

Chapter NR 3

**WISCONSIN POLLUTANT DISCHARGE
ELIMINATION SYSTEM PUBLIC
PARTICIPATION PROCEDURES**

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NR 3.01 Definitions. (1) **DEPARTMENT.** Department means the department of natural resources.

(2) **SECRETARY.** Secretary means the secretary of the department of natural resources.

(3) **PERMIT.** Permit means a permit for the discharge of pollutants issued by the department pursuant to chapter 147, Wis. Stats.

(4) **W.P.D.E.S.** Wisconsin pollutant discharge elimination system.

(5) **U.S.E.P.A.** United States environmental protection agency.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

**SUBCHAPTER I.
NOTICES OF COMPLETED PERMIT APPLICATIONS**

NR 3.02 Public notice of receipt of a completed permit application. (1) **INTENT.** Public notice of the receipt of a completed permit application is intended to inform interested and potentially interested members of the public of a completed application, the tentative determination to issue or deny the permit as required in section 147.09, Wis. Stats., and the public's right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a particular permit.

(2) **FORM.** The public notice of receipt of a completed permit application shall be in writing, with a title identifying the subject of the notice and the number of the application.

(3) **CONTENT.** The notice of receipt of a completed permit application shall contain the following information:

(a) The name and address of the applicant.

(b) A brief description of each applicant's activities or operations which result in the discharge described in the application.

(c) The name of the waterway to which the discharge is made, a general description of the location of such discharge and a statement whether such discharge is a new or existing discharge.

(d) A statement of the tentative determination to issue or deny a permit for the discharge described in the application.

(e) A brief description of the procedures for the formulation of final determinations, including the 30-day period for public comment, and the 30-day period for requesting an informational public hearing, and the availability of fact sheets.

(f) The name, address, and phone number of the governmental unit issuing the notices.

(g) The address and phone number where interested persons may obtain further information, request a copy of the fact sheet when applicable, request a copy of the draft permit, and inspect and copy forms and related documents.

(h) A statement that reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

(i) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions for the permit.

(4) CIRCULATION. Procedures for circulation of public notice of a completed permit application shall include the following:

(a) Publication of the notice as a class 1 notice under chapter 985, Wis. Stats., in a newspaper of general circulation in the area affected by the discharge.

(b) Mailing the notice to the applicant and any person or group upon request.

(d) Mailing the notice to individuals and groups on a formal department WPDES permit application mailing list. Requests to be placed on said mailing list shall be directed to the Department of Natural Resources, WPDES Permits, Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1), r. (4) (b), renum. (4) (c) to be (4) (b), renum. (4) (d) to be (4) (c) and am., Register, November, 1976, No. 251, eff. 12-1-76.

NR 3.03 Notice of receipt of a completed permit application to other government agencies. (1) **INTENT.** The intent for providing notice of a completed permit application to government agencies is to inform interested and potentially interested federal, state, and local government agencies of a completed application, the tentative determination to issue or deny the permit, and their right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a particular permit.

(2) **FORM.** Form shall be the same as for public notice in NR 3.02 (2).

(3) **CONTENT.** All government agency notices shall contain a copy of the public notice as described in NR 3.02, a copy of the fact sheet where available as described in NR 201.01, and a cover letter stating the purpose of the notice, the 30 day period for submitting comments and for requesting a public hearing pursuant to section 147.13, Wis. Stats. In addition, the United States environmental protection agency shall always receive a copy of the draft permit and be provided a comment period not to exceed 90 days unless it agrees to a shorter comment period.

(4) **CIRCULATION.** The following agencies shall be mailed government agency notices as described above:

(a) United States environmental protection agency.

(b) United States army corps of engineers.

(c) Other states potentially affected by the proposed discharge.

(d) The county and the city, town or village where the proposed discharge is located.

(e) The regional planning commission of the area where the proposed discharge is located.

(f) Any other agency or unit of government interested in the proposed discharge.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1) and (3), Register, November, 1976, No. 251, eff. 12-1-76.

