

Chapter NR 203

WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM PUBLIC PARTICIPATION PROCEDURES

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Note: Chapter NR 3 was renumbered ch. NR 203, effective 10-1-84.

NR 203.01 Definitions. (1) “Department” means the department of natural resources.

(2) “General permit” means a permit for the discharge of pollutants issued by the department under s. 283.35, Stats.

(3) “Permit” means a permit for the discharge of pollutants issued by the department pursuant to ch. 283, Stats.

(4) “Secretary” means the secretary of the department of natural resources.

(5) “US EPA” United States environmental protection agency.

(6) “WPDES” Wisconsin pollutant discharge elimination system.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; renum. (4) and (5) to be (5) and (6), cr. (4), Register, September, 1984, No. 345, eff. 10-1-84; renum. (2), (4), (5) and (6) to be (4), (2), (6) and (5) and am. (5) and (6), Register, February, 1996, No. 482, eff. 3-1-96; correction in (2) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491.

NR 203.015 Exceptions. The department may, with the consent of the permittee, revoke or modify a permit issued under s. 283.31 or 283.33, Stats., without following the notice procedures outlined in subch. I or without holding a public informational hearing as outlined in subch. II. Modification actions which qualify for this exception include:

(1) Correcting a typographical error.

(2) Requiring more frequent monitoring or reporting by the permittee.

(3) Changing an interim compliance date in a schedule of compliance to a date that is not more than 120 days after the date specified in the existing permit if the change does not delay attainment of final compliance.

(4) Reflecting a change in the owner or operator of a facility if the department determines that no other change in the permit is necessary and if the current and new owners or operators submit the department a written agreement that specifies a date for the new owner to assume responsibility for compliance with the permit and liability for violations of the permit.

(5) Changing the construction schedule for a new source if the change does not affect the permittee’s obligation to have required pollution control equipment installed and in operation before beginning to discharge.

(6) Eliminating a point source from a permit if the discharge from that point source terminates and that termination does not cause the discharge of pollutants from other point sources to exceed permit limits.

(7) Incorporating into a permit a condition of a publicly owned treatment works pretreatment program that has been approved by the department.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, November, 1996, No. 491.

Subchapter I — Notices of Completed Permit Applications

NR 203.02 Public notice of receipt of a completed permit application. (1) **INTENT.** Public notice of the receipt of a completed permit application 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 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 shall be in writing, with a title identifying the subject of the notice and the number of the application.

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

(a) The name and address of the applicant.

(b) A brief description of each applicant’s activities or operations which result in the discharge described in the application.

(c) The name of the waterway to which the discharge is made, a general description of the location of such discharge and a statement whether such discharge is a new or existing discharge.

(d) A statement of the tentative determination to issue or deny a permit for the discharge described in the application.

(e) A brief description of the procedures for the formulation of final determinations, including the 30-day period for public comment, and the 30-day period for requesting an informational public hearing, and the availability of fact sheets.

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

(g) The address and phone number where interested persons may obtain further information, request a copy of the fact sheet when applicable, request a copy of the draft permit, 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 and fact sheets.

(i) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions for the permit.

(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.

Note: A sludge use site includes a site for land application. Sludge disposal sites include surface disposal sites (not permitted in Wisconsin), landfills and incineration sites.

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

(a) Publication of the notice as a class 1 notice under ch. 985, Stats., in a newspaper of general circulation in the area affected by the discharge.

(b) Mailing the notice to the applicant 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.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1), r. (4) (b), renum. (4) (c) to be (4) (b), renum. (4) (d) to be (4) (c) and am., Register, November, 1976, No. 251, eff. 12-1-76; am. (1) and (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (1), Register, February, 1996, No. 482, eff. 3-1-96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; **CR 09-123: cr. (3) (j) and (k) Register July 2010 No. 655, eff. 8-1-10.**

NR 203.03 Notice of receipt of a completed permit application to other government agencies. (1) INTENT. The intent for proved completed permit application to 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 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.

(2) FORM. Form shall be the same as for public notice in s. NR 203.02 (2).

(3) CONTENT. All government agency notices shall contain a copy of the public notice as described in s. NR 203.02, a copy of the fact sheet where available as described in s. NR 201.01, and a cover letter stating the purpose of the notice, the 30 day period for submitting comments and for requesting a public hearing pursuant to s. 283.49, Stats. In addition, the US EPA shall receive a copy of the permit application and draft permit and be provided a comment period not to exceed 90 days unless it agrees to a shorter comment period.

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

(a) US EPA.

(b) United States army corps of engineers.

(c) Other states potentially affected by the proposed discharge.

(d) The county and the city, town or village where the proposed discharge is located.

(e) The regional planning commission of the area where the proposed discharge is located.

