

Clearinghouse Rule 14-027

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

The statement of scope for this rule, WT-13-12, was approved by the Governor on May 29, 2012, published in Register 678 on June 14, 2012 and approved by the Natural Resources Board on June 27, 2012.

The Wisconsin Natural Resources Board proposes an order to renumber subch. III of ch. NR 203; to amend NR 203 subch. I (title), 203.02 (title), (1), (2), (3), (e), (f), (g), (h), (j), (k), (4) (title and intro), (b), (c), 203.03 (title), (1), (4) (title) and (b), 203.05 (1) (e), (2) (c), (d) (3), (4), (5), 203.12, 203.13 (1), and 205.07 (1) (a), (b), (g); to repeal and recreate NR 201 and 205.07 (1) (g), (q); to create NR 200.11, 203.02 (3) (L), (m), 203.02 (4) (d), (e), (f), (5), 203.03 (5), 203 Subchapter III (title), 203.135, 203.136, and 205.07 (1) (x), (y); all relating to the processing of WPDES permits and other permit issuance procedural matters.

WT-13-12

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted:

Sections 283.31, 283.33, 283.35, 283.37, 283.39, 283.41, 283.45, 283.49, 283.53, 283.63, 285.61, and 285.62, Stats.

2. Statutory authority:

Sections 227.11, 283.11, 283.31, 283.37, 283.39, and 283.41, Stats.

3. Explanation of agency authority:

Chapter 283, Stats. grants authority to the department to establish, administer and maintain a Wisconsin Pollutant Discharge Elimination System (WPDES). More specifically, ss. 283.11 and 283.31, Stats., provide authority to promulgate rules to administer the WPDES permit program consistent with federal requirements. The department has general authority to promulgate rules under s. 227.11 (2) (a), Stats., that interpret the specific statutory authority granted in ch. 283, Stats.

4. Related statute or rule:

These rules relate directly to the WPDES permit program that regulates wastewater discharges. Chapters NR 200, 201 and 203, Wis. Adm. Code relate to permit processing and permit issuance procedures. Chapter NR 205, Wis. Adm. Code contains general provisions applicable to the WPDES permit program.

5. Plain language analysis:

The purpose of the proposed rule changes is to ensure that the state's regulations are consistent with federal regulations as well as recent statutory revision in 2011 Act 167. The rule changes will establish clear regulatory requirements for the processing of WPDES permits. Minor clarifications and corrections will also be made to these chapters.

Specifically, the proposed rule package will address EPA's issues with the state authority regarding permit processing issues and other permit issuance procedural matters. In a letter dated July 18, 2011, the U.S. Environmental Protection Agency (EPA) identified 75 potential issues with Wisconsin's statutory and regulatory authority for the WPDES permit program. EPA directed the department to either make rule changes to address this inconsistency or obtain a statement from the Attorney General's Office verifying that the existing rule is consistent with federal regulations. The department believes adoption of these rule changes (referred to as Rule Package 6) will address EPA's concerns for 13 of the issues. The item number of the applicable EPA issue is indicated in each rule section that addresses an EPA issue.

Following is a brief summary of changes to NR 200, NR 201, NR 203, and NR 205, Wis. Adm. Code:

Chapter NR 200 - This chapter contains the requirements for permit applications and water quality standards variances. A new section was created to add the federal regulations for the preparation of a draft permit after the receipt of a complete application, which were lacking in the rule as cited in EPA issue 65.

Chapter NR 201 - This chapter contains the requirements for the contents of the fact sheet for WPDES permits. Because of several changes needed to update the existing rule this chapter was repealed and recreated. It now includes all the federal regulations to address EPA issues 21 and 66. It is also consistent with s. 283.45, Stats. A note states that if the public notice includes some of the information specified in the fact sheet it may be omitted from the fact sheet because it is more appropriate in the public notice (decision to issue or deny a permit and the beginning and end dates of the comment period). The recreated rule was written compliant with the format procedures for drafting rules that the existing rule did not follow.

