

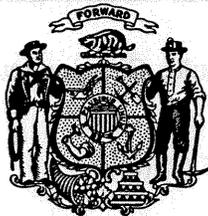
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

**RULES CLEARINGHOUSE**

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**Terry C. Anderson, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

---

**CLEARINGHOUSE REPORT TO AGENCY**

---

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-087**

AN ORDER to repeal NR 101.31; to amend NR 101.03 (4) and (5), 101.13 (intro.), (1), (3), (5) (c), (8) (intro.), (b) and (c); to repeal and recreate NR 101.13 (9); and to create NR 101.03 (2m) and 101.13 (4) (e) and (12), relating to the wastewater fee program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-09-00 RECEIVED BY LEGISLATIVE COUNCIL.

05-30-00 REPORT SENT TO AGENCY.

RS:RJC:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**Terry C. Anderson**  
Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 00-087

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

Section 299.15 (3) (e), Stats., requires that the rule implement wastewater fees to be paid beginning with fiscal year 2000-01 and that the fees be determined by using a "5-year rolling average." Since the first drafted option for s. NR 101.13 (3) (b) would not utilize a "5-year" average until 2004, is the department satisfied that this option meets the Legislature's intent of having fees for 2000-01 determined by a five-year average?

#### 2. Form, Style and Placement in Administrative Code

In s. NR 101.13 (4) (e), the phrase "shall be" should be replaced by the word "is."

#### 4. Adequacy of References to Related Statutes, Rules and Forms

Section NR 101.13 (9) refers to adjustment factors. What adjustment factors are being referred to? Are they the factors identified in sub. (8) or some other factors? An appropriate cross-reference to the adjustment factors referred to in sub. (9) should be provided.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Once the appropriate option for s. NR 101.13 (3) (b) is determined, it appears that s. NR 101.03 (2m) could be revised to more narrowly conform with the "five-year rolling average" option actually chosen. Also, since sub. (2m) defines "five-year rolling average" and the remainder of the rule seems to use the term "5-year rolling average," the term "5-year rolling average" should be included in the definition. Also, the provision seems to define the term "five-year rolling average" and "rolling average." These terms should be defined in separate provisions since they appear to have different meanings. Finally, if five years of data is available, is it necessary for the phrase "up to" to be included in the definition?

b. The first s. NR 101.13 (3) (b) option refers to the "5-year rolling average of the effluent quantities from s. NR 101.12 (5)." The second par. (b) option does not identify the basis of the five-year rolling average. It seems that it probably should. In addition, the phrase "5-year rolling average" should be spelled consistently throughout the rule. Therefore, a hyphen should be inserted in the first line of the second par. (b) option.

c. Section NR 101.13 (12) refers to a number varying by "more than 20%." The rule should be clarified to better identify the basis from which the 20% is to be measured. Also, it appears that the word "a" before "30%" should be deleted or that some other term should be inserted towards the end of the sentence to clarify its meaning.

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

The State of Wisconsin Natural Resources Board proposes an order to repeal NR 101.31; to amend NR 101.03(4) and (5), 101.13(intro.), (1), (3), (5)(c), (8)(intro.), (b) and (c); to repeal and recreate NR 101.13(9); and to create NR 101.03(2m) and 101.13(4)(e) and (12) relating to the wastewater fee program

WT-24-00

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 299.15, Stats.

Statutes interpreted: s. 299.15, Stats.

The proposed revisions to ch. NR 101, the wastewater fee rule, implement the 1999 Wisconsin Act 9 revisions to s. 299.15, Stats. The Act raises the revenue cap from \$7,450,000 in calendar year 1999 to \$7,925,000 in calendar year 2000 and beyond. The Act also calls on the Department of Natural Resources to develop a performance-based approach, using five-year rolling averaging, for fees beginning with calendar year 2000.

