

## 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 - Procedures for calculating water quality based effluent limitations for point source discharges to surface waters

NR 200 - Application For Discharge Permits And Water Quality Standards Variances

NR 205 - General Provisions

NR 207 - Antidegradation

NR 210 - Sewage Treatment Works

NR 220 - Categories And Classes Of Point Sources And Effluent Limitations

NR 221- Asbestos Manufacturing

NR 225 - Canned And Preserved Fruits And Vegetables

NR 228 - Cement Manufacturing

NR 231 - Explosives Manufacturing

NR 236 - Gum And Wood Chemicals Manufacturing

NR 239 - Carbon Black Manufacturing

NR 240 - Dairy Products Processing

NR 245 - Grain Mills

NR 247 - Glass Manufacturing

NR 250 - Hospital

NR 258 - Meat Products

NR 261 - Metal Finishing

NR 268 - Coal Mining

NR 269 - Stone, Gravel And Sand Segment Of Mineral Mining And Processing

NR 275 - Ore Mining And Dressing

NR 276 - Phosphate Manufacturing

NR 277 - Photographic Processing

NR 280 - Petroleum Refining

NR 281 - Plastics And Synthetics

NR 284 - Pulp And Paper Manufacturing

NR 286 - Rubber Processing

NR 290 - Steam Electric Power Generating

NR 294 - Soap And Detergent Manufacturing

NR 295 - Sugar Processing

NR 296 - Textile Industry

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3. Subject

WT-12-12: Revisions to the Wisconsin Pollution Discharge Elimination System (WDPES) Permit program to address some of the issues and potential inconsistencies with federal regulations identified by the U.S. Environmental Protection Agency (EPA) in a letter dated July 18, 2011.

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

4MA, 4AJ

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6. Fiscal Effect of Implementing the Rule

|  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs                      |
| <input type="checkbox"/> Indeterminate               | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |
|  |   | <input type="checkbox"/> Decrease Cost                       |

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

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

- |  |  |
|--|--|
| <input type="checkbox"/> State's Economy                   | <input checked="" type="checkbox"/> Specific Businesses/Sectors                          |
| <input checked="" type="checkbox"/> Local Government Units | <input type="checkbox"/> Public Utility Rate Payers                                      |
|  | <input checked="" type="checkbox"/> 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 primary purpose of this rule package is to establish clear regulatory requirements for the processing of WPDES permits that are consistent with federal requirements. In a letter dated July 18, 2011, U.S. 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 address these issues through other avenues. The proposed revisions seek to address 10 of these issues:

Issue 7: Incorporation of federal effluent limitation guidelines into WPDES permits

Issue 11: Reasonable potential to include effluent limits in WPDES permits

Issue 13: Inclusion of best management practices in WPDES permits

Issue 14: Antibacksliding requirements for limits in WPDES permits

Issues 15 and 29: Schedules for compliance with limits in WPDES permits

Issue 20: Adjustment of limits in permits when permittee disposes of pollutants into wells or publically owned treatment works (POTWs) or by land application

Issue 44: Definitions of "point source" and "pollutant"

Issue 46: Expedited variance applications

Issue 61: WPDES application materials

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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.

This proposed rule revision may impact some businesses with a surface water discharge regulated by a WPDES permit. There are 982 individual WPDES permittees in the state of Wisconsin. Potential permittees affected may include municipal wastewater treatment facilities and industrial discharges such as paper mills, power plants, cheese makers, food processors, and other dischargers of wastewater. Electronic notice of solicitation for comments was sent to the Department's Wastewater Program email notification list. This included a number of environmental interest groups, industry interest groups, law firms, and related government agencies. No comments were received.

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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)

This rule package primarily provides more details in state requirement and clarifies existing practices, such as the inclusion of limitations in permits when discharge has reasonable potential to exceed water quality standards, inclusion of schedules for compliance for limits for any pollutants when appropriate, incorporation of federal effluent limitation guidelines into WPDES permits in the absence of equivalent state regulations, adjustment of effluent mass limitations when a portion of effluent is disposed of into a POTW or by land application, expedited variance applications, and required WPDES application materials. None of these changes are anticipated to result in any significant, measurable economic or fiscal impacts because they primarily codify existing practices.

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While most changes simply codify existing practices and provide more details in existing statutory and regulatory requirements, there are some substantive changes proposed in the rule package. These are listed below, along with a

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

discussion of potential economic and fiscal impacts:

(1) Compliance schedules for study of secondary values: Current state adm. code s. NR 106.117 (2) (c) allows for two additional years within a compliance schedule to study secondary values. The proposed regulations limit this allowance to permittees within the Great Lakes Basin, as required by federal rules. Because this is a rarely used procedure, minimal, if any, economic impacts are expected.

