

## Chapter NR 299

## WATER QUALITY CERTIFICATION

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**Note:** Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1997, No. 503.

**NR 299.01 Purpose and policy. (1)** This chapter is promulgated under ss. 227.11 (2) (a), 281.11, 281.12 (1) and 283.001, Stats., to establish procedures and criteria for the application, processing and review of state water quality certifications required by the provisions of the federal water pollution control act, 33 USC ss. 1251 et seq.

**(2)** It is the policy of the department to review, consistent with the requirements of section 1341 of the federal water pollution control act, 33 USC ss. 1251, et seq., all activities which require a federal license or permit which may result in any discharge to waters of the state and to:

(a) Deny certification for any activity where the department does not have reasonable assurance that any discharge will comply with effluent limitations or water quality related concerns or any other appropriate requirements of state law as outlined in s. NR 299.04;

(b) Grant or grant conditionally certification for any activity where the department has reasonable assurance that any discharge will comply with effluent limitations, water quality related concerns or any other appropriate requirements of state law as outlined in s. NR 299.04; or

(c) Waive certification for any activity which the department finds will result in no discharge, any wastewater discharge associated with an activity which will be regulated by the permit authority under ch. 283, Stats., or any activity that does not fall within the purview of the department's authority.

**History:** Cr. Register, May, 1981, No. 305, eff. 6-1-81; am. Register, October, 1990, No. 418, eff. 11-1-90.

**NR 299.02 Definitions.** For the purpose of this chapter:

**(1)** "Applicant" means any person who applies for any license or permit granted by an agency of the federal government to conduct any activity which may result in any discharge into the waters of the state.

**(2)** "Department" means the department of natural resources.

**(3)** "Discharge" means any addition of any pollutant to the waters of the state from any point source.

**(4)** "Licensing or permitting agency" means any agency of the federal government to which application is made for any license or permit to conduct an activity which may result in any discharge into the waters of the state.

**(5)** "Person" means an individual, corporation, partnership, association, municipality, state agency, interstate agency or federal agency.

**(6)** "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, hazardous waste, hazardous substance, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste.

**(7)** "Practicable alternatives" means alternatives which are available and capable of being implemented after taking into consideration cost, available technology, and logistics in light of realistic project purposes.

**(8)** "Regional administrator" means the administrator of region V of the U.S. environmental protection agency.

**(9)** "Water dependency" means the activity requires location in or adjacent to surface waters or wetlands to fulfill its basic purpose.

**(10)** "Waters of the state" as defined in s. 281.01 (18), Stats., means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

**History:** Cr. Register, May, 1981, No. 305, eff. 6-1-81; renum. from NR 299.03, cr. (7) and (9), Register, October, 1990, No. 418, eff. 11-1-90.

**NR 299.03 Application for certification. (1)** No person may conduct any activity which may result in any discharge into the waters of the state unless the person has received a certification or waiver under this chapter. Unless the licensing or permitting agency or the regional administrator submits an application to the department under 40 CFR 121.13, the applicant shall submit to the department a complete description of the activity for which certification is sought, including:

(a) The name and address of the applicant;

(b) A description of the facility or activity and of any discharge which may result from the activity or facility, including, but not limited to: the volume of discharge; the biological, chemical, thermal, and other characteristics of the discharge; a description of the existing physical environment at the site of the discharge; the size of the area affected; the location or locations at which the discharge may enter the waters of the state; and any environmental impact document information and photographs which have been provided to the licensing or permitting agency;

(c) A description of the function and operation of equipment, facilities, or activities to treat pollutants or other effluents which may be discharged, including specification of the degree of treatment expected to be attained;

(d) The date or dates on which the activity will begin and end, if known, and the date or dates on which the discharge will take place;

(e) A description of the methods being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment, facilities, or activities employed in the treatment or control of pollutants or other effluents;

(f) Information sufficient to determine whether the proposed activity is water dependent; and

(g) A description of practicable alternatives to the proposed activity and a description of the investigation conducted to determine the viability of such alternatives, including alternative locations, construction design and methods, and operations.