Chapter NR 203 - This chapter contains the processes for public noticing a draft permit, informational hearing, final determination to issue or deny a permit, and public adjudicatory hearing. Following are the significant changes to this rule:

- The rule was revised to address EPA issues 3, 22, 50, and 51 to be consistent with federal regulations. This consists of language clarifying the processes for permit actions (modifications, revocation and reissuance, or termination), identifying the causes for permit actions, the notification of government agencies and others, and public informational hearing requests.
- The rule was revised to address 2011 Act 167 changes to ch. 283 and ch. 285, Stats., and changes initiated by the department to clarify public notice procedures. This consists of language to identify what is to be included in the public notice, allows use of the department's Internet Web site to post public notices and documents, proposed variances to water quality standards may be included in the public notice, the term notification replaces circulation to reflect the broader use of electronic media, and permit actions related to substantial changes to concentrated animal feeding operation nutrient management plans.

Chapter NR 205 - This chapter contains WPDES program definitions, general conditions applicable to WPDES permits, and requirements for the issuance of WPDES general permits. The rule was revised to address EPA issues 18, 45, 47, 48, 49, and 62 to be consistent with federal regulations. This consists of language that added termination of the permit for certain violations, replaced the use of the term suspension with termination, clarified the signatory requirements for permit documents, revised the

reporting requirements for facility changes, and added general conditions that permit compliance constitutes compliance for purposes of enforcement and affirmative defense.

6. Summary and comparison with existing and proposed federal regulations:

The department rules will be consistent with existing federal regulations with the revisions contained in this rule package. No proposed federal regulations are applicable; none were mentioned in EPA's letter that contained the 75 issues the department needed to address.

7. Comparison of similar rules in adjacent states:

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the U.S. EPA regulations that are delegated to the states for implementation. Wisconsin's rules for permit processing and other permit issuance procedures should essentially be the same as the other states.

8. Summary of factual data and analytical methodologies:

Not applicable.

9. Analysis and supporting documentation used to determine effect on small business or in preparation of an economic impact analysis:

Not applicable. The requirements of this rule package establish permit processing procedures that are implemented by the department and affect department staff, not the permit applicants.

10. Effect on small business:

None, the requirements of this rule package affect the department not the permit applicants.

11. Agency contact:

Paul W. Luebke, PH
Wisconsin Department of Natural Resources
Bureau of Water Quality WQ/3
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921
Paul.Luebke@wisconsin.gov

SECTION 1. NR 200.11 is created to read:

NR 200.11 Draft Permit. (1) Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the department tentatively decides to deny the permit application, the department shall issue a notice of intent to deny. A notice of intent to deny the permit application shall follow the same procedures as any draft permit prepared under this section. If the department's final decision is that the

tentative decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and proceed to prepare a draft permit under par. (4) of this section.

(3) If the department tentatively decides to issue a WPDES permit, a draft permit shall be prepared under paragraph (4) of this section.

(4) A draft permit shall contain terms and conditions required pursuant to ch. 283, Stats., and all rules promulgated pursuant to ch. 283, Stats.

(5) All draft permits prepared by the department under this section shall be accompanied by a fact sheet if required under ch. NR 201. The department shall provide public notice of the draft permit, fact sheet, and opportunity for a public hearing in accordance with ch. NR 203 and ch. 283, Stats.

SECTION 2. NR 201 is repealed and recreated to read:

CHAPTER NR 201

FACT SHEET FOR WPDES PERMITS

NR 201.01 Purpose. The purpose of this chapter is to identify when the department shall prepare a fact sheet for a draft Wisconsin Pollutant Discharge Elimination System (WPDES) permit, and what information shall be included in the fact sheet. The fact sheet describes the discharge to be permitted with a brief explanation of the draft permit's effluent limits, monitoring requirements, and other conditions. The department shall send a copy of the fact sheet to the applicant and any interested person on request.

NR 201.02 Applicability. The department shall prepare a fact sheet for each discharge for which it proposes to issue a WPDES individual permit under s. 283.31, Stats., a storm water permit under s. 283.33, Stats., or a general permit under s. 283.35, Stats. A fact sheet does not need to be prepared for each facility that is granted coverage under a general permit that covers a specific category of discharge.

