

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to amend NR 216.002(2), 216.002(8), 216.002(10), 216.002(12), 216.04(5)(b)(into.), 216.06(1), 216.06(2)(a), 216.06(8), 216.23(9), 216.26(2), 216.27(3)(j)1., 216.29(7), 216.30, 216.41, 216.43(1), 216.43(2), 216.43(4), 216.43(6), 216.46(2), 216.46(4)(a), 216.46(4)(f), 216.46(4)(g), 216.55(2) and 216.55(3); and to create NR 216.07(7m), 216.27(3)(hm), 216.42(2m), 216.46(1m), 216.46(6)(i), 216.46(6)(j) and 216.47(4) relating to stormwater discharge permits to certain construction sites, industrial facilities and municipalities.

WT-12-00

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 281.16 (2)(a), 283.33 (8) and (9) and 227.11(2), Stats.

Statutes interpreted: ss. 281.16 (2)(a) and 227.11 (2), Stats.

Existing ch. NR 216 is being amended in response to two legislative acts, 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9. These acts require changes to the department's Nonpoint Source Water Pollution Abatement Program and to the department of agriculture, trade and consumer protection's Soil and Water Resources Management Program. Amendment of ch. NR 216 is an integral part of promulgating a series of inter-related administrative rules to implement a re-design of Wisconsin's nonpoint source programs and related water regulations as set forth in these legislative acts. Other related components of this effort that are being conducted concurrently include: repeal and recreation of ch. NR 120, Priority Watershed And Priority Lake Program; creation of ch. NR 151, Runoff Management; creation of ch. NR 152, Model Ordinances for Construction Site Erosion Control and Storm Water Management; creation of ch. NR 153, Runoff Management Grant Program; creation of ch. NR 154, Best Management Practices and Cost-share Conditions; creation of ch. NR 155 Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program; repeal and recreation of ch. NR 243. The department of agriculture, trade and consumer protection is revising ch. ATCP 50, Soil and Water Resource Management, to incorporate changes in its programs required under 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9.

Chapter NR 216 establishes criteria and procedures for issuance of stormwater discharge permits to certain construction sites, industrial facilities, and municipalities, as required by s. 283.33, Stats., to limit the discharge of pollutants carried by stormwater runoff into waters of the state. Chapter NR 216 is primarily being revised to incorporate non-agricultural performance standards in proposed NR 151, subchapters III, IV and V. As revised, components of construction and municipal stormwater discharge permits including stormwater management programs, pollutant loading assessments, stormwater pollution prevention plans, construction erosion control plans, and stormwater management plans will need to meet the non-agricultural performance standards. Additional changes to this chapter are also being proposed to clarify the existing requirements of this chapter. Also, an exemption to the construction site permit fee is being removed so that now all construction sites conferred coverage under a construction site permit through subch. III of ch. NR 216 will have to pay an application fee.

SECTION 1. NR 216.002 (2) is amended to read:

NR 216.002 (2) "Construction site" means ~~a site~~ an area upon which one or more land disturbing construction activities ~~affecting~~ occur that in total will disturb 5 or more acres of land ~~are occurring~~, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is 5 or more acres.

SECTION 2. NR 216.002 (8) is amended to read:

NR 216.002 (8) "Final stabilization" means that all ~~soil~~ land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

SECTION 3. NR 216.002 (10) is amended to read:

NR 216.002 (10) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges ~~with authorized by~~ a WPDES permit or other discharges allowed locally not requiring a WPDES permit.

SECTION 4. NR 216.002 (12) is amended to read:

NR 216.002 (12) "Land disturbing construction activity" means any man-made ~~change~~ alteration of the land surface resulting in a change in the topography, or existing vegetative ~~and or~~ non-vegetative soil cover, ~~or the existing soil topography~~ which may result in storm water runoff and lead to increased soil erosion and movement of sediment into waters of the state. Land disturbing construction ~~activities include~~ activity includes, but are not limited to clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, but does not include agricultural land uses ~~or silviculture activities or routine maintenance for project sites that involve~~ under 5 acres of land disturbance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

SECTION 5. NR 216.04 (5)(b)(intro.) is amended to read:

NR 216.04 (5)(b)(intro.) The department shall review the urban storm water planning area required in s. NR 216.05 (3), and any petition to designate other municipalities for permitting in accordance with s. NR 216.05 (4). If the department intends to designate any municipality in the watersheds of an applicant, according to s. NR 216.02 (4), it shall do so in the process of approving the preapplication. However, the department may later designate any municipality for permitting based on that municipality having a significant change in discharge to waters of the state. The following time frame applies to the petition and designation process.

SECTION 6. NR 216.06 (1) is amended by adding a note after s. NR 216.06 (1)(f) to read:

Note: Construction site erosion control and storm water management model ordinances that may be adopted voluntarily by a municipality are available within ch. NR 152.

SECTION 7. NR 216.06 (2)(a) is amended to read:

NR 216.06 (2)(a) Identification and outline of the storm water drainage basins, the watersheds and municipal separate storm sewer systems. Other major municipal, government or privately owned storm water conveyance systems lying within, but not owned or operated by the permittee shall also be identified.

