

The statement of scope for this rule, SS 051-19 was approved by the Governor on May 30, 2019, published in Register No. 762A2 on June 10, 2019, and approved by the Natural Resources Board on September 25, 2019. This rule was approved by the Governor on September 9, 2021.

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 216.022, 216.07 (6) (a) (note), (8) (e) (note), 216.21 (4), 216.29 (1) (e) (note), 216.32 (5), and 216.42 (6) and (10); to **renumber** 216.04, and 216.42 (2); to **renumber and amend** NR 216.06 and 216.415; to **amend** NR 216.003 (1), 216.005 (note), 216.03 (intro.) and (note), 216.03 (2) (a) and (b), 216.07 (intro), (1) (intro.), (5) (a), (6) (a), (6) (a) 2. and 4., (8) (intro) and (b), 216.09, 216.21 (2) (b) 1. and 7., (3) (b) 3 and (Note), (3) (e) 2., 216.22 (4) and (note), 216.27 (1), (3) (c) 9., 216.29 (1) (a), (b), (e) and (g), 216.31, 216.32 (2) and (4) (note), 216.42 (1), (3), and (3) (note), 216.43 (1), (1) (note), and (2), 216.44 (1) and (3), 216.455 (1) and (2), 216.46 (4) (a), 216.47 (1), 216.48 (1) (b) (note), 216.50 (1) (a), 216.54, and 216.55 (2) and (note); and to **create** NR 216.002 (1m), (7m), (12m), (18m), (19m), (23m), (25m), (36m), (37m), (39g), and (39r), 216.003 (3), 216.006, 216.007, 216.031 (4) and (note), 216.032, 216.04 (2) and (3), 216.07 (7) (i), (8) (f) to (j), (10) and (11), 216.075, 216.10 (5) (e) to (g), 216.27 (3)(c)9. (note), and (3)(j) 6., 216.42 (1), (2) (b) and (c), 216.42 (8) (note) and (8m), 216.43 (4) and (5), 216.46 (4) (g), 216.49 (3) and (4), and 216.55 (6) relating to storm water discharge permits and affecting small business.

**WT-09-19**

**Analysis Prepared by the Department of Natural Resources**

**1. Statute Interpreted:**

Section 283.33(1), (1m), and (9), Stats.

**2. Statutory Authority:**

Section 283.33(8), Stats.

**3. Explanation of Agency Authority:**

Section 283.33(8), Stats., directs the department to promulgate rules for the administration of s. 283.33, Stats., which sets forth the requirements for storm water discharge permits under the Wisconsin Pollutant Discharge Elimination System (WPDES) program. Chapter NR 216, Wis. Adm. Code, was initially promulgated in 1994 pursuant to the department's statutory authority and subsequently amended in 2004. Chapter NR 216 establishes the criteria under which municipalities, industrial facilities, and construction site landowners must obtain coverage under a WPDES storm water discharge permit pursuant to s. 283.33, Stats. The department proposes amending ch. NR 216 to align with federal storm water requirements and effectuate consistency with relevant changes to state statutes and federal requirements.

**4. Related Statutes or Rules:**

This rule is directly related to the statewide non-agricultural performance standards pursuant to ch. NR 151, Wis. Adm. Code, and s. 283.33(8), Stats., directing the department to develop rules for the administration of storm water discharge permits.

**5. Plain Language Analysis:**

Chapter NR 216 outlines the provisions for storm water discharge permits that apply to municipalities in urban areas, industrial facilities, construction sites that disturb one acre or more, and construction site that

disturb less than one acre but are part of a larger common plan of development. This chapter was last updated in 2004. The purpose of this proposed rule change is to address the issues identified by the U.S. Environmental Policy Agency (USEPA) Region 5 by letter to the DNR dated July 18, 2011 as a result of their Legal Authorities Review (LAR); 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 ch. NR 216; and update fees authorized by s. 283.33 (9), Stats.

(A) The proposed changes that affect all subchapters under ch. NR 216 are briefly summarized below:

- (1) Definitions—The department proposes defining additional terms to support language in the subchapters.
- (2) National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule—The department proposes creating s. NR 216.006 to require electronic submittal of permit applications, reports, and other documents. The section also establishes a waiver process for those who provide justification for submitting documents in hard copy. All references to document submittal requirements have been updated to reference s. NR 216.006.
- (3) References to ch. NR 151—The department proposes to update references to ch. NR 151 to include sections that became effective on January 1, 2011.
- (4) Water quality standards—The department proposes to create s. NR 216.007 to improve consistency with federal regulations regarding protections for outstanding resource waters (ORW), exceptional resource waters (ERW), and impaired waters. This section provides more direct code support for provisions in storm water permits requiring protection of high-quality water resources and reduction of pollutant discharges to impaired waters. Total Maximum Daily Loads (TMDLs) are required to be included in WPDES permits by s. 283.31(3)(d)3, Stats. and s. NR 205.067(3)(a), Wis. Adm. Code. The existing statute and code are tailored toward implementation for traditional point sources such as wastewater treatment plants. The department proposes modifications to ch. NR 216 to clarify how TMDLs are addressed in storm water permits.
- (5) Coverage under subsequent permits—The department proposes creating s. NR 216.003(3) to clarify applicability of expired and reissued general permits to entities covered under an industrial or construction general permit.
- (6) Other environmental programs—The department proposes repealing ss. NR 216.022, 216.21(4), and 216.42(6) to remove exemptions from storm water permitting for activities covered under other department programs. This revision addresses EPA issues 23 and 24 of the LAR.

(B) The proposed changes that affect the municipal subchapter are briefly summarized below:

- (1) National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule—The department proposes amending Subchapter I of ch. NR 216 to be consistent with federal regulations requiring permit conditions that are clear, specific, and measurable for the minimum control measures included in s. NR 216.07 and provide for public input on those conditions. The changes proposed clarify the department's authority to define requirements for these programs in permits, implement improvements in each successive permit, and obtain the information needed for those improvements from permit applications, reapplications, and reporting.
- (2) Application requirements—The department proposes amending subchapter I to clarify the application requirements for coverage under general and individual permits.
- (3) The department proposes to create s. NR 216.07(8)(f) to require permittees to identify any other entities they are relying on to satisfy some of the permit obligations within the annual report. This revision addresses EPA Issue 56 of the LAR.
- (4) Annual reporting requirements—The department proposes creating subsections within s. NR

- 216.07(8) to evaluate the effectiveness of an MS4s storm water management program within the annual report and require MS4s to summarize any changes to required programs. This revision addresses LAR issues 57 and 67.
- (5) Records—The department proposes to create s. NR 216.07(11) to require permittees to retain records related to permit requirements and make them available to the public. This revision addresses LAR issue 67.
  - (6) TMDLs—The department proposes amending s. NR 216.04 to clarify when TMDL provisions will be included in permits. The department proposes creating s. NR 216.07 (7) to require, within a permit, mapping related to TMDL implementation. The department proposes creating s. NR 216.07 (10) to provide a framework for TMDL implementation through demonstrated progress when meeting the TMDL in one 5-year permit term is not feasible. The existing urbanized area performance standard language previously listed under pollution prevention has also been moved into this section for clarity.
  - (7) Authorized local program—The department proposes renumbering s. NR 216.415 to s. NR 216.10. Additional discussion is provided in the discussion of proposed changes to the construction subsection.
- (C) The proposed changes that affect the industrial subchapter are briefly summarized below:
- (1) Permitted area—The department proposes amending s. NR 216.21(2)(b) to remove the exclusion of access roads and rail lines from the area covered by an industrial storm water discharge permit. This exclusion is not authorized by federal law. This revision addresses LAR issue 52.
  - (2) Construction and demolition disposal sites—The department proposes amending s. NR 216.21(2)(b)7. to clarify that construction and demolition waste disposal sites require industrial storm water permits.
  - (3) Location information—The department proposes amending ss. NR 216.21(3)(b)3.(Note) and 216.21(3)(e)2. to require that an applicant certifying ‘no exposure’ provide its latitude and longitude as part of that request. As a requirement, this information needs to be moved from a note to a code section. This revision addresses LAR issue 53.
  - (4) Storm Water Pollution Prevention Plan (SWPPP)—The department proposes amending s. NR 216.27 to allow the submittal of a SWPPP in lieu of a SWPPP summary form. The department proposes amending, ch. NR 216 to require industrial permittees to address ERW, ORW, impaired waters, and TMDLs in their SWPPP where applicable.
- (D) The proposed changes that affect the construction subchapter are briefly summarized below:
- (1) Authorized local program—The department proposes renumbering NR 216.415 to 216.10 and amending language within s. NR 216.415. This section provides for streamlined permitting for construction sites that require both state and local construction site erosion control permit coverage in participating municipalities. The section is renumbered to move it into the municipal permit subchapter to clarify that the department plans to limit participation to only those municipalities that hold an MS4 storm water discharge permit. The amendments require transfer of permit submittal documents from the participating municipality to the department before permit coverage is conveyed by both entities. It also includes references to provisions in the construction site chapter on permit coverage denial, revocation, and individual permit processes. The amendment adds a requirement for the participating municipality to notify the department of compliance issues that cannot be resolved within a specified time frame. This revision addresses EPA Issue 25 of the LAR.
  - (2) Exemptions for certain agricultural and silvicultural activities—The department proposes clarifying ss. NR 216.42 (2) to (3) and 216.57 (3) to be more consistent with state statute and federal regulations. The drainage district exemption in s. NR 216.42 (8m) incorporates an exemption added to s. 283.33 (1m) (a) 3. conditioned to maintain consistency with the Clean

