

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, 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 98-197

AN ORDER to repeal NR 200.02 (1); to renumber NR 200.02 (2) to (10); to amend chapter NR 200 (title), 200.01, 200.02 (intro.), 200.05 (intro.) and (4), 200.07 (2), (3) and (4), 200.09 and 200.10; and to create subchapter I (title) of chapter NR 200, 200.02 (3), (4), (6), (7), (8), (13), (14) and (15), 200.03 (3) (i), 200.06 (4), 200.065 and subchapter II of chapter NR 200, relating to applications for discharge permits and water quality standards variances.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-10-98 RECEIVED BY LEGISLATIVE COUNCIL.
01-12-99 REPORT SENT TO AGENCY.

RS:MCP;jal;ksm

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)]

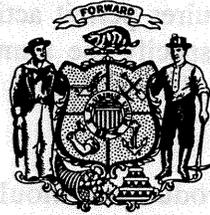
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, 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 98-197

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.]

2. Form, Style and Placement in Administrative Code

a. The rule creates a new subchapter in ch. NR 200. Each of the two subchapters has its own definitions, and five of the definitions in s. NR 200.21 duplicate definitions in s. NR 200.02. The purpose of definitions is to avoid needless repetition. An additional subchapter for definitions that are common to the entire chapter should be created.

b. When a subchapter title is created, as in SECTION 2, it should be in the following form: "Subchapter I (title) of ch. NR 200 [precedes NR 200.01] is created to read:". This provides the information necessary to create the subchapter title.

c. The definitions in s. NR 200.02 (3) and (4) are definitions of specific types of point source discharges. Accordingly, the defined terms should be "major municipal discharge" and "minor municipal discharge."

d. In s. NR 200.02 (6), the notation "e.g." should not be used. The word "including" could be used or examples of a biocide or water quality conditioner can be placed in a note to the rule.

e. References to addresses and departmental offices, as set forth in s. NR 200.07 (2), should be included in notes, rather than in the text of the rule. This allows for expedient updating of the rules when the department is reorganized.

f. The material stricken in the current rule should precede material inserted by the rule in s. NR 200.07 (4).

g. Section 227.116, Stats., requires permit action deadlines that include a requirement for a business to obtain a permit to specify the number of *business days* within which the department will review and make its determination. Do the amendments to s. NR 200.10 comply with this statutory requirement?

h. In s. NR 200.21, the introduction should be replaced by the phrase "In this subchapter:".

i. "Department" should not be capitalized in s. NR 200.24 (2).

j. The entire rule should be reviewed to ensure that introductory material grammatically leads into following subunits and that the introductory material clearly indicates whether all of the requirements in the following subunits must be met or whether it is sufficient to meet only one of the requirements in the following subunits.

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

a. Specific cross-references should be used wherever possible. If appropriate, the definition of "municipal water system" in s. NR 811.02 (16) should be used as the cross-reference in s. NR 200.02 (7).

b. A definition should add something to the understanding of a term and should be used to achieve consistency in the terminology used in the rule. "Point source" is defined in the current rule in s. NR 200.02 (7). Defining "outfall" to mean a "point source" in s. NR 200.02 (8) merely provides that two different terms mean the same thing. The department should review the use of the term "outfall" in current s. NR 200.02 (9) and proposed s. NR 200.065 (1) (b). "Point source" should be substituted if these terms in fact mean the same thing.

c. Has the department complied with s. 227.14 (3), Stats., with respect to application forms referenced in s. NR 200.06 (4) and NR 200.065 (1) (intro.)?

d. The cross-references in s. NR 205.07 (1) (g) set forth a procedure for submitting applications. This procedure is referenced in ss. NR 200.07 (4) and 200.25 (intro.). It is not clear why the details of s. NR 205.07 (1) (g) must be set forth following the cross-reference.

e. The cross-references in ss. NR 200.20 and 200.21 (15) are inconsistent. The former refers to variances "allowed by" s. 283.15, Stats., which is an appropriate description of that statute. However, the latter refers to water quality standards "adopted under" s. 283.15, Stats., when in fact the water quality standards are adopted under s. 281.15, Stats. The department should consider whether the definition of "variance" is necessary. The only purpose of the definition appears to be to provide a reference to the statutory authority, which could be provided in a note after s. NR 200.22 (1).

f. The terms in s. NR 200.21 that define by reference provisions of ch. NR 149 each appear to be used only once in the rule, mostly in s. NR 200.24 (1) (f) 6. These references would be substantially more useful if the cross-references were included where the terms are used in the rule. The definition section then could be shortened by eliminating the definitions of terms used only once in the rule.

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

a. The term “industrial facility or activity” is used in s. NR 200.02 (14). This term determines in part the regulatory scope of the rule. The department should consider whether it will be clear in all cases whether a particular facility is an industrial facility.

b. The term “surface waters,” as defined in s. NR 200.02 (15), is difficult to understand in relationship to the definition of “waters of the state” in the current rule. “Surface waters” are a subset of “waters of the state,” and the definition of “surface waters” could be substantially clarified by drafting it in that form, rather than repeating some, but not all, elements of the “waters of the state” definition.

c. In s. NR 200.065 (1), the introduction should conclude with a colon.

d. Is “results” an appropriate word choice in the heading of Table 1? Should any time frame be specified for the monitoring, particularly where multiple samples must be taken? Should any time frame be specified for the monitoring in s. NR 200.065 (1) (c) and (d)?

e. It is not clear what is meant by s. NR 200.065 (1) (g) 2. As drafted, the rule suggests that past monitoring is only acceptable if the results of that monitoring are similar to the results of monitoring the current discharge.

f. The term “discharge levels” is used in s. NR 200.065 (1) (h) 1. It is not clear whether this term refers to the volume of discharge, the concentration of contaminants in the discharge or some other element of the discharge. In sub. (1) (h) 2., to what time frame does the phrase “previous monitoring” apply?

g. In s. NR 200.07 (4) (a) to (e), it appears that the word “by” should be deleted in order to grammatically follow from the subsection’s introduction. Also, in par. (a), it appears that the word “of” should be replaced by the word “or.” [See also s. NR 200.25.]

h. In s. NR 200.22 (2) (e), it appears that the word “precludes” should be replaced by the word “preclude.”

i. Is s. NR 200.24 (1) (e) necessary, given the specific requirements of s. NR 200.24 (1) (n)?

j. It appears that the substantive provisions of s. NR 200.26 are more appropriately placed in s. NR 200.24.