(f) Any other agency or unit of government interested in the proposed discharge.

(g) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone manage-

ment plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States, or American Indian tribes or bands.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1) and (3), Register, November, 1976, No. 251, eff. 12-1-76; am. (1), Register, September, 1984, No. 345, eff. 10-1-84; correction made in (2) and (3) under 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. (1) to (3) and (4) (a), Register, February, 1996, No. 482, eff. 3-1-96; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; **CR 09-123: am. (3), cr. (4) (g) Register July 2010 No. 655, eff. 8-1-10.**

Subchapter II — Public Informational Hearings

NR 203.04 Intent and scope. The regulations in this chapter prescribe the policies and procedures to be followed in issuing the notice of and the conducting of a public informational hearing and deciding the final determination as to whether to issue or deny a permit authorizing discharges into the waters of the state of Wisconsin. A public informational hearing, either mandatory or discretionary on the department, is to give all interested persons an additional opportunity to make a statement with respect to a proposed permit or permit application and to have such statements considered in the final determination. Exceptions to the requirements for holding a public informational hearing are provided in s. NR 203.015. The promulgation of the regulations in this chapter is by authority of ss. 283.49 (1) (c) and (2) (b), Stats.

History: Cr. Register, January 1974, No. 217, eff. 2-1-74; am. Register, September, 1984, No. 345, eff. 10-1-84; am. Register, February, 1996, No. 482, eff. 3-1-96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491.

NR 203.05 Request for public informational hearing. (1) DISCRETIONARY HEARING. The department may schedule a public hearing on a proposed permit or permit application if requested by:

(a) The applicant.

(b) A state agency.

(c) A federal agency other than the US EPA.

(d) Any person.

(e) Any group of persons less than 5.

(2) MANDATORY HEARING. The department shall schedule a public hearing on any permit:

(a) If requested by the US EPA.

(b) If requested by any state affected by the discharge.

(c) Upon receipt of a petition signed by 5 or more persons.

(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 interest of the party filing the request or petition, the issues that the party desires to be considered at the hearing 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.

(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.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1) and (3), Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (c), (2) (a) and (5), Register, February, 1996, No. 482, eff. 3-1-96.

NR 203.06 Notice of public informational hearing. (1) FORM. Notice of a scheduled public hearing shall be in writing, with a title identifying the subject of the notice and the number of the application.

(2) CONTENT. The notice of a scheduled public hearing shall contain the following:

(a) The name, address, and phone number of the governmental unit conducting the hearing.

(b) The name and address of each applicant.

(c) The name of the authority to which the discharge is to be made, a general statement of the location of such proposed discharge, and a statement whether such discharge is a new or existing discharge.

(d) A brief statement that a public notice of a completed permit application has been issued, including date of such issuance.

(e) Information regarding the date, time and location of the hearing.

(f) The purpose and statutory authority of the hearing.

(g) A concise statement of the issues raised by the persons requesting the hearing.

(h) The address and phone number where interested persons may obtain further information, request a copy of each draft permit, and request a copy of each fact sheet where available, and inspect and copy forms and related documents.

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

(j) A brief description of the nature of the hearing, including the rules and procedures to be followed, proposed time schedules and any necessary constraints to be placed on testimony at the hearing.

(k) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions of the permit.

(L) If it is necessary to allow less than 30 days' notice prior to a hearing, a statement of the reasons for such shorter time period.

(m) The date of the notice.

(n) A brief description of the nature of the hearing and the procedures to be used at the hearing.

(o) Reference to the date of previous public notices relating to the permit.

(3) CIRCULATION AND NOTIFICATION. Circulation and notification shall be the same as for public notice in s. NR 203.02 and government notice in s. NR 203.03.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. (2) (L) and (3), Register, February, 1996, No. 482, eff. 3-1-96; **CR 09-123: cr. (2) (o) Register July 2010 No. 655, eff. 8-1-10.**

NR 203.07 Location of public informational hearing.

Whenever possible all public informational hearings on permit applications shall be held in the area affected by the proposed discharge. If more than one permit application from a particular region is scheduled for hearing at the same proceeding, the hearings may be held in a location reasonably accessible to all areas affected by the proposed discharges.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 203.08 Persons entitled to participate in public informational hearings.

In addition to the applicants named in the public notice of hearing, any interested members of the public or representatives of government agencies may participate in a public informational hearing with respect to the issuance of the proposed permit subject to any restrictions in s. NR 203.10. Persons and government agencies participating need not be represented by legal counsel.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; correction made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. Register, February, 1996, No. 482, eff. 3-1-96.

NR 203.09 Changes in time or place of hearing; adjournments. (1) CHANGES.