NR 201.02 Contents of permit fact sheet. The fact sheet shall include the following information if applicable:

- (1) The name and address of the applicant and facility location where the discharge occurs.
- (2) A statement as to whether the discharge is in existence or is a proposed new discharge or new source.
- (3) Justification for any waivers from permit application requirements that were granted.
- (4) A brief description of the type of facility and activity resulting in the discharge that is described in the permit application and is subject to the permit requirements.
- (5) A sketch or detailed description of the discharge outfall location with respect to the receiving water, surface water or groundwater as applicable.
- (6) A description of the type and quantity of discharges regulated under the permit shall include:

- (a) Information about the wastewater sources and by-product solids, biosolids or sludges.
 - (b) Treatment processes, storage facilities, and outfalls.
 - (c) The average daily discharge concentration and mass loading where appropriate of any pollutants subject to effluent limitations.
 - (d) The average daily flow in gallons or millions of gallons per day for continuous flows or the volume and frequency of batch discharges.
 - (e) The average monthly effluent temperatures for thermal discharges subject to limitation.
- (7)** If the tentative determination is to issue a permit the following shall be included:
- (a) An explanation of the derivation of proposed effluent limitations for those pollutants proposed to be limited including: toxic pollutants, internal waste streams, and indicator pollutants. An explanation of limitations that are technology based or established on a case-by-case basis using best professional judgment, or that are established for new sources or new discharges shall also be included.
 - (b) Justification for any waivers granted from monitoring any pollutants contained in technology based effluent limit guidelines because the pollutant is not present or is only present at the background level due to the water intake without any increase of the pollutant from the activities of the discharger.
 - (c) A brief discussion and rationale of proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations. For schedules to achieve compliance with water quality based effluent limitations, a brief description of treatment technologies or control strategies that may be available to achieve compliance.
 - (d) A brief summary of and basis for any proposed permit conditions including supporting regulatory or statutory references, which will have a significant impact on the discharge described in the application.
 - (e) An explanation of the limitations, conditions or standards included in the permit regarding by-product solids, biosolids or sludges, and a description of the land application plan or other means of disposal.
- (8)** A brief description of the uses for which the receiving waters have been classified and of the applicable water quality standards and effluent limitations.
- (9)** A statement of the tentative determination to issue or deny a permit.
- (10)** A description of the procedures for reaching a final decision on the draft permit including:
- (a) The beginning and ending date of the 30 day period for submitting written comments.
 - (b) The address of where comments will be received.
 - (c) Procedures for requesting a public hearing and a statement on the nature of such hearings.
 - (d) Any other procedures for public participation in the final determination.
 - (e) Name and contact information of the person to obtain additional information.

(11) For every permit issued to a privately owned treatment works an explanation of any conditions expressly applicable to any user of the treatment works, as a limited co-permittee, that may be necessary in the permit to ensure compliance. If separate permits are issued to the treatment works and to its users, an explanation of the department's decision to issue the permits and what conditions are applicable to the treatment works and users.

(12) When applicable to the permitted discharge, the following supplemental information shall also be attached to the fact sheet to provide supporting information for permit limits, conditions, or other requirements:

- (a) Substantial compliance determination for an existing discharger.
- (b) Water quality based effluent limits recommendation with limits calculations.
- (c) Water quality variance or alternative effluent limits.
- (d) Water intake evaluation for determining compliance with s. 283.31 (6), Stats.
- (e) Land application or land treatment management plan.
- (f) Groundwater evaluation of land treatment systems, land application systems, and storage facilities that have an associated monitoring well system.
- (g) The assumptions and information used by the department to calculate any mixing zones for the discharge.
- (h) If any of the specified fact sheet contents in this section are included in the public notice of the permit, that information may be omitted from the fact sheet.

SECTION 3. NR 203 Subchapter I (title), NR 203.02 (title), (1), (2), (3), (e), (f), (g), (h), (j), and (k) are amended to read:

SUBCHAPTER I

NOTICES OF COMPLETED PERMIT APPLICATIONS AND DRAFT PERMITS

NR 203.02 Public notice of receipt of a completed permit application and draft permit.

NR 203.02 (1) INTENT. Public notice of the receipt of a completed permit application and draft permit is intended to inform interested ~~and potentially interested~~ members of the public of a completed application, the tentative determination to issue or deny the permit as required in s. 283.39, Stats., and the public's right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a ~~particular~~ draft permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Public notice procedures for the issuance of general permits are contained in s. NR 205.08.

(2) FORM. The public notice of receipt of a completed permit application and draft permit shall be in writing, with a title identifying the subject of the notice and the number of the ~~application~~ permit.