SECTION 8. NR 216.06 (8) is amended to read:

NR 216.06 (8) PROPOSED MANAGEMENT PROGRAM. A schedule to provide a proposed storm water management program that shall be developed and initiated during the term of the permit in accordance with s. NR 216.07 (7) and (7m).

SECTION 9. NR 216.07 (7m) is created to read:

NR 216.07 (7m) PERFORMANCE STANDARDS. The storm water management program required in sub. (7) shall meet the performance standards in ss. NR 151.11, 151.12 and 151.13.

SECTION 10. NR 216.21 (2)(c) is amended to read:

NR 216.21 (2)(c) 1. Tier 3 categories shall include facilities that have certified to the department that they have no discharges of contaminated storm water and for which the department has concurred with the certification.

2. Facilities that have certified to the department, and the department concurs with the certification, that their storm water discharges contain only earthen materials from non-metallic mining operations, and that this stormwater is discharged to onsite seepage basins that effectively remove the contaminants prior to discharge to the groundwater.

SECTION 11. NR 216.21 (2)(b)10. is amended to read:

NR 216.21 (2)(b)10. Facilities previously classified as tier one dischargers which are subsequently classified as tier 2 under s. NR 216.23 (6) or (9).

SECTION 12. NR 216.23 (9) is amended to read:

NR 216.23 (9) MOVEMENT TO TIER 2. The department may make the determination that a facility or an industrial activity ~~defined under s. NR 216.21 (2) (a)~~ covered under a tier 1 general permit has no significant exposure of pollutants listed under s. NR 216.27 (3) (i) and is more appropriately covered by a tier 2 general permit.

SECTION 13. NR 216.26 (2) is amended to read:

NR 216.26 (2) DATE OF APPLICATION. Persons proposing to discharge storm water ~~within 6 months after November 1, 1994 shall submit to the department a completed storm water permit application at least 30 days prior to the commencement of activities at the site. Persons proposing to~~

~~discharge storm water after 6 months from November 1, 1994, or later,~~ shall submit to the department a ~~completed~~ complete storm water permit application at least 6 months prior to the commencement of activities at the site.

SECTION 14. NR 216.27 (3)(hm) is created to read:

NR 216.27 (3)(hm) The SWPPP shall meet the performance standards in s. NR 151.12 for those areas that are described in s. NR 151.12 (2).

SECTION 15. NR 216.29 (7) is amended to read:

NR 216.29 (7) RECORD RETENTION. Records required under this subchapter shall be retained for 5 years beyond the date ~~of the cover letter notifying a facility of coverage under a storm water permit that the report was made~~ and shall be made available to the department upon request.

SECTION 16. NR 216.30 is amended to read:

NR 216.30 Industrial storm water discharge permit fees. A storm water discharge permit fee shall be paid annually by each ~~industry~~ industrial facility holding a permit under this chapter or a wastewater discharge permit that incorporates storm water management requirements under this chapter. Permit fees are due June 30 of each year. ~~However, for 1994, the permit fees are due 60 days after November 1, 1994.~~ The fee shall be:

~~(a)~~ (1) \$200 for coverage under a tier 1 industrial general permit under s. NR 216.21 (2)(a), an industry-specific general permit under s. NR 216.24 with tier 1 requirements, or an individual WPDES permit under s. 283.31, Stats., with tier 1 requirements; or

~~(b)~~ (2) \$100 for coverage under a tier 2 industrial general permit under s. NR 216.21 (2)(b), an industry-specific general permit under s. NR 216.24 or an individual WPDES under s. 283.31, Stats., with tier 2 requirements; or

~~(c)~~ (3) \$0 for coverage under a tier 3 industrial general permit under s. NR 216.21 (2)(c); or

~~(d)~~ (4) \$500 for coverage under an individual WPDES permit issued under s. 283.33 (1), Stats.

SECTION 17. NR 216.41 is amended to read:

NR 216.41 Purpose. The purpose of this subchapter is to establish criteria defining those construction site activities that constitute discharges needing a WPDES storm water discharge permit, for landowners of construction sites that require coverage under a WPDES permit for storm water discharges; and the requirements for filing ~~applications for WPDES storm water discharge permits for a WPDES permit application for a construction site activities,~~ as required by s. 283.33, Stats.; to prescribe the form of the ~~applications~~ WPDES permit application pursuant to s. 283.37, Stats.; and to specify the number of working days within which the department will indicate its intended action on a WPDES permit

application or request for modification, pursuant to s. 227.116 (1), Stats. and to specify the storm water erosion control and management that is required at construction sites regulated under this subchapter.

SECTION 18. NR 216.42 (2m) is created to read:

NR 216.42 (2m) SILVICULTURE. Storm water discharges from silviculture activities, including tree nursery operations, tree harvesting road construction and maintenance, tree harvesting site preparation, tree harvesting operations, reforestation, tree thinning, prescribed burning and pest control are not covered by this subchapter. Clearing and grubbing of an area of a construction site is not considered a silviculture activity.

Note: Certain lumber, wood and paper product manufacturers may require coverage under an industrial general WPDES permit for storm water discharges pursuant to subchapter II. A silviculture activity may require approval pursuant to ch. 30 or 31, Stats., or an U.S. army corps of engineers section 404 permit.

SECTION 19. NR 216.43 (1) is amended to read:

NR 216.43 (1) FORMS. A notice of intent shall be submitted on forms supplied by the department. Data submitted in the notice of intent forms shall be used as ~~the basis for issuing storm water discharge permits conferring coverage under the general WPDES permit for storm water discharges. Different notice of intent forms are used to provide information from different sources of storm water discharge.~~

SECTION 20. NR 216.43 (2) is amended to read:

NR 216.43 (2) OBTAINING FORMS. Notice of intent forms may be obtained from the ~~district~~ regional offices of the department or by writing to the Department of Natural Resources, ~~WPDES Permit Section~~ Storm Water Program – WT/2, Box 7921, Madison, WI 53707-7921.

SECTION 21. NR 216.43 (4) is amended to read:

NR 216.43 (4) APPLICATION FEE. ~~(a)~~ A storm water construction site application fee of \$200 shall be paid to the department with the notice of intent, excluding notices filed under s. NR 216.42 (3), or (4) ~~or this subsection.~~

~~(b) Construction sites receiving erosion control plan review and inspection by a county, city, village or town with an ordinance in effect prior to January 1, 1994 that establishes standards for erosion control at commercial building sites are exempt from the permit application fee.~~

SECTION 22. NR 216.43 (6) is amended to read:

NR 216.43 (6) FILING. Notice of intent forms shall be filed with the regional office of the department in which the construction site activity is located or with the Department of Natural Resources, WPDES Permit Section Storm Water Program – WT/2, Box 7921, Madison, WI 53707-7921.

SECTION 23. NR 216.46 (1m) is created to read:

NR 216.46 (1m) PERFORMANCE STANDARDS. The construction site erosion control plan shall meet the applicable performance standards in either s. NR 151.11 or 151.23.

Note: Section NR 151.11 applies to construction sites that are not transportation facilities and s. NR 151.23 applies to transportation facility construction sites.

SECTION 24. NR 216.46 (2) is amended to read:

NR 216.46 (2) HANDBOOK. The *Wisconsin Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993 Revision) contains limitations on suitable conditions where best management practices can be applied. Tributary area limitations on the use of practices for trapping sediment in channelized flow conflict with the practices suggested in the January 7, 1987 version of the State Model Construction Site Erosion Control Ordinance. Also, best management practices within ch. NR 154 may conflict with the *Wisconsin Construction Site Best Management Practice Handbook*. Where this occurs, the specifications contained in the *Wisconsin Construction Site Best Management Practice Handbook* shall take precedence over erosion and other pollutant control requirements contained in the State Model Construction Site Erosion Control Ordinance and in ch. NR 154.

SECTION 25. NR 216.46 (4)(a) is amended to read:

NR 216.46 (4)(a) Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a USGS 7.5-minute series topographic map.

SECTION 26. NR 216.46 (4)(f) is amended to read:

NR 216 (4)(f) Depth to groundwater, as indicated by ~~soil~~ natural resources conservation service soil information where available, except when permanent infiltration systems are used, the depth to groundwater shall be identified as outlined in sub. (5); and

SECTION 27. NR 216.46 (4)(g) is amended to read:

NR 216.46 (4)(g) Name of immediate named receiving water from the United States geologic service 7.5-minute series topographic maps ~~or other appropriate source.~~

SECTION 28. NR 216.46 (6)(i) is created to read:

NR 216.46 (6)(i) Locations of all surface waters and wetlands within one mile of the construction site.

SECTION 29. NR 216.46 (6)(j) is created to read:

NR 216.46 (6)(j) An alphanumeric or equivalent grid overlying the entire construction site.

SECTION 30. NR 216.47 (4) is created to read:

NR 216.47 (4) PERFORMANCE STANDARDS. The storm water management plan shall meet the applicable performance standards in either s. NR 151.12 or 151.24.

Note: Section NR 151.12 applies to sites that are not transportation facilities and s. NR 151.24 applies to transportation facility sites.

SECTION 31. NR 216.55 (2) is amended to read:

NR 216.55 (2) OBTAINING FORMS. Notice of termination forms shall be obtained from the ~~district~~ regional offices of the department or by writing to the Department of Natural Resources, ~~WPDES Permit Section Storm Water Program – WT/2~~, Box 7921, Madison, WI 53707-7921.

SECTION 32. NR 216.55 (3) is amended to read:

NR 216.55 (3) FILING. Notice of termination forms shall be filed with the regional office of the department in which the construction site activity is located or to the Department of Natural Resources, ~~WPDES Permit Section Storm Water Program – WT/2~~, Box 7921, Madison, WI 53707-7921.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on January 22, 2002 and May 22, 2002.

The rules 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.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)