

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> August 23, 2023
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> <ul style="list-style-type: none"><li>• NR 102 - Water Quality Standards for Wisconsin Surface Waters</li><li>• NR 103 - Water Quality Standards for Wetlands</li><li>• NR 106 - Procedures for Calculating Water Quality Based Effluent Limitations for Point Source Discharges to Surface Waters</li><li>• NR 207 - Antidegradation and Antibacksliding</li><li>• NR 212 - Waste Load Allocated Water Quality Related Effluent Limitations</li><li>• NR 216 - Storm Water Discharge Permits</li></ul> (CR 23-010)	
<b>4. Subject</b> Revisions to chs. NR 102, 103, 106, 207, 212 and 216 for the purpose of updating Wisconsin's water quality antidegradation policy and procedures. Board Order WY-13-20.	
<b>5. Fund Sources Affected</b> <input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> 401(ma)/441(mm)
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input checked="" type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> The maximum annual cost is estimated to be \$1,669,284; the maximum 2-year cost is estimated to be \$2,517,984. The total estimated 10-year cost is estimated to be \$12,470,320 (see Attachment B).	
<b>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)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> This rule updates the state's antidegradation policy and procedures to ensure consistency with federal requirements and overall modernization. As a state delegated the authority to permit dischargers under the federal National Pollutant Discharge Elimination System (NPDES) program, Wisconsin is required to maintain authorities in state statute and administrative code that are consistent with federal NPDES regulatory requirements. Wisconsin's existing antidegradation codes are not consistent with federal requirements that were adopted by the United States Environmental Protection Agency (U.S. EPA) in 2015 and correspondingly require updating. A petition for de-delegation of Wisconsin's NPDES authority was filed with EPA in October 2015 partly in reference to Wisconsin's failure to update its antidegradation regulations. This rulemaking will address that petition's concerns surrounding antidegradation and ensure that Wisconsin maintains its delegated authority to regulate dischargers in Wisconsin.	
<b>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.</b> Wisconsin Pollutant Discharge Elimination System (WPDES) permittees seeking to establish new or increased discharges to waters of the state may be affected in situations where their discharges would cause a significant lowering of water quality. The existing rule language considers lowering of water quality to be significant when 1/3 of the receiving waterbody's assimilative capacity would be used by the new or increased discharge, whereas this rule sets the	

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threshold at 10 percent. This proposed threshold is more consistent with the language of federal regulations and the approach used in other states whose procedures have been recently approved by EPA. Organizations representing a variety of dischargers participated in a series of Stakeholder Advisory Committee meetings to provide input on this rule, and they were notified during the economic impact comment solicitation period. These organizations include Midwest Food Processors Association, Wisconsin Cheesemakers Association, Wisconsin Transportation Builders Association, Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, Central States Water Environment Association, Wisconsin Dairy Alliance, Wisconsin Farm Bureau, Dairy Business Association. Also included were municipal consulting firms, individuals representing construction discharges, environmental groups, EPA, and the organizations representing municipal dischargers specified below.

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

The external advisory committee for the rulemaking included the Municipal Environmental Group, which provides legal counsel to municipalities as well as Wisconsin Rural Water Association which provides technical assistance to municipal wastewater treatment plant operators. These groups were contacted during the economic impact comment solicitation period, and Municipal Environmental Group provided comments.

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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)

Estimated annual costs are summarized in the tables below. Documentation of the methods used for this analysis is provided in Attachment B. In summary:

- To determine the statewide economic cost of this proposed rule for wastewater discharges, the department evaluated three primary areas of costs: 1) the costs to develop an alternatives analysis, 2) sampling costs incurred by facilities needing to evaluate the background quality of the receiving waterbody or waterbodies, and 3) the costs incurred by facilities which choose an alternative based on the alternatives analysis.
  - NOTE: The department updated the proposed language in s. NR 207.031(4), Wis. Adm. Code, to specify that the applicant may select whether they prefer to have the department collect any additional water quality data or whether they prefer to do so themselves, when there is not enough recent ambient data for the receiving waterbody. Therefore, applicants seeking an antidegradation review are not required to incur additional costs for sampling. However, the department is including those costs as part of their economic impact analysis as a conservative measure, to account for permittees which decide to collect the water quality data themselves.
- To determine the economic costs to storm water discharges under the proposed rule, the department considered costs associated with: 1) application fees, sampling, data collection and analysis, engineering/consultant costs, 2) the installation of treatment best management practices, 3) operation and maintenance of specialty filtration systems related to non-conventional pollutants.
- The department anticipates that 2 or 3 concentrated animal feeding operations (CAFO) permittees will seek to establish surface water discharges under alternative discharge limits (ADLs) in each year. While these facilities would follow the procedures established in this rule, none of these discharges are expected to entail additional costs based on this rule. There are no anticipated cost impacts for typical CAFO permittees that do not discharge to surface water under ADLs.

