



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #554

### **Storm Water Management (DNR -- Water Quality)**

[LFB 2005-07 Budget Summary: Page 375, #10]

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#### **CURRENT LAW**

Under the federal Clean Water Act, certain storm water discharges from point sources to navigable waters of the United States are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (NPDES) permit. In 1974, the Environmental Protection Agency (EPA) delegated authority for these permits in the state to the Wisconsin DNR, which administers this authority through the issuance of Wisconsin Pollutant Discharge Elimination System (WPDES) permits under administrative rule NR 216. In 2001 Act 16 (the 2001-03 biennial budget act), DNR received authority to revise NR 216 in order to comply with federal EPA Phase II requirements. Under Phase I, EPA required storm water discharge permits for: (1) municipal separate storm sewer systems (MS4s) located in incorporated places of counties with populations of 100,000 or more (and other systems that served smaller populations that made discharges into sensitive and protected water quality areas); (2) 10 categories of industrial activity (including, among others, manufacturing, landfills, and light industrial activity); and (3) construction activity that disturbed five or more acres of land. Phase II updates these requirements by expanding the categories of municipalities and construction sites that are required to have a storm water discharge permit.

The first change made by Phase II requirements is to require operators of regulated small municipal separate storm sewer systems (MS4s) to obtain a storm water discharge permit. Small regulated MS4s are those MS4s not regulated by Phase I that meet one of the following three conditions: (1) the MS4 is located within an urbanized area (an adjacent population area of at least 50,000, with a population density of at least 1,000 people per square mile); (2) the MS4 is outside an urbanized area, serves a population of at least 10,000 (with a population density of at least 1,000 people per square mile), and the permitting authority (in this case, the DNR) determines that its discharges could adversely affect water quality; or (3) the MS4 is located outside of an urbanized area, but is found by the permitting agency (DNR) to substantially

contribute, through discharges, to the pollutant loadings of a MS4 that is regulated by the storm water program. However, the rule does allow MS4s to seek a waiver from the permit if certain conditions are met that indicate the discharge is not a threat to the water quality of the body of water into which the discharge is made.

In addition, the new federal rules require all regulated MS4s to develop and implement a storm water management plan designed to reduce the discharge of pollutants to the maximum extent practicable through the use of best management practices (practices found to be most effective at reducing pollutant discharge). Each plan is required to include the following six measures: (1) implementation of a public education program on the impact of storm water discharges; (2) public involvement and participation in the plan; (3) development and implementation of a system to detect and eliminate illicit discharges; (4) construction site storm water runoff control; (5) post-construction storm water management in new developments and areas that are redeveloped; and (6) pollution prevention measures.

Further, Phase II regulations affect current construction site regulations, by requiring all construction sites of one acre or more (five acres previously) to obtain a storm water discharge permit.

State law grants DNR authority over storm water discharge regulation through two sections of the statutes. Section 281.33 requires DNR to promulgate, by administrative rule, with consultation from the Department of Commerce, a state storm water management plan that includes minimum standards for erosion control and storm water management for construction sites in the state. Section 283.33 requires certain owners and operators that discharge storm water to obtain storm water discharge permits from DNR. Under the statutes (which are intended to comply with federal Phase II regulations), storm water discharges from the following sources require a permit: (a) industrial activity, as defined by administrative rule (which includes construction sites under federal law); (b) municipal separate storm sewer systems that serve an incorporated area of 100,000 (per the 1990 federal census) or more; (c) municipal separate storm sewer systems that the federal government determines serve an urbanized area; (d) municipal separate storm sewer systems that serve an area with a population of 10,000 or more, and a population density of 1,000 or more per square mile, if DNR determines the discharge could result in exceeding water quality standards; and (e) facilities where DNR determines a discharge could contribute to a violation of water quality standards.

