products handled or stored on roads or railways owned or maintained by the discharger.
 - i. Waste material, except waste in covered, non-leaking containers.
 - j. Application or disposal of process wastewater unless otherwise permitted.
 - k. Particulate matter or visible deposits of residuals from roof stacks or vents not otherwise regulated such as under an air quality control permit, and evident in the storm water outflow.
4. All "no exposure" certifications shall include the following certification statement, and be signed in accordance with the signatory requirements of s. NR 216.22 (7): "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from permitting requirements under subch. II of ch. NR 216; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document, except as

allowed under s. NR 216.21 (3)(c). I understand that I am obligated to submit a “no exposure” certification form once every five years to the department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain permit coverage under subch. II of ch. NR 216, prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(4) OTHER ENVIRONMENTAL PROGRAMS. If one of the following conditions is met, the department may determine that a facility is in compliance with permit coverage required under s. 283.33, Stats., and will not be required to hold a separate permit under s. 283.33, Stats.:

(a) The storm water discharge is in compliance with a department permit or approval, which includes storm water control requirements that are at least as stringent as those required under this subchapter.

(b) The storm water discharge is in compliance with a memorandum of understanding with another agency of the state that implements rules including storm water control requirements that are at least as stringent as those required under this subchapter.

(5) EXCLUSIONS. This subchapter does not apply to any of the following:

(a) Diffused surface drainage or agricultural storm water discharges.

(b) Non-storm water discharges at the outfall covered under an individual or general WPDES permit, including contact cooling water, non-contact cooling water, other process wastewaters or sewage.

(c) Non-storm water discharges at an outfall for which coverage under an individual or general WPDES permit is not required, including landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands and fire fighting.

(d) Inactive, closed or capped landfills that have no potential for contamination of storm water. The department shall make a determination of contamination potential on a case-by-case basis.

(e) Remedial action discharges or discharges authorized by a WPDES permit for discharging contaminated or uncontaminated groundwater.

(f) Discharges of hazardous substances that are required to be reported under ch. NR 706.

(g) Areas located on plant lands that are segregated from the industrial activities of the plant, such as office buildings and accompanying parking lots, if the drainage from the segregated areas is not mixed with contaminated storm water drainage.

(h) Storm water discharges into a municipal combined sewer system.

NR 216.22 Application requirements. (1) **APPLICABILITY.** The owner or operator of a facility type listed in s. NR 216.21 (2) shall apply for a storm water discharge permit unless the owner or operator is eligible for and has submitted a conditional “no exposure” certification in accordance with s. NR 216.21(3).

(2) **DATE OF APPLICATION.** Persons proposing to discharge storm water shall submit a notice of intent to the department as follows:

(a) For proposed facilities that will undergo one or more acres of land disturbing construction activities as part of their construction, at least 14 working days prior to initiating land disturbing construction activities at the site.

Note: This submittal timeline is consistent with the requirement to develop erosion control and storm water management plans and submit a notice of intent under subch. III.

(b) For all other facilities, at least 14 working days prior to initiating industrial operations.

Note: Where an existing facility is covered under a storm water discharge permit, permit coverage may be transferred to a new owner in accordance with s. NR 216.31.

(4) **FORMS.** Notices of intent shall be submitted to the department using forms available from the department.

Note: Notice of intent forms can be obtained from the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/publications.htm>, any regional office of the department, by writing to the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at (608) 267-7694. Unless the department directs otherwise, use notice of intent Form 3400-163 to apply for industrial storm water discharge permit coverage. Owners or operators of non-metallic mines may apply for coverage using the department notice of intent Form 3400-179.

(5) **PERMIT TYPE CRITERIA.** (a) The department shall evaluate the information submitted on the notice of intent to determine whether a facility should be covered under a general or individual storm water discharge permit under s. 283.31 or 283.33, Stats.; or whether coverage under a permit should be denied. A letter shall be sent to the applicant when permit coverage is granted. The letter granting coverage shall indicate the date upon which coverage under the permit becomes effective at the facility. If permit coverage is denied, a letter shall be sent to the applicant with the reason for denial.

(b) The basis for determining coverage under a general or individual storm water discharge permit and the tier type shall be based on a comparison of notice of intent information on SIC code, industrial activity and the discharge of contaminated storm water, to the categories identified in s. NR 216.21(2).

(c) If a facility has a WPDES permit, the department may choose to regulate storm water discharges under that permit.

(6) **ADDITIONAL INFORMATION.** The department may require more information than what is provided in the notice of intent in order to determine if coverage under a general permit is appropriate. The applicant shall provide additional information requested by the department within 30 days from receipt of notification by the department.

(7) **SIGNATURE.** The notice of intent shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice-president, or by the officer's authorized representative having overall responsibility for the operation of the site for which permit coverage is sought.

(b) In the case of a unit of government, by a principal executive officer, a ranking elected official, or other duly authorized representative.

(c) In the case of a partnership, by a general partner.

(d) In the case of a sole proprietorship, by the proprietor.

(e) In the case of a limited liability company, by a member or manager.

(8) DEFICIENT APPLICATION. The department may require an applicant to submit data necessary to complete any deficient notice of intent or may require the applicant to submit a new notice of intent where the deficiencies are extensive or the appropriate form has not been used.

(9) REAPPLICATION. When a general storm water discharge permit is reissued, the department may require the owner or operator of a previously covered facility to submit a new notice of intent in order to determine continued applicability of the permit.

NR 216.23 Permit coverage. (1) TIER 1 GENERAL PERMIT. The department may issue a statewide general permit to cover all tier 1 type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. NR 216.24, or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

(2) TIER 2 GENERAL PERMIT. The department may issue a statewide general permit to cover all tier 2 type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. NR 216.24, or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

(3) CHANGING TO TIER 2. (a) A permittee covered by a tier 1 general industrial storm water discharge permit issued under this section, or a permit issued under s. NR 216.24, may request that the department consider converting the permittee's coverage to a tier 2 general industrial storm water discharge permit if all of the following occur:

1. The process or operation is managed so that no storm water is contaminated with any of the pollutants identified in s. NR 216.27(3)(j).

2. The permittee certifies that there is no unauthorized discharge at the outfall.

3. The permittee has completed a minimum of 3 years of industrial activity under a SWPPP, with no confirmed problems identified by public complaint or the annual facility site compliance inspection reports required under s. NR 216.29 (2).

(b) The department may elect to cover any industrial storm water discharge under a tier 2 general permit where the department determines that a tier 2 general permit is appropriate.

(4) CHANGING TO TIER 1. If the department determines that a facility or an industrial activity covered under a tier 2 general permit may be discharging storm water contaminated with pollutants listed in s. NR 216.27(3)(j), the department may require that the facility or activity be covered by a tier 1 general permit.

NR 216.24 Industry-specific general permits. (1) **INDUSTRY-SPECIFIC PERMITS.** In addition to statewide general permits issued under s. NR 216.23(1) or (2), the department may issue industry-specific general storm water discharge permits to one or more categories of industries identified in s. NR 216.21(2).

(2) **REQUIREMENTS.** Industry-specific general industrial storm water discharge permits shall differ from the statewide storm water general permits by factoring in characteristics common to the industry including the characteristic that requirements of the permit may contain phased source area control compliance schedules.

(3) **COOPERATIVE COMPLIANCE PROGRAM.** (a) The department may allow a permittee to participate in a program to assist the facility with maintaining compliance with an industry-specific permit. The department may waive certain requirements of this subchapter via permit in exchange for alternative requirements such as mandatory education and a facility inspection program that the department finds to be equivalent or more effective at controlling pollution from storm water runoff.

(b) The department may terminate a cooperative compliance program if it finds that the program is ineffective.

NR 216.25 Individual permit. (1) **PERMIT REQUIREMENTS.** Requirements of an individual WPDES permit issued under s. 283.31 or 283.33, Stats., shall be consistent with similar requirements in general storm water discharge permits, except where the department determines that more stringent requirements are necessary to meet a performance standard of ch. NR 151 or a water quality standard. The department may require that specific source area controls be used as a requirement of an individual permit.

