

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board adopt Board Order WT-09-19, proposed rules affecting chapter NR 216 related to storm water discharge permits.

**FOR: August 2021 Board meeting**

**PRESENTER'S NAME AND TITLE:** Shannon Haydin, Chief, Storm Water Section, Watershed Bureau

**SUMMARY:**

The primary purpose of the proposed rule changes is to address technical inconsistencies with federal requirements and address recently promulgated federal requirements that state-authorized programs must accommodate. Storm water discharge permits are a type of national pollution discharge elimination system permit delegated by the Environmental Protection Agency (EPA) to Wisconsin. The federal storm water requirements are primarily found in 40 CFR Parts 122, 123, and 127. The major changes to the rule include:

- Implementing the NPDES Electronic Reporting Rule in 40 CFR 127;
- Implementing the NPDES Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule amending 40 CFR 122;
- Flexibility for MS4s implementing total maximum daily load (TMDL) requirements
- Construction erosion control permit application fee increases

The scope statement 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. The level of economic impact on small businesses is expected to be moderate (Level 2). The 30-month time frame for submission of a final rule to the legislature for approval expires on December 10, 2021

**RECOMMENDATION:** That the Board adopt Board Order WT-09-19.

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Background Memo   | <input checked="" type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule               |
| <input checked="" type="checkbox"/> Response summary  | <input type="checkbox"/> Other                                     |

Approved by	Signature	Date
Brian Weigel, Director, Watershed Bureau	 <small>DocuSigned by: B7B179C847C14C6...</small>	7/11/2021   2:16 PM CDT
David Siebert, Administrator, External Services Division	 <small>DocuSigned by: D2E3F67B71CE4F2...</small>	7/12/2021   10:59 AM CDT
Preston D. Cole, Secretary	 <small>DocuSigned by: 6793A7BA427C4CD...</small>	7/12/2021   2:38 PM CDT

cc: Board Liaison - AD/8

DS  
LJR

Program attorney – LS/8

by Todd Ambs

Department rule officer – LS/8

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**CORRESPONDENCE/MEMORANDUM**

DATE: July 2, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WT-09-19, relating to storm water permits

**1. Subject of Proposed Rule:**

The proposed rule updates ch. NR 216, which contains requirements for storm water Wisconsin Pollutant Discharge Elimination System (WPDES) permits. There are three types of storm water discharge permits:

- Municipal
- Industrial
- Construction Site

**2. Background:**

As a state authorized by the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program, Wisconsin is required to implement federal Clean Water Act regulations. In July 2011, EPA identified several provisions within ch. NR 216 as inconsistent with federal regulations for the storm water program portion of the WPDES program as part of its legal authority review (“75 Issues”). The Department of Natural Resources (the department) also identified several other changes to federal rule and state statute that have occurred in the 20 years since the rule has last been updated. Storm water permit fees are specified in ch. NR 216 and have not been updated since 2003.

**3. Why is the rule being proposed?**

The rule is being proposed to address the remaining issues within the July 2011 Legal Authority Review letter from EPA and to address other changes that have occurred since the rule was last updated in 2003.

**4. Summary of the rule.**

General provisions within the rule that affect all three permit programs include:

- Electronic permitting: These provisions allow the department to require electronic submittal of material so that the department can meet our obligations under the federal electronic permitting rule. A waiver process is provided for permittees who do not have access to the necessary technology.
- Clear references to water quality standards and Total Maximum Daily Loads (TMDLs), including clarifications to how TMDLs are addressed in storm water permits.
- Elimination of references to other environmental programs

Subchapter I changes relating to municipal storm water discharge permits include:

- Implementation of the NPDES Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule
- TMDL implementation language providing flexibility appropriate to the number of outfalls and variability of the discharges from municipal storm sewer systems
- Annual reporting updates to be consistent with federal regulations
- Use of 4<sup>th</sup> year annual report as reapplication for general permittees Moved Authorized Local Program (ALP) to Subchapter I from Subchapter III

Subchapter II changes relating to industrial storm water discharge permits include:

- Update regulated area and exemptions to be consistent with federal regulations
- The initial board order included elimination of the Storm Water Pollution Prevention Plan (SWPPP) Summary form but this provision was changed in response to public comment
- Include Exceptional Resource Waters (ERW), Outstanding Resource Waters (ORW), impaired waters, and TMDLs as items to be addressed within Storm Water Pollution Prevention Plans (SWPPPs)

Subchapter III changes relating to construction storm water discharge permits include:

- Update the Authorized Local Program (ALP) to address EPA comment and relocate the ALP to the municipal subchapter
- Update exemptions to be consistent with state statutes and federal regulations
- Include Exceptional Resource Waters (ERW), Outstanding Resource Waters (ORW), impaired waters, and TMDLs as items to be addressed within erosion control and storm water management plans
- Update fee structure, clarify coverage duration, and incorporate after-the-fact fees.

**5. How does this proposal affect existing policy?**

This proposed rule will not affect existing policy; the department is required to issue permits that are in compliance with federal regulations.

**6. Has Board dealt with these issues before?**

Yes. The Board approved the scope statement for WT-09-19 and conditionally authorized public hearings at its September 2019 meeting.

**7. Who will be impacted by the proposed rule? How?**

This rule is expected to impact regulated entities, including local units of government, manufacturing facilities, and developers of construction sites 1 acre or greater. All regulated entities will be required to submit permit applications, annual reports, and other submittals electronically or obtain a waiver from electronic reporting. Most permittees are already submitting material electronically. Storm water permittees will have more clarity on when a storm water permit is required and what the permit application and permit itself is required to contain. Construction site permit application fees will be increased, but will still be very small compared to the overall construction cost of the projects regulated.

## **8. Soliciting public input on economic impact synopsis**

During the Economic Impact Analysis (EIA) comment period that ended January 20, 2021, the department received five responses on the solicitation for economic impacts of this rule. Minor changes were made to the to the draft EIA and the draft board order as a result of the comments received. A summary of comment received on the draft EIA and department responses to comments was included with the updated economic impact analysis provided during public comment on the draft board order. In response to comments on the EIA, the department also provided a document explaining the basis for the proposed increase in construction site permit application fees. Minor updates to the EIA were also completed to reflect changes to the rule made in response to public comment on the draft board order. The total economic cost for the rule decreased by \$674,700 as a result of these updates.

## **9. Small Business Analysis**

The rule may have an economic impact on small businesses, as defined in s. 227.114(1), Wis. Stats. This rule's net impact on small business is expected to be Level 2. This includes \$2,400 in postage savings due to electronic permitting, \$30,200 in costs 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. These values reflect a decrease in economic impacts to small businesses of \$93,200 as a result of changes made to the board order in response to public comments.

**Drafter:** Amy Minser

**Attachment:** Fee analysis related to proposed rule changes to ch. NR 216 (WT-09-19)

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**State of Wisconsin  
Department of Natural Resources**

**Responses to Comments  
WT-09-19  
Chapter NR 216, Wis. Adm. Code  
Storm Water Discharge Permits  
July 2021**

This document presents a summary of comments received on rule package WT-09-19, modifications to ch. NR 216, Wis. Adm. Code, the Department of Natural Resources (the department) responses, and a summary of resulting changes to the Board Order.

Below is a summary of comments received, department responses, and amendments to the rule that the department has made in response to comments.

**Comments on the Economic Impact Analysis:**

A public comment period on the draft economic impact analysis (EIA) occurred from December 20, 2020 to January 20, 2021. The request for information concerning potential economic impacts of the proposed rule was sent to the municipal, construction, and industrial storm water distribution list, which has 19,753 subscribers.

During the EIA comment period, the department received five responses on the solicitation for economic impacts of this rule. Minor changes were made to the draft EIA and the draft board order as a result of the comments received. A summary of comments received on the draft EIA and department responses to comments was included with the updated economic impact analysis provided during public comment on the draft board order. In response to comments on the EIA, the department also provided a document explaining the basis for the proposed increase in construction site permit application fees.

**Comments by Wisconsin Legislative Council Rules Clearinghouse Report**

**Comment LCRC-1:** The Council has the following comments on form, style, and placement in Administrative Code:

- a. In s. NR 216.003 (1), the reference to s. NR 205.08 should not be underscored.
- b. In SECTIONS 4 and 16 of the proposed rule, the stricken “and” should precede the addition of new material. Similarly, the order of stricken and underscored text in SECTIONS 14, 30, 32, 41, 45, 47, 53, 57, 65, and 66 should be reviewed.
- c. SECTION 8 of the proposed rule should refer more specifically to the treatment of s. NR 216.03 (1).
- d. In s. NR 216.07 (intro.), “Department” should be changed to the lowercase. In sub. (8) (b), “subs.” should be indicated as “~~sub.~~ subs.”. In sub. (10) (b) Note, “two” should be changed to “2” and “Department” should be changed to the lowercase. In sub. (11), a period should follow “RECORDS”.
- e. In s. NR 216.075, it appears that the numbering and internal references in the rule are incorrect. In the second notation of sub. (2), “shall not” should be changed to “may not”.
- f. In SECTIONS 29 and 59 of the proposed rule, newly created material should not be underscored.
- g. In SECTION 43 of the proposed rule, provisions that are not amended should be excluded from the rule text, and the treatment clause should be revised accordingly to cite only the provisions subject to amendment. [s. 1.04 (6) (d), Manual.] As renumbered in this SECTION, in sub. (5) (e), “must” should be changed to “shall”.

- h. In s. NR 216.42 (3m), a subsection title should be added because the other subsections of s. NR 216.42 contain subsection titles. [s. 1.10 (2) (a) 2., Manual.]

Response: The department has modified the proposed board order as requested for comments a to h.

Comment LCRC-2: The Council has the following comments on clarity, grammar, punctuation, and use of plain language:

- a. Section NR 216.006 (6) and (7) (b) use the term “owner” and sub. (7) (intro.) and (7) (a) (intro.) and 7., use the term “landowner”. The department should review these provisions to ensure it intended to use a different term in each.
- b. The material created in SECTION 10 should not be duplicated in SECTION 14. However, in SECTION 14, the treatment of s. NR 216.031 (1) (a), as renumbered, should be reviewed. At minimum, it appears this material should be underscored.
- c. In s. NR 216.06 (4) Note, it appears that either “Department’s Internet site” should be changed to “department website”, the term used in s. NR 216.03 (1) Note, or “department website” should be changed to “department’s internet site”. The entire rule should be checked to ensure that the same term is used consistently.
- d. In s. NR 216.27 (1), “a” should be inserted between “with” and “storm water discharge”.
- e. In s. NR 216.29 (1) (f), it is unclear what type of “plans and submissions” should be submitted for review and approval.
- f. In s. NR 216.10 (5) (g), it would improve the clarity of the rule if the department could be more specific about what “non-compliance issues which cannot be resolved” means.
- g. In s. NR 216.42 (2), “Stat.” should be changed to “Stats.”.
- h. In s. NR 216.47 (7), it appears that “the storm water management plan required under s. NR 216.46” should be changed to “the erosion control plan required under s. NR 216.46”. In addition, is the storm water management plan requirement to “identify measures taken to avoid or minimize those impacts” referring to impacts identified in the erosion control plan?
- i. In s. NR 216.49 (4), “EPA approved” should be hyphenated.