## **GOVERNOR**

Provide \$681,800 PR in 2005-06 and \$724,100 PR in 2006-07 and 10.5 PR positions annually for the administration and state implementation of federal Phase 2 storm water requirements for municipalities, industrial facilities and construction sites, which became effective in March, 2003, (associated DNR administrative rules became effective in August, 2004).

## DISCUSSION POINTS

1. Due to federal Phase II requirements and the corresponding change in state law made in 2001 Act 16 (the 2001-03 biennial budget act), DNR modified its administration and issuance of storm water discharge permits under NR 216 through the administrative rule procedure. These changes became effective August 1, 2004, and DNR now issues storm water permits pursuant to the federal Phase II requirements.

2. Although DNR originally identified a need of up to 44.5 additional staff to fully implement the revised storm water regulations, in its 2005-07 budget request the agency sought an additional 10.5 positions and associated funding. The bill would provide funding of \$681,800 PR in 2005-06 and \$724,100 PR in 2006-07 with 10.5 PR positions. Program revenues are derived from storm water permitting fees collected under NR 216.

3. In addition to the 10.5 positions, the bill would also provide: (a) six, one-half time limited-term employees (LTEs); (b) \$150,000 on a one-time basis for database development; and (c) \$87,300 in 2005-06 only for permanent property for the new staff.

4. Under the bill, annual costs after 2006-07 would be approximately \$670,000. However, the Department indicates additional resources may be requested in future budgets based on actual permit numbers and workload.

5. The storm water permitting section is currently authorized 12.0 positions (9.5 PR from storm water fees and 2.5 FED positions).

6. During budget preparations last fall, DNR estimated the number of storm water permits would increase by up to 2,700 (approximately 2,500 new construction permits annually and about 180 new five-year municipal permits). Further, DNR estimates that additional industrial sites may require five-year storm water discharge permits and that perhaps 15,000 industrial facilities are now (under Phase II regulations) required to file a certification of no discharge every five years.

7. Expected revenues were believed to be sufficient to support 10.5 permanent staff. In order to accommodate this level of resources, DNR officials indicate they would implement a process that would result in prioritizing the review of applications (similar to the process used for Phase I regulation) and implement other streamlined procedures as discussed below.

8. For municipal discharges, (unless they are exempted by DNR) a permit is required for: (1) owners and operators of municipal separate storm sewer systems that serve a population of 100,000 or more; (2) owners and operators of municipal separate storm sewer systems that have previously been notified by DNR of their need to obtain a discharge permit; (3) federally-designated urbanized areas; and (4) owners or operators of municipal separate storm sewer systems that serve an area with a population of 10,000 or more, and a population density of 1,000 or more per square mile. As a result of this change, DNR estimates that the number of municipalities that will be required to obtain a permit will increase from around 70 to about 250. This permitting process involves DNR staff time for: (a) meetings and workshops to aid municipalities with the drafting of

their permits; (b) pre-application review and comment; (c) gathering information related to the permit; (d) providing technical assistance to the applicant; (e) one or more site visits; and (f) reviewing, and ultimately, issuing a five-year permit.

9. DNR is currently in the process of creating a general permit for municipalities, which it estimates will be complete in the summer of 2005. The Department estimates this will require a one-time workload of perhaps 5,000 hours, but will eliminate the need to issue individual permits to most municipalities. In addition, the agency will attempt to meet with representatives from a number of municipalities at one time to provide information regarding the required permits, and take other similar steps in order to reduce potentially repetitive action involved in the granting of these permits, and, where possible, integrate adjacent municipalities into one permit (with each municipality billed separately according to its population). For example, there are 19 municipalities that are a part of the Madison-area permit, which the Department estimates took around 600 to 700 hours to prepare and approve. There are currently about 70 municipalities that have permits under Phase II regulations, with the Department planning to add additional municipalities under the general permit currently being developed.