Water Act per EPA comment. Drainage district ditch maintenance projects no more than 40 foot total width and under 1 mile in length typically qualify under the routine maintenance exemption under s. NR 216.42 (8).

- (3) Routine maintenance—The department proposes creating a note to s. NR 216.42 (8) to better align with federal implementation of this exemption and provide regulatory certainty.
- (4) Erosion control and storm water management plan—The department proposes adding requirements to discuss impacts to ORW, ERW, impaired waters, and TMDLs, in the list of elements required to be included in the plan.
- (5) Update fee structure and program delivery—The department proposes amending s. NR 216.43 (2) to update construction site storm water discharge permit fee categories and fees. The department also proposes creating s. NR 216.43 (5) to clarify that permittees are required to reapply for coverage when the duration of land disturbing construction activity extends longer than 3 years.
- (6) Certificate posting—The department proposes amending s. NR 216.455 (2) to clarify that certificates of permit coverage shall be posted in publicly accessible locations.
- (7) Amendments—The department proposes amending s. NR 216.50 to clarify the circumstances where an amendment is required and when a new notice of intent is warranted.

#### **6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

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.

The primary purpose of the proposed rule changes is to address technical inconsistencies with federal requirements and to address recently promulgated federal requirements that state-authorized local programs must accommodate. The federal storm water requirements are primarily found in 40 CFR Parts 122, 123, and 127. With the revisions contained in this rule package, department rules will be consistent with the following federal regulations:

- Storm water discharges applicable to state NPDES programs in 40 CFR 122.26,
- National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule amending 40 CFR 122,
- Permit requirements for regulated small MS4 permits in 40 CFR 122.34,
- Additional conditions for municipal separate storm sewer systems in 40 CFR 122.42 (c)(2),
- State program requirements in 40 CFR 123.1(g)(1) and 123.25 (a)(4), and
- The NPDES Electronic Reporting Rule in 40 CFR 127.

#### **7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:**

A Preliminary Public Hearing was held on August 23, 2019 for the statement of scope. No comments were received during the hearing. Midwest Environmental Advocates provided a written comment requesting assurance that the scope was broad enough to resolve the remaining issues from EPA’s July 2011 Legal Authority Review.

#### **8. Comparison with Similar Rules in Adjacent States:**

For this rule package, comparisons were made to other states in EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, and Ohio) and Iowa. All of those states are subject to the Clean Water Act and EPA regulations.

Illinois, Iowa, Michigan, and Minnesota appear to incorporate the Clean Water Act by reference in their respective administrative codes pertaining to storm water permitting (see 35 III. IL Adm. Code; Subtitle C.1 and s. 455B.103A, Iowa Code; and ss. R 323.2161, R 323.2190 Michigan Adm. Code; and ss. 790.100 to 790.300 Minnesota Adm. Code).

Indiana in 327 IAC 15-13, IAC 15-6, and IAC 15-5 provides regulations similar to those currently in ch. NR 216, Wis. Adm. Code.

Ohio, in chs. 3745-39, provides regulations similar to those currently being proposed in this rulemaking effort. Ohio updated its storm water rules in 2019 to address the Remand Rule and Electronic Reporting.

All six states establish permit fees via administrative code. Construction site permit fees range from \$100-\$750. Iowa's fees are based on the years of coverage (1, 3, 4, or 5), with fees ranging from \$175 to \$700. Illinois' fees are based on acres disturbed, with \$250 for less than 5 acres and \$750 for more than 5 acres. Indiana, Michigan, and Minnesota have flat fees of \$100 for Indiana and \$400 for Michigan and Minnesota.

### **9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

The proposed modifications to the construction permit application fees are based on an evaluation of current fees, current program costs, changes in workload, and permit application data from the department's database. An increase to the construction site application fees is proposed for the following reasons:

1. The current fees are \$140 to \$350 and have not been updated since 2003. Applying a 2% per year rate of inflation over 20 years, the fees in 2023 would be 1.49 times (150%) the 2003 fee amount to account for inflation.
2. The demand for construction site permitting services has increased both in number of permits and complexity of projects since 2003. There is increased demand for technical assistance on complex projects and technical standards incorporating new technology.
3. The department is required to charge storm water fees proportional to the cost of program administration. The current construction fees support 16% of construction program costs. In comparison, fees collected for municipal permits cover 48% of municipal program costs and those collected for industrial permits cover 65% of industrial program costs.
4. Costs associated with increased efficiencies in permit turnaround time during the past decade are not sustainable at the current level of funding. Developing the e-permitting system reduced notice of intent turnaround time from 31 days to 17 days. Ongoing support of the system is expected to cost about \$31,000 annually.
6. Increasing fees will allow the program to provide a more consistent level of service to permit applicants. In 2020, the department received the second highest number of construction site NOIs in all the years that the program has existed while also incurring a GPR funding lapse.
7. Fees are a small portion of overall project costs. Permits only apply to projects that are expected to disturb one acre or more of land for construction activities individually or as part of a larger common plan of development. Typical permitted projects have construction costs that exceed \$1 million.

Additional detail is provided in a memo titled 'Fee analysis related to proposed rule changes to ch. NR 216 (WT-09-19)' available at <https://dnr.wisconsin.gov/topic/stormwater/nr216revisions>.

The remainder of the changes to ch. NR 216 are focused on ensuring consistency with federal rules and state statutes and are not based on data or analysis.

### **10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

The economic impact analysis was developed using information from several sources. The number and type of entities potentially impacted were determined through reports from the database the department uses to track discharge permits. Municipal program update costs were developed using averages from recent urban non-point source grant application budgets for similar work. Hourly rates were based on information from the bureau for labor statistics. Costs incurred will primarily be due to additional information requested from municipal separate storm sewer permittees to conform to federal regulations, storm water pollution prevention plan updates for industrial sites with ongoing grading and increases to construction site permit fees. The following economic impact statements for related federal rules and state statutes were also referenced:

- National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule <https://www.epa.gov/sites/production/files/2015-09/documents/npdesea.pdf>
- National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule <https://www.regulations.gov/document?D=EPA-HQ-OW-2015-0671-0125>
- 2015 Wisconsin Act 307, chs. 30 and 283, Wis. Stats. <https://docs.legis.wisconsin.gov/2015/related/fe/ab755>

Methods for developing the economic impact and impact to small businesses are described in more detail in this rule's Fiscal Estimate/Economic Impact Analysis.

### **11. Effect on Small Business (initial regulatory flexibility analysis):**

This rule's net impact on small business is expected to be \$112,000. This includes \$2,400 in postage savings due to electronic permitting, \$30,200 in costs to industrial permittees with small businesses to update storm water pollution prevention plans, and \$84,200 in increased construction site permit fees and additional information required with the permit application.