SUBCHAPTER II. PUBLIC INFORMATIONAL HEARINGS

NR 3.04 Intent and scope. The regulations in this chapter prescribe the policies and procedures to be followed in issuing the notice of and the conducting of a public informational hearing and deciding the final determination as to whether to issue or deny a permit authorizing discharges into the waters of the state of Wisconsin. A public informational hearing, either mandatory or discretionary on the department, is to give all interested persons an additional opportunity to make a statement with respect to a permit application and to have such statements considered in the final determination. The promulgation of the regulations in this chapter is by authority of sections 147.13 (1) (c) and 147.13 (2) (b), Wis. Stats.

History: Cr. Register, January 1974, No. 217, eff. 2-1-74.

NR 3.05 Request for public informational hearing. (1) **DISCRETIONARY HEARING.** The department may schedule a public hearing on a permit application if requested by:

(a) The applicant.

(b) A state agency.

(c) A federal agency other than the U.S.E.P.A.

(d) Any person.

(e) Any group of persons less than 5.

(2) **MANDATORY HEARING.** The department shall schedule a public hearing on any permit:

- (a) If requested by the U.S.E.P.A.
- (b) If requested by any state affected by the discharge.
- (c) Upon receipt of a petition signed by 5 or more persons.

(d) If the department determines that there is significant public interest in the permit application.

(3) **FORM OF REQUEST OR PETITION.** Any request or petition for hearing filed pursuant to this section shall be in writing and dated. The request or petition for hearing shall indicate the interest of the party filing the same, the issues that said party desires to be considered at the hearing and the number of the proposed permit application.

(4) **TIMELINESS OF REQUEST OR PETITION.** No request or petition for hearing under this section shall be timely unless received by the department within 30 calendar days of the issuance of the public notice of the receipt of a completed permit application.

(5) **FILING ADDRESS.** All requests or petitions for a public informational hearing shall be served by delivery or mail addressed to the Department of Natural Resources, W.P.D.E.S. Permits, P.O. Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.06 Notice of public information hearing. (1) **FORM.** Notice of a scheduled public hearing shall be in writing, with a title identifying the subject of the notice and the number of the application.

(2) **CONTENT.** The notice of a scheduled public hearing shall contain the following:

(a) The name, address, and phone number of the governmental unit conducting the hearing.

(b) The name and address of each applicant.

(c) The name of the authority to which the discharge is to be made, a general statement of the location of such proposed discharge, and a statement whether such discharge is a new or existing discharge.

(d) A brief statement that a public notice of a completed permit application has been issued, including date of such issuance.

(e) Information regarding the date, time and location of the hearing.

(f) The purpose and statutory authority of the hearing.

(g) A concise statement of the issues raised by the persons requesting the hearing.

(h) The address and phone number where interested persons may obtain further information, request a copy of each draft permit, and request a copy of each fact sheet where available, and inspect and copy forms and related documents.

(i) A statement that reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

(j) A brief description of the nature of the hearing, including the rules and procedures to be followed, proposed time schedules and any necessary constraints to be placed on testimony at the hearing.

(k) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions of the permit.

(l) If it should be necessary to allow less than 30 days' notice prior to a hearing, a statement of the reasons for such shorter time period.

(m) The date of the notice.

(n) A brief description of the nature of the hearing and the procedures to be used at the hearing.

(3) CIRCULATION AND NOTIFICATION. Circulation and notification shall be the same as for public notice in NR 3.02 and government notice NR 3.03.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.07 Location of public informational hearing. Whenever possible all public informational hearings on permit applications shall be held in the area affected by the proposed discharge. If more than one permit application from a particular region is scheduled for hearing at the same proceeding, the hearings may be held in a location reasonably accessible to all areas affected by the proposed discharges.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.08 Persons entitled to participate in public informational hearings. In addition to the applicants named in the public notice of hearing, any interested members of the public or representatives of government agencies may participate in a public informational hearing with respect to the issuance of the proposed permit subject to any restrictions set forth in NR 3.10. Persons and government agencies participating need not be represented by legal counsel.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.09 Changes in time or place of hearing; adjournments.

(1) CHANGES. Requests for changes in the time and place of a scheduled hearing will be granted only for good cause shown prior to any required newspaper publication of legal notice for said hearing.

(2) ADJOURNMENT. The hearing examiner may adjourn a hearing for good cause shown, the hearing to be reset or reconvened at the discretion of the department on 10 days' notice or at a time certain on agreement of all persons present.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.10 Conduct of public informational hearings. (1) NON-CONTESTED CASE. Public informational hearings held pursuant to this chapter are not contested cases under section 227.01 (2), Wis. Stats.