10. Under Phase II rules, the list of industrial sites that need a five-year permit is largely unchanged. The exception is that municipally-owned industrial facilities, which were previously exempt from obtaining a storm water permit, are now required to have a storm water permit. With the inclusion of these facilities, along with economic growth, DNR staff believe the number of industrial facilities that may require permits may increase from 3,600 facilities, prior to Phase II, up to as many as 5,000 by 2006. These facilities are currently permitted under six different general permits, with renewal required every five years. The number of permits that are renewed or approved in a given year is dependent upon which general permits expire in that year (the number of facilities on each of the six general permits ranges from a few to over 2,000). Further, industrial sites where no permit is required will need to certify to DNR that their facilities have no exposure of storm water to industrial materials or activities that could contaminate storm water (with certification required every five years). The Department estimates that an additional 15,000 industrial facilities will be required to provide no-exposure certification.

11. The Department plans to focus its efforts on environmentally sensitive sites. As a result, DNR expects initial no-exposure certification to involve the review of the application for any apparent errors or potential problems, and the subsequent entering of approved application information into the Department's database. Due to the likelihood that industrial sites requiring permits generally pose a greater threat to water quality than other industrial sites, the Department would plan to use the majority of its resources on sites that require permits, while designating fewer resources for review of certifications of no-exposure. The Department hopes to physically visit and inspect each permitted industrial site at least once every five years. In 2003-04, the Department inspected about 400 industrial sites, and would expect to double the number of industrial sites inspected to at least 800 annually under the bill. In some cases these inspections are expected to be brief visits, but in more environmentally sensitive areas or in cases where DNR has received complaints, the Department plans more extensive reviews. This is similar to how the prior program (before the federal phase II requirements) was administered. In addition, any violations will require

Department follow-up in order to bring the site into compliance with the certification, or in some cases, with the appropriate industrial permit. DNR workload related to the administration of industrial permits involves the following: (a) review of the industrial permit application; (b) the gathering of information related to the site; (c) approval of the site's storm water management plans; (d) the provision of technical assistance; and (e) visits to the industrial site to ensure compliance, the proper installation of best management practices and provide any additional assistance.

12. For construction sites, the new rule expanded the list of sites that need to obtain a discharge permit to include all sites that have a land disturbance of at least one acre (from all sites that disturb five acres or more, previously). The federal Environmental Protection Agency (EPA) estimated that this change would increase the number of construction sites that require permits by between 2,500 and 5,000 sites annually (as compared to the 500 sites that DNR permitted before Phase II rules were adopted). However, DNR now estimates the total number of construction sites that will need a permit to be approximately 1,500 sites annually (an increase of 1,000 sites annually, rather than 2,500 estimated earlier).

13. Under current law, the Department of Natural Resources has authority over erosion control and storm water management at construction sites that do not include the construction of a building. Examples of such construction sites include local road projects, parking lots, parks, golf courses and general subdivision development, which generally includes land grading and the building of roads. The Department of Commerce is required, in consultation with DNR, to establish statewide standards for construction site erosion control at public buildings and places of employment (commercial and multi-family residential buildings). Commerce is also required to establish standards for construction site erosion control on one- and two-family dwellings. Commerce must review construction plans and inspect erosion control activities at commercial construction sites. Commerce may delegate its administrative authority to local units of government (counties, cities, villages or towns). In instances such as subdivision development, construction sites will be under DNR authority during the land grading process, but switch to Commerce authority when the construction of houses begins. While the federal estimates reflect all construction sites of one acre or more, a significant number of these sites must be permitted by Commerce rather than DNR.