Response: The department has modified the proposed board order in response to these comments as follows:

- a) The reference sections were updated to use ‘owner’ as this applies to both construction and industrial permits.
- b) Section 10 has been deleted and the referenced material has been underlined in Section 14.
- c) The document has been searched and all instances of ‘Department’s Internet site’ were changed to ‘department website’.
- d) The requested word was added.
- e) Section NR 216.29 (1) (f), has been modified to specify that the plans and specifications are for storm water best management practices.
- f) Section NR 216.10 (5) (g) has been clarified to indicate that ‘non-compliance with provisions in subch. III that are not corrected by the permittee within 14 days’ must be reported to the department.
- g) The correction has been made as requested.
- h) Section NR 216.47 (7) has been eliminated in response to public comment.
- i) The hyphen has been added.



**Public Hearing Summary:**

Fifty persons attended the public hearing, held via Zoom on April 20, 2021, including 9 department staff. Of the non-department attendees, fourteen persons completed hearing appearance forms. Three registrants indicated that they were in support of the proposal and the balance indicated ‘as interest may appear’ or did not indicate a position. No registrants indicated that they were opposed to the rule proposal. Jim Bertolacini, a retired department employee, spoke in favor of the code revision. Mr. Bertolacini specifically spoke in favor of revisions related to electronic permitting, addressing EPA issues identified in 2011, construction fee updates, and revisions to the authorized local program.

**Comments from the Environmental Protection Agency:**

Comment EPA-1: Among other items, the proposed modifications address eight of the 75 issues outlined in the Environmental Protection Agency’s July 18, 2011 letter to former Secretary Cathy Stepp, including specifically issues 24, 25, 26, 52, 53, 56, 57, and 67. We thank you for the productive discussions that our respective staffs have had regarding rule modifications over the past decade; and, especially relevant for this rule package, the discussions we have had since October of last year.

Response: Thank you.

Comment EPA-2: Proposed Wis. Admin. Code NR § 216.42 (3m) provides:

Storm water discharges from land containing dredged material removed from a drainage district ditch, if the land is adjacent to the ditch from which the dredged material was removed, are not regulated by this subchapter. This subsection only applies to a drainage district subject to ch. 88, Stats.

As you are aware, the Clean Water Act (CWA) requires a permit for discharges of pollutants into waters of the United States from point sources. The federal regulations provide for specific exclusions from National Pollutant Discharge Elimination System (NPDES) permitting, under 40 C.F.R. § 122.3, and for some stormwater discharges, under 40 C.F.R. § 122.26(a)(2). The proposed rule at Wis. Admin. Code NR § 216.42 (3m), however, does not appear to fall under these exclusions. Therefore, we ask that you explain how the proposed regulation would be consistent with the CWA and its implementing regulations, or that you modify the rule to clearly establish that a permit is needed if required by the CWA.

Response: The department is proposing to modify the board order to clarify the application of implementing regulations within the Clean Water Act (CWA) to drainage district projects such that the exemption applies where consistency with the CWA can be demonstrated. Based on a review of past permit applications from drainage districts, it is anticipated that on average about one drainage district project per year is likely to require permitting under the CWA and equivalent state storm water regulations proposed.

Comments received from the EPA concern equivalent exemptions from permitting of storm water discharges under the CWA to those within the department’s proposed rules. The department notes that certain exemptions may be applicable where Wisconsin’s rules preclude storm water discharges from land containing dredged material removed from a drainage district ditch if the land is adjacent to the ditch from which the dredged material was removed. Those circumstances may include land disturbing construction activity of routine maintenance in s. NR 216.42(8), where the routine maintenance for project sites that involve under 5 acres of land disturbance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. This exemption is consistent with implementing regulations in 40 CFR 122.26 (a)(15)(i). An additional circumstance would include land disturbing construction activity of one acre or less, since only discharges under s. NR 216.42(1) require a Notice of Intent to be filed (40 CFR 122.26 (a)(15)(i)). Lastly, discharges from planting, growing, cultivating and harvesting of crops for human or

livestock consumption are not regulated by this subchapter. This exemption is consistent with implementing regulations in 40 CFR 122.3 (e).

To meet the intent of the CWA and these equivalent implementing regulations, the department is proposing to create NR 216.42(8m), to clarify that storm water discharges from land containing dredged material removed from a drainage district ditch are not regulated by this subchapter if: the work is authorized by a drainage district subject to ch. 88, Stats.; the land is adjacent to the ditch from which the dredge material was removed; and the area of land disturbing activity that does not meet the agricultural exemption in 216.42(2) is less than 5 acres for activities that qualify as routine maintenance and less than one acre for all other activities.

As this relates to ch. NR 216, storm water discharges that fall outside the existing exemption criteria of routine maintenance that are performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility; are less than one acre of land disturbance; or have discharges that are associated with planting, growing, cultivating and harvesting of crops for human or livestock consumption, would require storm water discharge permitting.

The department has also included a note under the created provision to clarify that the provisions in ch. 30, Stats. for drainage district dredging still apply, and that the erosion and sediment performance standards under s. NR 151.105 or 151.11, Wis. Adm. Code are used to implement s. 88.74(3)(b), Stats.

The department has updated the EIA to include costs associated with storm water permitting for one drainage district project per year.

**Comment by the League of Municipalities (LM):**

Comment LM-1: Current stormwater discharge permits, unlike wastewater discharge permits, do not include numeric water quality standards and do not measure compliance by numeric end of pipe standards. Nor would it be practicable to impose such numeric standards in stormwater discharge permits. Instead, stormwater discharge permits include best management practices (“BMPs”) designed to achieve compliance with water quality criteria. However, language in Sections 6 and 16 of the board order could be interpreted to lead to the imposition of numeric standards in storm water discharge permits.

The League understands that these revisions relate to the National Pollutant Discharge Elimination System (“NPDES”) MS4 General Permit Remand Rule and that this language is not intended to lead to the imposition of numeric standards in stormwater discharge permits. However, the League respectfully requests a clarification and assurance that numeric standards are not intended. To that extent, the Department could add text to the administrative code language or add a clarifying note in NR 216.07 providing as follows:

NOTE: Reduction of pollutants and compliance with water quality standards are intended to be monitored and achieved through the implementation of best management practices (“BMPs”).

Response: The department understands that due to the number of outfalls and the variability of storm water flows, meeting ‘end of pipe’ numeric effluent water quality standards is much more challenging for storm water permittees than for traditional point source permittees, such as wastewater treatment plants, who have one or two outfalls and more predictable flows. Therefore, the department has traditionally implemented numeric standards in storm water permits by requiring best management practices, many of which are modeled to determine performance on an average annual basis. The department plans on continuing the practice of implementing numeric standards as a percent reduction in the average annual pollutant discharge for most pollutants, as

determined by modeling best management practices. However, some pollutants, such as bacteria, are not easily modeled, so there may be instances where limited end of pipe monitoring will be needed to demonstrate the effectiveness of best management practices and to identify drainage basins where targeted actions are most needed. The department is not proposing any changes to the administrative code language in response to this comment.

**Comments by Midwest Environmental Advocates, Milwaukee Riverkeeper, Clean Water Action Council of NE WI, and River Alliance of Wisconsin (MEA):**

Comment MEA-1: DNR should ensure that facilities' SWPPP identify potential contamination during major storm or flood events and include measures to reduce that contamination, including moving sources of contamination out of the 100-year floodplain.

Response: The department's storm water program does not have direct regulatory authority over placement of materials within the floodplain. In accordance with s. NR 216.27 (2), Wis. Adm. Code, when plans are developed or activities conducted in accordance with other federal, state, or regulatory programs that meet the requirements of this section, the plans may be incorporated in the SWPPP by reference.

Chapter NR 116, Wis. Adm. Code, applies to all municipalities and their respective jurisdictions to regulate all floodplains where serious flood damage may occur. Municipalities are required to develop maps of the areas to be regulated under this chapter and develop floodplain zoning ordinances to define proper uses in those regulated areas. Under s. NR 116.12 (1)(c) and (g), Wis. Adm. Code, respectively, storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life are prohibited in floodways areas. Section NR 116.13 (6), Wis. Adm. Code, provides that storage of any materials which are buoyant, flammable or explosive, or which in times of flooding could be injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be either floodproofed to or placed at or above the flood protection elevation. Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

Subsequently, the SWPPP may be modified to reflect changes to minimum source area controls, best management practices, and good housekeeping measures where activities and materials may be present in the floodplain or incorporated by reference into the SWPPP where these conditions are present.

The department has made no changes to the proposed rule in response to this comment.

Comment MEA-2: DNR should add a clarifying note to NR 216.002(2) that: "Disturbances that are less than one acre must be permitted if they are part of larger common plan of development that may occur at different times and/or on different schedules."

Response: The department agrees that a note regarding common plan of development is warranted but believes it would be best placed in NR 216.42 (1).

The department updated the following note in the proposed rule:

NOTE: 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).

Comment MEA-3: DNR should amend the definition of illicit discharge to comply with federal law or, at a minimum, clarify in stormwater permits that all permittees must report any discharge to a municipal separate storm sewer system.

Response: The department has previously added a note to s. NR 216.002(11) stating that “A discharge listed in the definition above may be regulated on a case-by-case basis under s. NR 216.07 (3) (b) or s. 283.31, Stats., if the MS4 permittee, municipality, or the department identifies it as a significant source of a pollutant to waters of the state. In a memorandum dated December 21, 2017, the US EPA accepted this clarification as resolving their comment regarding illicit discharge regulation. No changes to the board order have been made in response to this comment.

Comment MEA-4: DNR should amend proposed § NR 216.10(6)(b)2 to require 14-day notice and specify that the municipality “shall provide DNR” with the application.

Response: The department agrees that it is reasonable to require the authorized local program to submit NOIs to the department at least 14 working days prior to the presumptive approval date.

The department has modified s. NR 216.10 (6) (b) 2 in response to this comment.

Comment MEA-5: DNR should clarify what form should be used to report the results of the non-stormwater evaluations described in § NR 216.28(1)(c).

Response: The department has modified s. NR 216.29 (1) (e), Wis. Adm. Code, to allow continued usage of the SWPPP Summary form. The form allows permittees to document non-stormwater discharge monitoring required under s. NR 216.28, Wis. Adm. Code. No changes to the board order have been made in response to this comment.

**Comment by Midwest Food Products Association (MWFPA):**

Comment MWFPA-1: MWFPA urges the Department to reconsider Section 36 of the Draft Rule, which requires industrial permittees to submit their entire Storm Water Pollution Prevent Plan (SWPPP) to the Department. The proposed requirement is administratively burdensome for permittees and is not necessary for the effective administration of the storm water permitting program.

Submitting a full plan, even by electronic means, shoulders permittees with an additional administrative reporting burden. Also, requiring permittees to submit the full plan may cause confusion as to when a revision to the SWPPP necessitates resubmittal of the entire plan. If a SWPPP is not resubmitted for each update, Department staff may rely on a prior version of the SWPPP that is not current for the facility. For these reasons, we support retaining the current language of NR 216.29, requiring submission of the SWPPP summary rather than the facility’s entire SWPPP.