(2) Leachate Compliance Schedules for Publically Owned Treatment Works (POTWs): Under this proposed rule package, POTWs may not receive compliance schedules to rectify problems caused by receiving leachate. Department staff are not aware of any instances in which this authority has been exercised, so no economic impacts are expected.

(3) Best Management Practices (BMPs): Current state adm. code specifies BMPs for Concentrated Animal Feeding Operations (CAFOs), stormwater discharges, and land application activities. The proposed rule package mandates that BMPs must also be included in WPDES permits when numeric effluent limits are infeasible or when the practices are reasonably necessary to meet limits, standards, or goals of the Clean Water Act. BMPs can include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The cost for these would vary significantly between cases, but a typical BMP involves primarily operating procedures and practices handled by environmental and safety staff at a plant. In some instances, there may be one-time upfront costs for implementation of new BMPs and/or slightly increased O&M costs; for others, BMPs will be aligned with current operating procedures at the plant. Since numeric limitations are feasible for most end-of-pipe dischargers, the clarification of BMP authority is not expected to affect many, if any, facilities.

(4) Fundamentally Different Factors Variances (FDFVs): FDFVs are variances to technology based effluent limits established for an industrial category and are granted on the basis that the ELGs for a given facility's industrial category are not applicable because the given facility is somehow fundamentally different than others within its industrial category. Resulting alternative limits may be more or less restrictive than current limitations. FDFVs are currently available to 25 out of the 46 industrial categories for which effluent limitation guidelines (ELGs) are established in chs. NR 221 through 297, Wis. Adm. Code. The proposed rule package expands this availability to all 46 industrial categories. It is unknown how many facilities may be eligible for a FDFV with more restrictive limitations, and costs could vary greatly between instances.

However, it is likely that realized costs will be minimal because, for facilities that do not fit within any industrial category with ELGs, the Department already has an existing practice of including technology based limits derived using best professional judgment (BPJ). FDFVs are only available to those facilities that, by definition, belong to an industrial category that has ELGs but are somehow fundamentally different from other facilities within the same industrial category. Additionally, FDFVs are already available to 25 out of 46 industrial categories, and Department staff are not aware of any facilities that have been granted a FDFV. Therefore, the Department does not expect many facilities or other interested parties to apply for an FDFV following the proposed changes, and minimal impacts are expected.

(5) Antibacksliding: Antibacksliding requirements prohibit the relaxation of existing effluent limitations except under specified conditions. Incorporation of this into code is expected to have minimal impacts, as antidegradation requirements provide similar obstacles for permittees requesting less stringent limits in a reissued or modified permit.

Although it is not possible to precisely predict all impacts of the rule package, cumulative economic impacts could be moderate (between \$50,000 and \$20 million annually) on a statewide basis.

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

The proposed rule package may also have a benefit to some specific businesses, business sectors, and local governmental units. As mentioned above, most proposed changes in the rule package will simply codify existing practices or provide more details in rules and will therefore have no expected economic or fiscal benefit. However, there are two changes that may yield minimal economic or fiscal benefits:

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

(1) Fundamentally Different Factors Variances (FDFVs): FDFVs are variances to technology based effluent limits established for an industrial category and are granted on the basis that the ELGs for a given facility's industrial category are not applicable because the given facility is somehow fundamentally different than others within its industrial category. Resulting alternative limits may be more or less restrictive than current limitations. FDFVs are currently available to 25 out of the 46 industrial categories for which effluent limitation guidelines (ELGs) are established in chs. NR 221 through 297, Wis. Adm. Code. The proposed rule package expands this availability to all 46 industrial categories. It is unknown how many facilities may be eligible for a FDFV with less restrictive limitations, and benefits could vary greatly between instances.

However, it is likely that realized benefits will be minimal because, for facilities that do not fit within any industrial category with ELGs, the Department already has an existing practice of including technology based limits derived using best professional judgment (BPJ). FDFVs are only available to those facilities that, by definition, belong to an industrial category that has ELGs but are somehow fundamentally different from other facilities within the same industrial category. Additionally, FDFVs are already available to 25 out of 46 industrial categories, and Department staff are not aware of any facilities that have been granted a FDFV. Therefore, there is no significant reason to expect many facilities or other interested parties to apply for an FDFV following the proposed changes, and minimal impacts are expected.

(2) Whole Effluent Toxicity (WET) Exception: This rule eliminates the requirement for WET limitations where chemical-specific limits for the effluent are sufficient to attain and maintain applicable water quality standards. Acute WET tests typically cost \$500-\$750 per test and are conducted annually at many facilities. Any forgone WET tests will represent a transfer of benefits from WET testing labs to regulated entities.

Additionally, the proposed rule package adds specificity and clarification to state WPDES regulations. This clarity may lead to efficiencies during the permitting process. Finally, in addition to the direct benefits to regulated entities outlined above, this rule package may result in less tangible, indirect benefits to the state (e.g. clean, swimmable waters and edible fish).

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

Revisions to WPDES permit regulations to more clearly incorporate federal regulations ensures that Wisconsin has a program that is consistent with federal regulations. This helps ensure that the Department can continue to administer the WPDES program efficiently and effectively.

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

Department rules will be made consistent with existing federal regulations with the revisions contained in this rule package. Specific federal laws that this rule seeks to conform with include:

- 40 CFR 122.2 provides definitions for "point source" and "pollutant."
  - 40 CFR 122.21 (g) requires existing manufacturing, commercial, mining, and silvicultural dischargers to submit certain application materials;
  - 40 CFR 122.21 (i), requires aquatic animal production facilities to submit certain application materials;
  - 40 CFR 122.21 (k) requires new sources and new dischargers to submit certain application materials;
  - 40 CFR 122.21 (o) allows expedited variance applications;
  - 40 CFR 122.44 (d) requires inclusion of WQBELs in NPDES permits when a given discharge has reasonable potential to cause an exceedance of water quality standards. It also authorizes inclusion of limits based on fundamentally different factors variances in NPDES permits;
  - 40 CFR 122.44 (k) requires inclusion of best management practices in certain NPDES permits;
  - 40 CFR 122.44 (l), pertaining to antibacksliding requirements for limits in NPDES permits;
  - 40 CFR 122.47, pertaining to compliance schedules in NPDES permits;
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## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

- 40 CFR 122.50, pertaining to expression of limits in NPDES permits when a permittee disposes of pollutants into wells, into POTWs, or by land application;
- 40 CFR 125.30-32 allows fundamentally different factors variances;
- 40 CFR, Part 132, Appendix F, Procedure 9, pertaining to schedules for compliance with limitations based on secondary values in the Great Lakes Basin;
- Clean Water Act Section 402 (o), pertaining to antibacksliding requirements for limits in NPDES permits; and
- Clean Water Act Section 303 (d) (4), pertaining to revision of water quality based effluent limitations in NPDES permits.

#### Reasonable Potential (Issue 11):

Under federal regulations (40 CFR s. 122.44 (d)(1)), a state is required to include a water quality based effluent limitation in a permit for a pollutant in a discharge if there is reasonable potential for the discharge to cause or contribute to an exceedance of a water quality standard. Wis. Stats. ss. 283.31 and 283.13 (5) already require that WPDES permits contain water quality based effluent limitations (WQBELs) when necessary to achieve water quality standards. Existing state regulations establish detailed reasonable potential procedures for toxic and organoleptic substances as well as for phosphorus in chs. NR 106 and 217, respectively. The proposed rule package includes specific reasonable potential procedures for all other pollutants, including whole effluent toxicity (WET). It also revises the Wis. Adm. Code to require effluent limitations where there is reasonable potential to exceed narrative standards, as required under federal regulations and under Wis. Stats. ss. 283.31 (3) and (4) and 283.13 (5). The proposed rules delineate processes for determining what constitutes “reasonable potential” to exceed water quality standards and for establishing limits in the absence of state numeric water quality criteria for specific pollutants. S. NR 205.067, Wis. Adm. Code, is created to achieve this purpose.

#### Best Management Practices for Permits (Issue 13):

40 CFR 122.44 (k) requires that the Department include best management practices (BMPs) in permits to control or abate the discharge of pollutants under certain circumstances. BMPs will be included when numeric effluent limitations are infeasible or when BMPs are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. The proposed rule adopts this requirement by creating s. NR 205.10, Wis. Adm. Code.

#### Antibacksliding (Issue 14):

40 CFR 122.44 (l) and Clean Water Act Sections 402 (o) and 303 (d) (4) require that, in any reissued permit, water quality based effluent limitations, best professional judgment limitations, and interim limitations, standards, or conditions be at least as stringent as those in the previous permit, with some exceptions. Existing state rules contain antidegradation procedures to prevent lowering of water quality in surface waters unless necessary, but existing state rules do not specifically contain the antibacksliding requirements in 40 CFR 122.44 (l) and Clean Water Act Sections 402 (o) and 303 (d) (4). The proposed rule specifically includes these detailed requirements by creating subchapter II of ch. NR 207, Wis. Adm. Code.

#### Compliance Schedules (Issues 15 and 29)

40 CFR 122.47 provides requirements for schedules for compliance with limitations in WPDES permits. 40 CFR 132, Appendix F, Procedure 9 allows dischargers within the Great Lakes Basin two years in order to study secondary values.

Existing rules contain specific provisions for compliance schedules for toxic and organoleptic substances, ammonia, temperature, and phosphorus. The proposed rule includes detailed compliance schedule provisions for all limitations, not just upgrades to meet limits for toxic and organoleptic substances, ammonia, temperature, or phosphorus. It also makes several minor changes to provisions for compliance schedules.

