

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: WT-09-19

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Relating to: Ch. NR 216, Wis. Adm. Code, *Storm Water Discharge Permits*

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Rule Type: Permanent

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### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable – The rule will be proposed as a permanent rule.

### 2. Detailed description of the objective of the proposed rule:

Chapter NR 216, Wis. Adm. Code, *Storm Water Discharge Permits*, establishes the criteria under which municipalities, industrial facilities, and construction site owners must obtain coverage under a Wisconsin Pollutant Discharge Elimination System (WPDES) storm water discharge permit pursuant to s. 283.33, Wis. Stats., and federal regulations established under the federal Clean Water Act. Furthermore, ch. NR 216 specifies the permit requirements and implementation of the appropriate performance standards of subchs. III and IV of ch. NR 151, Wis. Adm. Code, *Runoff Management*. The purpose of the rule amendment is to address the omissions or deviations from federal storm water requirements as identified by the U.S. Environmental Protection Agency (USEPA) Region 5 by letter to the DNR dated July 18, 2011; update the references to the non-agricultural and transportation facility performance standards in ch. NR 151; codify other federal storm water requirements that have become effective since the previous promulgation of amendments to NR 216; any additional rule changes that are necessary and reasonably related to those listed above; and other changes as necessary to be consistent and in compliance with s. 283.33, Wis. Stats., and other relevant state statutes or federal requirements.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

**Consistency with Federal Law.** In July 2011, USEPA Region 5 Administrator Susan Hedman sent a letter to DNR Secretary Cathy Stepp identifying 75 omissions and deviations from federal requirements in the WPDES program. The USEPA review of the WPDES program was undertaken to determine if the State of Wisconsin has the minimum legal authority needed to properly administer a USEPA-approved program. Eleven of the 75 issues relate specifically to the storm water program as administered under NR 216 (Issues 23, 24, 25, 26, 52, 53, 54, 55, 56, 57, and 67). To address the concerns of USEPA, the DNR proposes to amend ch. NR 216 to fully resolves Issues 23-25, 52, 53, 56, 57 and 67.

**Update References to ch. NR 151.** The current non-agricultural and transportation facility performance standards in ch. NR 151 became effective on January 1, 2011. As a result, some references to sections of NR 151 are obsolete or incorrect and need to be updated to the correct cites.

**Consistency with federal storm water regulations and/or state statutory changes.** USEPA in recent years has promulgated two federal regulations that impact the storm water permit program: The NPDES Electronic Reporting Rule (40 CFR Part 127) and the NPDES Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule (40 CFR 122 as amended). Other potential changes will be considered after a thorough analysis of applicable federal and state law.

The DNR may work with an external advisory committee to examine and consider changes to the fee structure and program delivery.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Under s. 283.11(2)(b), Wis. Stats., rules concerning storm water discharges may be no more stringent than the requirements under the federal Water Pollution Control Act, 33 USC 1251 to 1387, and regulations adopted under that act.

Section 283.33(8), Wis. Stats., states that “[t]he department shall promulgate rules for the administration of this section [i.e., s. 283.33, storm water discharge permits].”

Subject to certain restrictions, s. 227.11(2)(a), Wis. Stats., provides that a state agency “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

A state program approved by the USEPA for the administration of the National Pollutant Discharge Elimination System (NPDES) program must comply with the requirements of 40 CFR Part 123, *State Program Requirements*.

Under 40 CFR 123.25(a), “[a]ll State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each...”, which includes, among other NPDES permit programs, storm water discharge permits under 40 CFR 122.26; general permits under 40 CFR 122.28; and conditions applicable to specified categories of permits under 40 CFR 122.42.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The DNR estimates that approximately 800 hours of total state employee time among staff from the storm water program, management and budget, legal services, and for management review will be needed to develop the rule, manage the rulemaking process, facilitate and respond to public input, and prepare all documentation and complete the procedural requirements for final promulgation.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed rule will have some effect on permitted MS4s (currently 244). The proposed rule will have a negligible effect on industrial facilities and construction site owners. The most impact on permitted MS4s will be realized from compliance with the federal e-reporting and remand rules. The proposed rule will not develop any new policies for construction site owners.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

As previously discussed, the primary purpose of the proposed rule changes is to address technical inconsistencies with federal requirements or to address recently promulgated federal requirements that state-authorized programs must accommodate, i.e., the federal storm water requirements in 40 CFR Parts 122, 123, and 127.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

In accordance with the DNR's Economic Impact Analysis (EIA) guidelines, the total economic impact of implementing the rule changes statewide for all entities is anticipated to be moderate, between \$50,000 and \$20 million per year. The impact on small businesses in general is expected to be minimal. Small businesses involved in the construction and development industry may be more significantly impacted, which will be determined through the administrative rules fiscal estimate and EIA process.

**9. Anticipated number, month and locations of public hearings:**

The DNR anticipates holding two public hearings in March 2021 and will consider broadcasting the hearings via webinar format so that members of the public may participate remotely. The proposed physical locations of the hearings are Madison and Wausau. These sites will provide both a northern and southern centralized location for the hearings while keeping staff time and travel costs to a minimum.

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Preston D. Cole, Secretary

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Date Submitted