Response: Section NR 216.29 of the proposed rule applies to owners and operators of a proposed industrial stormwater discharge that have not yet begun industrial operations. The department has removed many of the proposed changes and instead has provided the option in s. NR 216.29 (1) (a) and (b), Wis. Adm. Code, to allow permittees to submit either the full SWPPP or SWPPP Summary when applying for coverage under this section. For facilities that currently have storm water discharge permit coverage, the provisions of ss. NR 216.27 (4) and 216.29 (6), Wis. Adm. Code, are applicable.

**Comments by the City of Watertown (CW):**

Comment CW-1: NR 216.031 (1) (e) and NR 216.032 (h), “Any other information that the department requests”. We encourage a revision of this language to more clearly indicate the type of information the department may require during the Municipal Separate Storm Sewer System (MS4) Permit application or reapplication process, such as specifying that the information would be related to the storm water pollutant reduction programs regulated under NR 216, Wisconsin Administrative Code. As written, the language is broad and unclear, subject to the interpretation of the individual requesting the information.

Response: The department is updating ch. NR 216, Wis. Adm. Code, to align with federal storm water requirements. 40 CFR § 122.34 (a) (2) requires the department to reissue permits based upon evaluation of current permit requirements, record of permittee compliance and program implementation progress, current water quality conditions, and other relevant information. This ensures MS4 permits have requirements necessary to meet the MS4 permit standard “to reduce pollutant discharges from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.” Pursuant to s. 283.37 (5), Stats., the department may require the applicant to submit information in addition to that supplied on the permit application. The department wants to ensure that any additional information can also be collected electronically. The board order has been revised to read ‘other relevant information’ in the two locations referenced.

Comment CW-2: NR 216.07(8) (h) and (j), regarding additional information required in the MS4 Permit Annual Reports.

- We encourage a revision NR 216.07 (8) (h) to describe the type of evaluation expected to meet this requirement, with potential alternative examples of submittals that could be used instead.
- In the first sentence of NR 216.07(8) (j) we encourage a substitution of the word “necessary” to “anticipated” (“... to comply with permit requirements or to achieve measurable goals.”) While staff try to forecast annual expenditures, municipal budgets are subject to review and approval by many individuals, committees and councils prior to adoption on an annual basis and may not reflect the originally planned budget that was initially developed by those managing the stormwater program. In addition, while a plan to implement a selection of specific projects over a 5-year permit term may serve as a guide to improving water quality, the real opportunity to implement a specific project often changes within a few years. The availability of land, willingness of partners to provide easements or assistance, and the evolution of the storm water industry and our understanding of pollutant control through new technologies result in conditions that may influence priorities and provide new opportunities for municipalities to cost effectively evaluate and embrace new opportunities which may be better suited to an area than the previously planned projects. For these reasons, we encourage the substitution of the word “necessary” to “anticipated” (“... to comply with permit requirements or to achieve measurable goals.”)

Response: Additional detail on the evaluation required under s. NR 216.07 (8) (h) is more appropriate within the text of permits and guidance documents. The evaluations are required under 40 CFR § 122.34 (d), which states that “the MS4 permit must require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its storm water management program (SWMP), and the status of achieving the measurable requirements in the permit. This includes appropriate record keeping by the permittee, written storm water management programs, and annual reporting. Based on the permittee’s annual review of their program via the annual report, they shall also report any changes made to their storm water management program.” The federal language is used as the basis for developing permit language and guidance related to this requirement. The department has modified s. NR 216.07 (8)

(j) in response to this comment and re-ordered 216.07 (8) (i) to (j) based on the order the required actions need to occur.

Comment CW-3: NR 216.07(10) (c), US EPA-approved TMDL. We recommend a clarification of the information to be considered by department staff as listed below:

- Sections (1), (4) and (5). Much of this information is compiled and analyzed through extensive and costly TMDL planning, often with funding through the Wisconsin Department of Natural Resources (WDNR) Urban Nonpoint Source and Storm Water Grant program. Input from department staff on the need for structural best management practices and related land acquisition, financing, and infrastructure changes (1), an evaluation of the effectiveness of previously implemented best management practices (4), and whether a TMDL implementation plan is “appropriate and necessary” (5) would be better provided during the planning process than after plan completion as a condition of permit compliance. If the information referred to in Sections (1), (4) and (5) is different than the information typically found in the TMDL planning activities performed prior to implementation, we encourage examples of the types of reports, studies, analyses, or the decision tree or flow chart that staff would use to evaluate this information. As written, the language is very unclear to the municipality on what may need to be developed to meet this requirement, and subsequently the resources that will be needed to achieve compliance with this aspect of the permit.
- Section (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.” We recommend adding examples after this existing language, to clarify the types of efforts department staff may consider in this evaluation. The term “good faith efforts” can be subject to individual interpretation.

Response: The ‘TMDL implementation plan’ is what comes out of the planning process as a permit condition. Sections (1), (4), and (5) are the items the department will consider when evaluating the permittee’s proposed implementation plan for achieving the TMDL reduction goals. These sections do not impose additional requirements on the permittee, rather provide a framework for review of the permittees plan and additional flexibility appropriate to implementing a TMDL in a municipal storm water permit context rather than a traditional wastewater treatment plant.

Section (3) recognizes that there are actions that the permittee can take to make progress towards achieving the TMDL reduction goals that are not always directly quantifiable. For example, a permittee may implement fall leaf collection in high density residential areas. The action is known to reduce pollutants for which there is a wasteload allocation, but the level of reduction may not be easily quantifiable. Ultimately, the goal of TMDLs is to delist the waterbody, and any action taken to reduce pollutant discharges to the waterbody can be considered.

No changes to the board order have been made in response to this comment.

Comment CW-4: NR 216.07(10) (d), Assessment. We encourage additional language be included in section (d) regarding the assessment to be included as a permit condition, per NR 216.07(10). Specifically, clarification on the extent of modeling that will be required in each 5-year permit term, or if alternative summaries or tabular summaries of pollutant loading data would be acceptable alternatives to costly municipal-wide modeling analyses.

Response: The requirement for an updated or new assessment of pollutant loading and reduction is not specified in code as the requirement is generally incorporated into permits following a precipitating event, such as a permittee’s first permit term, EPA approval of a new TMDL, or annexation of additional area. Permittees are encouraged to structure their modeling results in such a manner as to facilitate updates with minimal effort. Alternative approaches to providing pollutant

loading data and best management practice performance may be discussed with regional storm water engineers to determine if the proposed approach is acceptable.

No changes to the board order have been made in response to this comment.

Comment CW-5: NR 216.075 (2) and (3), regarding if the department finds that an agreement or implementation of a control measure does not meet the requirements of the permit. We encourage adding language to allow the noncompliance issue to be resolved by the other entity before disallowing a municipality from working with the other entity. In most cases, agreements between municipalities and other entities to meet the MS4 Permit program compliance is the result of the municipalities lack of resources to effectively meet the requirements individually. A revised program that addresses the noncompliance may be more effective and cost efficient than the program the municipality may try to create as a replacement.

Response: As with any disciplinary action the department takes, we have discretion on when to take enforcement. The overall department goal is to obtain voluntary compliance; however, when there is a violation, enforcement occurs in a sequence, or stepped process. The process usually begins with primary enforcement, termed informal enforcement. Department staff make these first steps as a part of routine operations. The enforcement process is outlined within internal department procedures, not within regulatory code.

This section is providing authority to require the MS4 to implement its permit program on its own, when the department finds a co-permittee or 3rd party is inadequate. This section should not be interpreted that the department will immediately revoke the ability to work cooperatively upon identification of a deficiency.

No changes have been made in response to this comment.

Comment CW-6: Please consider developing and including language in the revised NR 216 to address a timeframe for WDNR staff to review and respond to the MS4 Permit applications and reapplications, MS4 Permit Annual Reports, and permit compliance checks and audits.

Response: The department has internal procedures for staff regarding level of review and timeframes associated with review for certain documents. Depending on management decisions, competing workload, staff positions filled, etc., response time needs to remain flexible.

No changes to the board order have been made in response to this comment.

Comment CW-7: In NR 216.29, it is unclear on when existing permitted sites will be required to submit a full SWPPP. An anticipated date of implementation will help existing permittees budget for this expenditure.

Response: The proposed rule applies to owners and operators of a proposed industrial stormwater discharge but have not yet begun industrial operations. The department has amended this section to the previous language and provided the option in s. NR 216.29 (1) (a) and (b), Wis. Adm. Code, to allow permittees to submit either the full SWPPP or SWPPP Summary when applying for coverage under this section. For facilities that currently have storm water discharge permit coverage, the provisions of ss. NR 216.27 (4) and 216.29 (6), Wis. Adm. Code, are applicable.

No changes to the board order have been made in response to this comment.

**Comment by Wisconsin Builders Association (WBA):**

Comment WBA-1: Wisconsin faces a work force housing crisis. We are not building enough houses to keep up with demand.

1. The cost to build housing (multi-family and single family) is rising faster than inflation and incomes.
2. The state has seen a decline homeownership especially among younger families, first-time homebuyers, and African American and Hispanic families.
3. The latest data shows that, on average, regulations and fees imposed by government at all levels account for 24.3 percent of the final price of a new single-family home built for sale.
4. The WBA opposes the dramatic increase in proposed fees for permitting, which range from 79% to 400%. This is the worst time for the Department to increase fees on new single-family and multi-family projects. Such fee increases will continue to hinder Wisconsin's efforts to create more workforce and affordable housing.

Response: Construction site storm water permits are required when one or more acres of land will be disturbed, and for sites of less than one acre if they are part of a larger common plan of development or sale. An application for subdivision development is typically associated with a single fee for the entire project rather than construction of individual homes. Therefore, any design costs and fees are divided among the number of residential lots within the subdivision.

For example, according to the department's WPDES permit database, a recent subdivision included 45 residential lots across 24 acres. The construction site storm water permit application fee paid was \$235, or \$5.22 per residential lot. Another example included 58 lots across 49 acres. The storm water permit application fee paid was \$350, or \$6.03 per residential lot. Using the proposed fees amended in response to public comment, the estimated fee for similar developments would amount to \$12.22, and \$13.79 respectively, per residential lot. Therefore, it is not anticipated that the proposed construction site permit application fee increases would have a significant effect on the affordability of housing.

Proposed fee increases have been lowered in response to this comment.

**Comments by the Wisconsin Manufacturers & Commerce:**

Comment WMC-1: Electronic reporting requirements are described in Section 5 of the proposed NR 216. The requirements appear to grant the department very broad discretion. WMC urges the DNR to limit the scope of Section 5 (NR 216.006) to only apply to applications, and only to the extent required under federal law, as required by s. 283.11(2)(b). At a minimum this should include the deletion of NR 216.006(4) and NR 216.006(5). Additional revisions to Section 5 may also be necessary to accomplish this purpose.

Response: The National Pollutant Discharge Elimination System Electronic Reporting Rule (40 CFR 127) requires authorized NPDES programs to electronically collect, manage, and share NPDES data to EPA relating to applications and Notice of Intent, Notices of Termination, program reports (such as MS4 annual reports), and compliance and inspection information. Section NR 216.006 (4) and (5), Wis. Adm. Code, allow the department to establish an electronic system to collect the aforementioned data. EPA estimated that some authorized NPDES programs may need to update their regulations or statutes to make clear that electronic reporting is required for the reports. In order to incorporate electronic reporting into permits, authority needs to be established in ch. NR 216, Wis. Adm. Code.