**(2)** The department shall initially determine whether a complete application has been submitted and, no later than 30 calendar days after the application has been submitted, notify the applicant in writing about the initial determination of completeness. If the department determines that the application is incomplete, the notice shall state the reason for the determination and the specific items of information necessary to make the application complete. An application may not be considered complete until the require-

ments of the Wisconsin environmental policy act, s. 1.11, Stats., have been met and until all information necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 283, Stats., has been submitted to the department.

(3) The department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the applicant makes material additions or alterations to the project for which the application has been submitted.

(4) The department shall protect as confidential any information, other than effluent data, submitted under this chapter which meets the requirements of s. 283.55 (2) (c), Stats., and s. NR 2.19.

**History:** Cr. Register, May, 1981, No. 305, eff. 6-1-81; renum. from NR 299.04 and am. (1), (2), (4) and (5), r. (3), Register, October, 1990, No. 419, eff. 11-1-90; CR 02-015: am. (2) and (3) Register January 2003 No. 565, eff. 2-1-03.

**NR 299.04 Department review of water quality certification application.** (1) The department shall, upon receipt of the complete application, determine whether it has reasonable assurance that the proposed activity will:

- (a) Result in any discharge; and
- (b) Comply with the following water quality standards:

1. Effluent limitations adopted under s. 283.13, Stats., and 33 USC 1311, for categories of discharges;

2. Water based related effluent limitations adopted under s. 283.13 (5), Stats., and 33 USC 1312;

3. Water quality standards adopted under s. 281.15, Stats., and 33 USC 1313;

4. Standards of performance adopted under s. 283.19, Stats., and 33 USC 1316;

5. Toxic and pretreatment effluent standards adopted under s. 283.21, Stats., and 33 USC 1317;

6. Public interest and public rights standards, related to water quality, set forth in ss. 30.03, 30.10, 30.11, 30.12, 30.123, 30.13, 30.15, 30.18, 30.19, 30.195, 30.196, 30.20, 30.202, 30.206, 30.21, 31.02, 31.05, 31.06, 31.07, 31.08, 31.12, 31.13, 31.18, 31.23, 88.31 and 281.15, Stats., and made applicable by 33 USC 1341 (d);

7. Any other appropriate requirements of state law as provided in 33 USC 1341 (d).

**History:** Cr. Register, May, 1981, No. 305, eff. 6-1-81; renum. from NR 299.05 and am. (1) (intro.), (b) (intro.), 2. and 6., Register, October, 1990, No. 418, eff. 11-1-90; CR 02-015: am. (1) (intro.), Register January 2003 No. 565, eff. 2-1-03.

**NR 299.05 Preliminary and final department action.**

(1) The department shall notify the applicant, the federal permitting or licensing agency, and the regional administrator within 120 calendar days of receipt of the complete application of its determination to deny the certification, grant or conditionally grant the certification, or waive the certification.

(2) The department's determination shall be in writing and shall explain the reasons for granting, granting conditionally, denying or waiving certification.

(3) The department's decision concerning a certification shall include the following:

- (a) The name and address of the applicant;
- (b) A statement that the department has made its decision about compliance with related state water quality standards enumerated in s. NR 299.04 (1) and denies, grants, grants conditionally or waives certification consistent with that decision.
- (c) A waiver of certification shall include:

1. A statement explaining the determination that no discharge will result from the activity or that the activity does not fall within the purview of the department's authority; and

2. A statement advising the licensing or permitting agency and the applicant if the activity proposed requires authorization

under requirements of state law administered by the department which are not related to water quality; and, where applicable,

3. Specific recommendations to the federal permitting authority and the applicant for avoidance of waters of the state. When all reasonable alternatives necessarily result in adverse impacts on waters of the state, a waiver may recommend specific project locations, and design and construction techniques which minimize adverse impacts on waters of the state and which minimize overall environmental impacts.

