

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original  Updated  Corrected

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2. Administrative Rule Chapter, Title and Number

NR 106.06 (2), 106.06 (6), 106.10 and 106.145

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3. Subject

WT - 31-10

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4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

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5. Chapter 20, Stats. Appropriations Affected

None.

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

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9. Policy Problem Addressed by the Rule

The purpose of these rule additions and amendments is to make sections of NR 106, which deal with the procedures for calculating water quality based effluent limitations for point source discharges in the Wisconsin Pollutant Discharge Elimination System (WPDES) Permit program, consistent with federal regulations. In 2000, US EPA declared portions of NR 106 invalid and overpromulgated sections of NR 106, requiring the department to apply federal law. In 2009, EPA objected to the mercury reasonable potential section of NR 106 as inconsistent with federal requirements. In a letter dated July 18, 2011, 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 these inconsistencies or obtain a statement from the Attorney General's Office verifying that the existing rules are consistent with federal regulations. The department believes adoption of these rule changes (referred to as Rule Package 3) will address EPA's concerns identified in 2000 and 2009 in four of the 75 issues.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Businesses and municipalities that are authorized to discharge effluent to a surface water of the State in a WPDES permit will likely be impacted by this rule. The potential impacted facilities include facilities with non-contact cooling water outfalls or certain substances present in their intake water. The potentially impacted facilities include facilities with non-contact cooling water outfalls or certain substances present in their intake water. Some of these facilities do not currently have treatment processes and may require upgrades or modifications to the facility to meet effluent limitations. Small businesses without treatment processes would be more likely to have economic impacts from changes required to meet WPDES permit limits. The potentially impacted industries also include power plants and industries, especially those that discharge to Lake Michigan.

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11. Identify the local governmental units that participated in the development of this EIA.

None

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

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Businesses and municipalities that are authorized to discharge effluent to a surface water of the State in a WPDES permit will likely be impacted by this rule. It is possible a small number of permittees may receive new or more restrictive water quality based effluent limitations derived from the changes to the intake credit procedures and noncontact cooling water reasonable potential assessments. However, many permittees have already received WPDES permits based upon federal requirements, which DNR has been required to apply since EPA overpromulgated portions of NR 106 in 2000 and declared other portions of NR 106 invalid in 2009.

The department believes the proposed rules are no more restrictive than the federal rules which the department is currently applying. Department is currently required to use the procedures in the federal law when developing water quality based effluent limits and, as a result, many of the facilities impacted by these changes have already had permits reissued in compliance with the federal law. There are approximately 451 general permittees that may be impacted upon reissuance of the statewide Noncontact Cooling Water General Permit. There are 177 total permittees with specific permits with chlorine limits and approximately 25% of these permittees are industrial permit holders. There are an additional 17 permittees with specific permits with total residual chlorine monitoring. The department believes that less than half of these permittees will receive new or increased limits in the next reissued permit.

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#### 13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

On July 18, 2011, the Department received a letter from EPA identifying seventy five issues or potential inconsistencies with Wisconsin's authority to administer its National Pollutant Discharge Elimination System (NPDES) approved permit program. These proposed rule revisions address some of EPA's issues regarding Chapter NR 106. Implementing the proposed rule revisions will ensure that the State's regulations are consistent with and in compliance with federal regulations.

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#### 14. Long Range Implications of Implementing the Rule

Implementing the Administrative Rule revisions as proposed will align Wisconsin's WPDES regulations with federal regulations.

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#### 15. Compare With Approaches Being Used by Federal Government

In a November 6, 2000 Federal Register Notice, EPA objected to provisions in ss. NR 106.06(2), 106.06(6) and 106.06(10) as inconsistent with the federal Water Quality Guidance for the Great Lakes System required by section 118(c) of the Clean Water Act, 33 U.S.C. 1268(c). See Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission from the State of Wisconsin, and Final Rule, 60 Fed. Reg. 66502 to 66511 (November 6, 2000). Section 118(c) requires all Great Lakes states, including Wisconsin, to adopt procedures consistent with the federal guidance. In a February 17, 2009 letter, EPA objected to the department's mercury reasonable potential rule as inconsistent with federal requirements.

Implementing the Administrative Rule revisions as proposed will align Wisconsin's WPDES regulations with federal regulations. The department believes the proposed rules are no more restrictive than the federal rules which the department is currently applying.