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### Annual Cost Summary for Industries

Cost Area	Low End Number of Industries Per Year	High End Number of Industries Per Year	Low End Cost Per Industry	High End Cost Per Industry	Low End Total Statewide Annual Costs to Industries	High End Total Statewide Annual Costs to Industries
Sampling (Wastewater Permittees)	2	4	\$1,400	\$8,400	\$2,800	\$33,600
Alternatives Analysis <sup>1</sup> (Wastewater Permittees)	1	2	\$35,000	\$50,000	\$35,000	\$100,000
Construction, New Discharger (Stormwater Permittees)	0	3	\$0	\$300	\$0	\$900
Industrial, New Discharger to High Quality Water Listed by Type (Stormwater Permittees)	0	1	\$0	\$235,146	\$0	\$235,146
Industrial, New Discharge to Other High Quality Water (Stormwater Permittees)	0	1	\$0	\$235,146	\$0	\$235,146
Industrial, Increased Discharge (Stormwater Permittees)	0	2	\$0	\$235,146	\$0	\$470,292
<b>Total:</b>					<b>\$37,800</b>	<b>\$1,075,084</b>

<sup>1</sup> Wastewater facilities that may do an alternatives analysis are a subset of those doing sampling in the row above.

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### Annual Cost Summary for Local Governmental Units

Cost Area	Low End Number of POTWs Per Year	High End Number of POTWs Per Year	Low End Cost Per Facility	High End Cost Per Facility	Low End Total Statewide Annual Costs to POTWs	High End Total Statewide Annual Costs to POTWs
Sampling	8	16	\$1,400	\$8,400	\$11,200	\$134,400
Alternatives Analysis <sup>1</sup>	4	8	\$35,000	\$50,000	\$140,000	\$400,000
Chooosen Alternative <sup>2</sup>	1	1	\$4,784	\$11,960	\$4,784 <sup>3</sup>	\$59,800 <sup>3</sup>
<b>Total:</b>					<b>\$155,984</b>	<b>\$594,200</b>

<sup>1</sup> Facilities that may do an alternatives analysis are a subset of those doing sampling in the row above.

<sup>2</sup> Facilities choosing an alternative are a subset of those doing an alternatives analysis.

<sup>3</sup> The cost to implement a chosen alternative is an ongoing annual cost that is incurred by one new additional permittee each year for up to five years.

### **Potential Impacts to Rate Payers:**

The expected increase in annual sewer rates for the four to eight identified municipalities that may both perform sampling of the receiving waterbody and develop an alternatives analysis is \$3.94/person/year up to \$6.33/person/year for one year. Four to eight other publicly owned treatment works (POTWs) will incur water quality sampling costs but will not incur the cost to develop an alternatives analysis, so the expected increase in annual sewer rates for individuals within these communities is \$0.15/person/year up to \$0.91/person/year. Individuals within the communities that submit an alternatives analysis, perform a year of water quality sampling, and choose an alternative, may experience an increase in their rates in the range of \$4.46/person/year up to \$7.62/person/year for one year, with the rate increase lessened to \$0.52/person/year up to \$1.29/person/year thereafter for four more years.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule  
 By implementing this rule, Wisconsin will address the antidegradation issues raised in a petition submitted to EPA for de-delegation of Wisconsin's NPDES authority and ensure that Wisconsin remains authorized to regulate discharges under the Clean Water Act within its boundaries. Further, the updates will ensure Wisconsin's antidegradation policy is consistent with language and requirements included in EPA's 2015 regulatory updates and correspondingly reduce the likelihood of legal challenges on WPDES permits as it relates to antidegradation deficiencies. Additionally, the rule updates will modernize dated code provisions and provide clarity and regulatory certainty to the public and regulated community.

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16. Long Range Implications of Implementing the Rule  
 These rule updates are expected to have only infrequent and isolated effects on regulated entities (see Attachment B). The updates will ensure that degradation of high quality waters in the state are mitigated and that appropriate pollution control mechanisms are in place to minimize or lessen degradation. The rule updates also lay out a clear process for permittees seeking new or increased discharges.