The department notified EPA of their intent to be the initial recipient of electronic information from regulated facilities (verse EPA as the initial recipient) (40 CFR § 127.27). Pursuant to 40 CFR §



127.13, the department has responsibility for the quality of the information provided by permittees. NPDES permittees, facilities, and entities subject to this must use quality assurance and quality control procedures to ensure the quality of the NPDES information submitted. Additionally, 40 CFR § 127.23 requires electronic data transfers to be timely, accurate, complete, and consistent. To meet federal requirements and ensure consistent data collection and transfer, the department requires the use of their electronic system. The EPA also acknowledged that the authorized NPDES program may also require NPDES regulated entities to submit more data than what is listed in federal code. EPA is expected to expand the extent of electronic submittals required in their permits and then expect the states to follow suit in subsequent permit reissuances. The proposed rule allows the department to adapt to the anticipated changes in EPA electronic reporting requirements as the federal government further develops its electronic reporting systems.

As businesses move increasingly to electronic communications, electronic reporting is expected to be less of an administrative and economic burden than paper reporting. Electronic submittal of documentation eliminates time and money spent on printing paper submittals and shipping them to regulators. Companies may also search the water permit system for previous submissions and examples from similar businesses when developing information for new or modified facilities. The rule includes waiver provisions consistent with federal rules for the rare situations where electronic submittal may not be feasible.

The phrase ‘as needed to comply with s. 283.43 (1)(b), Stats.’ will be added to the end of s. NR 216.006 (4) and (5).

Comment WMC-2: WMC requests that the DNR delete the proposed NR 216.27(3)(cm) and NR 216.47(7) found in Sections 35 and 61, respectively. These wetland requirements go beyond what is required under s. 283.11(2)(b), and are beyond the scope of the rule. At a minimum, WMC urges the Department to explicitly state that the proposed NR 21.627(3)(cm) only applies to “landfills and nonmetallic mining states,” as previously indicated by DNR staff.

Response: The proposed sections directly implement water quality standards in ch. NR 103, Wis. Adm. Code that protect the aquatic and wildlife habitat within wetlands that could be impacted by a significant increase or decrease to the quantity of storm water discharged to them. The intent for including an assessment of these impacts in the SWPPP and the storm water management plan was to encourage evaluation of these concerns early in the design process when it can be most cost-effectively addressed. As the storm water permits are required to be conditioned to not cover any activities that would violate ch. NR 103, the requirement is already in place but is often overlooked until permit review. However, after further consideration, the department believes that these provisions are better addressed within ch. NR 151, Wis. Adm. Code, along with other performance standards developed to maintain water quality during and after construction. Therefore, these revisions have been removed from the proposed board order but may be included in a scope statement for ch. NR 151 updates in the future. The EIA has also been updated to remove costs associated with the removed provisions.

Comment WMC-3: WMC urges the DNR to eliminate Sections 36-39 from the proposed NR 216, and retain the SWPPP summary requirement found in the existing rule. This will remove an undue administrative burden on the regulated community, and remove an unlawful change included in the rule.

Response: The department amended sections of the board order back to the original language, but included the option to submit either the full SWPPP or the SWPPP summary in s. NR 216.29 (1) (a) and (b), Wis. Adm. Code.

Comment WMC-4: WMC urges the Department to withdraw the proposed fee increases included in Table 5 of Section 54 of the proposed rule. If the Department believes it is under a statutory obligation to reset fees under s. 283.33(9)(b), WMC urges the DNR to examine lowering, not raising, fees.

Response: The department has reduced the proposed fee increases in response to this comment. The department believes that the fee increase is necessary for the reasons provided in the memo titled ‘Fee analysis related to proposed rule changes to NR 216 (WT-09-19)’. These reasons include increased demand for department services on top of 20 years of inflation occurring between the last fee update and the anticipated effective date of proposed fees. When we asked our stakeholder what the construction cost was for typical projects requiring construction permit coverage, most of them identified project costs over \$1 million, therefore the proposed fees would reflect less than a tenth of a percentage of overall project costs. The department believes that the statutory obligation to set fees under s. 283.33 (9) (b), Stats. was intended to support administration of the program so it was not entirely dependent on general tax revenue. The storm water program engages in continual improvement, so there are always efforts underway to provide something ‘new’ to our permittees, such as improved electronic permitting functionality, new technical standards, and outreach to help the regulated community comply with permits. Increasing fees will enable the program to continue to support these efforts.

Comment WMC-5: WMC encourages the Department to reconsider the following improvements suggested by WMC in its July 21, 2020 letter:

- If the DNR clarifies “routine maintenance” under NR 216.42(8), it should consider including the phrase “Routine maintenance may include, but is not limited to...” to avoid limiting businesses’ options and flexibility.
- “Consider establishing a standardized method for the assessment of existing storm water ponds.”
- “Consider clarifying the phrase “separately or as part of a larger plan of development” with respect to routine activities – specifically, to clarify how many parcels of land must be disturbed, or how expansive a project must be, before it reaches the threshold where a permit is required.”
- “Consider clarifying this exemption with respect to earth disturbing activities associated with the general non-metallic mining permit for aggregate pits and quarries. Some of our members feel that regulators and industry are not on the same page in terms of what constitutes “routine activities” in this context.”

Response: The department considered the suggested changes as follows:

- In response to the comments provided on the economic impact assessment, the department decided not to modify the text of the code regarding routine maintenance. The definition of routine maintenance as it currently reads in ch. NR 216 is based in federal code. Instead a note is provided to clarify specific situations that we are commonly asked about. The modification proposed by WMC to the definition of routine maintenance was not implemented as it would expand the routine maintenance exemption beyond that supported by federal code.
- The suggestion to have a standardized method for assessment of existing storm water management ponds has merit as a potential new technical standard. The department has authority to develop that technical standard within subch. V of ch. NR 151, Wis. Adm. Code. This item has been added to the department’s list of potential technical standard development projects.

- The concept of common plan of development and the definition of routine maintenance are established in federal rule. The routine maintenance exemption specifies that the exemption applies to projects disturbing 5 acres or less, consistent with federal rule.
- The proposed non-metallic mining general permit, which is currently in the process of being reissued, includes language clarifying the circumstances under which activities would need to be covered under a construction site permit. Specifically, creation of new impervious surfaces that would warrant post-construction storm water measures would need to be covered under a construction site general permit. The proposed language is expected to improve understanding and consistency in this area.

No changes to the board order have been made in response to this comment.

**Comments by the Wisconsin Paper Council (WPC):**

Comment WPC-1: DNR should not require the submittal of the entire SWPPP, and instead continue to allow for the submittal of a summary of the SWPPP. Given current regulatory requirements, submittal is not necessary to ensure adequacy of SWPPPs. NR 216.29(1) requires owners or operators to develop a SWPPP that meets administrative code requirements prior to operation, and to submit a SWPPP summary to DNR. In addition, owner or operators must keep the SWPPP on site, and to make it available to DNR upon request.

Furthermore, DNR has the authority under its current rules to require the submittal of a complete SWPPP if it determines a SWPPP summary is inadequate. Specifically, NR 216.29(1)(f) provides: “The department shall notify the permittee if it determines that the SWPPP summary is inadequate and may require that permittee to submit the SWPPP for review.” Thus, the DNR can obtain and review the entire SWPPP if it determines such a review is necessary.

Also, DNR did not provide any information as to why it believed submittal of the SWPPP summary was insufficient, or why the existing requirements outlined above were not adequate to address any concerns. Requiring submittal, and presumably reviewing complete plans, would be less efficient than using the current rule provisions to address deficiencies.

Response: The department amended sections of the board order back to the original language, but included the option to submit either the full SWPPP or a SWPPP summary in s. NR 216.29 (1) (a) and (b), Wis. Adm. Code.

Comment WPC-2: In summary, we do not believe DNR’s fee increase proposal is reasonable for the following reasons:

- According to the FAM, the current fees are estimated to generate \$433,625 in FY 23. Under DNR’s proposal, fees would generate \$1,366,460, which is more than three times the amount of fee revenue that would be generated by the current fees in FY 23.
- A comparison of the current fees to the proposed fees, indicate fee increases ranging from 79% for sites less than two acres, to a 397% increase for sites of 50 acres or more.
- The fee increases far exceed inflation since 2003.
- DNR’s state fee comparison shows the Wisconsin’s fees would be significantly higher than fees imposed by other states, in many instances.

Response: The department has reduced the proposed fee increases in response to this comment. The smallest sites would have an increase slightly above inflation and the highest fee proposed is close to the maximum charged by neighboring states. The resulting estimated fee income divided by the total number of NOIs is comparable to the \$400 flat fee charged by Minnesota and Michigan.

**Comments by the Wisconsin Transportation Builders Association (WTBA):**

Comment WTBA-1: Section 1 – The definition of “receiving water” is too broad. The “receiving water” should be limited to the water body that initially receives the discharge. The proposed standard of “affected by the discharge” is vague and could conceivably include downstream waters that are a considerable distance from the discharge

Response: The storm water permit program is a pollution discharge elimination system permit program required by the Clean Water Act. 40 CFR section 131.10 (b) requires consideration of downstream uses and water quality standards when establishing permit requirements.

No changes to the board order have been made in response to this comment.

Comment WTBA-2: Section 6 – The relationship between TMDLs and the permitting process, particularly the reissued general permit, needs to be clarified. WTBA believes the past practice of use of BMPs or, if applicable, compliance with water discharge limits listed in the general permit instead of specific wasteload allocations should be continued. WTBA is opposed to individual wasteload allocations to implement TMDLs.

Response: The department understands that due to the number of outfalls and the variability of storm water flows, meeting ‘end of pipe’ numeric effluent water quality standards is much more challenging for storm water permittees than for traditional point source permittees, such as wastewater treatment plants, who have one or two outfalls and more predictable flows. Therefore, the department has traditionally implemented numeric standards in storm water permits by requiring best management practices, many of which are modeled to determine performance on an average annual basis. The department plans on continuing the practice of implementing numeric standards as a percent reduction in the average annual pollutant discharge for most pollutants, as determined by modeling best management practices. For pollutants such as bacteria that are not easily modeled, implementation may be via a combination of best management practices and targeted monitoring to identify drainage basins where actions are most needed.

No changes to the board order have been made in response to this comment.

Comment WTBA-3: Section 29 – The definition of “industrial waste” needs to be clarified so that it is clear that it does not include stockpiles of concrete rubble, recycled asphalt pavement, and other materials that are routinely used in the construction of transportation facilities.

Response: The department has combined sections 28. and 29. of the board order to provide appropriate context for interpretation of this section, and has clarified that the term as used in this subdivision does not include placement of recycled materials used during construction.

Sections 28 and 29 have been combined into s. NR 216.21 (2) (b) 7. and amended to read that 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 and 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.

This section was amended to specifically pertain to landfills, land application sites, open dumps, and construction and demolition waste landfills which may receive these types of waste, or that receive or have received industrial waste manufactured from the facilities regulated under s. NR 216.21, Wis. Adm. Code. This clarification is needed to align with the discharges that require industrial permit coverage commensurate with the clean water act, 40 CFR 122.26 (b) (14) (v). Therefore, landfills, land application sites, open dumps, and construction and demolition waste landfills that receive or have received wastes that were ultimately manufactured but disposed of in these facilities necessitates permit coverage.