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 200.02(1); renumber NR 200.02(2) through (10); to amend Chapter NR 200 (title), 200.01, 200.02 (intro.), 200.05 (intro.), 200.05(4), 200.07(2), (3) and (4), 200.09 and 200.10; and to create NR 200 Subchapter I (title), 200.02(3), (4), (6), (7), (8), (13) (14) and (15), 200.03(3)(i), 200.06(4), 200.065 and NR 200, Subchapter II relating to applications for discharge permits and water quality standards variances.

WT-39-98

Analysis prepared by the Department of Natural Resources

Statutory authority: ss. 227.11(2), 283.15(2)(b)1. and 283.31, Wis. Stats.

Statutes interpreted: ss. 227.116, 283.15, and 283.37, Wis. Stats.

This action will add language to Chapter NR 200 to specify effluent monitoring and other application requirements for various categories of dischargers to reflect what has become common practice by Department staff. Other minor clean-up changes will also be made. Subchapter II has been created to specify application requirements for variances to water quality standards to reflect statutory language and staff experience.

SECTION 1. Chapter NR 200 (title) is amended to read:

CHAPTER NR 200

APPLICATION FOR DISCHARGE PERMITS AND WATER QUALITY STANDARDS
VARIANCES

SECTION 2. Subchapter I (title) is created to read:

SUBCHAPTER I - APPLICATION FOR DISCHARGE PERMITS

SECTION 3. NR 200.01 is amended to read:

NR 200.01 PURPOSE. The purpose of this ~~chapter~~ subchapter is to set forth the requirements for filing applications for the discharge permits required by s. 283.31, Stats., to prescribe the form of such applications pursuant to s. 283.37, Stats., and to specify the number of business days within which the department will publish a public notice indicating its intended action on a Wisconsin pollutant discharge elimination system permit application or request for modification pursuant to s. 227.116, Stats. Section ~~283.37~~ 283.31 Stats., requires a permit for the lawful

discharge of any pollutant into the waters of the state, which include groundwaters by the definition set forth in s. 283.01(13), Stats. The federal water pollution control act of 1977, P.L. 95-217; 33 USC 466 et. seq., requires a permit for the lawful discharge of any pollutant into navigable waters. Therefore in Wisconsin, permits are required for discharges from point sources to surface waters of the state and additionally to land areas where pollutants may percolate, seep to, or be leached to groundwaters. This includes the land application of sludge.

SECTION 4. NR 200.02 (intro.) is amended to read:

*Common
these for NR 205
duplication*

NR 200.02 DEFINITIONS. For purposes of this ~~chapter~~ subchapter the following definitions are applicable:

SECTION 5. NR 200.02(1) is repealed.

SECTION 6. NR 200.02(2) to (10) are renumbered NR 200.02(1), (2), (5), (9), (10), (11), (12), (16) and (17).

SECTION 7. NR 200.02(3), (4), (6), (7), (8), (13), (14) and (15) are created to read:

NR 200.02(3) "Major municipal" means a point source discharge with an average daily volume equal to or greater than one million gallons per day of either municipal wastewater from a publicly owned treatment works or of domestic wastewater from a privately owned treatment works.

(4) "Minor municipal" means a point source discharge with an average daily volume less than one million gallons per day of either municipal wastewater from a publicly owned treatment works or domestic wastewater from a privately owned treatments works.

(6) "Noncontact cooling water with additives" means noncontact cooling water, as defined in ch. NR 205, to which the owner or operator has added a water treatment additive such as a biocide, e.g., chlorine or hypochlorite or a water quality conditioner, e.g., dechlorination chemical, alum, polymer, pH adjustment chemical, anti-scale chemical or corrosion inhibitor. XX

(7) "Noncontact cooling water without additives" means noncontact cooling water, as defined in ch. NR 205, free from water treatment additives other than those added by a municipal water system, as defined in ch. NR 811.

(8) "Outfall" means a point source.

used in 200.02(9) as "outlet streams"

(13) "Primary industry" means an industrial facility or activity that is encompassed by one of the industrial categories listed in 40 CFR, Part 122, Appendix A.

(14) "Secondary industry" means an industrial facility or activity that is not classified as a primary industry.

*is a reasonable term
what this is →*

(15) "Surface waters" means all natural and artificial named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters.

*in "waters of state" -
based on historical differences - but then
if there was a subcategory, 8 of 10*

*See 200 P. 8
only natural
point source*

SECTION 8. NR 200.03(3)(i) is created to read:

NR 200.03(3)(i) Discharges from municipal separate storm sewer systems permitted under subch. I of ch. NR 216.

SECTION 9. NR 200.05 (intro.) and (4) (intro.) are amended to read:

NR 200.05 REPORTING OF NEW DISCHARGES. Pursuant to s. 147.14 283.59, Stats.:

(4)(intro.) Any person discharging, or intending to commence discharging, into a publicly or privately owned treatment works who is or will become subject to the discharge reporting requirements of s. ~~147.025(4)~~ 283.37(4), Stats., shall give notice of the following, to the department and owner or operator of the treatment works, using the form prescribed in ch. NR 202, at least 180 days prior to:

SECTION 10. NR 200.06(4) is created to read:

NR 200.06(4) The department may require an applicant to supply on application forms any information the department needs to correspond with the applicant or assemble the permit components or conditions appropriate for the particular discharge including:

- (a) General facts about the applicant or facility, sources of wastewater or treatment system for which a permit is requested.
- (b) Data available to the applicant through information searches or measurements taken by the applicant.
- (c) Information obtained by the applicant as a result of requirements in previous permits.
- (d) Information on results of testing, including quality control information, obtained by the applicant through investigations, such as pilot studies or effluent or ambient monitoring.

Note: Application forms may be obtained by writing to the department regional office or central office at the address given in s. NR 200.07(2) or by calling one of those offices. Persons requesting an application form should say they wish to apply for a WPDES permit and provide their name, address, telephone number and a brief description of the facility which will generate the wastewater discharge.

SECTION 11. NR 200.065 is created to read:

NR 200.065 APPLICATION MONITORING REQUIREMENTS FOR DISCHARGES TO SURFACE WATERS. (1) EXISTING DISCHARGES. An applicant for permit issuance or reissuance with an existing discharge to surface waters shall monitor as follows and report the monitoring results on forms approved by the department.

- (a) Samples shall be as representative of normal effluent quality as possible.

227-14 (31)
not copy
with
new form

7

(b) Minimum monitoring requirements for each outfall that conveys a wastewater discharge are specified in Table 1.