(3) CONTENT. The notice of receipt of a completed permit application and draft permit shall contain the following information:

(e) A brief description of the procedures for ~~the formulation of final determinations~~ reaching a final decision on the draft permit, including the 30-day period for public comment, and the 30-day period for requesting an informational public hearing, ~~and the~~ or the hearing date and location if the department has already decided to hold a hearing. The availability of fact sheets documents including the draft permit, fact sheet and other supporting information shall also be included in the notice.

(f) The name, address, ~~and phone number,~~ and email of the ~~governmental unit~~ contact person issuing the notices.

(g) The name, address, and phone number, email, and Internet Web site where interested persons may obtain further information, ~~request a copy of the fact sheet when applicable,~~ request a copy of the draft permit, fact sheet, and inspect and copy forms and related documents.

(h) A statement that reasonable costs will be charged for copies of all information excluding public notices, permits, and fact sheets.

(j) If applicable, the location of each sludge treatment works treating domestic sewage including those for “sludge only facilities”, the sludge use, the sludge disposal practices, and the location(s) of each sludge use or disposal site(s) known at the time of permit application.

(k) The requirements applicable to cooling water intake structures under 33 USC 1316 (b), in accordance with 40 CFR part 125, subparts I, and J (sec. 316 (b) of the Clean Water Act).

SECTION 4. NR 203.02 (3) (L) and (m) are created to read:

NR 203.02 (3) (L) Information indicating where the complete application and draft permit may be viewed on the department’s Internet Web site.

(m) If the applicant applied under s. 283.15 (2) (a), Stats. for a variance, a statement regarding the tentative decision to approve or deny the variance. If the tentative decision is to grant the variance, the notice shall also specify which of the conditions specified in s. 283.15 (4) (a) 1. a. to e., Stats. were met, and shall also specify any effects of the variance on the designated use of the water body during the term of the permit.

SECTION 5. NR 203.02 (4) (title and intro), (b) and (c) are amended to read:

NR 203.02 (4) ~~CIRCULATION NOTIFICATION.~~ Procedures for ~~circulation of~~ providing public notice of a completed permit application shall include the following:

(b) Mailing the notice to the applicant, any user of a privately owned treatment works that was specifically identified in the permit application, and any person or group upon request.

(c) Mailing the notice to individuals and groups on a formal department WPDES permit application mailing list. Requests to be placed on the mailing list shall be directed to the Department of Natural Resources, WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707-7921.

SECTION 6. NR 203.02 (4) (d), (e), (f), and (5) are created to read:

NR 203.02 (4) (d) Publication of the notice through an electronic notification system established by the department.

(e) Publication of the notice on the department's Internet Web site.

(f) To satisfy the mailing requirement of this of this section the department may either send a paper copy of the document in the US mail, or transmit the document electronically by email provided the person or group does not object to electronic mailing. The document mailed may reference the department's internet web site where additional referenced material can be accessed.

(5) PUBLIC NOTICE DATE. Public notices shall be considered to be provided on the date that the department first publishes the notice on its Internet Web site.

SECTION 7. NR 203.03 (title), NR 203.03 (1), (4) (title), and (b) are amended to read:

NR 203.03 Notice of receipt of a completed permit application and draft permit to other government agencies. (1) INTENT. The intent ~~for~~ proved of providing notice of the completed permit application and draft permit to other government agencies is to inform interested and potentially interested federal, state, and local government agencies of a completed application, the tentative determination to issue or deny the permit, and their right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a ~~particular~~ draft permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Notification to government agencies of the proposed issuance of general permits shall be in accordance with s. NR 205.08.

(4) ~~CIRCULATION~~ NOTIFICATION. The following agencies shall be mailed government agency notices as described above:

(b) United States army corps of engineers, and United States fish and wildlife service.

SECTION 8. NR 203.03 (5) is created to read:

NR 203.03 (5) WAIVER OF NOTICE AND ELECTRONIC NOTICE. Any agency in sub. (4) may waive the right to receive notice or may consent to receive notices electronically.

SECTION 9. NR 203.05 (1) (e), (2) (c), (d), (3), (4), and (5) are amended to read:

NR 203.05 (1) (e) Any small group of persons ~~less than 5~~.

(2) (c) Upon receipt of a signed petition signed by 5 or more persons and where the department determines that there is a significant degree of public interest in the draft permit.