For the construction subprogram, it was assumed that small businesses were most likely to be associated with the smallest sites. For the construction permit application fee updates, a separate category was created for sites with under 2 acres of land disturbance. The application fee for this category was increased at a lower rate compared to sites over 2 acres to limit impacts to small businesses and local government entities.

### **12. Agency Contact Person:**

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### **13. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax or email to the contact information listed above.

Written comments may also be submitted to the Department at

[DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov).

A virtual public hearing was held on April 20, 2021 at 1 pm. Written comments were due no later than April 30, 2021.

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## RULE TEXT

### **SECTION 1. NR 216.002 (1m), (7m), (12m), (18m), (19m), (23m), (25m), (36m), (37m), (39g), and (39r) are created to read:**

NR 216.002 (1m) "Benchmark" means a minimum numeric or narrative level of pollution control required to demonstrate progress toward a required level of pollution control.

(7m) "Exceptional resource water" or "ERW" means waters designated under s. NR 102.11.

(12m) "Individual permit" means a permit for the discharge of pollutants by an individual or group issued by the department under s. 283.33, Stats.

(18m) "Notice of intent" or "NOI" means an application for coverage under a WPDES permit. Except as otherwise provided in this chapter, NOI and application mean the same thing.

(19m) "Outstanding resource water" or "ORW" means waters designated under s. NR 102.10.

(23m) "Pollutant of concern" means a pollutant that has been identified as contributing to a water quality impairment of an impaired water.

(25m) "Receiving water" means the portion of a surface water that will be affected by an existing, proposed new, or increased discharge. Receiving water includes downstream surface waters that are affected by the discharge.

(36m) "TMDL implementation plan" means a list of specific and identifiable steps and actions a permittee intends to undertake and complete to meet a TMDL wasteload allocation.

(37m) "Total Suspended Solids" or "TSS" means settleable solid material that is transported by runoff or suspended within runoff.

(39g) "US EPA" means the United States environmental protection agency.

(39r) "Wasteload allocation" means the allocation resulting from the process of distributing or apportioning the total maximum load to each individual point source discharge.

### **SECTION 2. NR 216.003 (1) is amended to read:**

NR 216.003 (1) CONDITIONS AND DURATION. In addition to the terms and conditions listed under this chapter, if the department issues a storm water discharge general permit ~~is issued~~, it may in the permit

require compliance with the terms and conditions identified in s. NR 205.08. The term of the permit shall be at least 2 years but no longer than 5 years in duration.

**SECTION 3. NR 216.003 (3) is created to read:**

NR 216.003 (3) COVERAGE UNDER SUBSEQUENT PERMIT. Unless notified otherwise by the department, general permittees covered under subchs. II and III shall remain covered under an expired general permit or conveyed coverage under a reissued general permit as described under s. NR 205.08 (9) (a).

**SECTION 4. NR 216.005 (Note) is amended to read:**

NR 216.005 Note: Pursuant to the requirements to maintain the long-term storm water management practices in accordance with ss. NR 151.12 ~~and to 151.128 and 151.24 to 151.249~~, the department may take enforcement action under this section and s. 281.98, Stats., against a land owner for not maintaining long-term storm water management practices.

**SECTION 5. NR 216.006 is created to read:**

**NR 216.006 Electronic reporting of information.** (1) The department shall provide an electronic reporting system to receive information from WPDES permit applicants and WPDES permittees as required in subchs. I to III. The electronic reporting system shall comply with s. Adm 12.05 and include electronically fillable forms developed by the department.

(2) Persons applying for permit coverage under ss. NR 216.03, 216.22, 216.43 shall submit a notice of intent to discharge under a general WPDES permit or an application for coverage under a WPDES permit via the system created under sub. (1) unless granted a waiver under sub. (6) or (7).

(3) Persons applying for a no exposure certification under s. NR 216.21 (3) shall submit the information required under s. NR 216.21 (3) (b) 3. via the system created under sub. (1) unless granted a waiver under sub. (6) or (7).

(4) The department may require permittees to utilize the system created under sub. (1) to submit documents and forms required under subchs I to III as needed to comply with s. 283.43 (1) (b), Stats., unless granted a waiver under sub. (6) or (7).

(5) The department may include terms and conditions in WPDES permits issued under this chapter to require permittees to utilize the system created under sub. (1) to submit documents and forms required by the permit to the department as needed to comply with s. 283.43 (1) (b), Stats., unless granted a waiver under sub. (6) or (7).



(6) The department may establish an episodic waiver from electronic reporting requirements for an owner, operator, or authorized representative of the regulated facility or entity in an area affected by a large-scale emergency, natural disaster, or during electronic reporting system outages lasting more than 96 hours. The department shall notify eligible parties and identify a period of up to 60 days for which the episodic waiver is in effect. The notification shall also identify whether delayed electronic submittals are allowed, if paper submittals are required, and a mailing address for paper submittals to be sent, if applicable.

(7) Any owner, operator, or authorized representative of the regulated facility or entity required to submit information electronically under subs. (2) to (5) may apply for a temporary or permanent waiver from electronic reporting through the following process:

(a) To apply for an electronic reporting waiver, the owner, operator, or authorized representative of the regulated facility or entity shall submit all of the following information in writing via certified or registered mail to the department of natural resources storm water program at WT/3, PO Box 7921, Madison, WI 53707-7921:

1. Name and contact information for the person requesting the waiver.
2. Facility or site name.
3. WPDES permit number, if applicable or the type of submittal the applicant is requesting a waiver for.
4. Facility or site address.
5. Brief statement regarding the basis for claiming a waiver.
6. Any other information required by the department.
7. Signature of the landowner, operator, or authorized representative.

(b) Within 14 business days of receipt of a complete request for a waiver, the department shall determine whether to grant a temporary or permanent waiver and provide notice of the determination to the owner, operator, or authorized representative submitting the waiver request. If the waiver is granted, the department's notice shall include all applicable forms, identify the mailing address for the submission of the information under subs. (2) to (4) and identify which submittals shall be sent via registered or certified mail. In determining whether to grant the waiver, the department shall consider all of the following:

1. For temporary waivers effective for up to 5 years, whether mandatory electronic reporting is technically infeasible due to lack of sufficient broadband availability or will otherwise be unduly burdensome or costly.

2. For permanent waivers, whether mandatory electronic reporting is an infringement of religious practices, such as for a facility owned or operated by members of religious communities that choose not to use computers, electricity, or internet services.

(8) Approved waivers under subs. (6) and (7) are not transferable.

**SECTION 6. NR 216.007 is created to read:**

**NR 216.007 Water quality standards.** The department, in individual and general WPDES permits issued under subchs. I to III, shall specify the terms and conditions under which storm water may be discharged to waters of the state for the purpose of achieving and implementing water quality standards contained in chs. NR 102 to 105, 140, and 207. The department, in individual and general permits issued under subchs. I to III, shall include an expression of the applicable wasteload allocation consistent with the assumptions and requirements laid out in the TMDL.

**SECTION 7. NR 216.022 is repealed.**

**SECTION 8. NR 216.03 (1) and NR 216.03 (1) (Note) are amended to read.**

**NR 216.03 Application for permit coverage.** (1) The owner or operator of a municipal separate storm sewer system identified as needing a permit under s. NR 216.02 shall submit an application under sub. (2) for coverage under a WPDES permit under this subchapter to the department within 90 days of a department letter notifying the owner or operator that a permit application is required. The application shall be submitted on forms made available from the department as specified under s. NR 216.006.

Note: ~~Under 40 CFR 122.33(c)(1), the owner or operator of a municipal separate storm sewer system listed under s. NR 216.02 (3) was required to apply for permit coverage by March 10, 2003. Notice of intent forms may be obtained from the department by writing to the Department of Natural Resources, Storm Water Program—WT/2, PO Box 7921, Madison, WI 53707-7921 or by calling the storm water program at.~~ Application forms may be obtained from the department website at <https://dnr.wisconsin.gov/topic/Stormwater/municipal> or by calling 1-888-936-7463(608) 267-7694.

**SECTION 9. NR 216.03 (2) (a) and (b) are amended to read:**

NR 216.03 (2) (a) Under a general permit. Applications for coverage under a general permit shall be submitted in accordance with s. NR 216.031.

