

Chapter NR 299

WATER QUALITY CERTIFICATION

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NR 299.01 Purpose and policy. (1) These rules are promulgated under ss. 144.025, 147.01 and 227.014, Stats., to establish procedures and criteria for the application, processing and review of state water quality certifications required by the provisions of the federal water pollution control act, 33 USC ss. 1251 et. seq.

(2) It is the policy of the department to review, consistent with the requirements of section 1341 of the federal water pollution control act, 33 USC ss. 1251, et. seq., all activities which require a federal license or permit which may result in any discharge and to:

(a) Deny or grant conditionally certification for any activity which the department finds will result in any discharge in violation of effluent limitations or water quality related concerns or any other appropriate requirements of state law as outlined in s. NR 299.05;

(b) Grant certification for any activity which the department finds will not result in any discharge in violation of effluent limitations, water quality related concerns or any other appropriate requirements of state law as outlined in s. NR 299.05; or

(c) Waive certification for any activity which the department finds will result in no discharge or does not fall within the purview of the department's authority.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.

NR 299.02 Severability. Should any section, paragraph, phrase, sentence, clause or word of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.

NR 299.03 Definitions. For the purpose of this chapter:

(1) "Applicant" means any person who applies for any license or permit granted by an agency of the federal government to conduct any activity which may result in any discharge into the waters of the state.

(2) "Department" means the department of natural resources.

(3) "Licensing or permitting agency" means any agency of the federal government to which application is made for any license or permit to conduct an activity which may result in any discharge into the waters of the state.

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(4) "Regional administrator" means the administrator of region V of the U.S. environmental protection agency.

(5) "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, hazardous waste, hazardous substance, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste.

(6) "Discharge" means any addition of any pollutant to the waters of the state from any point source.

(7) "Waters of the state" as defined in s. 144.01 (1), Stats., means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

(8) "Person" means an individual, corporation, partnership, association, municipality, state agency, interstate agency or federal agency.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.

NR 299.04 Application for certification. (1) No person may conduct any activity which may result in any discharge into the waters of this state unless the person has received a certification or waiver under this chapter. Unless the licensing or permitting agency or the regional administrator submits an application to the department under 40 CFR s. 121.13, the applicant shall submit to the department a complete description of the activity for which certification is sought, including:

(a) The name and address of the applicant; and

(b) A description of the facility or activity and of any discharge which may result from the activity or facility, including, but not limited to: the volume of discharge; the biological, chemical, thermal, and other characteristics of the discharge; a description of the existing physical environment at the site of the discharge; the size of the area affected; the location or locations at which such discharge may enter the waters of the state; and any environmental impact assessment information and photographs which have been provided to the licensing or permitting agency; and

(c) A description of the function and operation of equipment, facilities, or activities to treat wastes or other effluents which may be discharged, including specification of the degree of treatment expected to be attained; and

(d) The date or dates on which the activity will begin and end, if known, and the date or dates on which the discharge will take place; and

(e) A description of the methods being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment, facilities, or activities employed in the treatment or control of wastes or other effluents.

(2) The department shall review the application for completeness within 30 days of receipt of the application. The department shall notify

the applicant of any additional materials reasonably necessary to review the application. An application shall not be considered complete until the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been completed and until all materials necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 147, Stats., are submitted to the department.

(3) If the department does not request additional materials within 40 days of receipt of the application, the application shall be deemed complete for the purposes of this chapter.

(4) The provisions of sub. (3) notwithstanding, the applicant shall submit in timely fashion, at any time during the review process, such additional materials which the department finds to be reasonably necessary for review of the application.

(5) The department shall protect as confidential any information, other than effluent data, submitted under this chapter which meets the requirements of s. 147.08 (2) (c), Stats., and s. NR 2.19, Wis. Adm. Code.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.