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#### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All of the other EPA Region 5 states and/or adjacent states (Illinois, Indiana, Iowa, Michigan, Minnesota and Ohio) are subject to EPA regulations implementing the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) Program. All other states bordering the Great Lakes system (Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Pennsylvania), are subject to the GLI. See 40 CFR Part 132 (setting forth requirements that Great Lakes States must adopt). The proposed rules will align Wisconsin's WPDES regulations with federal regulations.

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<h4>17. Contact Name</h4>	<h4>18. Contact Phone Number</h4>
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## **ADMINISTRATIVE RULES** **Fiscal Estimate & Economic Impact Analysis**

### **ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The potential impacted facilities include facilities with non-contact cooling water outfalls or certain substances present in their intake water. Some of these facilities do not currently have treatment processes and may require upgrades or modifications to the facility to meet effluent limitations. Small businesses without treatment processes would be more likely to have economic impacts from changes required to meet WPDES permit limits. The potentially impacted industries also include power plants and industries, especially those that discharge to Lake Michigan. Impacts to these facilities by this rule are influenced by over promulgation and/or circuit court decisions that require the department to currently use these procedures in determining water quality based effluent limits. The department believes the proposed rules are no more restrictive than the federal rules which the department is currently applying.

In response to comments received, the department analyzed the number of facilities that may be received new total residual chlorine limits. Statewide there are approximately 451 Noncontact Cooling Water General permittees that may receive new or increased more restrictive limits when the statewide Noncontact General Permit is reissued. There are approximately 177 permittees with specific permits already containing total residual chlorine limits. There are an additional 17 permittees with specific permits that currently only have monitoring of total residual chlorine. Of these permittees, less than half are likely to get new or increased more restrictive limits in the next permit reissuance. Costs for these facilities may vary widely. In recently resissued permits with new total residual chlorine limits, permittees have chosen a wide range of methods to meet new limits. If a facility must dechlorinate, costs will include feasibility analysis, design and install costs, and ongoing operations costs. The equipment and installation cost may range from \$15,000-40,000 and annual chemical costs of \$3,000-4,000 depending on chlorination level and flow of the facility. These costs are likely to be greatest for facilities that do not have the building space to accommodate dechlorination equipment. A permittee may request a variance from water quality standards if the permittee can show that 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.

The Department received concerns that the changes to s. NR 106.10, Wis. Adm. Code will not require new or more restrictive total phosphorus limits. Phosphorus regulations in ch. NR217, see especially in s. NR 217.10(2), Wis. Adm. Code, governs phosphorus in discharge. The substances required to be monitored at the time of permit application and the reasonable potential procedures are unchanged under the proposed order.

The rule package may impact permittees discharging to the great lakes system where the intake water is above background concentration. Facilities that discharge to the Great Lakes have been identified as potentially impacted by these changes, especially power plants. Water Quality Based Effluent (WQBEL) limits for expired permits or permits due for permit reissuance are being written following the procedures in federal code. These WQBEL memos include language of options for meeting new limits including the provisions under paragraph D of procedure 5 in appendix F to 40 CFR part 132, "Consideration of Intake Pollutants in Determining Reasonable Potential." The proposed rule will be consistent with the department's current practice in setting limits. Additionally, a permittee may request a variance from water quality standards.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

DNR's System for Wastewater Applications, Monitoring and Permits (SWAMP) was used to compile existing WPDES permit holders with non-contact cooling water discharge outfalls. These data were used to determine which facilities may have impact from this rule. Many of the provisions of the proposed rule revision are already implemented by the department when setting water quality based limits as required by EPA under Federal law. As mentioned above, many

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of the facilities impacted by these changes have already had permits reissued in compliance with the federal law except for noncontact cooling water general permit holders. These permittees are more likely to be small businesses and may be impacted when this general permit is reissued.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

This rule does not specify monitoring frequency or compliance schedule timelines to allow for case by case assessment to ensure adequate environmental protection and reasonable reporting requirements. Consideration was made for difference within and outside the Great Lakes Basin that include additional considerations outside the Great Lakes Basin as allowed under federal code. The department believes the proposed rules are no more restrictive than the federal code which the department is currently applying.

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5. Describe the Rule's Enforcement Provisions

Enforcement provisions are not included in the subsections of the rule effected by the proposed order. These provisions are located in other portions of administrative rule not proposed for revision in this proposed rule order.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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