(b) Under an individual permit by themselves or as a co-applicant. Applications for coverage under an individual permit shall be submitted in accordance with s. NR 216.032.

**SECTION 10. NR 216.031 (4) and (Note) are created to read:**

NR 216.031 (4) OTHER REQUIREMENTS. A list of MS4 discharges to an outstanding resource water, exceptional resource water, impaired waters, and discharges of a pollutant of concern covered by a US EPA-approved TMDL. A description of the current control measures being implemented to meet applicable requirements for those discharges pursuant s. NR 216.07 (10).

Note: A list of outstanding resource waters and exceptional resource waters may be found on the department website at: <https://dnr.wi.gov/topic/SurfaceWater/orwerw.html>. A list of Wisconsin impaired waterbodies is updated every two years and may be found on the department website at: <http://dnr.wi.gov/topic/impairedwaters/>. A list of Wisconsin US EPA approved TMDLs may be found on the department website at: <https://dnr.wisconsin.gov/topic/TMDLs>

**SECTION 11. NR 216.032 is created to read:**

**NR 216.032 Individual permit application requirements.** Municipalities subject to the requirements of this subchapter seeking coverage under a storm water discharge individual permit shall apply by submitting the necessary application information to the department. The individual permit application shall include all of the following:

- (1) The information listed in s. NR 216.031 (1).
- (2) The best management practices that the municipality proposes to implement for each of the programs described in s. NR 216.07 (1) to (6).
- (3) Information on any discharges to designated waters as described in s. NR 216.06 (4).
- (4) The proposed measurable goals for each of the BMPs including, as appropriate, the months and years in which the municipality proposes to undertake required actions, including interim milestones and the frequency of the action.
- (5) The person or persons responsible for implementing or coordinating the storm water management program.
- (6) An estimate of square mileage served by the municipality.
- (7) A storm sewer map that satisfies the requirements of s. NR 216.07 (7).
- (8) Any additional relevant information that the department requests.

**SECTION 12. NR 216.04 is renumbered NR 216.04 (1).**

**SECTION 13. NR 216.04 (2) and (3) are created to read:**

NR 216.04 (2) For each applicant or permittee subject to a US EPA-approved TMDL, the department shall include in the permit an expression of the wasteload allocation, or may derive a percent

reduction for the pollutant of concern, consistent with the wasteload allocation and assumptions contained in the US EPA-approved TMDL that is designed to achieve water quality standards. If applicable, the TMDL-based percent reduction for TSS shall be included in a permit in addition to the requirements under s. NR 151.13 (2) (b).

(3) For each applicant or permittee discharging to an impaired water for which a TMDL is under development at the time of permit issuance, the department may include in the permit a requirement to begin development of a TMDL implementation plan once the TMDL is approved. Implementation will not be required until the permit term following TMDL approval.

**SECTION 14. NR 216.06 is renumbered NR 216.031 and NR 216.031 (intro.), (1), (2)(intro.), and (3) are amended to read:**

**NR 216.031 ~~Application~~ General permit application requirements.** Municipalities subject to the requirements of this subchapter ~~for a storm water discharge permit by submitting the necessary application information to the department seeking coverage under a general permit shall submit an application for permit coverage to the department. The municipal storm water discharge permit application shall~~ The contents of the application shall be specified in the general permit, shall require the submission of information necessary to demonstrate adequate program implementation, and at a minimum shall include all of the following:

(1) GENERAL INFORMATION. ~~The applicant's name, address, telephone number of contact person and status as a government entity.~~

(a) The legal name, address, and telephone number of the municipal owner or operator, and additional contact persons.

(b) Status as a government entity.

(c) Type of facility or discharges.

(d) The receiving waterbodies.

(e) Any additional relevant information that the department requests.

(2) MINIMUM CONTROL MEASURE INFORMATION. Descriptions of ~~the minimum control measures that~~ how the applicant intends to ~~implement~~ to comply with all of the following permit requirements:

(3) STORM SEWER SYSTEM MAP. ~~A description of a municipal separate storm sewer system~~ street map showing corporate boundaries, U.S. census urbanized area boundaries, and limits of any sanitary sewer service area.

**SECTION 15. NR 216.07 (intro.), (1) (intro.), (5) (a), and (6) (a) are amended to read:**

**NR 216.07 (intro.) Permit requirements.** The department shall establish permit conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to achieve and implement the water quality standards contained in chs. NR 102 to 105, 140, and 207. The department shall issue permits using the information provided by the applicant and other pertinent information when developing permit conditions. Permit conditions shall be expressed in clear, specific, and measurable terms. Permits shall, at a minimum, require development and implementation of written storm water management programs that address all of the following:

(1) PUBLIC EDUCATION AND OUTREACH. (a) (intro.) A public education and outreach program ~~to distribute materials to the public or conduct equivalent public outreach~~ using a variety of delivery mechanisms to increase awareness of storm water impacts on waters of the state. The program shall at a minimum be designed to achieve all of the following:

(5) (a) The implementation and enforcement of a legal authority to comply with ~~ss. NR 151.12 to 151.128, and 151.24 to 151.249.~~

(6) (a) A storm water management program and an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff and meeting the requirements of s. NR 216.07 (10). ~~This program shall achieve compliance with the developed urban area performance standards of s. NR 151.13 (2) for those areas that were not subject to the post-construction performance standards of ss. NR 151.12, and 151.24. The total suspended solids control requirements of s. NR 151.13 (2) (b) 1. b. and 2. may be achieved on a regional basis across an urban area or on an individual basis.~~ The program shall include all of the following activities:

**SECTION 16. NR 216.07 (6) (a) NOTE is repealed.**

**SECTION 17. NR 216.07 (6) (a) 2. and 4. are amended to read:**

NR 216.07 (6) (a) 2. Roadway maintenance including street sweeping and de-icer management. Permits may include requirements for de-icer usage tracking, equipment calibration, training, and de-icer reduction strategies.

4. Management of municipal garages, storage areas, and other municipal sources of pollution. Site-specific storm water pollution prevention plans shall be developed for sites with bulk storage piles, outdoor vehicle maintenance, fueling, outdoor material storage, uncovered dumpsters, composting, and other areas with discharges deemed by the department to be significant contributors of pollutants to waters of the state. Permits shall contain requirements for storm water pollution prevention plans that include the elements in s. NR 216.27 that are relevant to municipal sources of pollution.

**SECTION 18. NR 216.07 (7) (i) is created to read:**

NR 216.07 (7) (i) If the permittee is subject to a US EPA-approved TMDL, boundaries of applicable watersheds associated with a TMDL wasteload allocation.

**SECTION 19. NR 216.07 (8) (intro) and (8) (b) are amended to read:**

NR 216.07 (8) (intro) ANNUAL REPORT. For the permittee's first permit term of 5 years, submission of an annual report to the department. After the term of the first permit, the department may reduce annual reporting frequency but annual reports shall be filed in the 2nd and 4th years of the subsequent permit terms. Annual reports shall be submitted to the department using forms available from the department as specified under s. NR 216.006. The municipal governing body, interest groups and the general public shall be encouraged to review and comment on the annual report in accordance with sub. (2). The annual report shall include the following information:

(8) (b) A summary of activities to comply with ~~sub~~ subs. (6) and (10).

**SECTION 20. NR 216.07 (8) (e) Note is repealed.**

**SECTION 21. NR 216.07 (8) (f) to (j), are created to read:**

NR 216.07 (8) (f) If applicable, notice that the permittee is relying on another entity to satisfy some of the permit requirements as described in s. NR 216.075.

(g) An evaluation of the effectiveness of the components of the permittee's storm water management program.

(h) A summary of the progress toward implementing identified actions and activities to comply with requirements of sub. (10) (d) and if applicable, any changes to the TMDL implementation plan.

(i) A summary of any proposed changes to the permittee's storm water management programs created to comply with the requirements of subs. (1) to (6) and (10).

(j) For the annual report submitted in the 4th year of the permit term, the permittee shall also submit a fiscal evaluation summarizing program expenditures for the current permit term, projected program allocations for the subsequent permit term, and a list of planned modifications to storm water best management practices and programs necessary to comply with permit requirements or to achieve measurable goals.