Please note that definition of ‘industrial waste’ in the context of ch. NR 216 is regulated separately from ‘industrial waste’ defined in s. NR 500.03 (109) Wis. Adm. Code, which is administered through the department’s solid waste program. Furthermore, s. NR 500.08 (2) (a), Wis. Adm. Code, exempts clean soil, brick, building stone, concrete or reinforced concrete not painted with lead-based paint, broken pavement, and wood not treated or painted with preservatives or lead-based paint from licensing and regulation under chs. NR 500 to 538 provided the locational requirements of s. NR 504.04 (3) (c) and (4) (a) to (f), Wis. Adm. Code, are met and the facility is operated in a nuisance-free and aesthetic manner.

Comment WTBA-4: Section 33 – The scope of the applicability section needs to be clarified. As DNR is aware, internally drained non-metallic mines currently do not need to prepare a SWPPP. This practice should continue.

Response: Under s. NR 216.30 (2), Wis. Adm. Code, a non-metallic mining facility is considered internally drained if all storm water that contacts disturbed areas or excavated material is directed to onsite seepage areas that are entirely confined and retained within the property boundaries of the site. During initial mine site development, this provision also applies to the construction of best management practices that may not drain internally to the mine site. Once stabilized with vegetation, these areas are no longer considered disturbed area. Therefore, this provision is applicable to new facilities and facilities which may undergo expansion if the construction of best management practices results in storm water runoff containing conventional pollutants common to the industry are not entirely contained on the site. Additionally, internal drainage designation requires department concurrence.

No changes to the board order have been made in response to this comment.

Comment WTBA-5: Section 35 – The scope of the evaluation regarding impacts to wetlands needs to be clarified, particularly regarding ongoing operations that span many years. Alternative language is suggested as follows: “For industrial activities that include ongoing changes to drainage and grading, the SWPPP shall identify actions to avoid and minimize impacts to wetlands resulting from a change in hydrology.”

Response: The department has removed the proposed language from the board order in response to comment WMC-2. The EIA has also been updated updated to remove costs associated with this provision.

Comment WTBA-6: Section 36 – It is WTBA’s understanding that the ability to submit a SWPPP summary versus a SWPPP will remain. SWPPP summaries are a useful tool for certifying compliance with NR 216 without the excessive burden to continually submit updates for facilities with ongoing changes to drainage and grading. WTBA believes that ability is a critical aspect of the current NR 216 framework.

Response: The department has amended sections of the board order back to the original language, but included the option to submit either the full SWPPP or the SWPPP summary in s. NR 216.29 (1) (a) and (b), Wis. Adm. Code.

Comment WTBA-7: Section 40 – The transfer termination language needs to account for situations where a lessee no longer has access to a facility and the lessor will not cooperate in the transfer or termination of the permit. Also, the ability to use paper form submissions should continue as an alternative compliance mechanism for transfer termination.

Response: The board order, s. NR 216.31, has been updated to include the case where there is no contact between the permittee and the new owner or operator. This language allows the new owner or operator to submit a Notice of Intent without the transfer request form. Additionally, the electronic reporting waiver process is defined in s. NR 216.006 (6) through (8) for paper form option.

### **AMENDMENTS BY THE DEPARTMENT**

The following minor revisions were made by the Department:

1. Sections NR 216.005 (note), 216.07 (5) (a), and (10) (a) were revised to simplify the references to NR 151.
2. Subsections under s. NR 216.032 have been changed to correct the section numbering from par. (a) to sub. (1).
3. Proposed s. NR 216.06 (4) was renumbered to keep it with the balance of s. NR 216.06 which was renumbered s. NR 216.031.
4. Sections NR 216.10 (1) (2), and (4) were changed to replace ‘pursuant to’ with ‘under’ to align with board order style.
5. Section. 216.42 (8) (note) was changed to replace ‘regrading a dirt road’ with ‘Grading an existing dirt road’.
6. Section NR 216.43 (4) was revised to change ‘par.’ to ‘sub.’.

Prepared by:

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STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis  <input type="checkbox"/> Original   <input checked="" type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date            July 2021</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)            Chapter NR 216, Wis. Adm. Code (WT-09-19)</p>	
<p>4. Subject            Storm Water Discharge Permits</p>	
<p>5. Fund Sources Affected  <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input type="checkbox"/> PRO   <input checked="" type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected            Section 20.370 (9)(bj), Wis. Stats., Storm water management fees.</p>
<p>7. Fiscal Effect of Implementing the Rule  <input type="checkbox"/> No Fiscal Effect   <input checked="" type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input checked="" type="checkbox"/> Decrease Costs  <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply)  <input type="checkbox"/> State's Economy   <input checked="" type="checkbox"/> Specific Businesses/Sectors  <input checked="" type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers  <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).  <b>\$2,104,200 (not including \$20,400 reduction in compliance costs)</b></p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?  <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule</p> <p>Chapter NR 216, Wis. Adm. Code, Storm Water Discharge Permits, establishes the criteria under which municipalities, industrial facilities, and construction site owners must obtain coverage under a Wisconsin Pollutant Discharge Elimination System (WPDES) storm water discharge permit pursuant to s. 283.33, Wis. Stats., and federal regulations established under the federal Clean Water Act. Furthermore, ch. NR 216, Wis. Adm. Code, specifies the permit requirements and implementation of the appropriate performance standards of subchs. II and IV of ch. NR 151, Wis. Adm. Code, Runoff Management.</p> <p>The purpose of the rule amendment is to address the omissions and deviations from federal storm water requirements as identified by the U.S. Environmental Protection Agency (US EPA) Region 5 by letter to the Department of Natural Resources (the department) dated July 18, 2011; update the references to the non-agricultural and transportation facility performance standards in ch. NR 151, Wis. Adm. Code; codify other federal storm water requirements that have become effective since the previous promulgation of amendments to ch. NR 216, Wis. Adm. Code; any additional rule changes that are necessary and reasonable relating to federal requirements or state statute. In addition to the policy updates, the statement of scope includes evaluation and updates to permit fees. For additional descriptions of proposed revisions, see section 3. of the Scope Statement and/or section 5. of the draft board order.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</p> <p>Engineering and environmental consultants [AECOM, CW Purpero, Inc., McMahon Group, MSA Professional Services, Inc., Pinnacle Engineering, Short Elliott Hendrickson Inc (SEH)]; permitted municipalities [City of Appleton, City of Green Bay, City of Madison, City of Pewaukee, Waukesha County]; organizations representing permitted municipalities</p>	

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

[League of Municipalities, Northeast Wisconsin Stormwater Consortium of Fox-Wolf Watershed Alliance (NEWSC), Southeastern Wisconsin Watersheds Trust, Inc. (Sweet Water)]; and associations representing businesses [Wisconsin Manufacturers and Commerce, Wisconsin Transportation Builders Association] were contacted for conceptual feedback prior to drafting the board order.

Engineering and environmental consultants [McMahon Group, MSA Professional Services, Short Elliott Hendrickson Inc (SEH)]; permitted municipalities [City of Green Bay, City of Madison, City of Pewaukee]; developers [JS Realty, Kwik Trip, Neumann Companies, Inc., Veridian Homes, Zilber Property Group]; organizations representing permitted municipalities [League of Municipalities]; and associations representing businesses [Wisconsin Builders Association, Wisconsin Realtors Association, Wisconsin Manufacturers and Commerce] were contacted for feedback regarding construction application permit fees.

The department held a public hearing on April 20, 2021, on the board order and received comments from affected parties. In response to these comments, several changes with that had associated costs were removed. As a result of these comments, the economic impact of the proposed rule was reduced by \$674,700.

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#### 13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The City of Appleton provided input on typical costs for municipal storm water program updates. The department also used project budgets from 2019 urban non-point source planning grant applications from the Town of Grand Chute, Village of Kronenwetter, Marathon County, City of Merrill, City of Schofield, Village of Thiensville, and Village of Weston to estimate the typical cost of updating written minimum control measure plans for those measures with code changes proposed.

The department is provided a comment period on this economic impact analysis which local governmental units also had the opportunity to participate in the development of the final EIA. No local units of government commented directly, however League of Wisconsin Municipalities provided comments on the behalf of their members.

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#### 14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Overall, the compliance cost due to the proposed changes to code is estimated to be \$2,104,200 per year; this will be partially offset by cost savings detailed in question 15. The overall compliance cost among external entities and the department are as follows:

- Local Governmental Units cost estimate is \$150,800.
- The manufacturing sector is estimated to be \$326,300. The sectors most affected would be non-metallic mines and landfills.
- Small businesses cost estimate is \$114,400.
- Non-governmental entities with construction projects are estimated to incur \$579,700 of costs. As the residential projects requiring permits are primarily subdivisions; the impact on a typical ¼ acre residential lot is expected to be less than \$20. No impacts to public ratepayers are anticipated as most utility construction projects pay for notice of intent review via contracts with the department rather than the application fees.
- The fiscal impact to the department due to the proposed changes to code is estimated to be \$204,900.

The Department does not anticipate the proposed changes to the code to have an adverse impact on the state's economy.



## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

#### (A) Economic and fiscal impact affecting all subchapters.

National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule- US EPA estimated that overall, the rule will save money for permitting authorities and most NPDES permittees, as shown in US EPA's fiscal impact: <https://www.epa.gov/sites/production/files/2015-09/documents/npdesea.pdf>. However, there will be "initial investment costs associated with necessary changes to information technology and infrastructure." The "significant savings are anticipated once the final rule is fully implemented"; specifically savings are anticipated by "vastly [reducing] the need for authorized NPDES programs to enter data submitted by regulated entities into information systems" and "[reducing] the need for paper and postage by authorized NPDES programs and regulated entities." "Other anticipated benefits of the rule include improved quality and accuracy of the data available to regulatory agencies and the public; more timely and expanded use of the data to identify, target, and address problems; quicker availability of the data for use; and increased accessibility and transparency of the data to the public. These benefits should allow states to shift precious resources from data management activities to activities more useful in solving water quality and noncompliance issues. This shift will, in turn, contribute to increased compliance, and a level playing field for the regulated community." Since Wisconsin has already begun implementing the eReporting rule, the department used its own estimates for this EIA instead of the US EPA's estimates. Costs include the operation and maintenance for the updated infrastructure, \$83,800. The cost of developing the electronic reporting infrastructure cost of \$206,585 has already been incurred by the department, therefore it is not included in the final cost estimate of this EIA.

#### (B) Subchapter I – Municipal Storm Water Discharge Permits

The total estimated impact for this subchapter is \$1,168,500— \$1,047,400 is the estimated economic impact to permittees and \$121,100 is the estimated fiscal impact to the department. The total estimated impact is anticipated to be partially offset by postage reductions described in question 15. There is no impact to small businesses related to this subchapter.

Other environmental programs. The exemption removed in this subchapter affects the Department of Transportation, however, there are no costs related to this revision. With the enactment of 2015 Wisconsin Act 307, chs. 30 and 283, Wis. Stats., were amended in 2015 to remove the exemption from permitting storm water discharges from the site of a transportation activity under the direction and supervision of the DOT. The department and DOT fiscal estimates can be found at <https://docs.legis.wisconsin.gov/2015/related/fe/ab755>, wherein both agencies concluded the fiscal impact of the legislation was indeterminant.