Table 1 - Minimum monitoring requirements

Wastewater discharge type	Number of monitoring results	Pollutants requiring monitoring
Major municipal wastewater	1	Pollutants listed in s. NR 215.03 excluding asbestos, 2-chloroethyl vinyl ether, and dioxin; pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
	4	Copper, ammonia nitrogen, phosphorus and hardness
	1	Chloride and total phenols
Minor municipal wastewater	4	Copper, ammonia nitrogen, phosphorus and hardness
	1	Chloride, arsenic, cadmium, chromium, lead, nickel and zinc
Primary industry process wastewater	1	Pollutants listed in s. NR 215.03 ¹ excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105 ¹ , Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102 ¹ , Table 1
	4	Copper, ammonia nitrogen, phosphorus and hardness
	3	Mercury
	1	BOD ₅ (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature and total phenols
	1	Fecal coliform and pollutants listed in s. NR 215.06 excluding TOC (total organic carbon) when the applicant believes the pollutant is present in the discharge for reasons other than its presence in the intake water
Secondary industry process wastewater and noncontact cooling water with additives	4	Copper, ammonia nitrogen, phosphorus and hardness

14

u.c. ? Samples ?

what kind of...

	1	BOD ₅ (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature, arsenic, cadmium, chromium, lead, mercury, nickel, zinc
	1	Any of the following pollutants excluding copper and ammonia nitrogen that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
Noncontact Cooling Water without Additives	1	Ammonia nitrogen, BOD ₅ (five-day biochemical oxygen demand), chloride, oil and grease, pH, phosphorus, total suspended solids, temperature, arsenic, cadmium, chromium, lead, mercury, nickel, zinc
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1

¹ Primary industries are required to test only those GC/MS fractions that are specified in 40 CFR, Part 122, Appendix D, revised Table 1.

(c) The department may require the applicant to monitor 11 times for chloride for major municipal discharges or minor municipal discharges when the source of wastewater is from hard water communities, or for industrial process wastewater discharges from dairies, canneries, meat processors, water utilities that utilize ion-exchange water softening and others industrial categories expected to have high chloride levels.

(d) The department may require the applicant to monitor 4 times for the metals arsenic, cadmium, lead, nickel and zinc for major municipal discharges or minor municipal discharges when levels of those metals measured in the wastewater treatment system sludge from a facility are abnormally high compared with other similar facilities in the state.

9

(e) The department may require the applicant to monitor for the dioxin and furan congeners listed in s. NR 106.16(2) for a major municipal discharge or minor municipal discharge when sources of wastewater include a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer and for a primary industrial discharge if the industry is a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer.

(f) The department may require monitoring for any other pollutant not specified in Table 1 if its presence could be reasonably expected based on wastewater sources.

(g) Monitoring performed in the past meets the requirements of this subsection when:

- 1. The discharge sampling was performed no more than 3 years before submission of the application; and
- 2. The sample results are representative of the present discharge.

too vague for k.

unclear as int - what is the

(h) The department may exempt applicants from some or all of the monitoring requirements in this subsection for reasons including, but not limited to, any of the following:

> stand

1. Parameters such as flow, hardness or pH measured in the discharge or receiving water would result in proposed effluent limitations much greater than anticipated discharge levels, based upon measurements from similar discharges.

*not defined
include
no more
from similar*

2. Proposed effluent limitations would be much greater than anticipated discharge levels, based on previous measurements and the fact that no significant facility changes have occurred.

3. Previous monitoring from similar facilities indicate the absence of significant quantities of a pollutant or class of pollutants.

how previous

(2) NEW DISCHARGES. The department may require a person applying for a new discharge permit to conduct pilot studies or other tests or provide effluent data from similar facilities to project pollutant levels in the proposed discharge.

SECTION 12. NR 200.07(2) to (4) are amended to read:

NR 200.07(2) Application forms may be obtained from the district regional offices of the department or the Department of Natural Resources, WPDES Permit Section Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707.

minutes note

(3) Application forms shall be filed with the department, WPDES Permit Section, Box 7921, Madison, Wisconsin 53707, or appropriate district office at the address provided on the application.

(4) Application Pursuant to s. NR 205.07(1)(g), application forms or electronic permit application agreements submitted to the department shall be signed by a person who shall certify that the information was gathered and prepared under his or her supervision and that, to the best of his or her knowledge, the information is true, accurate and complete and shall provide his or her name, title, address and telephone number. The person signing shall have responsibility for the overall operation of the facility or activity regulated by the permit and shall be as follows either:

*10
Kup OK - 205.07 is "general conditions" - why repeat it all*

(a) In the case of a corporation, by a principal executive officer of at least the vice-president, or by his or her authorized representative responsible for the overall operation of the point source for which a permit is sought.

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

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

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

(d)(e) In the case of a publicly owned treatment works, by a principal executive officer, ranking elected official, or other duly authorized employee.

SECTION 13. NR 200.09 is amended to read as follows:

NR 200.09 INCOMPLETE APPLICATION. The department may require an applicant to submit data necessary to complete any deficient application, may require any additional data other than that requested in the application or may require the applicant to submit a complete new application where the deficiencies are extensive or the appropriate form has not been used. Within 60 days of receipt of a request from the department for additional data, the applicant shall submit the data. A permit may not be issued until a complete application is submitted to the department. A permit application will not be considered complete until the requirements of s. 23.11, Stats., and s. ~~NR 150.04~~ ch. NR 150 are met, and all required information is submitted.

SECTION 14. NR 200.10 is amended to read as follows:

NR 200.10 TIME PERIODS FOR ACTION ON PERMIT APPLICATIONS AND MODIFICATION REQUESTS. (1) Within ~~100 business~~ 150 days of receipt of a complete permit application or request for modification of an existing permit the department shall publish a class 1 notice under ch. 985, Stats., indicating its intended action.

(2) Where a complete reissuance application has been received at least 180 ~~calendar~~ days prior to the permit expiration date, the department shall, at least ~~25 business~~ 30 days prior to the expiration date, publish a class 1 notice under ch. 985, Stats., indicating its intended action. Where a complete reissuance application is not received at least 180 ~~calendar~~ days prior to the permit expiration date, the time deadline in sub. (1) shall apply.

(3) The department's final decision on a permit application or request for modification shall be made within ~~50 business~~ 60 days after completion of the hearing process under s. 283.49, Stats., and consideration of the environmental impact of the project as required by s. 1.11, Stats.