**SECTION 22. NR 216.07 (10) is created to read:**

NR 216.07 (10) OTHER REQUIREMENTS.

(a) *Urbanized area performance standards.* Installation and maintenance of source area controls and regional best management practices to comply with the developed urban area performance standards of s. NR 151.13 (2) and the post-construction performance standards of ss. NR 151.12 to 151.128 and 151.24 to 151.249. The total suspended solids control requirements of s. NR 151.13 (2) (b) 1. b. may be achieved on a regional basis across an urbanized area or within the urban storm water planning area for a municipality. The total suspended solids control requirements of s. NR 151.13 (2) (b) 1. b. may be achieved on a regional basis across an urbanized area or within the urban storm water planning area for a municipality.

(b) *Impaired waters.* For a permittee that discharges to an impaired waterbody but for which there is no US EPA-approved TMDL for the pollutant of concern, the permittee shall include a written section in its storm water management program that discusses the management practices and control measures it will implement as part of its program to reduce, with the goal of eliminating, the discharge of pollutants of concern that contribute to the impairment of the waterbody.

Note: Every 2 years, the department updates and publishes a list of waters considered impaired under the Clean Water Act. The list is updated in even-numbered years. A list of Wisconsin impaired waterbodies may be found on the department website at: <http://dnr.wi.gov/topic/impairedwaters/>

(c) *US EPA-approved TMDL.* If the permittee is subject to a US EPA-approved TMDL, the permittee shall evaluate its compliance with the applicable wasteload allocation consistent with the assumptions and requirements outlined in the TMDL. If the permittee cannot demonstrate compliance with the wasteload allocation within the first permit term, then the department may allow a permittee to develop a TMDL implementation plan that extends beyond one permit term for attaining the wasteload allocation. The implementation plan shall include estimated cost, schedules, assumptions, and levels of anticipated pollution control for each action. The TMDL implementation plan shall demonstrate continued progress leading to the attainment of the wasteload allocation as soon as possible. The department may establish numeric and narrative benchmarks within each permit term to ensure continued reduction of the pollutant of concern. In determining the length of time allowed under the TMDL implementation plan, the department shall consider all of the following factors:

1. Whether there is a need for the installation of both structural best management practices and the implementation of operation and maintenance programs to attain the wasteload allocation, and if so, how long it will take to implement taking into account factors including the need to acquire property, the need to remove or replace existing infrastructure, and the ability to obtain the necessary financing.
2. The length of time the permittee has had to attain the wasteload allocation under prior permits.
3. The extent to which the permittee has made good faith efforts to attain the wasteload allocation and other requirements in prior permits, if applicable.

4. The extent to which existing best management practices have proven to be effective in addressing the pollutant of concern covered by the wasteload allocation.

5. Whether the TMDL implementation plan is appropriate and necessary because the permittee cannot attain the wasteload load allocations within the existing permit term.

Note: The reports for Department and USEPA approved TMDLs are available from the department website at: <https://dnr.wi.gov/topic/TMDLs/tmdlreports.html>

(d) *Assessment.* A permittee shall conduct an assessment of the actions required to be taken under this subsection. The assessment shall include a pollutant-loading analysis using an urban water quality model that uses small storm hydrology or equivalent methodology that is approved by the department, or monitoring, trend analysis, or other appropriate qualitative or quantitative evaluation methods approved by the department. At a minimum, a pollutant-loading analysis shall be conducted for total suspended solids, phosphorus, any applicable pollutants of concern covered under an applicable US EPA-approved TMDL, and pollutants of concern discharged by the permittee to a listed impaired waterbody, ERW, or ORW.

Note: The department believes that computer modeling provides an efficient and cost-effective method for calculating pollutant loads. Pollutant loading models such as WinSLAMM, P8, or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids. Information on how to access WinSLAMM and P8 is available at <http://dnr.wi.gov/topic/stormwater/standards/slamm.html>.

**SECTION 23. NR 216.07 (11) is created to read:**

NR 216.07 (11) RECORDS. The permittee shall keep records relating to compliance with s. 283.33, Stats., this subchapter, or a permit issued under the subchapter for at least 3 years from the date of creation and make the records available to the public in accordance with subch. II of ch. 19, Stats.

**SECTION 24. NR 216.075 is created to read:**

**NR 216.075 Reliance on another entity. (1)** In this section, “another entity” or “other entity” means another permittee, unit of government, or organization that is separate and distinct from the permittee that is relying on another entity.

(2) A permittee may rely on another entity to implement a minimum control measure or another requirement of a permit issued under this subchapter provided all the following conditions are met:

(a) The other entity implements the minimum control measure or permit requirement.



(b) The minimum control measure or requirement, or component thereof, is at least as stringent as the corresponding permit requirement.

(c) The other entity agrees to implement a minimum control measure or requirement on the permittee's behalf, demonstrated by executing a formal written agreement signed by both parties' authorized representatives. The agreement shall be explicit as to which specific minimum control measure or requirement is being implemented by the other entity. A copy of an executed agreement created under this section shall be submitted to the department upon the department's request.

(d) The permittee remains responsible for the compliance with all permit obligations if the other entity fails to implement any minimum control measure or requirement provided for in an agreement under par. (c).

(3) If the department finds that an agreement executed under sub. (2) (c) is deficient, does not meet the requirements of sub. (2), or does not meet a requirement of a permit issued under this subchapter, the permittee may not rely on the other entity to implement the minimum control measure or requirement.

(4) If the department finds that the other entity does not effectively implement a minimum control measure or requirement pursuant to an agreement executed under this section, the permittee shall not rely on the other entity to implement the minimum control measure or requirement.

(5) A permittee or other entity that terminates an agreement under this section shall notify the department within 5 business days of the termination. Upon termination, the permittee shall become responsible for implementing a minimum control measure or other requirement of a permit issued under this subchapter that was subject to an agreement under sub. (2) (c).

**SECTION 25. NR 216.09 is amended to read:**

**NR 216.09 ~~Permit reissuance~~ Individual permit reapplication.** In order to remain covered after the expiration date of a an individual permit issued under this subchapter, a permittee shall reapply to the department at least 180 days prior to the expiration date of the permit for continued coverage under a reissued permit. Permittees shall include the elements listed in ss. NR 216.032 and 216.07 (8) (j) in the reapplication. If the permit is not reissued by the time the existing permit expires, the existing permit remains in effect. ~~To reapply for permit coverage, a permittee shall send a letter to the department that includes proposed changes to the storm sewer system map, storm water management program and any other relevant change.~~

**SECTION 26. NR 216.10 (5) (e) to (g), are created to read:**

NR 216.10 (5) (e) An authorized local program under this subsection shall include procedures to satisfy local and department NOI requirements under sub. (6). These procedures shall include transmittal of permit NOI materials to the department and acknowledgement of receipt by the department prior to notifying the landowner that permit coverage has been conveyed to the landowner by both entities.

NR 216.10 (5) (f) The municipality shall review all erosion and sediment control plans and post-construction storm water management plans to assure compliance with both local and state construction site erosion control and storm water management requirements.

NR 216.10 (5) (g) The authorized local program shall have procedures for notifying the department of non-compliance with provisions in subch. III which are not corrected by the permittee within 14 days.

**SECTION 27. NR 216.21 (2) (b) 1. and 7. are amended to read:**

NR 216.21 (2) (b) 1. Manufacturing facilities defined by Table 2, ~~not including their access roads and rail lines:~~

NR 216.21 (2) (b) 7. Landfills, land application sites and open dumps that receive or have received any industrial waste from any of the facilities identified in this section, including those subject to regulation under subtitle D of the resource conservation and recovery act, 42 USC 6901 et seq., or ch. 289, Stats. For the purposes of this subdivision, "industrial waste" means a disposed material generated by any of the facilities identified in this section including construction and demolition waste from a construction site regulated under subch. III. The term does not include placement of recycled material used during construction.

**SECTION 28. NR 216.21 (3) (b) 3., (3) (b) 3. (Note), and (3) (e) 2. are amended to read:**

NR 216.21 (3) (b) 3. Submit an initial "no exposure" certification to the department ~~within 6 months after August 1, 2004 using U.S. EPA NPDES Form 3510-11 or~~ at least 14 working days prior to the start of industrial operations on a form available from the department. ~~The "no exposure" form shall be mailed to: Department of Natural Resources, Storm Water Program WT/2, PO Box 7921, Madison, WI 53707-7921.~~ as specified under s. NR 216.006.