The department initiated an External Advisory Committee (EAC) to develop proposed rules to implement the new legislation. The short timeline for implementing the Act did not permit a thorough reassessment of the wastewater fee rule. Within the current rule, however, the EAC developed a workable solution to the performance-based requirement. The attached rule would result in a direct relationship between discharge levels and WPDES limits – and wastewater fees. Increases in discharge levels would result in higher fees, while decreases in discharges would result in lower fees. This is accomplished by adopting the 1999 adjustment factors, one for municipal discharges and one for industrial dischargers, for future fees beginning with calendar year 2000. The proposed rule language contains two options for meeting the rolling average requirement for comment. The first initiates the rolling average in calendar year 2000 but would not have five years of data until calendar year 2004. The second would use 1996 to 2000 data in calendar year 2000 and continue the rolling average from there.

The department is also proposing a fee rate for phosphorus of \$0.34 per pound. This recognizes the technology-based aspect of ch. NR 217 limits and proposes a rate more in line with the environmental impact of phosphorus..

The department also proposes making a number of editorial changes to keep the rule compact and current.

SECTION 1. NR 101.03(2m) is created to read:

NR 101.03(2m) "Five-year rolling average" means the average of up to 5 years of the most recent data. Where 5 years of data is not available, the rolling average shall consist of the average of the years for which data are available.

SECTION 2. NR 101.03(4) and (5) are amended to read:

NR 101.03(4) "Limit of detection" means the lowest concentration level that can be determined to be significantly different from a blank has the meaning specified in s. NR 149.03(15).

(5) "Limit of quantitation" means the level above which quantitative results may be obtained with a specified degree of confidence has the meaning specified in s. NR 149.03(16).

SECTION 3. NR 101.13(intro.), (1) and (3) are amended to read:

[DRAFTERS NOTE: Subsection (3) is shown in two cases to allow public comment on the different directions presented. The first case, containing subsection (3) (a) and (b), would result in an accumulating 5-year average beginning in 2000 and being a true five year rolling average in year 2004 and beyond. The second case, containing (3) (a) and the second (b), would result in a 5-year average the first year containing years 1996 to 2000, and beyond.]

**NR 101.13 Wastewater fees.** (intro.) An annual wastewater fee shall be assessed to each facility holding a specific WPDES permit and reporting discharges during the calendar year:

(1) The annual wastewater fee shall consist of the greater of the base fee under sub. (2) or a discharge fee under sub. (3). The effect of this section is to assess fees to each holder of a specific WPDES permit.

(3) The discharge fee shall be the total of fees for individual pollutants determined as follows:

(a) For calendar year 1999 fees, by multiplying the effluent quantities from s. NR 101.12(5) times the applicable limit rate determined in accordance with sub. (4), times the applicable adjustment factor determined in accordance with sub. (8).

(b) Beginning with calendar year 2000 fees, by multiplying the 5-year rolling average of the effluent quantities from s. NR 101.12(5) times the applicable limit rate determined in accordance with sub. (4), times the applicable adjustment factor under sub. (9). For the purpose of calculating the 5-year rolling average, the department shall use data from calendar year 1999 and thereafter. Prior to 2004, or where 5 years of data is otherwise not available, the rolling average shall consist of years for which data is available.

6

OR

(b) Beginning with calendar year 2000 fees, by multiplying the 5 year rolling average based on the previous 5 years by the applicable limit rate determined in accordance with sub. (4), times the applicable adjustment factor determined in accordance with sub. (9).

Done  
3/29/99  
by [unclear]  
a bure

SECTION 4. NR 101.13(4)(e) is created to read:

NR 101.13(4)(e) An effluent standard based limit under ch. NR 217. The limit rate for phosphorus shall be \$0.34 per pound.

SECTION 5. NR 101.13(5) (c), (8)(intro.), (b) and (c) are amended to read:

NR 101.13(5)(c) Effluent limits established in accordance with ch. NR 217, ~~except that until 90% of affected dischargers receive such limits or a variance from the limits there shall be no fees for the discharge of phosphorus.~~

(8) ~~The annual~~ For calendar year 1999 fees the adjustment factors shall be determined by the department as follows:

(b) The municipal adjustment factor shall be calculated ~~annually~~ by subtracting the total of applicable base fees under sub. (2) from the municipal revenue goal under par. (a) and then dividing the difference by the total of applicable discharge fees under sub. (3).

