

Report to
Legislative Council Rules Clearinghouse
NR 200, 201, 203, and 205, Wis. Adm. Code
Natural Resources Board Order WT-13-12

Wisconsin Statutory Authority

Section 227.11, Stats. - Administrative Procedure and Review

Sections 283.11, 283.31, 283.37, 283.39, and 283.41, Stats. - Pollutant Discharge Elimination

Federal Authority

40 CFR Part 122 - EPA Administered permit program the National Pollutant Discharge Elimination System

40 CFR Part 124 - Procedures for decision making

Comparison of Adjacent States

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the U.S. EPA regulations that are delegated to the states for implementation. Wisconsin's rules for permit processing and other permit issuance procedures should essentially be the same as the other states.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

The purpose of the proposed rule changes is to ensure that the state's regulations are consistent with federal regulations as well as recent statutory revision in 2011 Act 167. The rule changes will establish clear regulatory requirements for the processing of WPDES permits. Minor clarifications and corrections will also be made to these chapters.

Specifically, the proposed rule package will address EPA's issues with the state authority regarding permit processing issues and other permit issuance procedural matters. In a letter dated July 18, 2011, the U.S. Environmental Protection Agency (EPA) identified 75 potential issues with Wisconsin's statutory and regulatory authority for the WPDES permit program. EPA directed the department to either make rule changes to address this inconsistency or obtain a statement from the Attorney General's Office verifying that the existing rule is consistent with federal regulations. The department believes adoption of these rule changes (referred to as Rule Package 6) will address EPA's concerns for 13 of the issues. The item number of the applicable EPA issue is indicated in each rule section that addresses an EPA issue.

Following is a brief summary of changes to NR 200, NR 201, NR 203, and NR 205, Wis. Adm. Code:

Chapter NR 200 - This chapter contains the requirements for permit applications and water quality standards variances. A new section was created to add the federal regulations for the preparation of a draft permit after the receipt of a complete application, which were lacking in the rule as cited in EPA issue 65.

Chapter NR 201 - This chapter contains the requirements for the contents of the fact sheet for WPDES permits. Because of several changes needed to update the existing rule this chapter was repealed and recreated. It now includes all the federal regulations to address EPA issues 21 and 66. It is also consistent with s. 283.45, Stats. A note states that if the public notice includes some of the information specified in the fact sheet it may be omitted from the fact sheet because it is more appropriate in the public notice (decision to issue or deny a permit and the beginning and end dates of the comment period). The recreated rule was written compliant with the format procedures for drafting rules that the existing rule did not follow.

Chapter NR 203 - This chapter contains the processes for public noticing a draft permit, informational hearing, final determination to issue or deny a permit, and public adjudicatory hearing. Following are the significant changes to this rule:

- The rule was revised to address EPA issues 3, 22, 50, and 51 to be consistent with federal regulations. This consists of language clarifying the processes for permit actions (modifications,

revocation and reissuance, or termination), identifying the causes for permit actions, the notification of government agencies and others, and public informational hearing requests.

- The rule was revised to address 2011 Act 167 changes to ch. 283 and ch. 285, Stats., and changes initiated by the department to clarify public notice procedures. This consists of language to identify what is to be included in the public notice, allows use of the department's Internet Web site to post public notices and documents, proposed variances to water quality standards may be included in the public notice, the term notification replaces circulation to reflect the broader use of electronic media, and permit actions related to substantial changes to concentrated animal feeding operation nutrient management plans.

Chapter NR 205 - This chapter contains WPDES program definitions, general conditions applicable to WPDES permits, and requirements for the issuance of WPDES general permits. The rule was revised to address EPA issues 18, 45, 47, 48, 49, and 62 to be consistent with federal regulations. This consists of language that added termination of the permit for certain violations, replaced the use of the term suspension with termination, clarified the signatory requirements for permit documents, revised the reporting requirements for facility changes, and added general conditions that permit compliance constitutes compliance for purposes of enforcement and affirmative defense.

Agency Procedures for Promulgation

The department plans to hold one public hearing regarding these proposed changes to chs. NR 200, 201, 203, and 205, after which it will solicit public comments regarding the proposal. After reviewing submitted comments, any necessary changes to the proposal will be made followed by presentation of the final proposal to the Natural Resources Board, Board approval and final promulgation.

Description of any Forms (attach copies if available)

Not applicable.

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