(Note) The department's no exposure certification form, Form 3400-188, requests necessary information to be consistent with federal requirements and U.S. EPA NPDES Form 3510-11, ~~including the latitude and longitude of the facility.~~ U.S. EPA has published a guidance document entitled Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On "No Exposure" of Industrial Activities to Storm Water, EPA 833-B-00-001, dated June 2000. This guidance is available from the U.S. EPA website at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>. The department

no exposure certification form is available from the department website at <http://dnr.wi.gov/topic/stormwater/industrial/forms.html> ~~https://dnr.wi.gov/topic/stormwater/industrial/forms.html~~ or by calling 1-888-936-7463.

(3) (e) 2. The facility name, address, ~~and the county name where the facility is located,~~ and the latitude and longitude where the facility is located.

**SECTION 29. NR 216.21 (4) is repealed.**

**SECTION 30. NR 216.22 (4) and (Note) is amended to read:**

NR 216.22 (4) FORMS. Notices of intent shall be submitted to the department using forms available from the department as specified in s. NR 216.006.

Note: Notice of intent forms are available from the department website at <http://dnr.wi.gov/topic/stormwater/industrial/forms.html> ~~or by contacting the storm water program in the bureau of watershed management at (608) 267-7694~~ ~~Unless the department directs otherwise, use notice of intent Form 3400-163 to apply for industrial storm water discharge permit coverage. Owners or operators of non-metallic mines may apply for coverage using the department notice of intent Form 3400-179.~~ by calling 1-888-936-7463.

**SECTION 31. NR 216.27 (1) is amended to read:**

NR 216.27 (1) APPLICABILITY. Any person who owns or operates ~~a storm water discharge covered by a general or individual storm water discharge permit~~ an industrial activity with a storm water discharge subject to the applicability requirements of s. NR 216.21 (2) that does not qualify for a no exposure certification under s. NR 216.21 (3) shall prepare and implement ~~a~~ SWPPP under this section.

**SECTION 32. NR 216.27 (3) (c) 9. is amended to read:**

NR 216.27 (3) (c) 9. The name and location of receiving waters. Also identify receiving waters, including downstream waters, that are designated as ERW, ORW, or impaired waters.

**SECTION 33. NR 216.27 (3) (c) 9. (Note), and (j) 6. are created to read:**

NR 216.27 (3) (c) 9. (Note) A list of outstanding resource waters and exceptional resource waters may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/orwerw.html>. A list of Wisconsin impaired waterbodies is updated every two years and may be found on the department website at: <http://dnr.wi.gov/topic/impairedwaters/>.

(3) (j) 6. Any pollutant identified as contributing to the impairment if the facility discharges to an impaired water.

**SECTION 34. NR 216.29 (1) (a), (b), and (e) are amended to read:**

NR 216.29 (1) (a) Owners or operators of proposed facilities that will have one acre or more of land disturbing construction activities as part of their construction, shall develop a SWPPP and submit either the SWPPP or a SWPPP summary to the department at least 14 working days prior to initiating land disturbing construction activities at the site or submit a no exposure certification to the department ~~pursuant to~~ under s. NR 216.21 (3).

(b) Owners or operators of other facilities shall develop a SWPPP and submit ~~an~~ either the SWPPP or a SWPPP summary to the department prior to initiating industrial operations.

(e) The SWPPP summary shall be submitted on a standardized department form as specified under s. NR 216.006.

**SECTION 35. NR 216.29 (1) (e) (Note) is repealed.**

**SECTION 36. NR 216.29 (1) (g) is amended to read:**

NR 216.29 (1) (g) The SWPPP summary shall include the results of the non-storm water discharge evaluations required under s. NR 216.28 (1) and shall indicate whether the SWPPP includes a storm water treatment practice. If a SWPPP includes a storm water treatment practice, the department may require the submittal of plans and specifications for the storm water treatment practice for review and approval pursuant to s. 281.41 (1), Stats.

**SECTION 37. NR 216.31 is amended to read:**

**NR 216.31 Permit coverage transfers.** A permittee who will no longer control the permitted industrial facility may request that permit coverage be transferred to the person who will control the industrial facility. The transfer request shall be completed on forms provided by the department as specified under s. NR 216.006 and signed by both the permittee and the new owner or operator. If the permittee's signature cannot be obtained, the new owner or operator shall apply for coverage as specified under s. NR 216.22. The department may require additional information including a notice of intent to be filed prior to transferring permit coverage. Coverage is not transferred until the department sends notification of transfer approval to the new owner or operator.

**SECTION 38. NR 216.32 (2) and (4) (Note) are amended to read:**

NR 216.32 (2) A notice of termination shall be submitted on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage under this subchapter.

(4) (Note) The notice of termination form is available from the department website at <http://dnr.wi.gov/topic/stormwater/industrial/forms.html> or by ~~contacting the storm water program in the bureau of watershed management at (608) 267-7694~~ calling 1-888-936-7463.

**SECTION 39. NR 216.32 (5) is repealed.**

**SECTION 40. NR 216.415 is renumbered NR 216.10 and NR 216.10 (1), (2), (3) (title), (3) (b), (4), (5) (title), (5) (a), (5) (c), (6), (7) (intro), (7), (7) (b) (note), (7) (c) (note), (8) (a), (8) (b) (intro), (8) (b) 2., (8) (b) 3., (10) (a) (intro), (10) (a) 2., (10) (a) 3., and (10) (a) 5. are amended to read:**

NR 216.10 (1) PURPOSE. The purpose of this section is to promote efficient, and integrated administration implementation and oversight of the state and municipal construction site erosion control and storm water management programs requirements. A municipality covered under a permit issued under this subchapter with an authorized local program approved by the department will be the primary entity fulfilling the technical and administrative responsibilities shall review ~~of~~ erosion and sediment control plans and post-construction storm water management plans to assure compliance with both local and state construction site erosion control and storm water management requirements. Authorized local programs ~~will simplify~~ shall streamline the permitting review process for landowners and operators responsible for complying with state and local laws regulated by a municipal permittee under this subchapter and by the department under subch. III and facilitate the integration of erosion control and storm water requirements with other local planning and zoning functions. Notwithstanding an approval of an authorized local program, The the department retains its authority to conduct site inspections and take enforcement against individual landowners and operators for violations of this chapter subch. III.

NR 216.10 (2) VOLUNTARY PARTICIPATION. Any municipality subject to a permit issued under this subchapter may apply to the department for authorization approval of its an authorized local program applicable to sites within the area covered by the municipality's erosion and sediment control and post-construction storm water ordinances.

NR 216.10 (3) (title) AUTHORIZED LOCAL PROGRAM APPLICATION AND APPROVAL PROCESS.

NR 216.10 (3) (b) The department ~~will~~ shall review the application and any other relevant information and determine whether to authorize the local program. The department shall base its decision on the applicant's ability to meet the requirements in subs. (5) and (6). The department shall notify the

applicant in writing of its decision. If the application is denied, the department shall identify the reasons for denial.

NR 216.10 (4) ~~STATE COVERAGE UNDER STATE PERMIT. Any A~~ permittee or landowner of a construction site that is regulated by an authorized local program under this section ~~is deemed to be covered and is required to be covered~~ under a department construction site storm water discharge permit issued ~~pursuant to this subchapter~~ under subch. III and shall comply with the requirements of the department's permit. If the site does not meet the applicability criteria of the state construction site stormwater discharge general permit, the provisions of s. NR 216.51 (5) shall apply. If coverage under the state general permit is revoked by the department, the provisions of ss. NR 216.51 (4) and (5) shall apply. The department may enforce against the landowner of a construction site for violation of the permit.

NR 216.10 (5) (title) AUTHORIZED LOCAL PROGRAM REQUIREMENTS.

NR 216.10 (a) The municipality shall have the legal authority and resources to implement and enforce the requirements of ~~this subchapter~~ subch. III.