NR 299.05 Department review of water quality certification application. (1) The department shall, within 90 days of receipt of the complete application, determine whether the proposed activity will:

(a) Result in any discharge; and

(b) Result in violation of any of the following applicable standards:

1. Effluent limitations adopted under s. 147.04, Stats., and 33 USC s. 1311, for categories of discharges;

2. Water quality related effluent limitations adopted under s. 147.06, Stats., and 33 USC s. 1312;

3. Water quality standards adopted under s. 144.025 (2) (b), Stats., and 33 USC s. 1313;

4. Standards of performance adopted under s. 147.06, Stats., and 33 USC s. 1316;

5. Toxic and pretreatment effluent standards adopted under s. 147.07, Stats., and 33 USC s. 1317;

6. Public interest and public rights standards, as appropriate, set forth in ss. 30.03, 30.10, 30.11, 30.12, 30.13, 30.15, 30.18, 30.19, 30.195, 30.20, 30.21, 31.02, 31.05, 31.06, 31.12, 31.13, 31.18, 31.23, 88.31 and 144.025 (2) (b), Stats., and made applicable by 33 USC s. 1341 (d);

7. Any other appropriate requirements of state law as provided in 33 USC s. 1341 (d).

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.

NR 299.06 Preliminary and final department action. (1) The department shall notify the applicant, the federal permitting or licensing agency, and the regional administrator within 120 days of receipt of the complete application of its preliminary determination to deny the certi-

fication, grant or conditionally grant the certification, or waive certification.

(2) The department's preliminary determination shall be in writing and shall explain the reasons for granting, granting conditionally, denying or waiving certification.

(3) The notification concerning a certification shall include the following:

(a) The name and address of the applicant;

(b) A statement that the department has either:

1. Examined the complete application, specifically identifying the number or code affixed to such application, and based its determination upon an evaluation of the information contained in the application which is relevant to water quality consideration; or

2. Examined other information furnished by the applicant sufficient to permit the department to reach its decision.

(c) If a waiver of certification is made, a statement explaining the determination that no discharge will result from the activity or that the activity does not fall within the purview of the department's authority;

(d) If a grant or conditional grant of certification is made:

1. A statement that there is a reasonable assurance the activity will be conducted in a manner which will not violate the standards enumerated in s. NR 299.05 (1).

2. A statement of conditions which the department deems necessary with respect to the discharge including necessary monitoring requirements. Necessary monitoring requirements shall include, but not be limited to, the requirements that:

a. At least 5 working days prior to the beginning of the discharge, the applicant shall notify the department of intent to commence the discharge;

b. Within 5 working days after the completion of the discharge, the applicant shall notify the department of the completion;

c. The applicant shall allow the department reasonable entry and access to the discharge site in order to inspect the discharge for compliance with the certification and applicable laws.

(e) If a denial of certification is made, a statement explaining why the activity will result in the discharge of pollutants to the waters of the state and detailing the standards enumerated in s. NR 299.05 (1), which will be violated.

(f) A statement that unless a written request for a hearing is filed with the department within 30 days after mailing of the notice pursuant to the provisions of sub. (5), the department's preliminary decision will become final without public hearing.

(g) Such other information as the department determines to be appropriate.

(4) Except as provided in sub. (5) the department shall, at the same time it notifies the applicant, notify known interested persons and shall cause to be published by the applicant as a class 1 notice under ch. 985, Stats. Notice under this subsection shall contain the information required under sub. (3).

(5) Any person whose substantial interests may be affected by the department's determination may, within 30 days after publication of the notice, request in writing a hearing on the matter under s. 227.064, Stats. In any case where a contested case hearing on an application for water quality certification will be held under some other specific provision of law, the notice and hearings shall be combined.

(6) Hearings requested under this section shall be contested case hearings and shall be in accordance with the procedures outlined in ch. 227, Stats. The hearing shall be a de novo hearing on the issue of whether the department should grant, grant with conditions, deny or waive water quality certification. The hearing shall not be held for the purpose of review of the department's preliminary determination.

(7) (a) The department's preliminary determination shall become final:

1. Upon the expiration of the 30-day period provided under sub. (5) if no person has requested a hearing under that section, or
2. Upon the issuance of the department's decision denying the request for hearing under that section, or
3. Upon issuance of the department's decision after hearing.

(b) If a hearing is held under sub. (6), the hearing examiner shall make findings of fact, conclusions of law and a decision, which shall become final when issued in accordance with the procedures in ch. 227, Stats., and this section.

(c) The final decision of the department under par. (a) shall be judicially reviewable as provided under ch. 227, Stats.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81.