MS4 permit requirements. The US EPA's Economic Analysis estimated costs of the federal MS4 Remand Rule only impact the permitting authorities (such as the department). US EPA assumed all other costs were being accrued as a result of the existing small MS4 program, therefore it assumed baseline program costs would remain the same. It is estimated that a state would incur a cost of \$121,100 as a result of a federal rule. (The US EPA's fiscal impact can be found here: <https://www.regulations.gov/document?D=EPA-HQ-OW-2015-0671-0125>.)

Because MS4 permittees are already required to update programs with each permit reissuance, only costs associated with Public Education and Outreach and Pollution Prevention were included as these requirements were modified in the proposed code. These costs were estimated based on the budgets for updating those programs in applications for urban non-point source planning grant received in 2018 for funding in 2019. The department has assumed that costs to general permittees will be spread over the 2 years from when the requirement is added to the permit and when it is due. It is assumed that the cost incurred by individual permittees will be spread over 5 years as these permits are reissued every 5 years. The total economic impact to MS4 permittees is \$1,015,000. The total economic and fiscal impact of this section is \$1,136,100.

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

MS4 annual reports. The additional costs associated with updates to annual reporting requirements is primarily due to s. NR 216.07 (8) (h), Wis. Adm. Code, compliance evaluation. The cost was developed assuming an average of 2 hours of additional time would be required. Section NR 216.07 (8) (j), Wis. Adm. Code, allows for general permittees to reapply for permit coverage via the 4th year annual report evaluation; this cost was determined to be minimal, as the department will simultaneously eliminate the extra step of requiring a separate letter reapplication process. This revision results in one less item for the permittee to submit and one less item for the department to track. The other annual report related code changes are clarifications to items already required in current permits and annual reports and are not assumed to cause an economic impact. Therefore, the total economic impact of this section is estimated to be \$22,200 for permittees.

Public records. The cost of requiring the permittee to make records available to the public is estimated to be \$10,200. The department assumes, on average, 2 additional hours of municipal administrative staff time will be needed to implement this provision.

Total Maximum Daily Loads. Total Maximum Daily Loads (TMDLs) are currently 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 and addressed in a single 5-year permit term, therefore no new costs are expected to be incurred due to adding specific language on TMDLs into NR 216. Initial efforts to develop TMDL implementation plans for permitted municipalities subject to TMDLs demonstrated that this time frame is not feasible nor practicable for many municipal permittees, so the department is proposing code language to support implementation over a longer time period when warranted. Because the current requirement to implement the TMDL within 5 years is not practical for all permittees, there is no basis from which the Department can quantify any expected benefits provided by the proposed code language.

#### **(C) Subchapter II – Industrial Storm Water Discharge Permits**

The total cost estimate for this subchapter is \$326,300, of which \$30,200 is the estimated cost to small businesses.

SWPPP. This subchapter's costs primarily relate to the Storm Water Pollution Prevention Plan (SWPPP) requirements. It is estimated that 45 permittees will have to update their SWPPPs to include access roads and rail lines, which is estimated to cost no more than \$3,400. It is estimated that 4,200 permittees will have to evaluate for and identify the receiving waters with designations. Conducting this evaluation and updating the SWPPP is estimated to require, at most, 2 hours per permittee and is estimated to cost \$316,400, collectively. The portion of these permittees likely to be small businesses is estimated to be \$30,200.

Other environmental programs. The exemption removed in this subchapter affects the permitting of landfills. Landfills were permitted in 2016, with a total of 50 landfills now covered under the Industrial Tier 2 permit. These entities are now required to pay an annual fee for storm water permits, so the economic impact is estimated to cost \$6,500.

Total Maximum Daily Loads The provisions proposed in s. NR 216.007 require stormwater discharge permits to include an expression of the applicable wasteload allocation consistent with an applicable Total Maximum Daily Load. These provisions are not expected to result in additional costs to industrial storm water permittees because the TMDLs developed to date assume compliance with existing general permit conditions will result in meeting the assumed wasteload allocations for industrial storm water permittees. The department is not aware of any plans to change this approach for future TMDLs in Wisconsin.

#### **(D) Subchapter III – Construction Site Storm Water Discharge Permits**

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

The total cost estimate for this subchapter is \$730,500. The total impact on local units of government is estimated to be \$150,800, while the total impact on non-government entities is estimated to be \$579,700. Small businesses are estimated to have a total impact of \$84,200. These costs will be partially offset by postage reductions noted in section 15. This subchapter's costs primarily relate to the proposed increase in construction permit fees and the revisions to construction erosion control plan and post-construction storm water management plan requirements.

Construction permit fees. The total annual increase in construction permit application fee-related items is estimated to be \$552,100. Of the total, \$63,000 is estimated to have small business impacts and \$111,800 is estimated to have local government impacts. The increase in application fees is estimated to generate 513,700 per year. Late application fees are expected to affect approximately 15 applicants per year for an estimated cost of \$5,300. Reapplication fees are estimated to be \$29,600, with \$500 estimated to impact small businesses and \$3,000 to impact local governments. Amendments, which may require a second application, is estimated to be \$3,500; of that total, \$400 is estimated to impact small businesses.

Total Maximum Daily Loads The provisions proposed in s. NR 216.007 require stormwater discharge permits to include an expression of the applicable wasteload allocation consistent with an applicable Total Maximum Daily Load. These provisions are not expected to result in additional costs to construction storm water permittees because the TMDLs developed to date assume compliance with existing general permit conditions will result in meeting the assumed wasteload allocations for construction storm water permittees. The department is not aware of any plans to change this approach for future TMDLs in Wisconsin.

Erosion control plans and storm water management plans. Costs relating to identifying receiving waters with designations and updating the erosion control plan is estimated to be \$88,300. Of the total, \$8,800 is estimated to have small business impacts and \$18,600 is assumed to have local government impacts. Additionally, adding a section on control of pollutants associated with impaired waters, including those with total maximum daily loads, to the erosion control and storm water management plans is estimated to add an additional hour to plan development and cost \$88,300. Of the total, \$8,800 is estimated to have small business impacts and \$18,600 is assumed to have local government impacts. The department also seeks to clarify what types of plan changes will trigger the need for an amendment or submittal of a new notice of intent; this cost is estimated to be \$4,600 on the assumption that approximately 10 permittees per year would need to submit new notices of intent, rather than amendments. Of the total, \$500 is assumed to have small business impacts. Finally, while most drainage districts projects are likely to be exempt from getting a construction site permit for placement of dredged material, there is expected to be one project per year that does not meet the exemption criteria added in response to EPA comment. The cost associated with this is estimated to be \$1,800, which is also included for local governments.

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

This section attempts to quantify and qualitatively describe the benefits accrued to entities impacted by the revision of this rule. Primary quantified benefits relate to eliminating duplicative requirements in existing ch. NR 216, Wis. Adm. Code, or cost savings associated the reduction in postage costs. The agency estimates the total benefits of the rule revision to be \$1,118,400. Detailed assessment of these benefits is further described below.

##### (A) Changes that affect all subchapters

National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. Municipal, industrial, and construction permittees are estimated to save \$20,400 on postage for Notices of Intent, Notices of Termination, and Annual Reports. The savings for local units of governments is estimated to be \$4,100. The savings for industrial permittees is estimated to be \$2,300. The savings for construction permittees is estimated

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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to be \$16,000. The data entry savings for the state is estimated to be \$229,500. The elimination of time needed to create paper files and ship files between offices allowed state staff to reduce the average time between submittal of construction applications and permit issuance nearly in half, which has an unquantified benefit to applicants. Electronic reporting has also improved state staff collaboration. State staff can now conduct data analyses on MS4 Annual Reports to find trends in permit compliance and better educate the permittee on permit requirements.

**(B) Subchapter I – Municipal Storm Water Discharge Permits**

Remand Rule. The federal MS4 Remand Rule promotes greater public engagement through clear requirements on the opportunities for public participation in the permitting process. The updated “clear, specific, and measurable” rule language (and thus permit conditions) more clearly state what is expected for compliance, for better understanding among the public and permittees and increased consistency and expectations among state staff.

Reliance on another entity. Permitted municipalities have been forming consortiums and working together since the early days of the Phase 2 storm water regulations. Some of the shared efforts include corporate public education and outreach, watershed cleanup events, sharing street sweepers and sharing costs related to illicit discharge monitoring. These partnerships are cost-saving to municipal permittees. Due to the broad variety ways permittees have chosen to work together and the fact that many of these partnerships already exist, the department has not attempted to quantify the benefits.

**(C) Subchapter II – Industrial Storm Water Discharge Permits**

Most of the changes to the industrial permitting subchapter are clarifications which will improve regulatory certainty for the regulated community. Another benefit is elimination of the Storm Water Pollution Prevention Plan (SWPPP) summary form, as the department has updated the process to simply submit and store the full SWPPP document, which the form summarized.

**(D) Subchapter III – Construction Site Storm Water Discharge Permits**

The proposed increase in construction permit application fees is estimated to increase revenue to the state \$552,100 annually. Permittees that begin construction prior to applying for construction permit coverage often require additional staff time for inspections, documentation, and correspondence that is beyond that required for other permittees. The after-the-fact permit application fee places the cost for this additional work on the permittee, whose actions necessitate the additional work, rather than on taxpayers or other permittees.

**Alternative(s) to Implementing this Rule:**

An alternative is to not promulgate this rule. However, if the rule is not promulgated, then the department’s regulations will not be consistent with all federal rules and the department will jeopardize its status as a state-authorized program. Entities will also not benefit from the regulatory certainty provided by the updated rule language.

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16. Long Range Implications of Implementing the Rule

The long-range impact is generally the same as the short-range impact. Much of the proposed rule will be implemented as soon as the rule becomes effective. However, the department expects delayed implementation of the revised construction site application fees, which is being proposed to take in effect January 2023. This will allow landowners, developers, and municipalities time to incorporate changes in budgets and contracts.

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17. Compare With Approaches Being Used by Federal Government

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### Fiscal Estimate & Economic Impact Analysis

Under 40 CFR 123.25 (a), each state-authorized program shall possess the legal authority to implement and administer its program in conformance with federal law, including, 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 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, the 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.

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

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

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

Indiana in 327 IAC 15-13, IAC 15-6, and IAC 15-5 provides regulations like those in the current ch. NR 216, Wis. Adm. Code.

Ohio in Chapter 3745-39 provides regulations like those in the proposed ch. NR 216, Wis. Adm. Code. Their storm water rules were updated in 2019 and appear 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.

Section 227.137 (3) (a), Wis. Stats., requires that if the policy approach chosen by the agency to address that policy problem is different from approaches used by the federal government and neighboring states, an economic impact analysis prepared by an agency shall include a statement as to why the agency chose a different approach. Wisconsin's approach to implementing the storm water program differs from its neighboring states because Wisconsin allows more flexibility in the choice of storm water management practices by providing performance standards. This allows landowners and developers to implement a combination of practices that best fit the site and development needs. Providing this flexibility increases the need to provide technical consultation and review of these elements. Wisconsin also regulates projects by size rather than change a flat rate to proportion fees to the level of effort needed to review different size projects. The proposed fees would be within the \$250-\$780 range which is comparable to Iowa and Illinois and the average fee collected would be close to the \$400 flat fee charged by Minnesota and Michigan.