(c) The adjustment factor for other dischargers shall be calculated ~~annually~~ by subtracting the total of applicable base fees under sub. (2) from the revenue goal for other dischargers under par. (a) and then dividing the difference by the total of applicable discharge fees under sub. (3).

SECTION 6. NR 101.13(9) is repealed and recreated to read:

NR 101.13(9) After calendar year 1999, the adjustment factors shall be those determined for calendar year 1999.

SECTION 7. NR 101.13(12) is created to read:

NR 101.13(12) The department shall hold at least one public hearing under s. 299.15(5), Stats., in any year where the number of facilities subject to the provisions of this chapter varies by more than 20%, or where changes in any rate results in fees of more than a 30% of the total fees.

from what?

**SECTION 8.** NR 101.31 is repealed.

[DRAFTERS NOTE: This subsection was inadvertently left in the rule when ch. NR 101 was revised by Natural Resources Board Order No. TS-34-93. The provisions of the subsection were written into the remaining parts of ch. NR 101]

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on

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

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

OCT 27 2000

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. WT-24-00

Legislative Council Rules Clearinghouse Number 00-087

Subject of Rules WASTEWATER FEE PROGRAM

Date of Transmittal to Presiding Officers OCTOBER 25, 2000

**Send a copy of any correspondence or notices pertaining to this rule to:**

**Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
LC/5, 101 South Webster**

**266-1959**

## REPORT TO LEGISLATURE

NR 101, Wis. Adm. Code  
Wastewater fee program

Board Order No. WT-24-00  
Clearinghouse Rule No. 00-087

### Statement of Need

1999 Wisconsin Act 9 contained changes to s. 299.15, Stats., that must be addressed in ch. NR 101. The changes require that the wastewater fee program implement a performance-based system for the fees for calendar year 2000 and beyond, and that a 5-year rolling average be incorporated. The proposed rule will result in a direct relationship between discharge levels and WPDES limits and the wastewater fee collected. Increases in discharge levels would result in higher fees, while decreases in discharges would result in lower fees.

The department is also proposing a fee rate for phosphorus of \$0.34 per pound. This recognizes the technology-based aspect of ch. NR 217 limits and proposes a rate more in line with the environmental impact of phosphorus.

### Modifications as a Result of Public Hearing

At public hearing, the department proposed two options for implementing the 5-year rolling average. The first option averaged discharge data beginning with data generated for calendar year 2000. Under this option, a 5-year average would not be fully calculated until the calendar year 2004 fee process. The second option would use existing data from the years 1996 – 2000 to calculate a 5-year average for calendar year 2000 fees. The public comments strongly supported the first option. The proposed rule implements this option.

### Appearances at the Public Hearing and Their Position

#### In support:

John Exner, Midwest Food Processors Association, P.O. Box 1247, Madison, WI 53701  
Ed Wilusz, Wisconsin Paper Council, P.O. Box 718, Neenah, WI 54957  
Paul Kent, Municipal Environmental Group – Wastewater Division, 10 E. Doty Street, #600,  
Madison, WI 53701  
Jim Nemke, Madison Metropolitan Sewerage District, 1610 Moorland Road, Madison, WI 53713

In opposition – none

#### As interest may appear:

Renee Exum, Michael Best & Friedrich, P.O. Box 1806, Madison, WI 53701  
Kay M. Marshall, Wis. Rural Water Association, 350 Water Way, Plover, WI 54467

### Response to Legislative Council Rules Clearinghouse Report

See attached response.

**Final Regulatory Flexibility Analysis**

Pursuant to s. 227.114, Stats., the proposed changes to ch. NR 101 do not change the number nor types of small businesses impacted by the rule. The proposed changes do not require any additional bookkeeping nor reporting, nor do they require any change in the professional skills required by comply with the rule.

## Hearing Comments

### Clearinghouse Comments

1. Section NR 101.15 (3) (e), Stats., requires that the rule implement wastewater fees to be paid beginning with fiscal year 2000-01 and that the fees be determined by using a "5-year rolling average." Since the first draft option for s. NR 101.13 (3) (b) would not utilize a "5-year" average until 2004, is the department satisfied that this option meets the Legislature's intent of having fees for 2000-01 determined by a five-year average?

Response: The enabling legislation for the wastewater fee system requires that the fee system utilize a five year rolling average and be performance based. Two options were presented at the hearings to satisfy the five year averaging requirement. The first option in s. NR 101.13(3)(b) was developed in response to the External Advisory Committee's request for a system, that would, in total, immediately reward facilities for reducing their discharges. In general, over the past several years, the amount of pollutants discharged by facilities has gone down. By adopting option 1, this downward trend will be immediately reflected in the initial assessment of fees. Although option 1 will not fully utilize the five year averaging requirement until the year 2004, it will be consistent with the requirement for a performance based system. Alternatively, if the department had selected option 2, the five year averaging requirement would be immediately satisfied, but the fees for most dischargers would likely be higher in the initial years of implementation despite the fact that there has been an overall reduction in the amount of pollutants discharged over the past few years.

2. In s. NR 101.13 (4) (e), the phrase "shall be" should be replaced by the word "is."

Response: Subsections (a) through (d) of NR 101.13 (4) use the phrase "shall be" so sub. (e) will retain the phrase for consistency purposes.

4. Section NR 101.13 (9) refers to adjustment factors. What adjustment factors are being referred to? Are they the factors identified in sub. (8) or some other factors? An appropriate cross-reference to the adjustment factors referred to in sub. (9) should be provided.

Response: Sections NR 101.13 (3) (a) and (b) and (8) and (9) have been revised to remove the reference to past years and also to fully implement the adoption of the calendar year 1999 adjustment factors for 2000 and beyond.

5.a. Once the appropriate option for s. NR 101.13 (3) (b) is determined, it appears that s. NR 101.03 (2m) could be revised to more narrowly conform with the "five-year rolling average" option actually chosen. Also, since sub. (2m) defines "five-year rolling average" and the remainder of the rule seems to use the term "5-year rolling average," the term "5-year rolling average" should be included in the definition. Also, the provision seems to define the term "five-year rolling average" and "rolling average." These terms should be defined in separate provisions since they appear to have different meanings. Finally, if five years of data is available, is it necessary for the phrase "up to" to be included in the definition?

Response: All phrases referring to the "5-year rolling average" have been changed to match the definition. The definition has been enhanced to reflect option 1 in s. NR 101.13(3) (b).

5.b. The first s. NR 101.13 (3) (b) option refers to the "5-year rolling average of the quantities from NR 101.12 (5)." The second par. (b) option does not identify the basis of the five-year rolling average. It seems that it probably should. In addition, the phrase "5-year rolling average" should be spelled consistently throughout the rule. Therefore, a hyphen should be inserted in the first line of the second par. (b) option.

Response: Section NR 101.13(3) (a) and (b) have been revised to clarify the application of the 5-year rolling average option selected.

5.c. Section NR 101.13 (12) refers to a number varying by "no more than 20%." The rule should be clarified to better identify the basis from which the 20% is to be measured. Also, it appears that the word "a" before "30%" should be deleted or that some other term should be inserted towards the end of the sentence to clarify its meaning.

Response: Section NR 101.13 (12) has been revised to clarify the triggers for public hearings related to variances in the fee program.

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

The State of Wisconsin Natural Resources Board proposes an order to repeal NR 101.13 (8), (9), and 101.31; to amend NR 101.03(4) and (5), 101.13(intro.), (1), (3), (5)(c); and to create NR 101.03(2m) and 101.13(4)(e) and (12) relating to the wastewater fee program

WT-24-00

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 299.15, Stats.

Statutes interpreted: s. 299.15, Stats.

The proposed revisions to ch. NR 101, the wastewater fee rule, implement the 1999 Wisconsin Act 9 revisions to s. 299.15, Stats. The Act raises the revenue cap from \$7,450,000 in calendar year 1999 to \$7,925,000 in calendar year 2000 and beyond. The Act also calls on the Department of Natural Resources to develop a performance-based approach, using a 5-year rolling average, for fees beginning with calendar year 2000.

The department initiated an External Advisory Committee (EAC) to develop proposed rules to implement the new legislation. The short timeline for implementing the Act did not permit a thorough reassessment of the wastewater fee rule. Within the current rule, however, the EAC developed a workable solution to the performance-based requirement. The attached rule would result in a direct relationship between discharge levels and WPDES limits – and wastewater fees. Increases in discharge levels would result in higher fees, while decreases in discharges would result in lower fees. This is accomplished by adopting the 1999 adjustment factors, 2.4510 for municipal discharges and 5.0492 for industrial dischargers, for fees beginning with calendar year 2000 and beyond. The proposed rule language meets the 5-year rolling average requirement by averaging discharge data generated since calendar year 2000. If five years of data are not available, the 5-year rolling average will use available data.

The department is also proposing a fee rate for phosphorus of \$0.34 per pound. This recognizes the technology-based aspect of ch. NR 217 limits and proposes a rate more in line with the environmental impact of phosphorus.

The department also proposes making a number of editorial changes to keep the rule compact and current.

---

**SECTION 1.** NR 101.03(2m) is created to read:

NR 101.03(2m) "5-year rolling average" means the average of data from the current year plus the previous 4 years of data available since the beginning of calendar year 2000. Where 5 years of data is not available, the 5-year rolling average means the average of data from the current year plus any available data from the previous 4 years since the beginning of calendar year 2000.

**SECTION 2.** NR 101.03(4) and (5) are amended to read:

NR 101.03(4) "Limit of detection" ~~means the lowest concentration level that can be determined to be significantly different from a blank~~ has the meaning specified in s. NR 149.03(15).

(5) "Limit of quantitation" ~~means the level above which quantitative results may be obtain with a specified degree of confidence~~ has the meaning specified in s. NR 149.03(16).

**SECTION 3.** NR 101.13(intro.), (1) and (3) are amended to read:

**NR 101.13 Wastewater fees.** (intro.) An annual wastewater fee shall be assessed to each facility holding a specific WPDES permit and reporting discharges during the calendar year:

(1) The annual wastewater fee shall consist of the greater of the base fee under sub. (2) or a discharge fee under sub. (3). The effect of this section is to assess fees to each holder of a specific WPDES permit.

(3) The discharge fee shall be the total of fees for individual pollutants determined by multiplying the 5-year rolling average of the product of the effluent quantities from s. NR 101.12(5) times the applicable limit rate determined in accordance with sub. (4), times the ~~applicable~~ adjustment factor determined in accordance with sub. (8). The adjustment factor for municipal dischargers is 2.4510 and for other dischargers is 5.0492.

Note: The adjustment factors identified in sub. (3) were calculated and applied to calendar year 1999 fees to satisfy the requirement in s. 299.15(3)(e)3, Stats.

**SECTION 4.** NR 101.13(4)(e) is created to read:

NR 101.13(4)(e) An effluent standard based limit under ch. NR 217. The limit rate for phosphorus shall be \$0.34 per pound.

**SECTION 5.** NR 101.13(5) (c) is amended to read:

NR 101.13(5)(c) Effluent limits established in accordance with ch. NR 217 ~~, except that until 90% of affected dischargers receive such limits or a variance from the limits there shall be no fees for the discharge of phosphorus.~~

**SECTION 6.** NR 101.13(12) is created to read:

NR 101.13(12) The department shall hold at least one public hearing under s. 299.15(5), Stats., in any year where the total number of facilities subject to the provisions of this chapter changes by more than 20% compared with the total from the previous year, or where changes in any limit rate results in fees for a pollutant of more than a 30% of the total fees for that year.

**SECTION 7.** NR 101.13(8), (9) and NR 101.31 are repealed.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 25, 2000.

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

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)