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

The proposed rules will include revisions to compliance schedule requirements in chapter 106 for consistency with 40 CFR 122.47 and with 40 CFR 132, Appendix F, Procedure 9 for Great Lakes dischargers. Proposed revisions will also add a new section for compliance schedule requirements to ch. NR 205 that applies to all limitations not already covered in ch. NR 106 or 217.

This rule package proposes to repeal s. NR 106.13, which is inconsistent with 40 CFR 122.47 in allowing compliance schedules where leachate from solid waste facilities affects the ability of a POTW to meet WQBELs for toxic or organoleptic substances.

#### Expression of Limits in Permits when Permittee Disposes of Pollutants into Wells or Publically Owned Treatment Works or by Land Application (Issue 20):

Pursuant to 40 CFR 122.50, for situations where an industrial permittee chooses to dispose of a portion of its wastewater to a POTW or to a land application site and the other portion to a surface water, the permittee's effluent mass limits for the portion discharged through the surface water outfall must be reduced proportionally to the flow of wastewater diverted to land or a POTW. Concentration limits remain unchanged.

The proposed rule codifies the Department's current operating procedure and establishes consistency in state rules with federal regulations.

#### Definitions of "Point Source" and "Pollutant:" Issue 44

40 CFR 122.2 provides definitions for "point source" and "pollutant." The proposed rule revises the state's definitions of these terms in ch. NR 205 to include "landfill leachate collection system" as a type of point source and "filter backwash" as a type of pollutant. The Attorney General's office already stated the state statutory definitions were broad enough to include these items, so the rule includes these specific changes consistent with state statutory authority and federal regulations.

#### Expedited Variances (Issue 46):

Federal regulations at 40 CFR 122.21 (o) allow expedited variance procedures and time extensions for filing variance requests. The proposed rules clarify that the Department can accept variance applications before a permit is reissued. This is an existing practice already allowed under s. 283.15 (2) (a), Wis. Stats.

#### Application Materials for Categories of Industries and New Sources and New Dischargers (Issue 61):

Section 40 CFR 122.21 contains permit application requirements for specific industrial categories of dischargers. The proposed rule requires additional permit application materials from the following categories of dischargers: existing manufacturing, commercial, mining, and silvicultural dischargers; aquatic animal production facilities; and new sources and new dischargers. This rule revision reflects current Department requirements but will add specificity. The Department already has broad and clear authority in Wis. Stats. s. 283.37 (5) and in adm. code to require any additional necessary information in a permit application, but the existing code is not as detailed as federal regulations.

#### Fundamentally Different Factors Variances:

The federal regulations at 40 CFR 125.30-32 offers the option to apply for a fundamentally different factors variance for dischargers from all industrial categories\*. This allows industrial dischargers flexibility when effluent limitation guidelines apply to their industrial category as a whole but are not specifically applicable to the given discharger because the discharger has fundamentally different factors. The Adm. Code currently offers this option for only 25 out of 46 industrial categories identified in chs. NR 221 through 297. The proposed rule package expands this option for all industrial categories in chs. NR 221 through 297. A fundamentally different factors variance may result in a limitation

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

that is more or less stringent than the original limitations.

\* Except that this does not apply to the BPT for steam electric power generation.

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

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) and Iowa are subject to the U.S. EPA regulations because they have approved NPDES permit programs. Wisconsin's rules for permitting, limit calculation, variances, and other related procedures will be consistent with EPA regulations following passage of this rule package and should be similar for Great Lakes dischargers in the other Region 5 states.

Federal requirements applicable to the Great Lakes do not apply in the state of Iowa, because they do not have discharges to the Great Lakes. Although Wisconsin's program is consistent with federal law, it is not directly comparable to the Iowa implementation program, as Wisconsin is subject to these additional federal requirements for the Great Lakes Basin.

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17. Contact Name

Jason Knutson

18. Contact Phone Number

608-267-7894

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This document can be made available in alternate formats to individuals with disabilities upon request.

## 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)

See section 12 above. The impacts to small businesses, if any, are expected to be the same as impacts to other businesses.

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

Professional judgment of the Department's experienced permitting engineers.

The Department's System for Wastewater Applications, Monitoring, and Permits (SWAMP)

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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:

See Section 4 below.

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

This rule package simply incorporates federal requirements, none of which provide special exceptions for small businesses. The federal regulations do not grant the Department authority to promulgate less stringent requirements based on a facility's ability to pay or handle reporting burdens, except that in some cases businesses may qualify for economic variances. Economic variances to water quality standards are allowed in Wis. Stats. ss. 283.15 and 283.16.

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5. Describe the Rule's Enforcement Provisions

Enforcement of the administrative rules will follow the Department's stepped enforcement procedures.

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

- Yes     No
-