(2) HEARING EXAMINER. Public informational hearings held pursuant to this chapter shall be conducted by the secretary or his designee.

(3) **PROCEDURE.** (a) Regardless of specific requirements of this subsection the hearing examiner may, in his discretion, utilize such procedures as may be necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided such measures are consistent with broad public participation in the hearing.

(b) The hearing examiner will open the hearing and make a concise statement of the scope and purpose of the hearing and shall state what procedures will be used during the course of the hearing. The hearing examiner shall explain the method of notification of the final decision to grant or deny a permit and the methods by which said decision may be reviewed in a public adjudicatory hearing.

(c) Appearance slips shall be distributed to all in attendance at the hearing. Persons shall state on their appearance slips their intent to present or not present an oral or written statement at the hearing.

(d) Informational and clarifying questions may be directed at persons making oral statements through the hearing examiner. In no instance shall cross-examination be allowed at the hearing.

(e) Time limits may be placed on individual oral statements by the hearing examiner in order to insure an opportunity for all persons present to make statements in a reasonable period of time and to prevent undue repetition.

(f) The hearing examiner, in his discretion, may limit the number of representatives that may make oral statements on behalf of any individual organized group.

(g) Persons proposing to make oral statements at a hearing may be scheduled at times certain by the hearing examiner when necessary to ensure maximum participation and allotment of adequate time for oral statement. Such advanced oral statement scheduling shall not be a bar to unscheduled oral or written statements at the hearing.

(h) Multiple copies of all written statements are encouraged, however, no more than one legible copy of a written statement shall be required to be submitted to the hearing examiner.

(4) **CONTEMPT.** Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing by the hearing examiner.

(5) **REPORT OF PUBLIC PARTICIPATION.** The hearing examiner shall make a written report of public participation during the hearing process. Copies of said report may be obtained at reasonable cost by request to the Bureau of Legal Services, P. O. Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.11 Transcripts. (1) **METHOD AND COPIES.** Public informational hearings will be transcribed either stenographically or electronically. A typed copy of the transcript will be furnished to all persons, upon request, at a reasonable cost to be determined by the department.

(2) **CORRECTIONS.** Any person, within 7 days of the date of mailing of the transcript, may file with the hearing examiner a notice in writing,

claimed errors contained therein. Corrections of claimed errors shall be made at the discretion of the hearing examiner.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.12 Final determination to issue or deny a discharge permit. The department shall have the discretion to issue or deny any permit for a discharge or may modify any terms and conditions of a draft permit based on consideration of required standards, the permit application, statements by the public or by government agencies, and any other pertinent information.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.13 Notice of final determination to issue or deny a permit to discharge. (1) **FORM.** The notice of final determination shall be in writing, with a title identifying the subject of the notice and the number of the application.

(2) **CONTENT.** The notice of final determination shall contain the following information:

(a) The name, address, and phone number of the governmental unit issuing the notice.

(b) The name and address of the applicant.

(c) A brief description of the applicant's activities or operations which result in the discharge described in the permit application.

(d) The name of the waterway to which the discharge is to be made, a general statement of the location of such proposed discharge and a statement whether such discharge is a new or existing discharge.

(e) The purpose and the statutory authority for the permit.

(f) A statement of the final determination to issue or deny a permit for the discharge described in the application.

(g) A statement of any significant changes which have been made from terms and conditions set forth in the draft permit.

(h) The date of permit issuance or denial if the permit is issued, the date it becomes effective, and the length of the permit period.

(i) A brief description of the procedures available for adjudicative review.

(j) The address and phone number where interested persons may obtain further information, inspect and copy forms and related documents.

(k) A statement that reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

(3) **NOTIFICATION.** The following persons and agencies shall be mailed notes of final determination as described in NR 3.13 (2):

(a) The applicant or applicants for the permit.

(b) All persons filling out appearance slips at the public informational hearing or who submitted written statements with respect to issuance of the permit.