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
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FAX: (608) 267-0372

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

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19. Contact Name Amy Minser	20. Contact Phone Number 608-266-4359
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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis****ATTACHMENT A**

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**1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)**

The proposed rule could have an economic cost to some individual small businesses. Small businesses affected by this rule will likely fall into the category of industrial facility operators or landowners that disturb one to five acres of land for construction. The Department anticipates that the total cost to small businesses as a result of this rule will be approximately \$114,400. Specific cost estimates are indicated below.

Most small businesses requiring an industrial activity storm water permit (Subch. II) are primarily "light" industry and warehouses where they either operate completely inside of a building or under cover. These businesses can certify that they have "no exposure" of storm water to industrial materials or activities. If the small business does not self certify for "no exposure", then a compliance cost of \$30,200 is estimated to be incurred for identifying designated waters in the storm water pollution prevention plan.

For small businesses requiring a construction site storm water permit (Subch. III), increased permit application fees cost estimate of \$62,100 and a compliance cost estimate of \$18,100 is estimated to be incurred. This estimate was based on a review of fiscal year 2020 permittees with projects disturbing less than five acre and that were not known to be large businesses. Reapplication for construction permit coverage was estimated at \$500 for small businesses. The proportion of the compliance cost to small businesses was assumed to be consistent with the proportion of construction fee impacts the affect small businesses (about 12% of construction permittees).

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

The department utilized its permit records database to query data on the number of permittees. Data from Fiscal Year 2020 was utilized to estimate the number of small businesses affected by construction permit fees.

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**3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?**

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

A small business industrial facility (Subch. II) that meets the "no exposure" option does mean that a facility can be nearly exempted from the rule. A non-metallic mine that is internally drained or does not drain to a regulated wetland is also unlikely to be impacted by the proposed rule.

A small business construction site (Subch. III) (e.g., building and parking lot) can have a greater impact than a large business if the size and pollutant load from the impervious area is greater or the small business is in close proximity to a sensitive water resource. If our requirements are to achieve water quality standards, then all contributing businesses (large or small) must meet the performance standards.

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

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

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**ADMINISTRATIVE RULES**  
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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.

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5. Describe the Rule's Enforcement Provisions

Enforcement provisions are not included in the subsections of the rule affected by the proposed order. These provisions are in other portions of administrative rule not proposed for revision in this rule order.

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

Yes  No

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**CORRESPONDENCE/MEMORANDUM**

DATE: July 2, 2021

TO: Dave Siebert, Administrator, External Services Division  
Brian Weigel, Director, Watershed Management Bureau

FROM: Shannon K. Haydin, Storm Water Runoff Section Chief

SUBJECT: Fee analysis related to proposed rule changes to ch. NR 216 (WT-09-19)

Chapter NR 216, Wis. Adm. Code establishes the criteria for when certain entities must obtain coverage under a Wisconsin Pollutant Discharge Elimination System (WPDES) storm water discharge permit. Activities to update this rule were approved by the Governor on May 30, 2019. The Fiscal Estimate and Economic Impact Analysis was published for public comment on December 21, 2020. Included in this proposed rule change is an increase in the application fee for construction storm water permits. The application for storm water permit coverage under a general permit is also called a Notice of Intent (NOI). The purpose of this memo is to clarify the information reviewed to support the proposed increase in fees.

**Highlights**

**The current fees have not been updated since 2003.** The average inflation rate based on the consumer price index between 2003 and 2020 was 2.05%. 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. Applying the inflation rate to the current fees accounts for the change in the value of money over time but does not account for changes in workload over that same timeframe. Therefore, inflation is only one of several factors that were considered.

**The demand for construction site permitting services has increased since 2003.** Changes affecting construction permitting since 2003 include:

- a. Adjustments to NOI review procedures to prevent environmental impacts and delays during construction.
- b. Changes to Ch. NR 151, Wis. Adm. Code, which sets performance standards for nonpoint source runoff, increased demand for technical assistance to permittees and development of new technical standards.
- c. In 2009 commercial construction permitting shifted from the Department of Commerce to DNR.
- d. Since Fiscal Year (FY) 2010, the department has experienced an increase in construction NOIs received by 48%.
- e. As communities exhaust “green field” construction sites, there has been an increase in more complex urban infill projects and urban infill construction requires an increased level of review of NOIs.
- f. Changes in municipal practices has increased the demand for faster notice of termination responses requiring staff attention.

**The department is required to charge storm water fees proportional to the cost of program administration.** Section 283.33 (9) (b), Wis. Stats. states, “The department shall establish the amount of the fee under par. (a) for permits for construction sites, other industrial permits and municipal separate storm sewer permits based on the costs associated with each type of permit.” 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.

**Costs associated with increased efficiencies in permit turnaround time during the past decade are not sustainable at the current level of funding.** Investment in the development of service platforms, databases and technology support resulted in the successful implementation of the department’s e-permitting system for construction NOIs. Implementation of this platform reduced NOI turnaround time from 31 days to 17 days. The cost to develop this system was approximately \$98,000. Maintenance and continued improvements costs about \$31,000 per year. Implementing electronic notices of termination cost approximately \$10,000 for construction permits annually.

**Comparisons to other states should be considered in relative terms.** As further detailed in the documentation below, 93% of construction permittees would be paying fees comparable to other states based on project size.

**Increasing fees will allow the program to provide a more consistent level of service to permit applicants.** Currently, the program relies heavily on General Purpose Revenue (GPR) to fund its activities which is problematic when state funds are lapsed or cut. Shifting to a more fee-based financial structure will allow the program to be more stable and maintain a level of service commensurate with the demand for construction permitting. For perspective, in 2020 the department received the second highest number of construction site NOIs in all the years that the program has existed, while incurring a GPR funding lapse.

**Larger projects typically require more staff time.** A 1.5-acre commercial development in an urban area may be able to be screened by intake staff in 5-10 minutes and reviewed for permit compliance in under 15 minutes. Likewise, a 1.5-acre site can often be inspected in approximately 30 minutes. In contrast, a site that exceeds 25 acres in a suburban or rural area is more likely to be close to wetlands, waterways, and habitat for threatened and endangered species. A 50-acre site may take up to an hour to screen and several hours to a couple of days to review depending on complexity. In addition, there are often advance meetings for large, high profile sites. Meetings may be necessary after the permit is issued for large complex projects with multiple phases. Most site inspections are conducted on foot, therefore large sites may require significantly more inspection time, with more photos and notes to organize in the office following the inspection. Large sites frequently include multiple best management practices (BMPs) required during construction and for post construction storm water management. There are fewer projects of this size, however when under review they take a significantly higher level of staff effort.

**Fees are a small portion of overall project costs.** Interviews of stakeholders were conducted in September 2020. Stakeholders were asked about the construction cost for a typical permitted project and reported costs more than \$1 million to complete. As there are sometimes small, simple projects, the fee proposal would increase the fee for sites under two acres at a rate close to inflation.

Size category	Current fee	Proposed fee starting Jan. 2023	Percent of all NOIs	Typical construction cost for regulated projects*
1-2 acres	\$140	\$250	23%	\$50,000 - \$2 Million
2-5 acres	\$140	\$350	38%	\$1.5 Million - \$5 Million
5-25 acres	\$235	\$550	32%	\$4 Million - \$5 Million
25-50	\$350	\$800	3%	\$8 Million - \$14 Million
>50 acres	\$350	\$800	4%	\$9 Million - \$40 Million

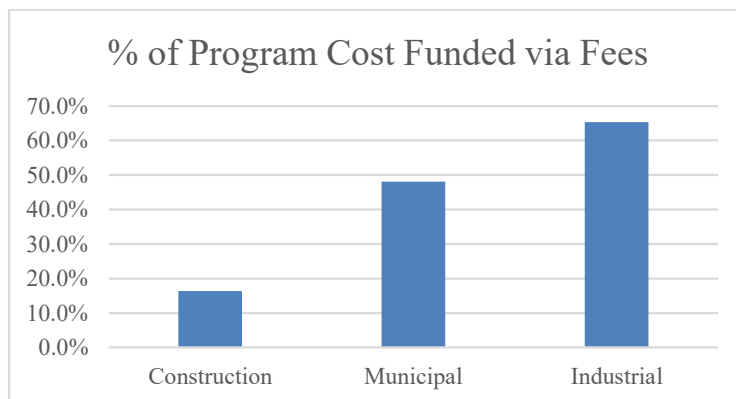
\*Information obtained from stakeholder interviews in September 2020.

**Detailed Background Analysis**

The current application fees for construction site erosion control permits are \$140-\$350 per NOI depending on the land area disturbed. These fees are codified in s. NR 216.43 (2), Wis. Adm. Code. Storm water permit fees have not been adjusted since 2003.

Storm water permit fees are authorized under s. 283.33(9), Wis. Stats. Paragraph (b) of that statute reads “The department shall establish the amount of the fee under par. (a) for permits for construction sites, other industrial permits and municipal separate storm sewer permits based on the costs associated with each type of permit.”

The chart below shows that construction fees currently fund a lower percentage of the associated costs than the other two storm water permit sub-programs. The industrial and municipal annual permit fees fund a larger percentage of their own program costs as they are currently administered. All costs referenced in this document are estimated for the cost of a fully-staff program in FY 2020 dollars.



A study of time spent across the construction, industrial and municipal sub-programs in 2013, 2014 and 2015 showed a disproportionate amount of time processing construction permits. During this time, staff spent more than 80% of their time processing construction permits, despite the fact that these fees cover a much lower percentage of program costs.

When fees were established in 2003, they were projected to be adequate to fund the program through 2008. Since then, the following changes have occurred:

### **Added responsibilities**

- Prior to 2003, there were some periods when minimal review of NOIs was occurring. As a result of reduced reviews, environmental issues occurred during construction and potential issues with post-construction storm water management were not identified. Limits to reviews caused delays during construction. As a result, staff time for NOI review has increased.
- Increase in the number of construction NOIs. In FY 2005, the department received 1,719 NOIs. In FY 2020, the department received 2,365 NOIs, an increase of 37.6% from 2005-2020.
- In 2004, the post-construction performance standards required in ch. NR 151, Wis. Adm. Code came into effect. A greater level of effort was required to develop technical standards and educate the regulated community.
- Additional guidance, technical standards, and outreach is needed to implement new technology and research the performance of new technologies.
- In 2009, permitting of commercial construction storm water NOIs shifted from the Dept. of Commerce to the DNR.
- The program added 28 municipal permittees to the MS4 municipal permit program as a result of the 2010 US Census, an increase of nearly 10% since the previous US Census. A significant level of effort is needed when new municipalities are required to become permitted. Staff must educate municipalities on the requirements, assist with ordinance development, help them develop education and outreach programs, review storm sewer system mapping, review permit applications and ultimately review these compliance documents.
- The implementation of Total Maximum Daily Load (TMDL) requirements necessitates more staff time devoted to municipal permit oversight. Compliance with a TMDL standard requires staff to review additional BMP modeling results prepared by consultants hired by the municipality. Compliance with the TMDL may require review, analysis and development of new technical standards for unique BMPs that had not previously been deployed. Additional staff time may be required to confer with peers and other external agency experts from partner agencies. Currently, nearly one-half of all permittees (149) are subject to additional requirements for TMDL compliance.
- The most easily developed sites are generally developed first; the complexity of proposed projects is increasing as undeveloped land becomes less available. Sites selected for

development today often have steep slopes, have more potential impact to wetlands, or other site constraints that increase the potential to impact water resources.