NR 216.10 (c) The municipality shall implement a program to inform the public that it has an authorized local program under which landowners are to ~~apply for~~ submit a notice of intent to discharge and erosion control and storm water management plans approval under this subchapter via the municipality.

NR 216.10 (6) ~~APPLICATION NOTICE OF INTENT.~~ For construction sites regulated under ~~this subchapter~~ section, all of the following apply:

~~(a) A municipality operating an authorized local program shall clearly identify in writing to applicants seeking municipal erosion control and storm water management approval, that applicants will also be granted coverage under the department's general construction site storm water discharge permit pursuant to sub. (4).~~

~~(b) (a) A municipality operating an authorized local program shall require that~~ The landowners of a construction site that is regulated by an authorized local program shall submit to the authorized local program a copy of the department's notice of intent using either the department's forms or an equivalent department and municipal joint application form to request municipal erosion control and storm water management approval. An equivalent department and municipal joint application form shall comply with the signature requirements under s. NR 216.43 (3). The submittal of a complete application to a municipality operating an authorized local program by a landowner constitutes submittal to the department of a notice of intent under s. NR 216.43. The application that is required under this paragraph shall be sent to the department if the department requests a copy.

~~(e)~~ (b) 1. The 14-working day timeline for permit coverage authorization granted under s. NR 216.44 does not apply to construction sites regulated by an authorized local program under this section.

2. ~~Under this section, the notice of intent or equivalent application shall be submitted by the landowner.~~ The landowners who submit the notice of intent or equivalent department and municipal joint application under par. (a) shall submit the notice of intent to the municipality operating the authorized local program at least 30 calendar days prior to the anticipated commencement of any land disturbing construction activities. The municipality shall provide the application to the department 14 business days before the end of the 30-day period or before granting coverage, whichever occurs earlier. Unless notified to the contrary by the municipality or the department, a landowner who has submitted a notice of intent or equivalent application in accordance with this section is authorized to discharge storm water from a construction site under the terms and conditions of the department's general construction site storm water discharge permit 30 calendar days after the date that the municipality operating the authorized local program receives the notice of intent or equivalent application. The municipality may grant coverage to a landowner in a period of less than 30 days.

NR 216.10 (7) (intro) SITE REVIEW. A municipality operating an authorized local program shall perform all of the following for applications-notice of intent for construction site approval under this section:

NR 216.10 (7) (b) (note) The construction site storm water discharge permit issued pursuant to ~~this chapter subch. III~~ expressly requires that the construction project be conducted in accordance with the requirements listed under par. (a).

NR 216.10 (7) (c) (note) ~~A municipality operating an authorized local program has the authority to grant general permit coverage under this subchapter. However, projects-Projects~~ that require a permit under ch. 30, Stats., ~~or~~ water quality certification, a wetland fill permit, or other permits and approvals for work within waterways or wetlands are not included in an authorized local program approved by the department. and landowners must still apply and obtain those permits and approvals directly from the appropriate department regulatory programs.

NR 216.10 (8) (a) The municipality shall maintain ~~applications~~ records of notices of intent, inspection records inspections, and other relevant information necessary to administer an authorized local program.

NR 216.10 (8) (b) (intro) ~~A~~ The municipality shall submit a written annual report to the department by March 31 of each year, based on the activities undertaken during the previous calendar year of authorized local program operation. The annual report shall include the following:

NR 216.10 (8) (b) 2. Construction project ~~name~~ names and legal address of projects that have been ~~granted initial coverage approved~~ under this section in the previous calendar year ~~and the acreage of land disturbance at each of those sites.~~

NR 216.10 (8) (b) 3. ~~An estimate of the~~ The number of construction site inspections performed and ~~citations issued~~ a summary of enforcement actions taken.

NR 216.10 (10) (a) (intro) To voluntarily discontinue operation of an authorized local program, a municipality shall do all of the following:

NR 216.10 (10) (a) 2. Inform landowners of construction sites and the public at least 30 days prior to discontinuation of an authorized local program. ~~that the department will be taking over as the primary enforcing agency under this subchapter~~ The notice shall include the effective date of program termination and the requirement to submit a notice of intent directly to the department for all projects requiring coverage under subch. III following that date.

NR 216.10 (10) (a) 3. Send the department a copy of all pending construction site ~~applications~~ notices of intent and other relevant information ~~where approval under this section was granted and coverage has not been terminated.~~

NR 216.10 (10) (a) 5. Provide the department with its shared ~~application~~ notice of intent revenue for projects that the municipality granted coverage to over the past calendar year in accordance with sub. (8) (c). Provide the department with its shared application revenue for projects that the municipality granted coverage to over the past calendar year in accordance with sub. (8) (c).

**SECTION 41. NR 216.42 (1) is amended to read:**

NR 216.42 (1) CONSTRUCTION SITES OF ONE ACRE OR MORE OF LAND DISTURBANCE. Except as provided in subs. (2) to (11), a notice of intent shall be filed with the department ~~pursuant to~~ under s. NR 216.43 or to the department via an authorized local program ~~pursuant to~~ under s. NR ~~216.415~~ 216.10 by any landowner who intends to create a point source discharge of storm water from a construction site to waters of the state. The landowner of the construction site regulated by this subchapter shall comply with all applicable provisions of this subchapter and the appropriate WPDES permit issued pursuant to this subchapter.

**SECTION 42. NR 216.42 (1) (note) is created to read:**

NR 216.42 (1) Disturbances less than one acre may require a permit if the disturbances are part of a common plan of development with one acre or more of total land disturbance as described in s. NR 216.002 (2).



**SECTION 43. NR 216.42 (2) is renumbered NR 216.42 (2) (a) and amended to read:**

NR 216.42 (2) (a) Storm water discharges associated with planting, growing, cultivating, and or harvesting of crops for use or consumption by humans, or livestock consumption and pasturing as defined in s. 95.80 (1) (b) Stats., or yarding of livestock, poultry, including sod farms and tree nurseries are not regulated by this subchapter. ~~This exemption does not include the construction of structures such as barns, manure storage facilities or barnyard runoff control systems.~~

**SECTION 44. NR 216.42 (2) (b) and (c) are created to read:**

NR 216.42 (2) (b) Storm water discharges associated with pasturing or yarding livestock, as defined in s. 95.80 (1) (b), Stats., or poultry are not regulated by this subchapter.

(c) The exemptions under pars. (a) and (b) do not apply to the construction of barns, manure storage facilities, barnyard runoff control systems, or other similar structures.

**SECTION 45. NR 216.42 (3) is amended to read:**

NR 216.42 (3) SILVICULTURE. Storm water discharges from silviculture activities conducted in accordance with standard industry practices, including tree nursery operations, tree harvesting operations, site preparation, reforestation and subsequent cultural treatment, tree thinning, prescribed burning, and pest and fire control, harvesting operations, surface drainage, or road construction and maintenance are not regulated by this subchapter. Land disturbing construction activity that includes ~~Clearing~~ clearing and grubbing of an area of a construction site is not a silviculture activity.

**SECTION 46. NR 216.42 (3) (Note) is amended to read:**

NR 216.42 (3) (Note) Wisconsin's Forestry Best Management Practices for Water Quality Field Manual provides examples of silvicultural industry practices. These practices are intended to prevent or reduce pollution to waters of the state from silvicultural activities. Certain lumber, wood and paper product manufacturers may require coverage under a general industrial WPDES permit for storm water discharges pursuant to subch. 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 under 33 USC 1344.

**SECTION 47. NR 216.42 (6) is repealed.**

**SECTION 48. NR 216.42 (8) (Note) is created to read:**

Note: Grading an existing dirt road or adding gravel to an existing parking lot are examples of routine maintenance. Full depth pavement reconstruction or underground utility replacement involving exposure of bare soils is not routine maintenance.

**SECTION 49. NR 216.42 (8m) is created to read:**

NR 216.42 (8m) DRAINAGE DISTRICTS. Storm water discharges from land containing dredged material removed from a drainage district ditch are not regulated by this subchapter if all of the following are met:

- (a) The work is authorized by a drainage district subject to ch. 88, Stats.
- (b) The land is adjacent to the ditch from which the dredged material was removed.
- (c) The area of land disturbing activity that does not meet the exemption in sub. (2) is less than 5 acres for activities that qualify as routine maintenance and less than one acre for all other activities.