Requests for changes in the time and place of a scheduled hearing will be granted only for good cause shown prior to any required newspaper publication of legal notice for said hearing.

(2) ADJOURNMENT. The hearing examiner may adjourn a hearing for good cause shown, the hearing to be reset or reconvened at the discretion of the department on 10 days' notice or at a time certain on agreement of all persons present.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 203.10 Conduct of public informational hearings. (1) NONCONTESTED CASE.

Public informational hearings held pursuant to this chapter are not contested cases as defined in s. 227.01 (3), Stats.

(2) HEARING EXAMINER. Public informational hearings held pursuant to this chapter shall be conducted by the secretary or designee.

(3) PROCEDURE. (a) Regardless of specific requirements of this subsection the hearing examiner may, in his or her discretion, utilize procedures as may be necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided such measures are consistent with broad public participation in the hearing.

(b) The hearing examiner will open the hearing and make a concise statement of the scope and purpose of the hearing and shall state what procedures will be used during the course of the hearing. The hearing examiner shall explain the method of notification of the final decision to grant or deny a permit and the methods by which the decision may be reviewed in a public adjudicatory hearing.

(c) Appearance slips shall be distributed to all in attendance at the hearing. Persons shall state on their appearance slips their intent to present or not present an oral or written statement at the hearing.

(d) Informational and clarifying questions may be directed at persons making oral statements through the hearing examiner. In no instance shall cross-examination be allowed at the hearing.

(e) Time limits may be placed on individual oral statements by the hearing examiner in order to insure an opportunity for all persons present to make statements in a reasonable period of time and to prevent undue repetition.

(f) The hearing examiner, in his or her discretion, may limit the number of representatives that may make oral statements on behalf of any individual organized group.

(g) Persons proposing to make oral statements at a hearing may be scheduled at times certain by the hearing examiner when necessary to ensure maximum participation and allotment of adequate time for oral statement. Advanced oral statement scheduling may not be a bar to unscheduled oral or written statements at the hearing.

(h) Multiple copies of all written statements are encouraged, however, no more than one legible copy of a written statement shall be required to be submitted to the hearing examiner.

(4) CONTEMPT. Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing by the hearing examiner.

(5) REPORT OF PUBLIC PARTICIPATION. The hearing examiner shall make a written report of public participation during the hearing process. Copies of the report may be obtained at reasonable cost by request to the Bureau of Legal Services, P. O. Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (5), Register, September, 1984, No. 345, eff. 10-1-84; correction in (2) and (3) (f) made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1984, No. 345; am. (1), (3) (a), (b) and (g), Register, February, 1996, No. 482, eff. 3-1-96.

NR 203.11 Transcripts. (1) METHOD AND COPIES.

Public informational hearings will be transcribed either stenographically or electronically. A typed copy of the transcript will be furnished to all persons, upon request, at a reasonable cost to be determined by the department.

(2) CORRECTIONS. Any person, within 7 days of the date of mailing of the transcript, may file with the hearing examiner a

notice in writing, claimed errors contained therein. Corrections of claimed errors shall be made at the discretion of the hearing examiner.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

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 or 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.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 203.13 Notice of final determination to issue or deny a permit to discharge. (1) **FORM.** The notice of final determination shall be in writing, with a title identifying the subject of the notice and the number of the application.

(2) **CONTENT.** The notice of final determination shall contain the following information:

(a) The name, address, and phone number of the governmental unit issuing the notice.

(b) The name and address of the applicant for a permit, or the class or category of discharger covered by a general permit.

(c) A brief description of the activities or operations which result in the discharge described in the proposed permit or permit application.

(d) The name of the waterway to which the discharge is to be made, a general statement of the location of such proposed discharge and a statement whether such discharge is a new or existing discharge.

(e) The purpose and the statutory authority for the permit.

(f) A statement of the final determination to issue or deny a permit for the discharge described in the application.

(g) A statement of any significant changes which have been made from terms and conditions in the draft permit. This statement shall contain all of the following:

1. A description and response to significant comments on the draft permit.

2. Explanation of the reasons for change between the draft and final permit.

(h) The date of permit issuance or denial if the permit is issued, the date it becomes effective, and the length of the permit period.

(i) A brief description of the procedures available for adjudicative review.

(j) The address and phone number where interested persons may obtain further information and the department's response to comments, and inspect and copy forms and related documents.

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

(3) **NOTIFICATION.** The following persons and agencies shall be mailed notes of final determination as described in sub. (2):

(a) The applicant or applicants for a permit.

(b) All persons filling out appearance slips at the public informational hearing, or who submitted written comments with respect to issuance of the permit even if a public informational hearing was not held.

(c) US EPA.

(d) United States army corps of engineers.

(e) Other states potentially affected by the proposed discharge.