(4) The time deadlines in subs. (1) to (3) are not applicable to permit applications or modification requests submitted to the department by a municipality.

(5) The time deadlines in sub. (2) are not applicable if the department determines, pursuant to s. 283.53, Stats., that the permittee is not in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expiring permit.

11

~~Note: One hundred business days is approximately 140 calendar days; 50 business days is approximately 70 calendar days; 25 business days is approximately 30 calendar days.~~

SECTION 15. NR 200. Subchapter II is created to read as follows:

SUBCHAPTER II - APPLICATION FOR WATER QUALITY STANDARDS VARIANCES

NR 200.20 PURPOSE. The purpose of this subchapter is to set forth the requirements for filing applications for variances to water quality standards allowed by s. 283.15, Stats.

NR 200.21 DEFINITIONS. For the purpose of this subchapter the following definitions are applicable:

(1) "Approved method" means an analytical test method listed in ch. NR 219 and identified for use for a particular pollutant.

(2) "Department" has the meaning specified in s. NR 200.02(1).

(3) "Discharge of pollutant" or "discharge of pollutants" has the meaning specified in s. NR 200.02(2).

(4) "Field blank" means a volume of reagent grade water which is handled in such a way so as to duplicate as closely as possible the exposure of a water sample to potential sources of contamination during sampling, preservation and transportation to the laboratory.

(5) "Limit of quantitation" has the meaning specified in s. NR 149.03(16).

(6) "Matrix spike" has the meaning specified in s. NR 149.03(29).

(7) "Permit" has the meaning specified in s. NR 200.02(9).

(8) "Point source" has the meaning specified in s. NR 200.02(11).

(9) "Pollutant" has the meaning specified in s. NR 200.02(12).

(10) "Quality control limit" has the meaning specified in s. NR 149.03(22).

(11) "Raw data" has the meaning specified in s. NR 149.03(22m).

(12) "Reagent grade water" has the meaning specified in s. NR 149.03(24).

(13) "Replicate sample" has the meaning specified in s. NR 149.03(26g).

(14) "Results" has the meaning specified in s. NR 149.03(27).

In this subchapter: create separate def before subch 2

See also 200.02

is in NR 205 205

How terms + titles used over def - or diff me when used.

281.15?

not using this

NR 200.22 GENERAL. (1) When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13(5), Stats., the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

(2) In order to obtain a variance, a permittee shall demonstrate, by the greater weight of credible evidence, that attaining the water quality standard is not feasible because of one or more of the following:

(a) Naturally occurring pollutant concentrations prevent the attainment of the standard.

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements.

(c) Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(d) Dams, diversions or other types of hydrological modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the standard.

(e) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of aquatic life protection uses. *X*

(f) The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

NR 200.23 TIME DEADLINE FOR FILING VARIANCE REQUESTS. A permittee who wishes to apply for a variance shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit. *203.2*

NR 200.24 INFORMATION TO BE INCLUDED IN AN APPLICATION FOR A VARIANCE. (1) A permittee applying for a variance shall supply the following information:

(a) Facility name, address, and WPDES permit number.

(b) The name, address and telephone of a facility contact person.

(c) The date the permit was issued, reissued or modified which gives rise to the request for a variance.

(d) Each water quality standard, pollutant and corresponding effluent limitation for which a variance is being requested.

(e) Which of the grounds listed in s. NR 200.22(2) form the basis for the variance request.

compare (n)

H13

(f) Results of monitoring data which represents the past and current levels of effluent quality. Monitoring shall conform with the following:

1. The submittal shall specify sample location, sample type, sampling dates, analysis dates and laboratory name and certification number.

2. Data quantity shall be sufficient to allow appropriate statistical treatment to characterize effluent quality over time.

3. Samples shall be collected on days when contributions from industrial, commercial or other processes or sources of wastewater are expected to be at normal to maximum levels.

4. Results of monitoring shall be summarized in tabular or graphical format or both.

5. Any changes, such as changes in contract lab or method of analysis or treatment or process changes that occurred which may have affected results or could explain data trends shall be noted and an explanation provided.

6. In addition, for this data to be considered to be representative, the permittee shall supply information to demonstrate that:

all of following

a. Sample results fall above the limit of quantitation for the analytical method used or that the most sensitive approved method was used with proper technique to produce the results.

b. Proper laboratory quality control procedures were used to generate the data. To make this demonstration, the permittee shall supply, for several representative analytical runs, the raw data for samples, calibrations, calibration verifications and quality control steps. The raw data for quality control steps shall include results of replicate samples, identity of samples used for replicate samples, matrix spikes, matrix spike concentrations used, reagent blanks, method blanks and quality control

b. Data on the water supply stability or corrosivity, using one of various methods of determination, for the raw and treated water supply

c. Other potential methods of water supply treatment as an alternative.

(h) Information which establishes the significance of industrial and commercial wastewater sources versus sanitary wastewater sources of the pollutant for which a variance is requested. This may include an approximate mass-balance calculation of treatment system loadings from all sources.

(i) For facilities which monitor the treatment system sludge pursuant to requirements in ch. NR 204 or 214 for the pollutant for which a variance is requested, results of the most recent 3 years of sludge testing, along with volumes disposed of so as to perform an approximate mass balance of the pollutant entering and leaving the plant.

(j) If a variance is being requested for whole effluent toxicity in conjunction with a specific chemical pollutant or if whole effluent toxicity failures have been experienced and they are believed to have resulted from the pollutant for which the variance is being requested, evidence which points to the pollutant as the cause of the whole effluent toxicity failures.

(k) Effluent limitations which the permittee believes it can currently achieve.

(l) Effluent limitations which the permittee believes it can achieve at some later date during the term of the variance and the corresponding schedule which would be followed to meet these limitations.

(m) Whether the permittee believes it can meet the effluent limitations that give rise to the variance request at any time during the term of the permit.

(n) A detailed discussion of evidence and reasons why the permittee believes a variance is warranted based on one or more of the grounds listed in s. NR 200.22(2).

(o) For variance requests based on s. NR 200.22(2)(f), the permittee shall conduct a financial impact analysis which shall include an estimate of the capital, operation and maintenance and financing costs, translated into an annualized cost, of potential changes identified in par. (g) compared with an analysis of financial affordability. The analysis of financial affordability shall include:

1. For publicly owned systems, an estimate of how much annual municipal revenue would need to increase, taking into account any offsetting state shared revenues if the most cost-effective pollutant control option was implemented and how this would affect user fees if user fees were used to finance the costs. This analysis shall also compare projected user fees with user fees in similar communities.