(2) **EFFLUENT LIMITATIONS.** A facility covered by an individual WPDES storm water permit under s. 283.33(1)(d), Stats., may be subject to an effluent limitation for a point source discharge, as defined in s. 283.01(6), Stats., for storm water discharge.

(3) **INDIVIDUAL PERMIT COVERAGE.** If it determines that one or more of the following conditions are met, the department may require that a storm water discharge be covered by an individual WPDES permit under s. 283.31 or 283.33, Stats.:

(a) The storm water discharge is a significant source of pollution and more appropriately regulated by an individual WPDES storm water permit.

(b) The storm water discharger is not in compliance with the terms and conditions of this chapter, or a general storm water discharge permit issued under this subchapter.

(c) Effluent limitations or standards are promulgated for a storm water discharge.

(4) **PETITION.** Any person may submit a written request to the department that it take action under this section.

(5) **REVOCATION OF GENERAL PERMIT COVERAGE.** If the department determines that an industrial facility should be covered by an individual WPDES permit, the department shall explain its decision in writing to the permittee prior to revoking general permit coverage and issuing an individual WPDES permit.

NR 216.27 Storm water pollution prevention plan. (1) **APPLICABILITY.** Any person who owns or operates a storm water discharge covered by a general or individual storm water discharge permit shall prepare and implement a SWPPP.

(2) INCORPORATION BY REFERENCE. When plans are developed or activities conducted in accordance with other federal, state or local regulatory programs that meet the requirements of this section, the plans may be incorporated into the SWPPP by reference.

(3) PLAN REQUIREMENTS. The SWPPP shall contain, at a minimum, the following items and provisions:

(a) The SWPPP shall identify by job title the specific individual who has primary responsibility for all aspects of SWPPP development and implementation and identify any other individuals concerned with SWPPP development or implementation, and their respective roles. The specific individual who has primary responsibility shall develop, evaluate, maintain and revise the SWPPP; and carry out the specific management actions identified in the SWPPP, including: maintenance practices, monitoring activities, preparing and submitting reports and serving as facility contact for the department.

(b) The SWPPP shall contain a short summary of the major activities conducted at various locations throughout the facility.

(c) The SWPPP shall include a drainage base map depicting all of the following:

1. How storm water drains on, through and from the facility to groundwater, surface water or wetlands.
2. The facility property.
3. A depiction of the storm drainage collection and disposal system including all surface and subsurface conveyances.
4. Any secondary containment structures.
5. The location of all outfalls that discharge channelized flow to surface water, ground water or wetlands, including outfalls recognized as permitted outfalls under another WPDES permit, numbered for reference.
6. The drainage area boundary for each outfall.
7. The surface area in acres draining to each outfall, including the percentage that is impervious such as paved, roofed or highly compacted soil, and the percentage that is pervious such as grassy areas and woods.
8. Existing structural storm water controls.
9. The name and location of receiving waters.
10. The location of activities and materials that have the potential to contaminate storm water.

(d) The SWPPP shall summarize any results of available storm water sampling data or other observations that characterize the quality of storm water discharges or identifying sources of storm water contamination. Available data that characterizes the quality of storm drainage discharges under dry weather flow conditions shall also be included, except when the data has been or will be reported to the department under another WPDES permit.

(e) The SWPPP shall identify all potential source areas of storm water contamination including:

1. Outdoor manufacturing areas.
2. Rooftops contaminated by industrial activity.
3. Industrial plant yards.
4. Storage and maintenance areas for material handling equipment.
5. Immediate access roads and rail lines.

6. Material handling sites including storage, loading, unloading, transportation, or conveyance of any raw material, finished product, intermediate product and by-product or waste areas.

7. Storage areas for raw materials, finished and intermediate products including tank farms.

8. Disposal or application of wastewater.

9. Areas containing residual pollutants from past industrial activity.

10. Areas of significant soil erosion.

11. Refuse sites.

12. Vehicle maintenance and cleaning areas.

13. Washing areas for equipment, vehicles, containers or other material.

14. Shipping and receiving areas.

15. Manufacturing buildings.

16. Residual treatment, storage and disposal sites.

17. Any other areas capable of contaminating storm water runoff.

(f) Specific pollutants likely to be present in storm water as a result of contact with source areas identified in par. (e) shall also be listed.

(g) The SWPPP shall identify all contaminated and uncontaminated sources of non-storm water discharges to the storm sewer system and indicate which are covered by WPDES permits. The SWPPP shall contain the results of the non-storm water discharge monitoring required by s. NR 216.28. If monitoring is not feasible due to the lack of suitable access to an appropriate monitoring location, the SWPPP shall include a statement that the monitoring could not be conducted and an explanation of the reasons why.

(h) The SWPPP shall rely to the maximum extent practicable, and to the extent it is cost effective, on the use of source area control best management practices that are designed to prevent storm water from becoming contaminated at the site. Source area control best management practices that are either proposed or in place at the facility shall be indicated on the facility drainage base map. The SWPPP shall provide for the use of the following applicable source area control best management practices:

1. Practices to control significant soil erosion.

2. Good housekeeping measures, preventive maintenance measures, visual inspections, spill prevention and response measures and employee training and awareness.

3. Covering or enclosing salt storage piles so that neither precipitation nor storm water runoff can come into contact with the stored salt; or, for facilities that use brine and have salt storage piles on impervious curbed surfaces, a means of diverting contaminated storm water to a brine treatment system for process use.

4. Use of a combination of precipitation control, containment, drainage controls or diversions to control section 313 water priority chemicals potentially discharged through the action of storm water runoff, leaching or wind.

(i) The SWPPP shall maintain best management practices necessary to maintain compliance with the performance standards in s. NR 151.12 for those areas that are described in s. NR 151.12 (2).

(j) The SWPPP shall identify pollutants that are likely to contaminate storm water discharges to waters of the state following implementation of source area control best management practices. Past sampling data collected at

the facility or at sufficiently similar outfalls at other facilities may be used in making this determination. At a minimum, all of the following pollutants shall be considered for their potential to contaminate storm water:

1. Any pollutant for which an effluent limitation is contained in any WPDES permit issued to the facility by the department.

2. Any pollutant contained in a categorical effluent limitation or pre-treatment standard to which the facility is subject.

3. Any section 313 water priority chemical for which the facility has reporting requirements and which has the potential for contaminating storm water.

4. Any other toxic or hazardous pollutants from present or past activity at the site that remain in contact with precipitation or storm water and which could be discharged to the waters of the state and which are not regulated by another environmental program.

5. Any of the following parameters that might be present in significant concentrations: oil and grease; acids or bases; total suspended solids; 5-day biological oxygen demand; chemical oxygen demand.

(k) When source area control best management practices are not feasible, not cost effective or are inadequate to control storm water pollution, or when the department determines source area control best management practices are inadequate to achieve a water quality standard, the SWPPP shall prescribe appropriate storm water treatment practices as needed to reduce the pollutants in contaminated storm water prior to discharge to waters of the state. Proposed or existing storm water treatment practices shall be shown on the facility drainage basin map. The SWPPP shall provide for the following types of storm water treatment practices:

1. Storm water significantly contaminated with petroleum products shall be treated for oil and grease removal by an adequately sized, designed and functioning wastewater treatment device. Coverage under an individual or general WPDES permit is required for discharges of storm water from oil/water treatment devices.

2. Point source discharges of storm water contaminated by significant amounts of sediment from eroding areas, including bare earth industrial lots and ongoing industrial processes, shall be treated by filtration or settling type practices.

(L) The SWPPP shall include provisions for complying with the monitoring requirements specified in s. NR 216.28. The SWPPP shall include a checklist of inspections to be made during the annual facility site inspection described in s. NR 216.28(2). The SWPPP shall also identify for each outfall the type of monitoring that will be conducted, such as non-storm water discharge monitoring; storm water discharge quality inspections; or chemical pollutant monitoring for facilities covered under a tier 1 permit. The following are requirements for facilities covered under a tier 1 permit:

1. A list of chemical parameters proposed for testing at each outfall shall be included along with the analytic sample testing procedures from ch. NR 219 that will be used to determine pollutant concentrations.