Note: Drainage district ditch dredging is also subject to provisions in ch. 30, Stats., and erosion and sediment control performance standards under s. NR 151.105 or 151.11, to implement s. 88.74 (3) (b), Stats.

**SECTION 50. NR 216.42 (10) is repealed.**

**SECTION 51. NR 216.43 (1) and (Note) is amended to read:**

NR 216.43 (1) FORMS. The landowner shall submit a notice of intent to the department on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of intent forms shall be used as a basis for conferring coverage under a WPDES storm water permit.

Note: The notice of intent form is available from the department website at <http://dnr.wi.gov/topic/Stormwater/construction/forms.html> or ~~by contacting the storm water program in the bureau of watershed management at (608) 267-7694~~ by calling 1-888-936-7463.

**SECTION 52. NR 216.43 (2) is amended to read:**

NR 216.43 (2) APPLICATION FEE. A storm water application fee defined by Table 5 shall be submitted to the department with the notice of intent.

**Table 5**

<b>Acres of Land Disturbance</b>	<b>Application Fee before January 1, 2023</b>	<b>Application Fee after January 1, 2023</b>
<u>Less than 2</u>	<u>140</u>	<u>\$250</u>
<del>Less 2 or more and less than 5</del>	140	<u>\$350</u>
5 or more and less than 25	235	<u>\$550</u>
25 or greater	350	<u>\$800</u>

**SECTION 53. NR 216.43 (4) and NR 216.43 (5) are created to read:**

NR 216.43 (4) LATE APPLICATION FEE. If an applicant applies for a permit after land disturbance has commenced, the application fees under sub. (2) shall be doubled.

NR 216.43 (5) REAPPLICATION. Coverage under a general permit shall be valid for up to 3 years from the date the department conveys coverage for the site. If the covered discharge is not completed within 3 years, the permittee shall reapply for coverage at least 14 working days before coverage will expire. The reapplication fee shall be equal to the application fee at the time of reapplication for the original disturbed area and coverage will remain effective for up to 3 more years.

**SECTION 54. NR 216.44 (1) and (3) are amended to read:**

NR 216.44 (1) Except as provided under sub. (3), a landowner required to obtain WPDES permit coverage for storm water discharges from a construction site shall submit a completed notice of intent, ~~via certified or registered mail,~~ in accordance with the requirements of this subchapter and as specified under s. NR 216.006. The notice of intent shall be submitted so that it is received by the department at least 14 working days prior to the commencement of any land disturbing construction activities. Unless notified by the department to the contrary, a landowner who has submitted a notice of intent in accordance with the provisions of this subchapter is authorized to discharge storm water from a construction site under the terms and conditions of the general construction site storm water discharge permit 14 working days after the date that the department receives the notice of intent or upon receipt of notification from the department that the construction site is covered under the general construction site discharge permit. The landowner becomes the permittee once the construction site is authorized permit coverage.

(3) If the construction site is located in an area regulated by an authorized local program ~~pursuant to~~ under s. NR 216.415-216.10, the landowner shall apply for storm water discharge approval ~~to jointly to the department and the authorized local program.~~

**SECTION 55. NR 216.455 (1) and (2) are amended to read:**

NR 216.455 (1) A copy of the ~~notice of intent or other documentation~~ permit issued under this subchapter and the letter of permit coverage documenting that storm water discharges from the site are

covered under a construction site storm water discharge permit shall be kept with building plans on the construction site and with the landowner.

(2) The permittee shall post a copy of the permit certificate in a conspicuous place on near each main entrance to the construction site in a location where it is legible from a public right-of-way. The permittee shall provide sufficient weather protection to avoid the certificate from becoming unreadable. The department, or an authorized local program under s. NR 216.10, shall make a shall include the permit certificate available. An authorized local program under s. NR 216.415 may make its own permit certificate or equivalent notice for posting, with the letter of permit coverage.

**SECTION 56. NR 216.46 (4) (a) is amended to read:**

NR 216.46 (4) (a) Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a USGS 7.5-minute series topographical map or as specified by the department.

**SECTION 57. NR 216.46 (4) (g) is created to read:**

NR 216.46 (4) (g) Identify receiving waters, including downstream waters, that are designated as ERW, ORW, or impaired waters.

Note: A list of outstanding resource waters and exceptional resource waters may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/orwerw.html>. A list of Wisconsin impaired waterbodies is updated every two years and may be found on the department website at: <http://dnr.wi.gov/topic/impairedwaters/>.

**SECTION 58. NR 216.47 (1) is amended to read:**

NR 216.47 (1) PERFORMANCE STANDARDS. The storm water management plan shall meet the applicable performance standards in either ~~s. NR 151.12 subch. III~~ of ch. NR 151 for construction sites that are not transportation facilities or ~~s. NR 151.24 subch. IV~~ of ch. NR 151 for transportation facility construction sites.

**SECTION 59. NR 216.48 (1) (b) Note is amended to read:**

NR 216.48 (1) (b) Note: The storm water management plan and long-term maintenance agreement should be kept as long as necessary to document proper maintenance of long-term storm water best management practices in accordance with ~~s. NR 151.12 or 151.24 subchs. III and IV~~ of ch. NR 151.

**SECTION 60. NR 216.49 (3) and (4) are created to read:**

NR 216.49 (3) IMPAIRED WATERS. For any of the receiving waters designated as an impaired water, the erosion control plan required under s. NR 216.46 and the storm water management plan required under s. NR 216.47 shall contain a written assessment of the potential for storm water from the facility to discharge a pollutant of concern and identify the control measures and maintenance practices that will collectively be used to reduce, with the goal of eliminating, storm water discharge containing pollutants of concern.

(4) TMDL. If the permittee is subject to an US EPA-approved TMDL, the erosion control plan required under s. NR 216.46 and the storm water management plan required under s. NR 216.47 shall specify the pollution prevention and treatment systems that will be employed to achieve the TMDL permit requirements.

**SECTION 61. NR 216.50 (1) (a) is amended to read:**

NR 216.50 (1) (a) There is a change in design, construction, operation or maintenance at the construction site which has the reasonable potential for the discharge of pollutants and which has not otherwise been addressed in the erosion control and storm water management plans. Changes that may trigger an amendment include addition of access points, additional land disturbing construction activity not included in the original plan, a change or elimination of a best management practice, an increase in proposed impervious area, and changes to post-construction site treatment practices. The department may require a permittee to file a new notice of intent if the amended site requires resource screening of additional area or the amended site no longer meets an exemption from post-construction performance standards under ss. NR 151.121 to 151.125.

**SECTION 62. NR 216.54 is amended to read:**

**NR 216.54 Transfers.** A landowner who has submitted a completed notice of intent and does not intend to control the permitted activities on the construction site may transfer authorization of construction site storm water discharge permit coverage to the person who will control the permitted activities. The transfer ~~request shall occur upon written notification,~~ be completed on forms provided by the department as specified under s. NR 216.006 and signed by both the current permittee and the proposed permittee and sent via certified or registered mail to the department. Unless the department notifies the permittee to the contrary, the department will recognize this permit coverage transfer upon receipt of written notification. Coverage is not transferred until the department sends notification of transfer approval to the new permittee. The department may require additional information to be filed prior to granting coverage under the general WPDES permit. The department may, if appropriate, require an application for an individual WPDES storm water permit.

**SECTION 63. NR 216.55 (2) and (Note) is amended to read:**

NR 216.55 (2) FORMS. A notice of termination shall be submitted to the department on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage of a storm water discharge permit.

Note: The notice of termination form is available from the department website at <http://dnr.wi.gov/topic/Stormwater/construction/forms.html> ~~by contacting the storm water program in the bureau of watershed management at (608) 267-7694~~ or by calling 1-888-936-7463.

**SECTION 64. NR 216.55 (6) is created to read:**

NR 216.55 (6) ADMINISTRATIVE TERMINATION. If an applicant fails to reapply under s. NR 216.43 (5) or submit a notice of termination under this section, the department may administratively terminate permit coverage 3 years after the date the department conveyed coverage.

**SECTION 65. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 66. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2021.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

For Preston D. Cole, Secretary