2. For privately owned systems or if the most cost-effective pollutant control option for a publicly owned system involves additional regulation of privately owned contributors as the impacted parties, an estimate of how implementing the most cost-effective pollutant control option would affect profitability and other financial health indicators.

3. An analysis of the socioeconomic impacts to the community where the entity is located.

(2) In addition to the information required in sub. (1), the permittee may, within the 60-day time limits specified in s. NR 200.23, submit to the Department any other information to support the request for a variance.

NR 200.25 SIGNATURE OF AUTHORIZED REPRESENTATIVE. Pursuant to s. NR 205.07(1)(g), applications for variances, including the additional information submitted under s. NR 200.26(1), shall be signed by a person who shall certify that the information was gathered and prepared under his or her supervision and that, to the best of his or her knowledge, the information is true, accurate and complete and shall provide his or her name, title, address and telephone number. The person signing shall have responsibility for the overall operation of the facility or activity

information identified as such in documents separate from nonconfidential information 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 200.28 TIME PERIODS FOR DEPARTMENT ACTION ON APPLICATIONS. The department shall adhere to the time deadlines specified in s. 283.15, Stats., in making determinations of application completeness and tentative and final decisions on variance requests.

describe
note

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

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

JUL 20 REC'D

State of Wisconsin
Department of Natural Resources

**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-39-98

Legislative Council Rules Clearinghouse Number 98-197

Subject of Rules Applications for discharges permits
and water quality standards variances

Date of Transmittal to Presiding Officers July 19, 1999

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 200, Wis. Adm. Code

Applications for discharge permits and water quality standards variances

Board Order No. WT-39-98

Clearinghouse Rule No. 98-197

Statement of Need

The changes state in general terms the type of information the Department may require permittees to submit on application forms and more specifically the standard effluent monitoring requirements for various categories and sizes of dischargers.

Since promulgation of chs. NR 105 and 106 protecting water quality for discharges of toxic and organoleptic substances in 1989, the Department has required pollutant testing or projecting effluent quality as part of permit applications to adequately implement those rules. Over the years, these testing requirements have become more standardized to the point where it is now appropriate to codify the requirements.

Variances to water quality standards are allowed pursuant to s. 283.15, Stats. That section of the statutes, which is consistent with federal requirements for variances, specifies how a permittee wishing to apply for a variance must do so, time lines for applying, what a permittee must do to demonstrate that a variance is appropriate and the conditions under which the Department may grant variances. It also directs the Department to specify by rule the information to be included in the application for a variance. The Department now has sufficient experience processing variances that we believe we can specify the information requirements in such a way that requests for additional information will be minimized. Chapter NR 200 is the appropriate place for listing these requirements.

Since justification for variances are site specific, we do not use an application form for variance requests. Currently, the Department conveys information requests by letter after an applicant notifies the Department of its intent to apply for a variance.

Modifications as a Result of Public Hearing

Pursuant to requirements at 40 CFR part 132, appendix f, procedures 2(c)(2)(a) and (b), the Department added to the information that must be included in a variance application requirements that a permittee must show that the variance will conform with Wisconsin's antidegradation procedures, specified in ch. NR 207 and must characterize the extent of increased risk to human health and the environmental associated with granting a variance.

The definition of point source was modified to be more consistent with current federal and statutory regulations.

To Table 1, whole effluent toxicity was added as a required parameter for testing for major municipal dischargers to be consistent with federal regulations.

In Table 1 the term "ammonia nitrogen" was changed to "ammonia". There is no substance named ammonia nitrogen.

Section NR 200.065(1)(g)1. was modified to allow monitoring data collected within the last 5 years as long as there were no operational or process changes.

Section NR 200.014 was added to clarify the requirement that laboratories performing effluent testing must be certified under ch. NR 149 or that they must use analytical methods approved in ch. NR 219. The requirements stated in this new section are already contained in other rules.

Appearances at the Public Hearing and Their Position

In support – none

In opposition – none

As interest may appear:

Bill Skalitzy, Alliant Energy, 222 W. Washington, Madison, WI
David Vogl, MWFPA, 600 N. 15th Street, Rochelle, IL 61068

Response to Legislative Council Rules Clearinghouse Report

The comments and recommendations were accepted, except for:

5.a. The Department has searched in vain for a good definition of "industrial". The Department is reluctant to formulate a definition without a complete understanding of the impacts such a definition might have on other program elements, such as pretreatment. One alternative is to define industrial facility as a non-municipal facility and essentially, that is what the implication in the rule is. There are really only two types of surface water discharges covered by the regulation, municipal and industrial. The others are sub-types. Since the applicability and exclusions section describes the scope of the rule, it should be clear that if a covered entity is not a municipal facility, it is an industrial facility. Therefore, no further attempts have been made to define industrial.

5.j. The Department disagrees. Section 283.15, Stats., provides for a step-by-step process where the Department, before deciding if the application is complete, may request additional case-specific information after reviewing the initial application submittal. The initial submittal is the information which the statute requires the Department to specify in this rule and it makes sense that this information stand its own section. This approach also parallels that of subch. II for permit applications, which has a separate section called "Incomplete application". In both cases, the application completeness determination is an important step, since it defines the start date for counting the number of days within which the Department must review and make its determination. Therefore, we left it in a separate section.

Final Regulatory Flexibility Analysis

Because these code changes merely formalize what the Department commonly requires under more general authority, there should be minimal impact on small businesses.

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

The Wisconsin Natural Resources Board proposes an order to renumber NR 200.02(2) to (6) and (8) to (10); to renumber and amend NR 200.02(7) and 200.08; to amend ch. NR 200 (title), 200.01, 200.03(1)(a) and (3)(f), 200.05 (intro.), (1)(b) and(4)(intro.), 200.07(2), (3) and (4) and 200.09; and to create NR 200 subch. I (title), 200.02(2), (5), (6), (7), (8), (10), (15), (16), (17) and (18), 200.027, NR 200 subch. II (title), 200.03(3)(i), 200.06(4), 200.065, 200.10(5) and NR 200, subch. III relating to applications for discharge permits and water quality standards variances.

WT-39-98

Analysis prepared by the Department of Natural Resources

Statutory authority: ss. 227.11(2), 283.15(2)(b)1. and 283.31, Wis. Stats.

Statutes interpreted: ss. 227.116, 283.15, and 283.37, Wis. Stats.