~~(d) If the department determines that there is significant public interest in the permit application.~~

(3) FORM OF REQUEST OR PETITION. Any request or petition for hearing filed pursuant to this section shall be in writing and dated. The request or petition for hearing shall indicate the number of the draft permit, the interest of the party filing the request or petition, the issues that the party desires to be considered at the hearing and the reason why a hearing is warranted ~~and the number of the proposed permit or application.~~

(4) TIMELINESS OF REQUEST OR PETITION. No request or petition for hearing under this section shall be timely unless received by the department within 30 calendar days of the issuance of the public notice of the receipt of a completed permit application and draft permit.

(5) FILING ADDRESS. All requests or petitions for a public informational hearing shall be served by delivery or mail addressed to the Department of Natural Resources, WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707-7921.

SECTION 10. NR 203 Subsection III (title), inserted after NR 203.11, is created to read:

SUBCHAPTER III
PERMIT ACTIONS

SECTION 11. NR 203.12 and 203.13 (1) are amended to read:

NR 203.12 Final determination to issue or deny a discharge permit. The department shall ~~have the discretion to issue or deny any permit for a discharge~~ in accordance with ch. 283, Stats. or ~~and~~ may modify any terms and conditions of a draft permit based on consideration of required standards, the permit application, statements by the public or by government agencies, and any other pertinent information.

NR 203.13 (1) FORM. The notice of final determination under s. NR 203.12 shall be in writing, with a title identifying the subject of the notice and the number of the ~~application permit.~~

SECTION 12. NR 203.135 and 203.136 are created to read:

NR 203.135 Modification, revocation and reissuance, or termination of permits.

(1) GENERAL. The department may modify, revoke and reissue, or terminate a permit based on request or upon the department's initiative based on any information. Permits may only be modified, revoked and reissued, or terminated for one of the caused listed in s. NR 203.136. If cause exists, the department may request an updated application if necessary.

(2) NOTIFICATION. Whenever, on the basis of any information available to it, the department finds that there is cause under s. NR 203.136 for modifying, revoking and reissuing, or terminating a permit, in whole or in part, the department shall notify the permittee by certified mail or personal service of its intended permit action. However, if the department proposes to modify a permit to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation, the department may notify the permittee by email. When notifying the permittee of a proposal to modify, revoke and reissue, or terminate the department shall specify the information upon which the department relies, and if the department intends to modify the permit, shall explain the modifications which the department intends to make in the permit.

(3) REQUESTS. Permits may be modified, revoked and reissued, or terminated at the request of any interested person, including the permittee. All requests for a modification, revocation and reissuance, or termination by a permittee or interested person shall be in writing and shall contain facts or reasons supporting the request.

(4) DENIAL. If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, informational hearings or adjudicatory hearings under s. 283.63, Stats.

(5) PERMIT ACTION PROCEDURES. (a) If the department tentatively decides to modify or revoke and reissue a permit the department shall prepare a draft permit under s. NR 200.11 incorporating the proposed changes. For a permit modification, the department may request additional information and may require the submission of an updated application. For revoked and reissued permits, the department shall require the submission of a new application. The department shall follow the public notice, comment and hearing procedures in ch. NR 203 of its intention to modify, or revoke and reissue a permit, except as otherwise provided in this section.

(b) In a permit modification only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) Minor modifications that qualify for a procedural exemption under s. NR 203.015 are not subject to the requirements of this section, and the permit may be modified without a draft permit or public review.

(6) TERMINATION. (a) Except as provided in paragraph (b), if the department tentatively decides to terminate a permit, the department shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under s. NR 200.11.

(b) If the department tentatively decides to terminate a permit due to permanent elimination of a discharge that is due to a facility closure, connection to a publicly owned treatment works or some other cause, the department may terminate the permit by written notice to the permittee. The termination of the permit shall be effective 30 days after the notice is sent, unless the permittee files a written objection of the termination with the department within the 30 day time period. If a notice of objection is filed by the permittee, then the department shall follow the procedures for preparation of a draft permit under s. NR 200.11.

(7) CAFO PERMITS. (a) If the department proposes to modify a permit to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation (CAFO), the department is not required to provide notice of the substantial change under s. 283.39 (1) (a), Stats. The department shall provide a 14-day period, from the date on which notice is provided on the department's Internet Web site in accordance with s. 283.39 (1) (d), Stats., for written comments on a proposed modification to authorize a substantial change to a nutrient management plan. A petition for an informational hearing on a proposed permit modification to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation shall be filed within 14 days of the date notice is provided under s. 283.39 (1) (d), Stats.