2. The list of chemical parameters shall include each of the residual pollutants identified in par. (j), or an explanation of why the pollutant should not be included in the chemical testing.

(m) The SWPPP shall include an implementation schedule that is consistent with the compliance schedule in the general storm water discharge permit.

(n) The SWPPP shall be signed in accordance with s. NR 216.22(7) prior to submittal to the department.

(4) PLAN AMENDMENT. A permittee shall amend a SWPPP if any of the following circumstances occur:

(a) When expansion, production increases, process modifications, changes in material handling or storage or other activities are planned which will result in significant increases in the exposure of pollutants to storm water discharged either to waters of the state or to storm water treatment devices. The amendment shall contain a description of the new activities that contribute to the increased pollutant loading, planned source control activities that will be used to control pollutant loads, an estimate of the new or increased discharge of pollutants following treatment and, when appropriate, a description of the effect of the new or increased discharge on existing storm water treatment facilities.

(b) The facility finds through its comprehensive annual facility site compliance inspection, quarterly visual inspection of storm water quality, annual chemical storm water sampling or other means that the provisions of the SWPPP are ineffective in controlling storm water pollutants discharged to waters of the state.

(c) Upon written notice that the department finds the SWPPP to be ineffective in achieving the conditions of the storm water discharge permit applicable to the facility.

NR 216.28 Monitoring requirements. (1) NON-STORM WATER DISCHARGES. The permittee shall evaluate all outfalls for non-storm water discharges into the storm drainage system beginning in the first year of permit coverage. Evaluations shall take place during dry periods. The following are additional requirements for evaluating non-storm water discharges:

(a) Any monitoring shall be representative of non-storm water discharges from the facility.

(b) One of the following monitoring procedures shall be followed:

1. End of pipe screening shall consist of visual observations made at least twice per year at each outfall of the storm sewer collection system. Observations shall be made at times when non-storm water discharges from the facility are considered most likely to occur. Instances of dry weather flow, stains, sludges, color, odor or other indications of a non-storm water discharge shall be recorded; or

2. A detailed testing of the storm sewer collection system may be performed. Testing methods include dye testing, smoke testing or video camera observation. Should the permittee use detailed testing as an alternative, the department shall require a re-test after 5 years or a lesser period as deemed necessary by the department.

(c) All permitted facilities shall maintain the results of their non-storm water evaluations on site. Facilities shall report the results of the initial non-storm water evaluations to the department within the SWPPP summary form required pursuant to s. NR 216.29(1)(e). Information reported shall include date of testing, test method, outfall location, testing results and potential significant sources of non-storm water discovered through testing.

Note: The department storm water pollution prevention summary Form 3400-167 contains a table for recording the results of the non-storm water discharge evaluations.

(d) Any permittee unable to evaluate outfalls for non-storm water discharges shall sign a statement certifying that this requirement could not be complied with, and include a copy of the statement in the SWPPP. The statement shall be submitted to the department.

(e) If a permittee identifies an unauthorized discharge of pollutants, the permittee shall immediately cease the discharge and contact the department to determine if a permit is required under s. 283.31 or 283.35, Stats.

(2) ANNUAL SITE INSPECTIONS. Permittees under this subchapter shall perform and document the results of an annual facility site compliance inspection. The inspection shall be adequate to verify that the site drainage conditions and potential pollution sources identified in the SWPPP remain accurate, and that the best management practices prescribed in the SWPPP are being implemented, properly operated and adequately maintained. Information reported shall include the inspection date, inspection personnel, scope of the inspection, major observations and revisions needed in the SWPPP.

(3) QUARTERLY VISUAL INSPECTION. Permittees under this subchapter shall perform and document quarterly visual inspections of storm water discharge quality at each outfall. Inspections shall be conducted within the first 30 minutes or as soon thereafter as practical, but not to exceed 60 minutes, after runoff begins discharging at the outfall. The inspections shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen or other obvious indicators of storm water pollution. Information documented shall include: the inspection date, inspection personnel, visual quality of the storm water discharge and probable sources of any observed storm water contamination.

(4) STORM WATER SAMPLING AND ANALYSIS. Unless an alternative monitoring plan is required as part of the SWPPP, owners or operators of facilities covered under a tier 1 general permit issued under this subchapter or an individual WPDES permit issued under s. 283.31, Stats., containing tier 1 general permit requirements, or individual storm water discharge permits issued under s. 283.33(1)(a) and (d), Stats., shall perform annual chemical storm water sampling at each outfall for those residual pollutants listed in the permittee's SWPPP as required by s. NR 216.27(3)(j). The following are specific requirements for chemical storm water monitoring:

(a) The list of pollutants to be tested in the discharge at the outfall shall be identified in the facility monitoring plan portion of the SWPPP.

(b) When a facility has more than one outfall which have storm water discharges substantially similar based on consideration of industrial activity, significant materials and management, one outfall may be selected to represent the group of similar outfalls provided that this strategy has been clearly stated in the facility monitoring plan and that the representative outfall is clearly identified as such on the drainage base map. No more than 5 outfalls with discharges representative of storm water discharged from the facility need to be sampled.

(c) After review of the facility monitoring plan portion of the SWPPP, the department shall add additional pollutants to the monitoring list if it has cause to do so based on a reasonable probability that the pollutants will be present in storm water discharges from the facility. The department shall remove pollutants from the monitoring list if it determines that continued monitoring for the pollutant serves no further purpose. Chemical monitoring may be discontinued after submitting the second round of chemical monitoring results to the department with the annual facility site compliance inspection report unless the department directs the permittee otherwise. The department shall require additional chemical sampling within a tier 1 general permit for industrial facilities where chemical monitoring has shown a reasonable potential that the storm water discharge from an individual facility or a type of industry will exceed a water quality standard.

(d) Storm water samples shall be collected during the period of March through November from rainfall events that produce greater than 0.1 inch of rainfall and occur at least 72 hours after a previous rainfall of 0.1 inch or greater.

(e) Storm water samples shall be representative of the “first flush” of storm water runoff at the outfall using one of the following sampling methods:

1. Composite sample shall be collected during the first 30 minutes of runoff. At least 3 separate samples shall be collected for compositing, and the collection of samples shall be evenly spaced throughout the sampling period. Composite samples are required for all pollutants except those for which analytic techniques require grab samples.

2. A grab sample is required for all pollutants in storm water discharged from a detention pond or other structure that has greater than a 24-hour holding time for a representative storm. The grab sample shall be representative of the storm water discharge at the pond outfall.

3. An alternative sampling collection time specified by the department if the department determines it is necessary to obtain a representation sample of storm water runoff from the site.

(f) Monitoring samples shall be representative of the monitored discharge. Analytic testing shall be in conformance with ch. NR 219, unless an alternate procedure is approved by the department prior to the initiation of sampling.

(g) For each storm water measurement or sample taken, the permittee shall record and submit the following information to the department in the annual facility site compliance inspection reports described in s. NR 216.29(2):

1. The date, exact place, method and time of sampling or measurements.
2. The individual who performed the sampling or measurements.
3. The date the analysis was performed.
4. The name of the certified laboratory which performed the analysis.
5. The analytical techniques or methods used.
6. The results of the analysis.
7. The estimated duration of the rainfall event, in hours, and the estimated total amount of precipitation falling during the rainfall event, in inches.

(5) MONITORING EXCEPTIONS. The department may waive specific monitoring requirements if one of the following applies:

(a) An employee could not reasonably be present at the facility at the time of the snowmelt or runoff event, or those attempts to meet the monitoring requirement would endanger employee safety or well being.

(b) There were no snow melt or runoff events large enough to conduct a quarterly visual inspection at an outfall.

(c) The facility is inactive or remote, such as inactive mining operations where monitoring and inspection activities are impractical or unnecessary. At a minimum, the department shall establish an alternative requirement that the facilities make site inspections by a qualified individual at least once in every 3-year period.

(d) The permittee can demonstrate to the department’s satisfaction that the sources of storm water contamination are outside of the facility’s property boundary and are not associated with the facility’s activities. The demonstration shall be presented in the SWPPP and submitted to the department for evaluation.

NR 216.29 Compliance and reporting requirements. (1) REQUIREMENTS. Facilities covered by permits issued under s. NR 216.23(1) or (2) are subject to the following requirements:

(a) Owners or operators of proposed facilities that will have one acre or more of land disturbing construction activities as part of their construction, shall develop a SWPPP and submit a SWPPP summary to the department at least 14 working days prior to initiating land disturbing construction activities at the site or submit a no exposure certification to the department pursuant to s. NR 216.21(3).

Note: This timeline is consistent with the requirement to develop erosion control and storm water management plans and submit a notice of intent under subch. III.

(b) Owners or operators of other facilities shall develop a SWPPP and submit a SWPPP summary to the department prior to initiating industrial operations.

(c) The SWPPP shall conform to the requirements specified in s. NR 216.27(3).

(d) The SWPPP shall be kept at the facility and made available to the department upon request.

(e) The SWPPP summary shall be submitted on a standardized department form.

Note: The SWPPP summary Form 3400-167 may be obtained from the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/publications.htm>, any regional office of the department, by writing to the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at (608) 267-7694.

(f) The department shall notify the permittee if it determines that the SWPPP summary is inadequate and may require the permittee to submit the SWPPP for review.

(g) The SWPPP summary shall include the results of the non-storm water discharge evaluations, under s. NR 216.28(1), and shall indicate whether the SWPPP includes a storm water treatment practice. If a SWPPP includes a storm water treatment practice, the department may require the submittal of plans and specifications for review and approval pursuant to s. 281.41(1), Stats.

(2) ANNUAL SITE INSPECTION. The first annual facility site compliance inspection shall be conducted by the permittee within 12 months of the effective date of coverage under the general permit. Facilities covered under a tier 1 permit shall submit their first inspection report to the department within 18 months of the effective date of coverage under the permit and the second inspection report within 30 months of the effective date of permit coverage. The report shall be written on department forms, and shall contain information from the inspection, the quarterly visual inspection and the annual chemical monitoring. Facilities covered under the tier 2 permit shall keep the results of their annual facility site compliance inspection and quarterly visual inspections on site for department inspection. Facilities covered under a tier 1 permit are not required to submit inspection reports after submittal of the second inspection report, unless so directed by the department. However, these inspections and quarterly visual inspections shall still be conducted; and results shall be kept on site for department inspection.

(3) INSPECTION DATES. The first quarterly visual inspection of storm water discharge quality shall be conducted within 3 months of the effective date of coverage under the permit.

(4) CHEMICAL SAMPLING DATES. Owners and operators of facilities covered under a tier 1 permit shall submit annual chemical monitoring results with the compliance inspection report required under s. NR 216.28(2) for the first 2 years following SWPPP implementation. The monitoring results shall include all of the information specified in s. NR 216.28(4)(g).

(5) **BMP IMPLEMENTATION.** Unless an alternate implementation schedule is identified in the permit, the BMPs identified in the SWPPP shall be implemented beginning at the start of industrial operations.

(6) **SWPPP AMENDMENTS.** The permittee shall correct deficiencies in the original SWPPP. The permittee shall amend the SWPPP and notify the department in the event of any facility operational changes that could result in additional significant storm water contamination.

(7) **RECORD RETENTION.** Records required under this subchapter shall be retained for 5 years beyond the date that the record was made and shall be made available to the department upon request.

(8) **SIGNATURE.** Reports required under this subchapter shall be signed in accordance with s. NR 216.22(7).

NR 216.30 Permit fees. (1) A storm water discharge permit fee shall be paid annually by each industrial facility covered by or holding a permit under this subchapter or a wastewater discharge permit that incorporates storm water management requirements under this chapter. Permit fees are due June 30 of each year. The fee shall be either:

(a) \$260 for coverage under a tier 1 general industrial storm water discharge permit under s. NR 216.21(2)(a), an industry-specific general industrial storm water discharge permit under s. NR 216.24 with tier 1 requirements, or an individual WPDES permit under s. 283.31, Stats., with tier 1 requirements,

(b) \$130 for coverage under a tier 2 general industrial storm water discharge permit under s. NR 216.21(2)(b), an industry-specific general industrial storm water discharge permit under s. NR 216.24 or an individual WPDES permit under s. 283.31, Stats., with tier 2 requirements, or

(c) \$500 for coverage under an individual WPDES storm water permit issued under s. 283.33(1), Stats.

(2) Notwithstanding sub. (1), no fee may be charged under this section for facilities that are regulated under a WPDES permit developed specifically to address discharges from non-metallic mining operations and that the department concurs are internally drained and no pollutants are exposed that could contaminate groundwater. A non-metallic mining operation is internally drained if all storm water that contacts disturbed areas or excavated material is directed to onsite seepage areas that are entirely confined and retained within the property boundaries of the site.

NR 216.31 Permit coverage transfers. A permittee who will no longer control the permitted industrial facility may request that permit coverage be transferred to the person who will control the industrial facility. The transfer request shall be signed by both the permittee and the new owner or operator and sent via certified or registered mail to the department. The department may require additional information including a notice of intent to be filed prior to transferring permit coverage. Coverage is not transferred until the department sends notification of transfer approval to the new owner or operator.

NR 216.32 Permit termination. (1) If the owner or operator of a facility no longer claims coverage under any general or individual permit for the discharge of storm water from industrial activity under this subchapter, the permittee shall submit a signed notice of termination to the department.

(2) A notice of termination shall be submitted on forms available from the department. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage under this subchapter.

(3) The notice of termination form shall be signed in accordance with the signature requirements in s. NR 216.22 (7).

(4) Termination of coverage under this subchapter shall be effective upon receipt of written confirmation from the department by the permittee.

Note: Notice of termination forms may be obtained from the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/publications.htm>, any regional office of the department, by writing to the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at (608) 267-7694.

(5) Notice of termination forms shall be filed with the appropriate department regional office or with the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921.

Subchapter III — Construction Site Storm Water Discharge Permits

NR 216.41 Purpose. The purpose of this subchapter is to establish criteria defining those construction site activities that constitute discharges needing a WPDES storm water permit for landowners of construction sites that require coverage under a WPDES permit for storm water discharges; and the requirements for filing a WPDES permit application for a construction site, as required by s. 283.33, Stats.; to prescribe the form of the WPDES permit application pursuant to s. 283.37, Stats.; to specify the number of working days within which the department will indicate its intended action on a WPDES permit application or request for modification, pursuant to s. 227.116(1), Stats.; and to specify the erosion control and storm water management that is required at construction sites regulated under this subchapter.

NR 216.415 Authorized local program. (1) **PURPOSE.** The purpose of this section is to promote efficient, integrated administration of state and municipal construction site erosion control and storm water management programs. A municipality with an authorized local program will be the primary entity fulfilling the technical and administrative responsibilities to assure compliance with both local and state construction site erosion control and storm water management requirements. Authorized local programs simplify the permitting process for landowners and operators responsible for complying with state and local laws and facilitate the integration of erosion control and storm water requirements with other local planning and zoning functions. The department retains its authority to take enforcement against individual landowners and operators for violations of this chapter.

(2) **VOLUNTARY PARTICIPATION.** Any municipality may apply to the department for authorization of its local program under this section.

(3) **APPLICATION AND APPROVAL PROCESS.** (a) A municipality seeking approval from the department for an authorized local program shall submit an application on forms available from the department. Applications shall be submitted by October 1 of the year prior to anticipated operation of an authorized local program.

(b) The department shall review the application and any other relevant information and determine whether to authorize the local program. The department shall base its decision on the applicant's ability to meet the requirements in subs. (5) and (6). The department shall notify the applicant in writing of its decision. If the application is denied, the department shall identify the reasons for denial.

(c) Department authorization of a local program shall remain effective until termination or discontinuation under sub. (10).

(4) STATE COVERAGE. Any landowner of a construction site that is regulated by an authorized local program under this section is deemed to be covered under a department construction site storm water discharge permit issued pursuant to this subchapter and shall comply with the requirements of the department's permit. The department may enforce against the landowner of a construction site for violation of the permit.

(5) PROGRAM REQUIREMENTS. (a) The municipality shall have the legal authority and resources to implement and enforce the requirements of this subchapter.

(b) The municipality shall adopt, implement and enforce an ordinance with erosion control and storm water management requirements that comply with the requirements of subchs. III and IV of ch. NR 151.

Note: Municipalities may wish to use the model ordinances within ch. NR 152 to guide them in developing their erosion control and storm water management ordinances. This section does not give the municipality authority to regulate certain agricultural, commercial and transportation projects that are exempt pursuant to s. NR 216.42 (2) to (11) from the requirement to obtain a permit under this subchapter.

(c) The municipality shall implement a program to inform the public that it has an authorized local program under which landowners are to apply for erosion control and storm water management approval under this subchapter via the municipality.

(d) The program requirements in this subsection and subs. (6) to (8) may be provided through municipal staff, intergovernmental agreements or use of professional service contracts.

(6) APPLICATION. For construction sites regulated under this subchapter, all of the following apply:

(a) A municipality operating an authorized local program shall clearly identify in writing to applicants seeking municipal erosion control and storm water management approval, that applicants will also be granted coverage under the department's general construction site storm water discharge permit pursuant to sub. (4).

(b) A municipality operating an authorized local program shall require that landowners submit a copy of the department's notice of intent or an equivalent application form to request municipal erosion control and storm water management approval. An equivalent application form shall comply with the signature requirements under s. NR 216.43(3). The submittal of a complete application to a municipality operating an authorized local program by a landowner constitutes submittal to the department of a notice of intent under s. NR 216.43. The application that is required under this paragraph shall be sent to the department if the department requests a copy.

(c) 1. The 14-working day timeline for permit coverage authorization granted under s. NR 216.44 does not apply to construction sites regulated by an authorized local program under this section.

2. Under this section, the notice of intent or equivalent application shall be submitted by the landowner to the municipality operating the authorized local program at least 30 calendar days prior to the anticipated commencement of any land disturbing construction activities. Unless notified to the contrary by the municipality or the department, a landowner who has submitted a notice of intent or equivalent application in accordance with this section is authorized to discharge storm water from a construction site under the terms and conditions of the department's general construction site storm water discharge permit 30 calendar days after the date that the municipality operating the authorized local program receives the notice of intent or equivalent application. The municipality may grant coverage to a landowner in a period of less than 30 days.

(7) SITE REVIEW. A municipality operating an authorized local program shall perform the following for applications for construction site approval under this section:

(a) Using information made available by the department, screen applications to identify projects that may be affected by any of the following:

1. Wetland water quality standards provisions in ch. NR 103.
2. Endangered and threatened resource protection requirements of s. 29.604, Stats., and ch. NR 27.
3. Rules pertaining to any historic property that is a listed property, on the inventory or on the list of locally designated historic places under s. 44.45, Stats.

Note: Historic properties include archaeological sites, burial sites and historic structures. The municipality screens projects to help landowners identify conflicts with the requirements listed under par. (a), but it is the landowner's responsibility to meet the requirements listed under par. (a) regardless of whether or not the authorized local program identifies concerns.

(b) Where the municipality identifies that a proposed construction site may be affected by requirements listed under par. (a), direct the landowner to the appropriate state agency to resolve concerns or obtain proper authorization as appropriate.

Note: The construction site storm water discharge permit issued pursuant to this subchapter expressly requires that the construction project be conducted in accordance with the requirements listed under par. (a).

(c) Review proposed projects for compliance with the municipality's erosion control and storm water management ordinance.

Note: A municipality operating an authorized local program has the authority to grant general permit coverage under this subchapter. However, projects that require a permit under ch. 30, Stats., or water quality certification for work within wetlands must still obtain those permits and approvals directly from the department.

(8) RECORDS, ANNUAL REPORT AND FEES. (a) The municipality shall maintain applications, inspection records and other relevant information necessary to administer an authorized local program.

(b) A municipality shall submit a written annual report to the department by March 31, based on the activities undertaken during the previous calendar year of authorized local program operation. The annual report shall include the following:

1. Name, address and phone number of person responsible for administering the municipality's authorized local program.
2. Construction project name and legal address of projects that have been granted initial coverage under this section in the previous calendar year and the acreage of land disturbance at each of those sites.
3. An estimate of the number of construction site inspections performed and citations issued.

(c) The application fee payable by the landowner to the department under s. NR 216.43 (2) is waived for each landowner who applies to an authorized local program, and in lieu of these individual payments, the municipality shall submit an annual fee to the department. This fee shall be paid by March 31 based on the previous calendar year of operation as an authorized local program. The annual fee is \$75.00 for each construction site that the municipality approves under this section during the previous calendar year but in no case less than \$500 nor more than \$3,500 in total.

(9) DEPARTMENT AUDIT. (a) The municipality shall provide the department with relevant information requested by the department to evaluate the municipality's effectiveness in administering its authorized local program.

(b) The municipality shall cooperate with the department in performing site inspections.

(10) PROGRAM TERMINATION. (a) To discontinue operation of an authorized local program a municipality shall do all of the following:

1. Notify the department by letter of program termination at least 30 days prior to discontinuation of an authorized local program and include reasons for termination.

2. Inform landowners of construction sites and the public at least 30 days prior to discontinuation of an authorized local program that the department will be taking over as the primary enforcing agency under this subchapter.

3. Send the department a copy of all construction site applications and other relevant information where approval under this section was granted and coverage has not been terminated.

4. Provide the department with the annual report as required under sub. (8)(b).

5. Provide the department with its shared application revenue for projects that the municipality granted coverage to over the past calendar year in accordance with sub. (8)(c).

(b) The department shall notify a municipality of any deficiencies in complying with the authorized local program requirements of this section. The municipality shall be given a reasonable opportunity to correct deficiencies in complying with this section. If the municipality is unable to correct deficiencies or the department determines that the municipality has had continued occurrences of noncompliance with the requirements of this section, the department may terminate the authorization of a municipality's local program. The department shall notify the municipality by letter at least 30 days prior to termination.

NR 216.42 Applicability. (1) CONSTRUCTION SITES OF ONE ACRE OR MORE OF LAND DISTURBANCE. Except as provided in subs. (2) to (11), a notice of intent shall be filed with the department pursuant to s. NR 216.43 or to an authorized local program pursuant to s. NR 216.415 by any landowner who intends to create a point source discharge of storm water from a construction site to waters of the state. The landowner of the construction site regulated by this subchapter shall comply with all applicable provisions of this subchapter and the appropriate WPDES permit issued pursuant to this subchapter.

(2) AGRICULTURE. Storm water discharges from planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock, including sod farms and tree nurseries are not regulated by this subchapter. This exemption does not include the construction of structures such as barns, manure storage facilities or barnyard runoff control systems.

(3) SILVICULTURE. Storm water discharges from silviculture activities, including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control are not regulated by this subchapter. Clearing and grubbing of an area of a construction site is not a silviculture activity.

Note: Certain lumber, wood and paper product manufacturers may require coverage under a general industrial WPDES permit for storm water discharges pursuant to subch. II. A silviculture activity may require approval pursuant to ch. 30 or 31, Stats., or an U.S. army corps of engineers section 404 permit under 33 USC 1344.

(4) **COMMERCIAL BUILDINGS.** Storm water discharges from construction sites for public buildings and buildings that are places of employment regulated by the department of commerce pursuant to s. 101.1205, Stats., in a manner which is equivalent to this subchapter shall be deemed to hold a WPDES permit issued pursuant to this subchapter.

(5) **DEPARTMENT OF TRANSPORTATION PROJECTS.** Storm water discharges from projects directed and supervised by the department of transportation, regulated by ch. Trans 401, and subject to the department of transportation and department of natural resources liaison cooperative agreement, if in compliance with ch. Trans 401 and the liaison cooperative agreement shall be deemed to be in compliance with s. 283.33, Stats., and the requirements of this subchapter. The department of transportation shall notify the department of projects under this subsection which shall constitute the notice of intent for these projects.

(6) **OTHER ENVIRONMENTAL PROGRAMS.** If a storm water discharge is in compliance with a department permit or approval which includes storm water control requirements that are at least as stringent as requirements under this subchapter, the department may determine that a facility is in compliance with permit coverage required under s. 283.33, Stats., and will not be required to hold a separate permit under s. 283.33, Stats.

(7) **MILL AND CRUSH OPERATION.** If construction activity does not result in land disturbing construction activity including a mill and crush operation that does not have soil disturbance, filling or road shoulder grading, the activity is not regulated under this subchapter.

(8) **ROUTINE MAINTENANCE.** Routine maintenance for project sites that involve under 5 acres of land disturbance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility is not regulated under this subchapter.

(9) **ONE AND TWO FAMILY DWELLINGS.** Storm water discharges from construction sites of one- and two-family dwellings regulated by the department of commerce pursuant to s. 101.653, Stats., in a manner which is equivalent to the requirements of this subchapter as determined by the department in writing, shall be deemed to hold a WPDES permit issued pursuant to this subchapter.

Note: At this time, the department of commerce erosion control and storm water management requirements for one- and two-family dwellings do not meet the requirements of this subchapter. Until such time as the department concurs that the department of commerce one- and two-family dwelling rules are equivalent to this subchapter, storm water discharges from construction sites of one- and two-family dwellings will need to have permit coverage from the department under this subchapter where there is one acre or more of land disturbance.

(10) **OIL AND GAS INDUSTRY.** Storm water discharges from construction sites that disturb from one to 5 acres of land and that are associated with construction activity at oil and gas exploration, production, processing or treatment operations or transmission facilities are exempt from this subchapter until March 10, 2005.

(11) **QUARTER MILE SEPARATION.** Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project may be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

NR 216.43 Notice of intent requirements. (1) FORMS. The landowner shall submit a notice of intent to the department on forms available from the department. Data submitted in the notice of intent forms shall be used as a basis for conferring coverage under a WPDES storm water permit.

Note: Notice of intent forms may be obtained from the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/publications.htm>, any regional office of the department, by writing to the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at (608) 267-7694.

(2) APPLICATION FEE. A storm water construction site application fee defined by Table 5 shall be submitted to the department with the notice of intent.

Table 5

Acres of Land Disturbance	Application Fee
Less than 5	\$140
5 or more and less than 25	\$235
25 or greater	\$350

(3) SIGNATURE REQUIREMENTS. The notice of intent form shall be signed by the landowner as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by the officer's authorized representative having overall responsibility for the operation of the site for which a permit is sought.

(b) In the case of a limited liability company, by a member or manager.

(c) In the case of a partnership, by a general partner.

(d) In the case of a sole proprietorship, by the proprietor.

(e) For a unit of government, by a principal executive officer, ranking elected official or other duly authorized representative.

NR 216.44 Notice of intent deadline. (1) Except as provided under sub. (3), a landowner required to obtain WPDES permit coverage for storm water discharges from a construction site shall submit a completed notice of intent, via certified or registered mail, in accordance with the requirements of this subchapter. The notice of intent shall be submitted so that it is received by the department at least 14 working days prior to the commencement of any land disturbing construction activities. Unless notified by the department to the contrary, a landowner who has submitted a notice of intent in accordance with the provisions of this subchapter is authorized to discharge storm water from a construction site under the terms and conditions of the general construction site storm water discharge permit 14 working days after the date that the department receives the notice of intent or upon receipt of notification from the department that the construction site is covered under the general construction site discharge permit. The landowner becomes the permittee once the construction site is authorized permit coverage.

(2) A site-specific erosion control and storm water management plan pursuant to ss. NR 216.46 and 216.47 shall be completed by the landowner prior to submitting the notice of intent to the department under sub. (1) and shall be updated as appropriate pursuant to s. NR 216.50. The erosion control and storm water management plans shall be submitted to the department upon request so that it may evaluate whether the plans comply with ss. NR 216.46 and 216.47. The department may withhold permit coverage as necessary until it verifies that the plans comply with ss. NR 216.46 and 216.47.

Note: The department encourages landowners and their representatives to consult with the department's regional storm water staff prior to local plan approval on the conceptual plans for erosion control and storm water management. Department regional storm water staff can be identified through the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater.htm> or by calling the storm water program at (608) 267-7694.

(3) If the construction site is located in an area regulated by an authorized local program pursuant to s. NR 216.415, the landowner shall apply for storm water discharge approval to the authorized local program.

NR 216.45 Incomplete notice of intent and time limit for department decision. (1) Within 14 working days after the date the department receives the notice of intent, the department may require an applicant to submit data that the department has identified as being necessary to complete any deficient notice of intent or may require the applicant to submit a complete new notice of intent when the deficiencies are extensive or the appropriate form has not been used.

(2) The department shall refund to the applicant the stormwater construction site storm water discharge permit application fee paid under s. NR 216.43(2) if the department does not make a determination on the permit application within 45 business days of receipt of the information required under sub. (1). In this subsection, "business day" means any day except Saturday, Sunday and state holidays as designated in s. 230.35(4)(a), Stats. This subsection does not apply to permit applications related to mining, as defined in s. 293.01(9), Stats., prospecting, as defined in s. 293.01(18), Stats., or nonmetallic mining, as defined in s. 295.11(3), Stats.

NR 216.455 Proof of permit coverage. (1) A copy of the notice of intent or other documentation that storm water discharges from the site are covered under a construction site storm water discharge permit shall be kept with building plans on the construction site and with the landowner.

(2) The permittee shall post a permit certificate in a conspicuous place on the construction site. The department shall make a permit certificate available. An authorized local program under s. NR 216.415 may make its own permit certificate or equivalent notice for posting.

NR 216.456 Responsible parties. (1) The permittee or landowner required to submit a notice of intent under this subchapter is responsible for complying with this subchapter.

(2) An operator shall comply with this subchapter where the operator has a contract or other agreement with the landowner to meet the requirement.

Note: General contractors, landscape architects, project designers and inspectors are responsible for the particular services that they provide to a landowner to comply with the requirements of this subchapter.

NR 216.46 Erosion control plan requirements. (1) **SITE-SPECIFIC PLAN.** The permittee or landowner required to submit a notice of intent under this subchapter shall develop a site-specific erosion control

plan for each construction site regulated by this subchapter. The permittee or landowner required to submit a notice of intent under this subchapter, or their representative, shall implement and maintain as appropriate all best management practices specified in the erosion control plan from the start of land disturbing construction activities until final stabilization of the construction site.

(2) **PERFORMANCE STANDARDS.** The construction site erosion control plan shall meet the applicable performance standards in either s. NR 151.11 for construction sites that are not transportation facilities or s. NR 151.23 for transportation facility construction sites.

Note: Pursuant to s. NR 151.32(2), the department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list. Transportation facilities regulated under ch. Trans 401 generally have a 2-step plan development process of an erosion control plan (ECP) that contains design requirements and then development of an erosion control implementation plan (ECIP) that includes implementation details. This subchapter requires an erosion control plan that is equivalent to the Trans 401 ECP and ECIP plans put together.

(3) **PLAN COMPLETION.** The erosion control plan shall be completed prior to the submittal of a notice of intent to the department and shall be updated as appropriate pursuant to s. NR 216.50.

(4) **REQUIRED INFORMATION.** The construction site erosion control plan shall include, at a minimum, the following items:

(a) Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a USGS 7.5-minute series topographical map.

(b) Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, such as grubbing, excavation or grading.

(c) Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.

(d) Available data describing the surface soil as well as subsoils.

(e) Wherever permanent infiltration devices will be employed or were evaluated, the depth to the nearest seasonal high groundwater elevation or top of bedrock shall be identified as outlined in s. NR 216.47(3).

(f) Name of immediate named receiving water from the United States geological service 7.5-minute series topographic maps.

(5) **SITE MAP REQUIREMENTS.** Each construction site map shall include all of the following:

(a) Existing topography and drainage patterns, roads and surface waters.

(b) Boundaries of the construction site.

(c) Drainage patterns and approximate slopes anticipated after major grading activities.

(d) Areas of soil disturbance.

(e) Location of major structural and non-structural controls identified in the erosion control plan.

(f) Location of areas where stabilization practices will be employed.

(g) Areas that will be vegetated following land disturbing construction activities.

(h) Area and location of wetland acreage on the construction site and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.

(i) Areas used for infiltration of post-construction storm water runoff.

(j) An alphanumeric or equivalent grid overlying the entire construction site.

(6) EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES. The erosion control plan shall include a description of appropriate erosion and sediment control best management practices that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion control plan shall clearly describe the appropriate erosion and sediment control best management practices for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control best management practices will be implemented. The description of erosion and sediment control best management practices shall include the following requirements:

(a) Description of any interim and permanent stabilization practices, including a schedule for implementing the practices. The erosion control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the construction site are stabilized.

(b) Description of any structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the construction site. Unless otherwise specifically approved in writing, structural measures shall be installed on upland soils.

(c) Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.

(d) Trapping of sediment in channelized flow.

(e) Staging land disturbing construction activities to limit exposed soil areas subject to erosion.

(f) Protection of downslope drainage inlets where they occur.

(g) Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.

(h) Clean up of off-site sediment deposits.

(i) Proper disposal of building and waste material.

(j) Stabilization of drainage ways.

(k) Installation of permanent stabilization practices as soon as possible after final grading.

(L) Minimization of dust to the maximum extent practicable.

(7) MATERIAL. No solid materials, including building materials, may be discharged in violation of ch. 30 or 31, Stats., or 33 USC 1344 or an U.S. army corps of engineers section 404 permit issued under 33 USC 1344.

(8) NON-EROSIVE FLOW. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a watercourse so that the natural physical and biological characteristics and functions are maintained and protected.

(9) INSPECTIONS. The landowner, or the landowner's representative, shall inspect erosion and sediment control practices weekly, and within 24 hours following a rainfall of 0.5 inches or greater. Written documentation of each inspection shall be maintained at the construction site and shall include the time, date and location of inspection, the phase of land disturbance at the construction site, person conducting the inspection, assessment of

control practices, and a description of any erosion or sediment control measure installation or maintenance performed in response to the inspection.

NR 216.47 Storm water management plan requirements. Pollution caused by storm water discharges from the construction site after construction is completed, including rooftops, parking lots, roadways and the maintenance of grassed areas, shall be addressed by a storm water management plan. A storm water management plan shall be developed prior to submitting a notice of intent to the department and shall comply with all of the following:

(1) **PERFORMANCE STANDARDS.** The storm water management plan shall meet the applicable performance standards in either s. NR 151.12 for construction sites that are not transportation facilities or s. NR 151.24 for transportation facility construction sites.

(2) **PRACTICES DURING CONSTRUCTION.** The plan shall include a description of the management practices that will be installed during the construction process to control total suspended solids and peak flow, enhance infiltration, maintain or restore protective areas and to reduce petroleum in runoff that will occur after construction operations have been completed. Storm water management practices shall be in accordance with applicable state and local regulations.

(3) **GROUNDWATER LIMITATIONS.** When permanent infiltration systems are used, appropriate on-site testing shall be conducted to determine if seasonal high groundwater elevation or top of bedrock is within 5 feet of the bottom of the proposed infiltration system.

(4) **SEPARATION DISTANCES.** Storm water management practices shall be adequately separated from wells to prevent contamination of drinking water, and the following minimum separation distances shall be met:

(a) Storm water infiltration systems and ponds shall be located at least 400 feet from a well serving a community water system unless the department concurs that a lesser separation distance would provide adequate protection of a well from contamination.

(b) Storm water management practices shall be located with a minimum separation distance from any well serving a non-community or private water system as listed within s. NR 812.08.

Note: Chapter NR 815, when promulgated, will regulate injection wells including storm water injection wells.

(5) **LONG-TERM MAINTENANCE.** For any permanent structures, provisions shall be made for long-term maintenance with the municipality or other responsible party. A copy of the long-term maintenance agreement shall be submitted to the department with the notice of intent unless the department agrees that it may be submitted by an alternative date prior to termination of permit coverage. The department may withhold permit coverage until the long-term maintenance agreement is submitted to the department.

Note: There may be valid reasons that a maintenance agreement could not be secured prior to submittal of a notice of intent. However, the long-term maintenance agreement is an important requirement and the department wants to ensure that appropriate steps are being taken to secure the agreement. For regional treatment structures, the department encourages the landowner to obtain a municipal agreement for long-term maintenance of regional treatment structures. Long-term storm water management practices shall be maintained after permit termination in accordance with s. NR 216.005.

(6) **MANAGEMENT PRACTICES.** Best management practices to control impacts from storm water runoff include infiltration systems, wet detention ponds, constructed wetlands, grassed swales, vegetative protective areas, reduced imperviousness, beneficial reuse such as irrigation or toilet flushing, combinations of these practices, or other methods which do not cause significant adverse impact on the receiving surface water or groundwater. The plan shall include an explanation of the technical basis used to select the best management practices.

Note: Pursuant to s. NR 151.32(2), the department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control storm water runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list.

NR 216.48 Reporting and monitoring requirements. (1) **RECORDS.** The permittee or landowner required to submit a notice of intent under this subchapter shall retain records of all construction site inspections, copies of all reports and plans required by the permit, and records of all data used to obtain coverage under the permit. Minimum periods of retention are as follows:

(a) The erosion control and storm water management plans and amendments to the erosion control and storm water management plans shall be retained at the construction site until permit coverage is terminated in accordance with s. NR 216.55.

(b) All reports required by this subchapter or information submitted to obtain permit coverage under this subchapter, including the erosion control and storm water management plans, amendments and background information used in their preparation, shall be kept for a period of at least 3 years from the date of notice of termination.

Note: The storm water management plan and long-term maintenance agreement should be kept as long as necessary to document proper maintenance of long-term storm water best management practices in accordance with s. NR 151.12 or 151.24.

(2) **LOCAL APPROVALS.** A landowner operating a construction site under approved municipal sediment and erosion plans, grading plans or storm water management plans shall also submit signed copies of the notice of intent to the local agency approving the plans. If storm water from the construction site discharges to a municipal separate storm sewer system that is regulated under a municipal storm water discharge permit issued pursuant to subch. I, then a signed copy of the notice of intent shall also be sent to the operator of the system.

(3) **ADDITIONAL INFORMATION.** Upon request by the department, the permittee or landowner required to submit a notice of intent under this subchapter shall provide a copy of the erosion control and storm water management plans, construction site inspections and any additional data requested, within 5 working days to the department, to the operator of the municipal storm sewer system that receives the storm water discharge, and any municipal agency approving sediment and erosion plans, grading plans or storm water management plans. Additional information may be requested by the department for resource waters that require additional protection such as outstanding or exceptional resource waters, or other sensitive water resources.

(4) **INSPECTIONS AND MAINTENANCE.** The permittee or landowner required to submit a notice of intent under this subchapter shall:

(a) Conduct the following construction site inspections:

1. Weekly inspections of implemented erosion and sediment control best management practices.
2. Inspections of erosion and sediment controls within 24 hours after a precipitation event of 0.5 inches or greater. A precipitation event may be considered to be the total amount of precipitation recorded in any continuous 24-hour period.

(b) Repair or replace erosion and sediment control best management practices as necessary within 24 hours of an inspection or department notification that repair or replacement is needed.

(c) Maintain, at the construction site or available via an Internet website, weekly written reports of all inspections conducted by or for the permittee or landowner required to submit a notice of intent under this subchapter. The landowner shall notify the department of all appropriate Internet addresses to access the weekly inspection records. Weekly inspection reports shall include all of the following:

1. The date, time and location of the construction site inspection.
2. The name of the individual who performed the inspection.
3. An assessment of the condition of erosion and sediment controls.
4. A description of any erosion and sediment control best management practice implementation and maintenance performed.
5. A description of the present phase of land disturbing construction activity at the construction site.

NR 216.49 Conformance with other applicable regulations. (1) LOCAL COMPLIANCE. The erosion control and storm water management plans shall document other applicable municipal regulatory provisions, compliance with which will also meet the requirements of the permit. If these municipal provisions are more stringent than those provisions appearing in a permit issued pursuant to this subchapter, the erosion control and storm water management plans shall include a description of how compliance with the municipal provisions will be achieved.

(2) PLUMBING REGULATIONS. The erosion control and storm water plans shall be in compliance with applicable state plumbing regulations.

Note: Plumbing regulations are contained within chs. Comm 81 to 87.

NR 216.50 Amendments. (1) LANDOWNER INITIATED. The permittee or landowner required to submit a notice of intent under this subchapter shall amend the erosion control and storm water management plans if either of the following occurs:

(a) There is a change in design, construction, operation or maintenance at the construction site which has the reasonable potential for the discharge of pollutants and which has not otherwise been addressed in the erosion control and storm water management plans.

(b) The actions required by the plan fail to reduce the impacts of pollutants carried by storm water runoff.

(2) SUBMITTAL REQUIREMENTS. For construction sites for which there has been earlier department review of the erosion control and storm water management plans, if the permittee or landowner required to submit a notice of intent under this subchapter identifies changes needed in either plan, the permittee or the landowner required to submit a notice of intent under this subchapter shall notify the department 5 working days prior to making the changes in the plan.

(3) PERMIT MODIFICATION. The department may, upon request of a permittee or upon finding of just cause, modify the compliance and reporting schedules or any requirement of a storm water discharge permit.

NR 216.51 Department actions. (1) INADEQUATE PLANS. The department may notify the permittee or landowner required to submit a notice of intent under this subchapter at any time that the erosion control or storm water management plans do not meet one or more of the requirements of this subchapter, or a permit issued pursuant to this subchapter, for reducing and preventing the discharge of pollutants. The notification shall identify those provisions that are not being met by the erosion control or storm water management plan, and identify which provisions of the plan require modifications in order to meet the requirements.

(2) REQUIRED PLAN REVISIONS. Within the time frame identified by the department in its notification, the permittee or landowner required to submit a notice of intent under this subchapter shall make the required changes to the erosion control and storm water management plans, perform all actions required by the revised plans, and submit to the department a written certification that the requested changes have been made and implemented, and submit other information the department requires. The department may revoke construction site storm water discharge permit coverage for failure to comply with this section or take action under s. 283.89, Stats. The landowner of a construction site where the department has revoked coverage under the general WPDES permit may not discharge storm water to waters of the state from the construction site unless an individual WPDES permit for storm water discharge is issued to the landowner.

(3) OTHER STORM WATER DISCHARGES. The department may require the landowner of any storm water discharge associated with land disturbing construction activity to apply for and obtain a storm water discharge permit if the storm water discharge is either:

- (a) Contributing to the violation of a water quality standard, or
- (b) Contributing significant pollution to waters of the state.

Note: This subsection allows the department to require permit coverage of construction sites with less than one acre of land disturbance.

(4) DENIAL OR REVOCATION OF GENERAL PERMIT. The department may deny or revoke coverage under a general WPDES permit and require submittal of an application for an individual WPDES storm water permit based on a review of the completed notice of intent or other relevant information. The landowner of a construction site denied or revoked coverage under the general WPDES permit may not discharge storm water to waters of the state from the construction site until an individual WPDES permit for storm water discharge is issued to the landowner.

(5) INDIVIDUAL PERMIT. The department may require the landowner of any storm water discharge covered by a general WPDES permit issued pursuant to this subchapter to apply for and obtain an individual WPDES storm water permit if any of the following occur:

(a) The storm water discharge is determined to be a significant source of pollution and more appropriately regulated by an individual WPDES storm water permit.

(b) The storm water discharge is not in compliance with the terms and conditions of this subchapter, or of a general WPDES permit issued pursuant to this chapter.

(c) A change occurs in the availability of demonstrated technology or best management practices for the control or abatement of pollutants from the storm water discharge.

(d) Effluent limitations or standards are promulgated for a storm water discharge that is different than the conditions contained in this subchapter.

(6) PETITION. Any person may submit a written request to the department that it take action under sub. (5).

Note: The department will evaluate a request submitted pursuant to this subsection to determine if an individual permit is warranted.

NR 216.52 Use of information. All information contained in the notice of intent other than that specified as confidential shall be available to the public for inspection and copying. All confidential information, so identified, shall be in separate documents. Effluent data is not confidential information. Confidential treatment will be considered only for that information identified as confidential in documents separate from non-confidential information and which meets the requirements of s. 283.55(2)(c), Stats., and for which written application for confidentiality has been made pursuant to s. NR 2.19.

NR 216.54 Transfers. A landowner who has submitted a completed notice of intent and does not intend to control the permitted activities on the construction site may transfer authorization of construction site storm water discharge permit coverage to the person who will control the permitted activities. The transfer shall occur upon written notification, signed by both the current permittee and the proposed permittee and sent via certified or registered mail to the department. Unless the department notifies the permittee to the contrary, the department will recognize this permit coverage transfer upon receipt of written notification. The department may require additional information to be filed prior to granting coverage under the general WPDES permit. The department may, if appropriate, require an application for an individual WPDES storm water permit.

NR 216.55 Notice of termination. (1) WHEN TO FILE. When a construction site has undergone final stabilization, temporary erosion control best management practices have been removed and all storm water discharges associated with the construction site activities that were required to have WPDES permit coverage under this subchapter have ceased, the permittee shall submit a signed notice of termination to the department.

(2) FORMS. A notice of termination shall be submitted to the department on forms available from the department. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage of a storm water discharge permit.

Note: Notice of termination forms may be obtained from the department website at <http://www.dnr.state.wi.us/org/water/wm/nps/stormwater.htm>, any regional office of the department, by writing to the Department of Natural Resources, Storm Water Program – WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at (608) 267-7694.

(3) SIGNATURE REQUIREMENTS. The notice of termination form shall be signed as required under s. NR 216.43(3).

(4) REQUIRED INFORMATION. The notice of termination shall include the following information:

(a) The mailing address and location of the construction site for which the notice of termination is submitted.

- (b) The name, mailing address and telephone number of the current permittee, as well as any transferee.
- (c) The name, mailing address and telephone number of the general contractor.
- (d) The following signed certification:

“I certify under penalty of law that disturbed soils at the identified site have undergone final stabilization and temporary erosion and sediment control measures have been removed or that all storm water discharges associated with construction activity that are authorized by a general WPDES permit have otherwise been eliminated. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with construction activity by the general WPDES permit, and that discharging pollutants in storm water associated with construction activity to waters of Wisconsin is unlawful where the discharge is not authorized by a general WPDES permit.”

(4) **EFFECTIVE DATE.** Termination of coverage under the permit shall be effective upon written confirmation of permit termination by the department to the permittee.

SECTION 2. CROSS-REFERENCE CHANGES. In the sections of the Code listed in Column A, the cross-reference in Column B is changed to the cross-reference in Column C.

Column A Citation with specific x-ref	Column B Current cross reference	Column C New cross reference
NR 120.16(3)(a)1.	NR 216.42	subch. III of NR 216
NR 151.12(4) Note	NR 216.07(7)	NR 216.07(1) to(6)
NR 151.13(2)(a) Note	NR 216.02(4)	revise note – to say “... designated by the department under s. NR 216.025.”
NR 151.13(2)(b) Note	NR 216.07(7)	NR 216.07(1) to (6)
NR 151.24(2) Note	NR 216.07(7)	NR 216.07(1) to (6)
NR 162.003(27)	NR 216.002(10)	NR 216.002(11)
NR 162.003(75)	NR 216.06(1)	216.06(2)(c)
NR 162.08(1)	NR 216.06(1)	216.06(2)(c)
NR 162.08(4)(e)	NR 216.06(1)	216.06(2)(c)

SECTION 3. EFFECTIVE DATE. 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.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 25, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)