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17. Compare With Approaches Being Used by Federal Government  
 The purpose of this rule is to ensure consistency between state antidegradation policy/procedures and federal requirements under 40 CFR 131.12, as amended in 2015.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)  
 The rule package is consistent with the antidegradation policies and implementation procedures in neighboring states. Consistent with federal requirements, Illinois, Iowa, Michigan, and Minnesota require protection of existing uses and apply antidegradation procedures to high quality waters, as Wisconsin proposes. These states also classify high quality waters on both a waterbody-by-waterbody and parameter-by-parameter basis, applying heightened standards to outstanding state resource waters. The states have slight variations in their implementation procedures. Similar to Wisconsin's proposal, Michigan has a significance threshold under which discharges do not go through antidegradation

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review. Minnesota and Illinois do not have a designated threshold, which means that all new or increased discharges would go through an antidegradation review. The states all consider slightly different factors when determining whether a discharge will lead to an important economic or social benefit; however, Wisconsin's factors are not more restrictive than any neighboring state.

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19. Contact Name

Nate Willis

20. Contact Phone Number

608-535-2369

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### ATTACHMENT A

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)

To estimate the number of small businesses affected by this rule, the department estimated the percent of industrial point source dischargers that are small businesses. In reviewing small business data from the Statistics of U.S. Businesses' 2020 Annual Data Tables provided by the U.S. Census Bureau, the department determined that approximately 72% of industrial point sources in Wisconsin are small businesses. This means that the likelihood of an industrial point source discharger being a small business is high. As stated above, the department estimates that 2 to 4 industrial facilities may perform surface water sampling because of the revisions in this rule, and of these, 1 to 2 may need to create an alternatives analysis. Applying the 72% number to the overall occurrence of industrial wastewater and stormwater dischargers, the department approximated the economic effect this rule may have on small businesses in Wisconsin outlined in the table below.

On a per-project basis, the same costs are applied for small and larger businesses. The costs would be similar, although small businesses may have somewhat lower costs than larger industries because the rule provides that materials submitted during this process are scalable to the size of the facility/project. The department included the costs of hiring a consultant for both water quality sampling and developing an alternatives analysis, so these costs are covered in the estimate for both small and larger businesses. The department will continue to provide enhanced compliance assistance for all small businesses.

**Cost Summary for Small Businesses**

Cost Area	Low End Number of Small Businesses Per Year	High End Number of Small Businesses Per Year	Low End Cost Per Small Business	High End Cost Per Small Business	Low End Total Statewide Annual Costs to Small Businesses	High End Total Statewide Annual Costs to Small Businesses
Sampling (Wastewater Permittees)	2	3	\$1,400	\$8,400	\$2,800	\$25,200
Alternatives Analysis <sup>1</sup> (Wastewater Permittees)	1	2	\$35,000	\$50,000	\$35,000	\$100,000
Construction, New Discharger (Stormwater Permittees)	0	1	\$0	\$900	\$0	\$900
Industrial, New Discharger to High Quality Water Listed by Type (Stormwater Permittees)	0	1	\$0	\$235,146	\$0	\$235,146
Industrial, New Discharge to Other High Quality Water (Stormwater Permittees)	0	1	\$0	\$235,146	\$0	\$235,146
Industrial, Increased Discharge (Stormwater Permittees)	0	2	\$0	\$235,146	\$0	\$470,292
<b>Total:</b>					<b>\$37,800</b>	<b>\$1,066,684</b>

<sup>1</sup> Wastewater facilities that may do an alternatives analysis are a subset of those doing sampling in the row above.

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

Data for obtaining the cost estimates for small businesses was sourced from: Wisconsin State Laboratory of Hygiene (for sampling costs), private sector consultants familiar with alternatives analysis costs, internal review of the department's

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WPDES permit database, and urban grant recipient costs from 2016 - 2019.

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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:

These factors are not applicable to this rule since the rule only establishes requirements for submittal of application materials for WPDES permits and does not address compliance or reporting. However, the rule does contain considerations to reduce costs and requirements for smaller projects by stating that both the water quality data collected and the information required in the facility's alternatives analysis will be "relative to the size of the project, characteristics of the proposed discharge, and the characteristics of the receiving water."

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

The department has considered the methods outlined in s. 227.114(2)(a) to (e), Wis. Stats., and has concluded that, based on existing state and federal regulations, the department cannot exempt small businesses from sampling and antidegradation demonstration requirements. Small businesses still have the potential to significantly affect high quality waters with their discharge(s). Additionally, Wisconsin's WPDES permit program is based on the requirements in ch. NR 283, Wis. Stats., and the state's permitting program must be consistent with federal NPDES permit requirements established in the Clean Water Act and applicable federal regulations. Federal regulations do not allow less stringent requirements categorically for small businesses. However, as described in section 3, this rule contains allowances to scale the facility's sampling and application materials commensurate with the size of the project.

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5. Describe the Rule's Enforcement Provisions

This rule will not result in enforcement actions; rather, it must be followed when applicants submit materials for WPDES permit issuance or reissuance as well as facility planning.

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

- Yes     No

A formal Cost Benefit Analysis was not performed, though various costs and benefits to this rule are outlined in questions 15/16 above and in Attachment B.

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