(d) A grant or conditional grant of certification shall include:

1. A statement that there is a reasonable assurance the activity will be conducted in a manner which will comply with the standards enumerated in s. NR 299.04 and, if appropriate,

2. A statement of conditions which the department deems necessary with respect to the discharge including necessary monitoring requirements. Monitoring requirements shall include, but not be limited to, provisions that:

- a. At least 5 business days prior to the beginning of the discharge, the applicant shall notify the department of its intent to commence the discharge;

- b. Within 5 business days after the completion of the discharge, the applicant shall notify the department of the completion of the discharge;

- c. The applicant shall allow the department reasonable entry and access to the discharge site in order to inspect the discharge for compliance with the certification and applicable laws.

3. A statement advising the licensing or permitting agency and the applicant if the activity proposed may require additional authorization under requirements of state law administered by the department which are not related to water quality.

(e) A denial of certification shall include, a statement explaining why the department does not have reasonable assurance that the discharge will comply with the standards enumerated in s. NR 299.04, and detailing the standards of concern.

(f) All grants, conditional grants or denials of certification shall include a statement that unless a written request for a hearing is filed with the department within 30 days after mailing of the notice, the department's decision will become final without public hearing at the end of the 30-day period.

(g) All such decisions may also include other information which the department determines to be appropriate.

(4) Except for applications under chs. 30 and 31, Stats., the department shall, in the case of a grant or conditional grant of certification:

- (a) Notify the applicant, the licensing or permitting agency and known interested persons of its decision.

- (b) Cause notice of its decision to be published by the applicant as a class I notice under ch. 985, Stats. Notice under this subsection shall identify the applicant and his or her address, describe the activity and its location, state the department's determination, and apprise the public of the opportunity to request a hearing under this chapter.

- (5) Any person whose substantial interests may be affected by the department's determination may, within 30 days after publication of the notice, request in writing a contested case hearing on the matter under ch. 227, Stats. A request for a contested case hearing shall include a written statement giving specific reasons why the proposed activity violates the standards under s. NR 299.04 (1) (b) and provide specific information explaining why the petitioner's interests are adversely affected by the department's determination. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the petitioner's objections in a contested case hearing. The department may request additional information from the petitioner to support the allegations in the petition prior to granting or denying a hearing request. In any case where a class I notice on the application is otherwise required by

law or where a contested case hearing on an application for water quality certification will be held under some other specific provision of law, the notice and hearings shall be combined.

**(6)** Hearings requested under this section shall be contested case hearings, shall be in accordance with the procedures outlined in ch. 227, Stats. The hearing shall be a de novo hearing on the issue of whether the department should grant, grant with conditions, deny or waive water quality certification. No hearing may be granted under this section on issues relating to water quality certification for a specific project if the same issues were, or could have been, adjudicated in another proceeding in which the petitioner or persons privy to the petitioner was named or admitted as a party.

**(7)** (a) The department's determination shall become final:

1. Upon issuance of the department's decision where no public notice is required, or

2. Upon the expiration of the 30-day period provided under sub. (5) if no person has requested a hearing under that section, or

3. Upon the issuance of the department's decision denying the request for hearing under sub. (5), or

4. Upon issuance of the department's decision after hearing.

(b) If a hearing is held under sub. (6), the hearing examiner shall make findings of fact, conclusions of law and a decision, which shall become final when issued in accordance with the procedures in ch. 227, Stats., and this section.

(c) The final decision of the department under par. (a) shall be judicially reviewable as provided under ch. 227, Stats.

**History:** Cr. Register, May, 1981, No. 305, eff. 6-1-81; am. (1), (2), (3) (f), (4), (5), (6) and (7) (a), Register, November, 1981, No. 311, eff. 12-1-81; renum. from NR 299.05 and am. (3) to (6) and (7) (a) 3., Register, October, 1990, No. 418, eff. 11-1-90; am. (5) and (6), Register, May, 1998, No. 509, eff. 6-1-98; **CR 02-015: am. (1) Register January 2003 No. 565, eff. 2-1-03.**