- (c) United States environmental protection agency.
- (d) United States army corps of engineers.
- (e) Other states potentially affected by the proposed discharge.
- (f) The county and city, town or village where the proposed discharge is located.
- (g) The regional planning commission of the area where the proposed discharge is located.
- (h) Any other agency or unit of government interested in the proposed discharge.
- (i) All individuals and groups upon request or on a formal department mailing list. Requests to be placed on said mailing list shall be directed to the Department of Natural Resources, W.P.D.E.S. Permits, Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

SUBCHAPTER III. PUBLIC ADJUDICATORY HEARINGS

NR 3.14 Intent. The purpose of this subchapter is to provide adequate procedures to insure as broad a degree of public participation in administrative adjudication of W.P.D.E.S. permits and their conditions as is consistent with procedural due process to the parties involved in said proceedings.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.15 Applicability of subchapter. (1) This subchapter is applicable only to the review of the following:

- (a) The denial, modification, suspension or revocation of a W.P.D.E.S. permit pursuant to sections 147.02 and 147.03, Wis. Stats.
- (b) The reasonableness of or necessity for any term or conditions of any issued or modified W.P.D.E.S. permit.
- (c) The establishment of a proposed thermal effluent limitation pursuant to subsection 147.05 (4), Wis. Stats.
- (d) The establishment of any proposed water quality related limitation pursuant to subsection 147.05 (1), Wis. Stats.

(2) If the hearing is a contested case pursuant to subsection 227.01 (2), Wis. Stats., the rules set forth in chapter NR 2, Wis. Adm. Code, will be applicable to the extent that they are not in conflict with the below-stated specific procedures for W.P.D.E.S. adjudicatory hearings.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.16 Who may petition; when. (1) A review hearing pursuant to this subchapter may be petitioned by any permit applicant, a permittee, a state affected or to be affected by a discharge or 5 or more persons.

Register, November, 1976, No. 251

(2) The petition must be filed within 60 days after notice of any action, which is reviewable under this section, is issued by the department.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.17 Form of petition.

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby petition (s) for a review of the department's (proposed rule) (decision) entitled _____ and dated _____, 19__ . The specific issue (s) requested to be reviewed (is) (are): _____ . The specific interest (s) of the petitioner (s) (is) (are): _____ . The reasons why a hearing is warranted are: _____ .

Date _____

Signature (s) _____

Verification _____

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.18 Form of hearing notice; content. (1) **FORM OF HEARING NOTICE.** Notice of a scheduled public hearing shall be in writing, with a title identifying the subject of the notice and the number of the proposed rule, and the number of the subject permit or permit application.

(2) **CONTENT OF HEARING NOTICE.** The notice of a scheduled public hearing shall contain the following:

(a) The name, address, and phone number of the governmental unit conducting the hearing.

(b) The name and address of each petitioner.

(c) The substance of the petition for review.

(d) If applicable, the name of the waterway to which the discharge is to be made, a general statement of the location of such proposed discharge, and a statement whether such discharge is a new or existing discharge.

(e) Information regarding the date, time and location of the hearing.

(f) If applicable, a brief statement that a public notice of a completed permit application had been issued, including date of such issuance.

(g) The address and phone number where interested persons may obtain further information, request a copy of each draft permit if applicable, request a copy of each fact sheet when applicable, request a copy of proposed rules when applicable and inspect and copy forms and related documents.

(h) The purpose and statutory authority of the hearing.

(i) A statement that reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

(j) Where applicable, a statement that confidential information has been received and used to determine some of the conditions for the permit.

(k) If applicable, a brief summary of the proposed rule.

(l) If it should be necessary to allow less than 30 days' notice prior to a hearing, a statement of the reasons for such shorter time period.

(m) The date of the notice.

(n) A brief description of the nature of the hearing and the procedures to be used at the hearing.

(3) **CIRCULATION OF NOTICE.** The notice of hearing shall be circulated pursuant to the provisions of sections NR 3.02 (4) and NR 3.03 (4), Wis. Adm. Code, at least 30 days prior to the hearing. If it should be necessary to allow less than 30 days' notice prior to a hearing, the hearing notice shall state the reasons for the shorter time period.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.19 Location of hearing. The location of the hearing shall be in conformance with section NR 3.07, Wis. Adm. Code.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.

NR 3.20 Final decision. The final decision on the issues raised by the petitioners shall be made within 90 days of the close of the hearing.

History: Cr. Register, January, 1974, No. 217, eff. 2-1-74.