14. In order to accommodate the staffing level under the bill, DNR would commence the construction site permitting process by screening all applications to see if the site is located in an area of priority environmental concern (adjacent to a wetland, for example), as it currently does. If, after screening, the site is determined to be in a priority area, the Department would perform a full review of the erosion control and storm water management plans for the site. For sites that are determined not to be located in a priority area, DNR plans on developing an expedited process of review, especially for those sites that are less than five acres, where permits would likely initially be granted with limited additional review. In addition, if a local governmental agency has approved the erosion control and storm water management plans for the construction site, DNR is usually able to spend a reduced amount of time reviewing the plans. For construction sites, DNR reviews the plans submitted and has attempted to inspect each site. In 2003-04 the Department visited about 450 construction sites. Under the bill, the agency anticipates doubling the number of construction

sites it would inspect to at least 900 sites annually. These inspections can lead to additional follow-up work for the Department in instances where a violation or other problem is found at the site. Further, the Department plans to perform additional inspections of construction sites based on complaints received, focusing on sites that are located in priority areas of environmental concern.

15. The Department indicates that through the procedures outlined above, and a policy of selectively reviewing those sites that pose the highest environmental risk, the expanded program could be administered with an additional 10.5 permanent positions and six limited-term-employee positions. The full-time positions would include 3.0 water resource engineers and 7.5 water resource management specialists, while the LTEs would be half-time and consist of six water resource management specialists (the equivalent of three full-time positions).

16. In response to the new permitting requirements and workload responsibilities, DNR also implemented a new fee structure through NR 216 in an attempt to reflect the amount of time the Department devotes to each category of site (industrial, municipal and construction). The municipal, industrial and construction site fees that were charged prior to the administrative rule changes and the current fee levels are shown in Tables 1 and 2. The new fees are beginning to be implemented in 2004-05.

**TABLE 1**

**NR 216 Annual Municipal Storm Water Discharge Permit Fees**

<u>Population</u>	<u>Prior Fee</u>	<u>Current Fee</u>
400,000 +	\$10,000	\$25,000
200,000 to 399,999	10,000	20,000
100,000 to 199,999	10,000	12,000
75,000 to 99,999	5,000	10,000
50,000 to 74,999	5,000	8,000
40,000 to 49,999	5,000	7,500
35,000 to 39,999	5,000	6,500
30,000 to 34,999	5,000	5,000
25,000 to 29,999	5,000	4,000
15,000 to 24,999	5,000	3,000
12,500 to 14,999	5,000	2,000
10,000 to 12,499	5,000	1,500
6,000 to 9,999	N/A	1,000
2,000 to 5,999	N/A	500
1,000 to 1,999	N/A	250
100 to 999	N/A	50
Less than 100	N/A	0
County/state	1,000	500

**TABLE 2**

**NR 216 Industrial and Construction Site Permit Fees**

<u>Permit Type</u>	<u>Prior Fee</u>	<u>Current Fee</u>
<b>Industrial (Annual)</b>		
Heavy	\$200	\$260
Light	100	130
<b>Construction Site (One-time)</b>		
1 to 5 acres	N/A	140
5 to 25 acres	200	235
Over 25 acres	200	350

17. Total annual program revenues (PR) under NR 216 were originally expected to approximately double from the prior level and were projected at approximately \$1.5 million annually. However, due to the reduced number of construction sites that are expected to require a DNR permit, revenue from the new fees is now expected to be about \$1.3 million annually.

18. Construction site permit fees are paid at the time of application, while municipal and industrial permit fees are typically sent out as part of DNR's consolidated billing in late-May to early-June, with payments credited to the fiscal year for which the permit was billed. As stated earlier, the Department has not yet completed work on a general permit for municipalities and has issued permits to only about 70 of the estimated 250 municipalities that will be required to have discharge permits under Phase II regulations. However, the remaining 180 municipalities will not be permitted and billed by DNR until the completion of the general municipal permit, which is expected to occur in the summer of 2005 (in fiscal year 2005-06), meaning the full effect of the fee increase will not be realized until 2005-06. As a result, revenues are estimated at \$1 million in 2004-05 and \$1.3 million annually beginning in 2005-06. DNR collects these revenues and deposits them to the Department's storm water management fees annual PR appropriation, which has authorized budget expenditures of \$821,600 and 9.5 positions in 2004-05. Table 3 shows the anticipated account balance of DNR's storm water management appropriation account under the bill. The table shows revenues are expected to be sufficient to fund expenditures under the bill through June 30, 2007. However, a structural imbalance (expenditures exceed revenue) in the account would be expected to increase the amount of needed revenue in 2007-08. DNR officials indicate that fees were set with the expectation that they would fund the program through 2008-09, with the Department then evaluating the program and adjusting fees among the three permit types (commercial, industrial and municipal) to fund program needs and to reflect the resources devoted to each permit type by the Department.