(b) Incorporation of a nutrient management plan in a CAFO general permit when a CAFO obtains coverage under a general permit is not a permit modification that must follow the notice and public notice procedures in the subsection.

NR 203.136 Causes for a modification, revocation and reissuance, or termination.

(1) MODIFICATION. The department may modify a permit for the following causes:

(a) *Changes to facility or discharge.* There are material and substantial alterations or additions to the permitted facility or activity, including changes in sludge use or disposal which occurred after permit reissuance which would justify the application of different permit conditions or the addition of permit conditions.

(b) *New information.* The department has received new information, other than revised regulations, guidance or test methods, that was not available at the time of permit issuance or reissuance and that would have justified different permit terms or conditions.

(c) *New regulations or a judicial decision.* After permit reissuance or issuance, the standards or regulations have changed and a permittee has requested a change in a timely manner, or a judicial decision, including a decision or stipulation from a contested case hearing, requires a change. For purposes of this paragraph, a changed standard or regulation means a change in an effluent limitation guideline, a change in secondary treatment regulations or a change in a water quality standard that has been approved by EPA.

(d) *Compliance schedules.* The department determines good cause exists for modification of the compliance schedule such as events over which the permittee has little or no control and for which there is no reasonably available remedy. The department may also modify a compliance schedule to reflect time lost during construction of an innovative or alternative facility. The compliance schedule may not be modified to extend beyond the deadlines established under state and federal law.

(e) *Variances.* If a permittee has filed a variance request for a pollutant effluent limitation or thermal discharge; or a variance from a technology based effluent limit based on the presence of fundamentally different factors.

(f) *Toxics.* When required to incorporate an applicable toxic effluent standard or prohibition.

(g) *Reopener.* When required by a provision in the permit that requires a modification or reopening of the permit.

(h) *Net limits.* Upon the request of a permittee for an adjustment to a technology based limitation based on pollutants in the intake water, provided the permittee qualifies for the limit adjustment, or the department may modify a technology based limitation based on an intake credit if the permittee no longer qualifies for the adjustment.

(i) *Pretreatment.* When necessary to establish a compliance schedule for development of a pretreatment program.

(j) *Failure to notify.* Upon failure of the department to notify another state whose waters may be affected by the discharge.

(k) *Non-limited pollutants.* When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements applicable to the permittee.

(L) *Errors.* To correct technical mistakes such as errors in calculations or mistakes in applying pertinent regulations to permit terms and conditions.

(m) *Unable to achieve effluent limitation.* Where the permittee has installed a treatment technology considered by the permit writer in setting an effluent limitation, and where the permittee has properly operated and maintained its treatment facilities, but nevertheless has been unable to achieve compliance with an effluent limitation, the department may modify the limitation to reflect the level of

pollutant control actually achieved, but in no case may the limit be less stringent than a subsequent promulgated effluent limitation guideline.

(n) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse for sewage sludge or other biosolids, to revise an existing land application plan or to add a land application.

(o) *Transfer of permit.* To reflect a change in ownership or operator of a permitted facility. A transfer of a permit to a new owner or operator is subject to the following procedures:

1. A permit may only be transferred after notification of the department of the proposed new permittee. The modification request shall include the “Facility Information” section of the permit application or equivalent.

2. The current permittee and proposed new permittee shall submit to the department a written agreement that specifies the date of transfer and acceptance of responsibility for compliance with the permit and liability for any violations.

3. The modification is exempt from public notice procedures in accordance with s. NR 203.015, if the department determines no other change to the permit is necessary.

(p) *Other.* One of the causes for termination in sub. (3) exists and the department determines that a modification is more appropriate than termination.

(2) REVOCATION AND REISSUANCE. The department may revoke and reissue a permit for the following causes:

(a) For any of the causes for a modification listed in sub. (1) provided the permittee agrees to the revocation and reissuance.

(b) Based on one of the causes for termination in sub. (3) if the department determines that a revocation and reissuance is the appropriate action to take.

(3) TERMINATION. The department may terminate a permit, or deny an application for reissuance, for the following causes:

(a) Substantial noncompliance by the permittee with any condition of a permit;

(b) Failure by the permittee in the permit application or during the permit issuance process to fully disclose all relevant facts, or the permittee’s misrepresentation of any relevant facts at any time.