(f) The city, town or village where the proposed discharge is located for individual permits.

(g) The county and regional planning commission of the area where the proposed discharge is located.

(h) Any other agency or unit of government interested in the proposed discharge.

(i) All individuals and groups upon request or on a formal department 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.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (2) (b), (c) and (3) (a), (f), (g) and (i), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (g), (3) (c) and (i), Register, February, 1996, No. 482, eff. 3-1-96; **CR 09-123; am. (2) (g), (j) and (3) (b), Register July 2010 No. 655, eff. 8-1-10.**

Subchapter III — Public Adjudicatory Hearings

NR 203.14 Intent. The purpose of this subchapter is to provide adequate procedures to insure as broad a degree of public participation in administrative adjudication of WPDES permits and their conditions as is consistent with procedural due process to the parties involved in the proceedings.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. Register, February, 1996, No. 482, eff. 3-1-96.

NR 203.15 Applicability of subchapter. (1) This subchapter is applicable only to the review of the following:

(a) The denial, modification, suspension or revocation of a WPDES permit pursuant to s. 283.31, 283.33, 283.35 or 283.53, Stats.

(b) The reasonableness of or necessity for any term or conditions of any issued or modified WPDES permit.

(c) The establishment of a proposed thermal effluent limitation pursuant to s. 283.15 (4), Stats.

(d) The establishment of any proposed water quality related limitation pursuant to s. 283.15 (1), Stats.

(2) If the hearing is a contested case pursuant to s. 227.01 (3), Stats., the rules in ch. NR 2, will be applicable to the extent that they are not in conflict with the specific procedures in this subchapter for WPDES adjudicatory hearings.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1) (a), Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (a), (b) and (2), Register, February, 1996, No. 482, eff. 3-1-96; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491.

NR 203.16 Who may petition; when. (1) A review hearing pursuant to this subchapter may be petitioned by any permit applicant, a permittee, a state affected or to be affected by a discharge or 5 or more persons.

(2) The petition shall be filed within 60 days after notice of any action, which is reviewable under this section, is issued by the department.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (2), Register, February, 1996, No. 482, eff. 3-1-96.

NR 203.17 Form of petition.

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby petition(s) for a review of the department's (proposed rule) (decision) entitled _____ and dated _____, 2___. The specific issue(s) requested to be reviewed (is) (are): The specific interest(s) of the petitioner(s) (is) (are): _____.

The reasons why a hearing is warranted are: _____.

Date _____

Signature(s) _____

Verification _____

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 203.18 Form of hearing notice; content.

(1) **FORM OF HEARING NOTICE.** Notice of a scheduled public hearing shall be in writing, with a title identifying the subject of the notice and the number of the proposed rule, and the number of the subject permit or permit application.

(2) **CONTENT OF HEARING NOTICE.** The notice of a scheduled public hearing shall contain the following:

(a) The name, address, and phone number of the governmental unit conducting the hearing.

- (b) The name and address of each petitioner.
- (c) The substance of the petition for review.
- (d) If applicable, the name of the waterway to which the discharge is to be made, a general statement of the location of the proposed discharge, and a statement whether such discharge is a new or existing discharge.
- (e) Information regarding the date, time and location of the hearing.
- (f) If applicable, a brief statement that a public notice of a completed permit application had been issued, including date of issuance.
- (g) The address and phone number where interested persons may obtain further information, request a copy of each draft permit if applicable, request a copy of each fact sheet when applicable, request a copy of proposed rules when applicable and inspect and copy forms and related documents.
- (h) The purpose and statutory authority of the hearing.
- (i) A statement that reasonable costs will be charged for copies of all information excluding public notices and fact sheets.
- (j) Where applicable, a statement that confidential information has been received and used to determine some of the conditions for the permit.
- (k) If applicable, a brief summary of the proposed rule.

(L) If it should be necessary to allow less than 30 days' notice prior to a hearing, a statement of the reasons for such shorter time period.

(m) The date of the notice.

(n) A brief description of the nature of the hearing and the procedures to be used at the hearing.

(3) CIRCULATION OF NOTICE. The notice of hearing shall be circulated pursuant to the provisions of ss. NR 203.02 (4) and 203.03 (4), at least 30 days prior to the hearing. If it is necessary to allow less than 30 days' notice prior to a hearing, the hearing notice shall state the reasons for the shorter time period.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (3), Register, September, 1984, No. 345, eff. 10-1-84; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. (2) (d) and (f), (3), Register, February, 1996, No. 482, eff. 3-1-96.

NR 203.19 Location of hearing. The location of the hearing shall be in conformance with s. NR 203.07.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; correction made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345.

NR 203.20 Final decision. The final decision on the issues raised by the petitioners shall be made within 90 days of the close of the hearing.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.