- Municipal inspection practices have increased the demand for timely notice of termination responses.

### Efficiency Initiatives

- Implementation of the NOI triage process. Statewide, the triage process screens NOIs for level of complexity. NOIs that meet certain criteria are screened early in the process and are quickly issued permit coverage. The triage process identifies NOIs that will require higher levels of review and places them into the hands of the appropriate review staff sooner. Implementation of this process along with e-permitting has cut staff review time in half.
- Targeted outreach to improve quality of NOIs and identify common issues delaying permit coverage issuance.
- Development and maintenance of the e-permitting system has reduced the average time from NOI receipt to conveyance of coverage from 31 days to 17 days. The most recent addition to this system is the notice of termination.

### Comparison with Other States

State fees for construction projects assumed 1 year of construction duration and the requirement of post-construction storm water management. Using these assumptions, 93% of the applicants would be paying fees like those charged by neighboring states under the proposed fee structure.

**Table 1: Comparison with Other States**

Disturbed acres:	Sample projects and associated fees				Basis for fees
	3 acres	10 acres	30 acres	50 acres	
WI	\$140	\$235	\$350	\$350	Acres Disturbed
IA	\$175	\$175	\$175	\$175	Years of coverage requested
IL	\$250	\$750	\$750	\$750	Acres disturbed
IN	\$100	\$100	\$100	\$100	N/A
MI	N/A	\$400	\$400	\$400	N/A
MN	\$400	\$400	\$400	\$400	N/A
NC	\$605	\$605	\$605	\$605	Higher fees for expedited processing and if post-construction is required, plus \$100 annual fee
OH	\$200	\$300	\$500	\$500	Acres disturbed
TN	\$250	\$1,000	\$3,000	\$6,000	Acres disturbed; annual fees of \$125-\$3,750/yr after first year

**Additional Considerations**

**A. Inflation**

The current fees were established in 2003. The average inflation rate based on the consumer price index between 2003 and 2020 was 2.05%. Any fee updates are likely to be effective no earlier than 2023. If a 2% per year rate of inflation is assumed over 20 years, the fees in 2023 should be 1.49 times the 2003 fees just to account for inflation. The inflation calculation accounts for the change in the value of money over time but does not account for the changes in workload over that time. Therefore, inflation is only one of several factors that should be considered.

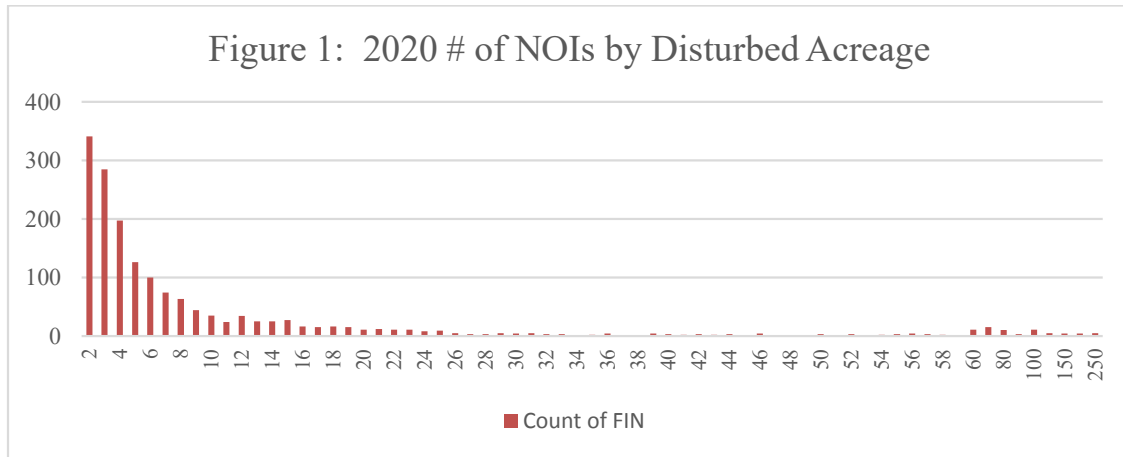
**B. Site Size**

The current fee structure is based on disturbed area in three ranges. Acres of land disturbance is easy to quantify and generally correlates with the level of effort required for review of the NOI. Review times for larger sites tend to be more complex due to occurrences of more natural resources such as wetlands and concentrated flow areas, and a larger number of BMPs to be implemented during and post-construction. Table 2 shows the existing fee structure and how it relates to the overall construction program proportionally.

**Table 2: Current Fee Structure and Distribution**

Size range	Existing fee	Proportion of total NOIs	Estimated % of construction fee income
<5 Acres	\$140	60%	45%
5-25 Acres	\$235	33%	42%
>25 Acres	\$350	7%	13%

Most NOIs are for sites less than two acres and over a third are in the 2 to 5-acre range (Fig. 1). During interviews with externals, there was interest in adding a size range category on the low end and openness to adding one on the high end.



### C. Duration of Site Disturbance

The current fees provide general permit coverage for a period of three years. Permittees that intend to discharge storm water from a construction site for more than three years must re-apply for permit coverage. Reapplication typically requires paying a new application fee for another three years of coverage; Wisconsin's practice for at least the last 10 years. Iowa bases their fees on the amount of time the permit applicant intends to have the site disturbed. A challenge with establishing fees on the anticipated duration of construction is that permittees are likely to assume the minimum possible duration and then exceed that duration should delays occur due to weather, material availability, or other factors.

### D. After-the Fact Fees

When an applicant begins a project before applying for and obtaining a permit, there is substantial staff time invested in obtaining permit coverage. These projects are frequently identified by a complaint, followed up by a field visit, and reviewed to determine the scope and scale of the project prior to receiving the NOI application and the associated application fees. Stakeholders contacted in September 2020, indicated support for charging after the fact fees.

### E. Post-Construction Considerations

During interviews with external stakeholders, there was some interest in charging higher fees for projects subject to post-construction performance standards because there is more to review in these instances. This is a logical approach, but it may be challenging to implement. Sometimes, applicants believe they are exempt from post-construction performance standards and later learn that they are not. In these instances, fees would be underpaid at the time of application. There are also sites where the post-construction BMPs were built in an earlier phase, so even though the project is not exempt, the practices being used to satisfy the performance standard are already constructed. Staff recommends that if this option is pursued that the expectations in these scenarios are well defined.

## **Alternatives Considered**

Based on the considerations above, the department developed the following fee alternatives:

1. No action, fees remain at 2003 levels. This does not meet statutory obligations and does not address inflation or workload increases.

Fee category	Current	Proposed	FY 23 estimated	
			NOIs	Revenue
1-5 acres	\$140	\$140	1399	\$195,860
5-25 acres	\$235	\$235	769	\$180,715
>25 acres	\$350	\$350	163	\$57,050
Total			2331	\$433,625

2. Only adjust for inflation. This would retain the existing fee structure and increase fees to account for 20 years of inflation. This does not meet statutory obligations and does not account for workload increases.

Fee category	Current	Proposed	FY 23 estimated	
			NOIs	Revenue
1-5 acres	\$140	\$210	1399	\$293,790
5-25 acres	\$235	\$350	769	\$269,150
>25 acres	\$350	\$520	163	\$84,760
Total			2331	\$647,700

3. Fund 60% of the construction portion of the storm water permit program with construction fees. Fee-based funding for the construction site permitting program would be elevated to a level comparable with the industrial storm water program. Statutory obligations to have fees proportional to the cost of administering the program and account for some of the workload increases would be met.

Fee category	Current	Proposed	FY 23 estimated	
			NOIs	Revenue
1-2 acres	\$140	\$250	536	\$134,000
2-5 acres	\$140	\$460	886	\$407,560
5-25 acres	\$235	\$780	746	\$581,880
25-50 acres	\$350	\$1,160	70	\$81,200
> 50 acres	\$350	\$1,740	93	\$161,820
Total			2331	\$1,366,460

4. Fund 100% of the construction subprogram with construction fees. This meets the statutory obligation to fund the cost of administering the program and accounts for some of the workload increases.

Fee category	Current	Proposed	FY 23 estimated	
			NOIs	Revenue
1-2 acres	\$140	\$250	536	\$ 134,000
2-5 acres	\$140	\$780	886	\$691,080
5-25 acres	\$235	\$1,300	746	\$969,800
25-50 acres	\$350	\$1,940	70	\$135,800
> 50 acres	\$350	\$3,880	93	\$360,840
Total			2331	\$2,291,520

5. In response to public comment, the department evaluated an additional option that brings the program funding from construction permit fees to 43%. The proposed fee structure sets fees



for the smaller projects to just above inflation and caps the largest projects at \$800, which is slightly higher than adjacent states, but is lower than the original fee proposal. Fee-based funding for the construction site permitting program would be elevated to a level comparable to the \$400 flat fees charged by Minnesota and Michigan. Statutory obligations to have fees proportional to the cost of administering the program and account for some of the workload increases would be partially met.

Fee category	Current	Proposed	FY 23 estimated	
			NOIs	Revenue
1-2 acres	\$140	\$250	536	\$134,000
2-5 acres	\$140	\$350	886	\$310,100
5-25 acres	\$235	\$550	746	\$410,300
> 25 acres	\$350	\$800	163	\$130,400
Total			2331	\$984,800

### Comparison of Alternatives

Alternative	Estimated FY 2023 construction revenue	% of construction subprogram fee-funded	% fee-funded for all subprograms*
No Action	\$433,625	19	37
Inflation Only	\$647,700	28	43
43%	\$984,800	43	51
60%	\$1,378,920	60	61
100%	\$2,291,520	100	83

\*Assumes no change to municipal and industrial permit fees

### Recommendation

Amend s. NR 216.43 (2) to implement the 43% funding alternative with an effective date of January 1, 2023.

**Table 5**

Acres of Land Disturbance	Application Fee
Less than 2	\$250
2 or more and less than 5	\$350
5 or more and less than 25	\$550
25 or greater	\$800

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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 insert date.

**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

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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

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- 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 compliances 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

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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

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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.

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### **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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 Wisconsin Department of Natural Resources  
 Bureau of Watershed Management, WT/3  
 101 S. Webster St.  
 P.O. Box 7921  
 Madison, WI 53707-7921  
 Amy.minser@Wisconsin.gov  
 608/266-4359

### **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).



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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.

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**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).

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(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

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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.

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~~Note: Under 40 CFR 122.33(e)(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:

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- (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~~

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~~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~~

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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.



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**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.

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(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:

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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:**

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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,

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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:**

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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.**

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**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 ~~an 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:**

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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:**



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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

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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).~~

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~~(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:

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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.~~

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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.

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(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:**

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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 <u>before</u> <u>January 1, 2023</u></b>	<b>Application Fee <u>after</u> <u>January 1, 2023</u></b>
<u>Less than 2</u>	<u>140</u>	<u>\$250</u>

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<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.



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**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.

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**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.

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**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.

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**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 [DATE].

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_  
For Preston D. Cole, Secretary

(SEAL)