**TABLE 3****Storm Water Management Fees Appropriation Account under the Bill**

	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>
Opening Balance	\$635,700	\$672,000	\$820,100	\$553,900	\$215,900	-\$64,500
Revenue	853,800	1,000,000	1,308,300	1,308,300	1,308,300	1,308,300
Expenditures	817,500	821,600	1,569,500	1,611,800	1,571,300	1,571,300
Reserves	<u>0</u>	<u>30,300</u>	<u>5,000</u>	<u>34,500</u>	<u>17,400</u>	<u>34,500</u>
Total Expenditures	817,500	851,900	1,574,500	1,646,300	1,588,700	1,605,800
Closing Balance	\$672,000	\$820,100	\$553,900	\$215,900	-\$64,500	-\$362,000

19. Due to the decreased number of construction sites that are likely to need permits, and the corresponding reduction in fee revenue, the Committee could consider reducing the resources available to allow adequate program funding through 2008-09. If 9.0 PR positions (6.0 water resource specialists and 3.0 water resource engineers) were provided to DNR, funding could be estimated at \$515,300 in 2005-06 and \$644,700 (including \$75,000 in one-time costs) in 2006-07 (a total reduction of \$245,900 PR and 1.5 PR positions under the bill).

20. As shown in Table 4, were the Committee to adopt alternative #2 (providing DNR with 9.0 permanent positions, and associated LTE funding and supplies, the appropriation would be expected to have a July 1, 2007, balance of over \$460,000 and fund costs of the program through 2008-09.

**TABLE 4****Storm Water Management Fees Appropriation Account under Alternative #2**

	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>
Opening Balance	\$635,700	\$672,000	\$820,100	\$720,400	\$466,700	\$273,100
Revenue	853,800	1,000,000	1,308,300	1,308,300	1,308,300	1,308,300
Expenditures	817,500	821,600	1,403,000	1,532,400	1,487,000	1,487,000
Reserves	<u>0</u>	<u>30,300</u>	<u>5,000</u>	<u>29,600</u>	<u>14,900</u>	<u>29,600</u>
Total Expenditures	817,500	851,900	1,408,000	1,562,000	1,501,900	1,516,600
Closing Balance	\$672,000	\$820,100	\$720,400	\$466,700	\$273,100	\$64,800



## ALTERNATIVES

1. Approve the Governor's recommendation to provide \$681,800 PR in 2005-06 and \$724,100 PR in 2006-07 and 10.5 PR positions annually for the administration and state implementation of federal Phase 2 storm water requirements for municipalities, industrial facilities and construction sites.

2. Provide \$515,300 PR in 2005-06 and \$644,700 PR in 2006-07 (including \$75,000 on a one-time basis) and 9.0 PR positions annually for the administration and state implementation of federal Phase 2 storm water requirements for municipalities, industrial facilities and construction sites. This would reduce PR expenditures under the bill by 1.5 positions, \$166,500 in 2005-06 and \$79,400 in 2006-07.

<u>Alternative 2</u>	<u>PR</u>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$245,900
<b>2006-07 POSITIONS</b> (Change to Bill)	- 1.50

3. Maintain current law.

<u>Alternative 3</u>	<u>PR</u>
<b>2005-07 FUNDING</b> (Change to Bill)	\$1,405,900
<b>2006-07 POSITIONS</b> (Change to Bill)	- 10.50

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