This action will add language to ch. NR 200 to specify effluent monitoring and other application requirements for various categories of dischargers to reflect what has become common practice by Department staff. Other minor clean-up changes will also be made. New subchapters will be created to; 1) specify application requirements for variances to water quality standards to reflect statutory language and staff experience and 2) to define terms and conditions that apply throughout the chapter.

SECTION 1. Chapter NR 200 (title) is amended to read:

CHAPTER NR 200

**APPLICATION FOR DISCHARGE PERMITS AND WATER QUALITY STANDARDS
VARIANCES**

SECTION 2. Subchapter I (title) of ch. NR 200 [precedes NR 200.01] is created to read:

SUBCHAPTER I - PURPOSE, DEFINITIONS AND GENERAL PROVISIONS

SECTION 3. NR 200.01 is amended to read:

NR 200.01 PURPOSE. The purpose of this chapter is to:

(1) To set forth the requirements for filing applications for the discharge permits required by s. 283.31, Stats., to prescribe the form of such applications pursuant to s. 283.37, Stats., and to specify the number of business days within which the department will publish a public notice

indicating its intended action on a Wisconsin pollutant discharge elimination system permit application or request for modification pursuant to s. ~~227.0105~~ 227.116, Stats. Section ~~283.37~~ 283.31, Stats., requires a permit for the lawful discharge of any pollutant into the waters of the state, which include groundwaters by the definition set forth in s. 283.01(13), Stats. The federal water pollution control act of 1977, P.L. 95-217; 33 USC 466 et. seq., requires a permit for the lawful discharge of any pollutant into navigable waters. Therefore in Wisconsin, permits are required for discharges from point sources to surface waters of the state and additionally to land areas where pollutants may percolate, seep to, or be leached to groundwaters. This includes the land application of sludge.

(2) To set forth the requirements for filing applications for variances to water quality standards allowed by s. 283.15, Stats.

SECTION 4. NR 200.02(1) is amended to read:

NR 200.02(1) "Business days" means each day except Saturday; Sunday; January 1; the third Monday in January, which shall be the day of celebration for January 15; the last Monday in May, which shall be the day of celebration for May 30; July 4; the first Monday in September; the 4th Thursday in November; December 24; December 25; December 31; and the day following if January 1, July 4 or December 25 falls on Sunday; after 12 noon on Good Friday, in lieu of the period specified in s. 757.17, Stats; and December 24 and 31.

SECTION 5. NR 200.02(2) to (10) are renumbered NR 200.02(3), (4), (9), (11), (12), (13), (14), (19) and (20) and NR 200.02(13), as renumbered, is amended to read:

NR 200.02(13) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, outfall, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants may be discharged either into the waters of this state or into a publicly owned treatment works. ~~"Point source" shall not include diffused surface drainage or any ditch or channel which serves only to intermittently drain excess surface water from rain or melting snow and is not used as a means of conveying pollutants into waters of the state. "Point source" shall not include uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the department as a significant contributor of pollution, except for a conveyance that conveys only storm water.~~

SECTION 6. NR 200.02(2), (5), (6), (7), (8), (10), (15), (16), (17) and (18) are created to read:

NR 200.02(2) "Cooling water" means water which has been used primarily for cooling but which may be contaminated with process waste or airborne material. Examples are the discharge from barometric condensers or the blowdown from cooling towers.

(5) "Limit of detection" means the lowest concentration level that can be determined to be statistically different from a blank.

(6) "Limit of quantitation" means the level above which quantitative results may be obtained with a specified degree of confidence.

Note: The limit of quantitation is 10/3 or 3.333 times the limit of detection.

(7) "Major municipal discharge" means a point source discharge with an average daily volume equal to or greater than one million gallons per day of either municipal wastewater from a publicly owned treatment works or of domestic wastewater from a privately owned treatment works.

(8) "Minor municipal discharge" means a point source discharge with an average daily volume less than one million gallons per day of either municipal wastewater from a publicly owned treatment works or domestic wastewater from a privately owned treatments works.

(10) "Noncontact cooling water" means water used for cooling which does not come into contact with any raw material, intermediate or finished product, or waste and has been used in heat exchangers, air or refrigeration compressors, or other cooling means where contamination with process waste is not normally expected.

(15) "Primary industry" means an industrial facility or activity that is encompassed by one of the industrial categories listed in 40 CFR 122, Appendix A.

(16) "Results" includes measurements, determinations and information obtained or derived from tests.

(17) "Secondary industry" means an industrial facility or activity that is not classified as a primary industry.

(18) "Surface waters" means waters of the state except wells and other groundwater. Cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters are also excluded from this definition.

SECTION 7. NR 200.027 is created to read:

NR 200.027 ANALYTICAL METHODS AND LABORATORY REQUIREMENTS. (1)

SUBCHAPTER II - APPLICATION FOR DISCHARGE PERMITS

SECTION 9. NR 200.03(1)(a) and (3)(f) are amended to read:

NR 200.03(1)(a) ~~Direct discharge~~ Discharge of any pollutant to any surface water.

(3)(f) The disposal of solid wastes, including wet or semi-liquid wastes, at a site or operation licensed pursuant to chs. NR 500 to 536, except as required for municipal sludge in ch. NR 204 or where storm water permit coverage is required under ch. NR 216.

SECTION 10. NR 200.03(3)(i) is created to read:

NR 200.03(3)(i) Discharges of storm water permitted under ch. NR 216.

SECTION 11. NR 200.05 (intro.), (1)(b), and (4) (intro.) are amended to read:

NR 200.05 REPORTING OF NEW DISCHARGES. Pursuant to s. ~~147.14~~ 283.59, Stats.:

(1)(b) If the new or increased discharge will not result in exceeding or violating any effluent limitations of the permit, the permittee shall give notice in the form of a letter addressed to the ~~Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, Wisconsin 53707 and to the appropriate district office~~ department. The letter shall refer to the number and expiration date of the existing permit, describe the proposed expansion, production increase, or process modification, and include a statement that no effluent limitation of the permit will be exceeded or violated. The letter of notification shall be signed in accordance with s. NR 200.07(4).

Note: The letter required in par. (b) may be mailed to the appropriate regional office or to the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707.

(4)(intro.) Any person discharging, or intending to commence discharging, into a publicly or privately owned treatment works who is or will become subject to the discharge reporting requirements of s. ~~147.025(4)~~ 283.37(4), Stats., shall give notice of the following, to the department and owner or operator of the treatment works, using the form prescribed in ch. NR 202, at least 180 days prior to:

SECTION 12. NR 200.06(4) is created to read:

NR 200.06(4) The department may require an applicant to report on application forms any information the department needs to correspond with the applicant or assemble the permit components or conditions appropriate for the particular discharge including:

(a) General facts about the applicant or facility, including coverage under other environmental permits, sources of wastewater and information on the treatment system for which a permit is requested.

(b) Data available to the applicant through information searches or measurements taken by the applicant.

(c) Information obtained by the applicant as a result of requirements in previous permits.

(d) Information on results of testing, including quality control information, obtained by the applicant through investigations, such as pilot studies or effluent or ambient monitoring.

SECTION 13. NR 200.065 is created to read:

NR 200.065 APPLICATION MONITORING REQUIREMENTS FOR DISCHARGES TO SURFACE WATERS. (1) EXISTING DISCHARGES. An applicant for permit issuance or reissuance with an existing discharge to surface waters shall monitor as follows and report the monitoring results on application forms:

(a) Samples shall be as representative of normal effluent quality as possible.

(b) Minimum monitoring requirements for each type of point source that conveys a wastewater discharge are specified in Table 1.

Table 1 - Minimum monitoring requirements

Wastewater discharge type	Number of monitoring tests	Pollutants required to be monitored
Major municipal discharge	1	Pollutants listed in s. NR 215.03 excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
	4	Copper, ammonia, phosphorus and hardness
	1	Chloride and whole effluent toxicity
Minor municipal discharge	4	Copper, ammonia, phosphorus and hardness
	1	Chloride, arsenic, cadmium, chromium, lead, nickel and zinc
Primary industry process discharge	1	Pollutants listed in s. NR 215.03 ¹ excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105 ¹ , Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102 ¹ , Table 1
	4	Copper, ammonia, phosphorus and hardness
	3	Mercury

	1	BOD ₅ (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature (summer and winter) and total phenols
	1	Fecal coliform and pollutants listed in s. NR 215.06 excluding TOC (total organic carbon) when the applicant believes the pollutant is present in the discharge for reasons other than its presence in the intake water
Secondary industry process discharge or cooling water discharge, or both	4	Copper, ammonia, phosphorus and hardness
	1	BOD ₅ (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature (summer and winter), arsenic, cadmium, chromium, lead, mercury, nickel, zinc
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
Noncontact cooling water discharge	1	Ammonia, BOD ₅ (five-day biochemical oxygen demand), chloride, oil and grease, pH, phosphorus, total suspended solids and temperature (summer and winter)
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1

¹ Primary industries are required to test only those GC/MS fractions that are specified in 40 CFR 122, Appendix D, revised Table 1.

(c) Persons collecting multiple samples for a pollutant shall allow at least a 24 hour interval between consecutive samples.

(d) The department may require the applicant to monitor 11 times for chloride for major municipal discharges or minor municipal discharges when the source of wastewater is from hard water communities, or for industrial process wastewater discharges from dairies, canneries, meat processors, water utilities that utilize ion-exchange water softening and other industrial categories expected to have high chloride levels.

(e) The department may require the applicant to monitor 4 times for the metals arsenic, cadmium, lead, nickel and zinc for major municipal discharges or minor municipal discharges when levels of those metals measured in the wastewater treatment system sludge from a facility are abnormally high compared with other similar facilities in the state.

(f) The department may require the applicant to monitor for the dioxin and furan congeners listed in s. NR 106.16(2) for a major municipal discharge or minor municipal discharge when sources of wastewater include a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer or for a primary industrial discharge if the industry is a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer.

(g) The department may require monitoring for any other pollutant not specified in Table 1 if its presence could be reasonably expected based on wastewater sources.

(h) An applicant for permit reissuance may apply test data collected to fulfill current permit required monitoring or data collected for other reasons to fulfill these requirements if:

1. No more than 5 years have elapsed since the monitoring; and
2. No operational changes have occurred since the monitoring.

(i) Unless the monitoring is required by federal regulations, the department may exempt applicants from some or all of the monitoring requirements in this subsection for reasons including, but not limited to, any of the following:

1. Parameters such as flow, hardness or pH measured in the discharge or receiving water would result in proposed effluent limitations for a pollutant much greater than anticipated discharge levels for that pollutant, based upon measurements from similar discharges.

2. Proposed effluent limitations for a pollutant would be much greater than anticipated discharge levels for that pollutant, based on previous measurements made since significant facility changes have occurred.

3. Previous monitoring from similar facilities indicate the absence of significant quantities of a pollutant or class of pollutants.

(2) NEW DISCHARGES. The department may require a person applying for a new discharge permit to conduct pilot studies or other tests or provide effluent data from similar facilities to project pollutant levels in the proposed discharge.

SECTION 14. NR 200.07(2) to (4) are amended to read:

NR 200.07(2) Application forms may be obtained from the district offices or by contacting the department or the Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, Wisconsin 53707.

Note: Persons may obtain application forms by writing to the department regional office or the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707 or by calling one of those offices. Persons requesting an application form should say they wish

SECTION 17. NR 200.10(5) is created to read:

NR 200.10(5) The time deadlines in sub. (2) are not applicable if the department determines, pursuant to s. 283.53, Stats., that the permittee is not in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expiring permit.

SECTION 18. NR 200, Subchapter III is created to read:

SUBCHAPTER III - APPLICATION FOR WATER QUALITY STANDARDS VARIANCES

NR 200.20 GENERAL. (1) When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13(5), Stats., the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

(2) In order to obtain a variance, a permittee shall demonstrate, by the greater weight of credible evidence, that attaining the water quality standard is not feasible because of one or more of the following:

- (a) Naturally occurring pollutant concentrations prevent the attainment of the standard.
- (b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements.
- (c) Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place.
- (d) Dams, diversions or other types of hydrological modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the standard.
- (e) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.
- (f) The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

NR 200.21 TIME DEADLINE FOR FILING VARIANCE REQUESTS. A permittee who wishes to apply for a variance shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit.

NR 200.22 INFORMATION TO BE INCLUDED IN AN APPLICATION FOR A

(c) The date the permit was issued, reissued or modified which gives rise to the request for a variance.

(d) Each water quality standard, pollutant and corresponding effluent limitation for which a variance is being requested.

(e) Results of monitoring data for the pollutant for which the permittee is seeking a variance which represents the past and current levels of effluent quality. Monitoring shall conform with the following.

1. The submittal shall specify sample location, sample type, sampling dates, analysis dates and laboratory name and certification number.

2. Data quantity shall be sufficient to allow appropriate statistical treatment to characterize effluent quality over time.

3. Samples shall be collected on days when contributions from industrial, commercial or other processes or sources of wastewater are expected to be at normal levels.

4. Results of monitoring shall be summarized in tabular or graphical format or both.

5. Any changes, such as changes in contract lab or method of analysis or treatment or process changes that occurred which may have affected results or could explain data trends shall be noted and an explanation provided.

6. In addition, for this data to be considered to be representative, the permittee shall supply information to demonstrate that:

a. Sample results fall above the limit of quantitation for the analytical method used or that the most sensitive approved analytical method listed for the pollutant in ch. NR 219 was used with proper technique to produce the results.

b. Proper laboratory quality control procedures were used to generate the data. To make this demonstration, the permittee shall supply, for several representative analytical runs, the raw data for samples, calibrations, calibration verifications and quality control steps. The raw data for quality control steps shall include results of replicate samples, identity of samples used for replicate samples, matrix spikes, matrix spike concentrations used, reagent blanks, method blanks and quality control limits. Raw data, replicate sample, matrix spike and quality control limit have the meanings specified in s. NR 149.03.

c. Proper sampling quality control procedures designed to minimize sample contamination were used. This demonstration shall include a description of sampling procedures and submittal of results of field blanks. A field blank is a volume of reagent grade water which is handled in such a way so as to duplicate as closely as possible the exposure of a water sample to potential sources of contamination during sampling, preservation and transportation to the laboratory.

(f) Changes which could be made to enhance treatment or source reduction of flows coming to the treatment facility or which would reduce the level of toxicity or the discharge of the pollutant for which the permittee is seeking a variance. This information shall include the following:

1. An estimate of capital and operating costs for the changes and a reasonable schedule for planning and accomplishing the work.

2. If the source of the pollutant is believed to be from dissolution of metals from water supply distribution piping materials:

a. Information on past and current water supply treatment practices which may increase or decrease the corrosive nature of the water supply including what changes have been made and when.

b. Data on the water supply stability or corrosivity, using one of various methods of

determination, for the raw and treated water supply.

c. Other potential water sources or methods of water supply treatment as an alternative.

(g) Information which establishes the significance of industrial and commercial wastewater sources versus domestic wastewater sources of the pollutant for which a variance is requested. This may include an approximate mass-balance calculation of treatment system loadings from all sources.

(h) For facilities which monitor the treatment system sludge pursuant to requirements in ch. NR 204 or 214 for the pollutant for which a variance is requested, results of the most recent 3 years of sludge testing, along with volumes disposed of so as to perform an approximate mass balance of the pollutant entering and leaving the plant.

(i) If a variance is being requested for whole effluent toxicity in conjunction with a specific chemical pollutant or if whole effluent toxicity failures have been experienced and they are believed to have resulted from the pollutant for which the variance is being requested, evidence which points to the pollutant as the cause of the whole effluent toxicity failures.

(j) Effluent limitations which the permittee believes it can currently achieve.

(k) Effluent limitations which the permittee believes it can achieve at some later date during the term of the variance and the corresponding schedule which would be followed to meet these limitations.

(l) Whether the permittee believes it can meet the effluent limitations that give rise to the variance request at any time during the term of the permit.

(m) A detailed discussion of evidence and reasons why the permittee believes a variance is warranted based on one or more of the grounds listed in s. NR 200.20(2).

(n) Demonstration that the variance requested conforms with antidegradation requirements specified in ch. NR 207.

(o) Characterization of the extent of any increased risk to human health and the environment associated with granting the variance so as to allow the department to decide if such increased risk is consistent with protection of the public health, safety and welfare.

(p) For variance requests based on s. NR 200.20(2)(f), the permittee shall conduct a financial impact analysis which shall include an estimate of the capital, operation and maintenance and financing costs, translated into an annualized cost, of potential changes identified in par. (g) compared with an analysis of financial affordability. The analysis of financial affordability shall include:

1. For publicly owned systems, an estimate of how much annual municipal revenue would need to increase, taking into account any offsetting state shared revenues if the most cost-effective pollutant control option was implemented and how this would affect user fees if user fees were used to finance the costs. This analysis shall also compare projected user fees with user fees in similar communities. If industrial or commercial contributions comprise a significant source of the pollutant, information requested in subd. 2 shall also be provided.

2. For privately owned systems or if the most cost-effective pollutant control option for a publicly owned system involves additional regulation of privately owned contributors as the impacted parties, an estimate of how implementing the most cost-effective pollutant control option would affect profitability and other financial health indicators of the private entity.

3. An analysis of the socioeconomic impacts to the community where the entity is located.

Note: Permittees may find helpful a United States Environmental Protection Agency publication titled *Interim Economic Guidance for Water Quality Standards - Workbook*, EPA-823-B-95-002, March 1995. Information on ordering EPA publications can be found on the World Wide Web at <http://www.epa.gov/>.

(2) In addition to the information required in sub. (1), the permittee may, within the 60-day time limits specified in s. NR 200.21, submit to the department any other information to support the request for a variance.

NR 200.23 SIGNATURE OF AUTHORIZED REPRESENTATIVE. Pursuant to s. NR 205.07(1)(g), a person submitting an application for a variance shall include a signed statement by an authorized representative that certifies to the accuracy of the information.

NR 200.24 APPLICATION COMPLETENESS. When the department receives an application for a variance:

(1) The department may request additional information from the permittee within 30 days after receiving the application. The permittee shall provide the additional information within 30 days of receipt of the department's request. An application is not complete until the additional information is provided to the department.

(2) If the permittee does not provide information as required under s. NR 200.22 or sub. (1), the department shall deny the application.

NR 200.25 TIME PERIODS FOR DEPARTMENT ACTION ON APPLICATIONS. The department shall adhere to the time deadlines specified in s. 283.15, Stats., in making determinations of application completeness and tentative and final decisions on variance requests.

Note: These time deadlines are as follows: (1) Public notice of receipt of an application for a variance within 30 days after receipt of the information specified in s. NR 200.22 or 200.24(1), if applicable. (2) Public notice of a tentative decision within 120 days after receipt of the information specified in s. NR 200.22 or 200.24(1), if applicable. (3) Final decision within 90 days after expiration of the 30-day public notice comment period under sub. (2).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 30, 1999.

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