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(d) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice regulated by the permit.

Note: Refer to 40 CFR 122.62, 122.63, and 122.64 for federal regulations on the causes for a permit modification, revocation and reissuance, or termination.

SECTION 13. NR 203 subch. III is renumbered subch. IV:

SUBCHAPTER ~~III~~IV
PUBLIC ADJUDICATORY HEARINGS

SECTION 14. NR 205.07 (1) (a) and (b) are amended to read:

NR 205.07 (1) (a) *Duty to comply.* The permittee shall comply with all conditions of the permit. Any permit noncompliance is a violation of the permit and is grounds for enforcement action; permit termination, permit revocation and reissuance, or modification; or denial of a permit reissuance application. If a permittee violates any terms of the permit, the permittee is subject to the penalties established in ch. 283, Stats.

NR 205.07 (1) (b) *Permit actions.* As provided in s. 283.53, Stats., after notice and opportunity for a hearing the permit may be modified, ~~suspended, terminated or~~ revoked and reissued, or terminated for cause. ~~If the~~ The filing of a request by the permittee files a request for a permit modification, ~~termination, suspension, revocation and reissuance, or termination,~~ or submits a notification of planned changes or anticipated noncompliance, ~~this action by itself does not relieve the permittee of~~ does not stay any permit condition.

SECTION 15. NR 205.07 (1) (g) and (q) are repealed and recreated to read:

NR 205.07 (1) (g) *Signatory requirement.* 1. All permit applications submitted to the department shall be signed for a corporation by a responsible corporate officer including a president, secretary, treasurer, or vice president that is in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation. A manager in a corporation may also sign the permit application if the manager has received authorization or delegation to sign these documents in accordance with corporate procedures, and provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations. Any manager authorized to sign permit applications must also have the ability to ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit applications. For a municipality, all permit applications submitted to the department shall be signed either by a principal executive officer or ranking elected official. For a partnership or sole proprietorship, the permit application shall be signed by a partner or the proprietor.

2. All reports required by permits and other information requested by the department shall be signed by a person that is authorized to submit the permit applications as described in subd. 1., or a duly authorized representative. To be a duly authorized representative, a person must have written permission to submit permit reports and other information from an officer, manager, official or other person listed in subd. 1. The written permission must be submitted to the department. If there are any changes to this permission, a new written authorization shall be submitted prior to the submittal of any required forms. A duly authorized representative shall also have responsibility for the overall operation of the regulated facility or activity such as a plant manager or superintendent or a person having overall responsibility for environmental matters for the company. Any person signing a document under this paragraph shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Upon written request to the department and subject to the department's approval, a permittee may submit information by electronic media or electronic transmission provided the permittee signs and submits the certification in subd. 2. The party signing the agreement shall make a similar certification when submitting subsequent information by electronic media or electronic transmission. Electronic reporting shall be an alternative to written reports.

NR 205.07 (1) (q) *Reporting Requirements.* The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the existing permit.

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process nor reported pursuant to an approved

land application plan. Additional sites may not be used for the land application of sludge until department approval is received, as required by ch. NR 204.

SECTION 16. NR 205.07 (1) (x) and (y) are created to read:

NR 205.07 (1) (x) *Permit as enforcement shield.* Compliance with a permit during its term constitutes compliance for purposes of enforcement with 33 USC 1311, 1312, 1316, 1317, 1328 and 1345 (a) and (b), except for any toxic effluent standard or prohibition, and standards for sewage sludge use or disposal. If a new or revised toxic effluent standard or toxic prohibition becomes effective during the term of the permit, the permittee may be subject to enforcement action if the discharge exceeds the new or revised effluent standard for the toxic pollutant even though the discharge is in compliance with the existing permit. The permittee may also be subject to enforcement action standards for sewage sludge use or disposal. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in ch. 283, Stats. and ch. NR 203.

Note: The toxic effluent standards in s. NR 205.07 (1) (x) are the technology based limitations applicable to the categorical sources in accordance with 33 USC 1317 (sec. 307 of the Clean Water Act). Refer to 40 CFR 122.5 (a).

(y) *Affirmative defense.* Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

SECTION 17. EFFECTIVE DATE.

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

SECTION 18. BOARD ADOPTION.

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary