

Chapter NR 200

APPLICATION FOR DISCHARGE PERMITS AND
WATER QUALITY STANDARDS VARIANCES**Subchapter I — Purpose, Definitions and General Provisions**

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Note: Chapter NR 200 as it existed on May 31, 1985, was repealed and a new chapter NR 200 was created effective June 1, 1985.

Subchapter I — Purpose, Definitions and General Provisions**NR 200.01 Purpose.** The purpose of this chapter is:

(1) To set forth the requirements for filing applications for the discharge permits required by s. 283.31, Stats., to prescribe the form of such applications pursuant to s. 283.37, Stats., and to specify the number of business days within which the department will publish a public notice indicating its intended action on a Wisconsin pollutant discharge elimination system permit application or request for modification pursuant to s. 227.116, Stats. Section 283.31, Stats., requires a permit for the lawful discharge of any pollutant into the waters of the state, which include groundwaters by the definition in s. 283.01 (13), Stats. The federal water pollution control act of 1977, P.L. 95-217; 33 USC 466 et seq., requires a permit for the lawful discharge of any pollutant into navigable waters. Therefore in Wisconsin, permits are required for discharges from point sources to surface waters of the state and additionally to land areas where pollutants may percolate, seep to, or be leached to groundwaters. This includes the land application of sludge.

(2) To set forth the requirements for filing applications for variances to water quality standards allowed by s. 283.15, Stats.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. Register, December, 1995, No. 480, eff. 1-1-96; corrections made under s. 13.93 (2m) (b) 7, Stats., Register, November, 1996, No. 491; am. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.02 Definitions. For the purpose of this chapter the following definitions are applicable:

(1) "Business days" means each day except Saturday; Sunday; January 1; the third Monday in January, which shall be the day of celebration for January 15; the last Monday in May, which shall be the day of celebration for May 30; July 4; the first Monday in September; the 4th Thursday in November; December 24; December 25; December 31; and the day following if January 1, July 4 or December 25 falls on Sunday.

(2) "Cooling water" means water which has been used primarily for cooling but which may be contaminated with process waste or airborne material. Examples are the discharge from barometric condensers or the blowdown from cooling towers.

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

(4) "Discharge of pollutant" or "discharge of pollutants" means any addition of any pollutant to the waters of this state from any point source, including the land application of sludge.

(5) "Limit of detection" means the lowest concentration level that can be determined to be statistically different from a blank.

(6) "Limit of quantitation" means the level above which quantitative results may be obtained with a specified degree of confidence.

Note: The limit of quantitation is 10/3 or 3.333 times the limit of detection.

(7) "Major municipal discharge" means a point source discharge with an average daily volume equal to or greater than one million gallons per day of either municipal wastewater from a publicly owned treatment works or of domestic wastewater from a privately owned treatment works.

(8) "Minor municipal discharge" means a point source discharge with an average daily volume less than one million gallons per day of either municipal wastewater from a publicly owned treatment works or domestic wastewater from a privately owned treatment works.

(9) "Municipality" means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes or other wastes.

(10) "Noncontact cooling water" means water used for cooling which does not come into contact with any raw material, intermediate or finished product, or waste and has been used in heat exchangers, air or refrigeration compressors, or other cooling means where contamination with process waste is not normally expected.

(11) "Permit" means a permit for the discharge of pollutants issued by this department.

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

(13) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, outfall, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants may be discharged either into the waters of this state or into a publicly owned treatment works, except for a conveyance that conveys only storm water.

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

(15) "Primary industry" means an industrial facility or activity that is encompassed by one of the industrial categories listed in 40 CFR 122, Appendix A.

(16) "Results" includes measurements, determinations and information obtained or derived from tests.

(17) "Secondary industry" means an industrial facility or activity that is not classified as a primary industry.

(18) "Surface waters" means waters of the state except wells and other groundwater. Cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters are also excluded from this definition.

(19) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, sewage sludge or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the work, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, "treatment work" means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

(20) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (3) and (9), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), renum. (2) to (10) to be (3), (4), (9), (11), (12), (13), (14), (19) and (20) and am. (13), cr. (2), (5) to (8), (10) and (15) to (18), Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.024 Use of information. (1) Data submitted in the applications or as part of additional information submittals shall be used as a basis for issuing discharge permits or variances.

(2) All information contained in an application other than that specified as confidential shall be available to the public for inspection and copying. All confidential information, so identified, shall be set forth in separate documents. Effluent data may not be deemed confidential information. Effluent data includes the name and address of the permittee, the permit, the permit application, and any effluent report or information in the department's files, that identifies the amount, frequency and characteristics of the pollutants discharged. Confidential treatment will be considered only for that information identified as such in documents separate from nonconfidential information which meets the requirements of s. 283.55 (2) (c), Stats., and for which written application for confidentiality has been made pursuant to s. NR 2.19.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (2), Register, December, 1995, No. 480, eff. 1-1-96; correction in (2) made under s. 13.93 (2m) (b) 7, Stats., Register, November, 1996, No. 491; renum. from NR 200.08 and am. (1), Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.027 Analytical methods and laboratory requirements. (1) Methods used for analysis of samples shall be those specified as approved in ch. NR 219. Where more than one approved method exists, the department may require the applicant to repeat testing using a more sensitive approved method if results are reported as not detected.

(2) The applicant shall submit, with all monitoring results, appropriate quality control information, as specified in the permit application or s. NR 200.22 (1) (f).

(3) The applicant shall report numerical values for all monitoring results greater than the limit of detection, as determined by a method specified by the department, unless analyte-specific instructions in the current WPDES permit specify otherwise. The applicant shall appropriately identify all results greater than the limit of detection but less than the limit of quantitation.

(4) Except for those tests excluded in s. NR 219.06, laboratory testing shall be performed by a laboratory registered or certified under ch. NR 149.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

Subchapter II — Application for Discharge Permits

NR 200.03 Applicability and exclusions. (1) An application for a discharge permit shall be filed by any person who discharges or intends to discharge any pollutant from a point source to the waters of the state, or who land applies or disposes of sludge as specified in ch. NR 204, unless the discharge is excluded under sub. (3). Discharges for which applications are required include, but are not limited to:

- (a) Discharge of any pollutant to any surface water;
- (b) Discharge of any pollutant including cooling waters to any surface water through any storm sewer not discharging to a publicly owned treatment works;
- (c) Discharge of pollutants for the purpose of disposal, treatment, land application of sludge or containment on land areas including land disposal systems such as, but not limited to, ridge and furrow, land spreading, spray irrigation, and absorption pond systems;
- (d) Discharge of pollutants to waters of the state from agriculture as specified in ch. NR 243;

(2) Where the discharge of pollutants as set forth in sub. (1) is by hauling, the applications shall be filed by the persons responsible for the origin or treatment of the pollutants. If a person hauling sludge changes the characteristics of the sludge such that they become a generator under ch. NR 204, then that person shall apply for a permit.

(3) The following discharges are exempt from the requirement of sub. (1):

- (a) Discharges to publicly owned treatment works;
- (b) Sewage discharged from vessels;
- (c) Discharges from properly functioning marine engines;
- (d) Discharges of domestic sewage to disposal systems, such as to septic tanks and drain fields, defined as private sewage systems in s. 145.01 (12), Stats., with a design capacity of less than 8000 gallons per day;
- (e) The disposal of septic tank pumpage and other domestic waste to the extent that it is regulated by ch. NR 113. This does not exempt centralized septage treatment facilities which are required to obtain a permit under ch. NR 204 or where storm water permit coverage is required under ch. NR 216.

(f) The disposal of solid wastes, including wet or semi-liquid wastes, at a site or operation licensed pursuant to chs. NR 500 to 536, except as required for municipal sludge in ch. NR 204 or where storm water permit coverage is required under ch. NR 216.

(g) Discharges from private alcohol fuel production systems as exempted in s. 283.61, Stats.;

(h) Discharges which have been included under the provisions of a general permit to the extent that all conditions of the general permit are met.

(i) Discharges of storm water permitted under ch. NR 216.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; r. and recr. (3) (d), Register, October, 1986, No. 370, eff. 11-1-86; am. (1) (intro.), (c), (2), (3) (e) and (f), Register, December, 1995, No. 480, eff. 1-1-96; correction in (3) (g) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; am. (1) (a) and (3) (f), cr. (3) (i), Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.04 Reporting of existing discharges.

(1) Any person discharging pollutants into waters of the state, for which an application is required under s. NR 200.03 (1) (a) and (b), shall have had a complete application on file with the department at least 180 days prior to the date on which the person commenced the discharge.

(2) Any person discharging pollutants into waters of the state, for which a complete application is required under s. NR 200.03 (1) (c), shall have had a complete application on file with the department at least 180 days prior to the date on which the person commenced the discharge.

(3) Any person discharging pollutants into waters of the state, for which an application is required under s. NR 200.03 (1) (d), shall have a complete application on file with the department no later than 90 days following receipt of the application.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (1) and (2), Register, December, 1995, No. 480, eff. 1-1-96.

NR 200.05 Reporting of new discharges. Pursuant to s. 283.59, Stats.:

(1) Any permittee discharging pollutants into waters of the state shall give notice to the department at least 180 days prior to any facility expansion, production increase, or process modification which will result in a new or increased discharge of one or more pollutants.

(a) If the new or increased discharge will result in exceeding or violating any effluent limitation of the existing permit for the discharge, the permittee shall file a new application with the department pursuant to s. 283.37, Stats., for the purpose of obtaining either a modification of the existing permit or the issuance of a new permit.

(b) If the new or increased discharge will not result in exceeding or violating any effluent limitations of the permit, the permittee shall give notice in the form of a letter addressed to the department. The letter shall refer to the number and expiration date of the existing permit, describe the proposed expansion, production increase, or process modification, and include a statement that no effluent limitation of the permit will be exceeded or violated. The letter of notification shall be signed in accordance with s. NR 200.07 (4).

Note: The letter required in par. (b) may be mailed to the appropriate regional office or to the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707.

(2) Any permittee who has ceased to discharge and who intends to recommence a discharge, for which an application is required under s. NR 200.03, whether under the former or new ownership or management, shall file a complete application with the department no later than 180 days prior to the date on which the permittee intends to recommence discharge.

(3) Any person who intends to commence a new discharge, for which an application is required under s. NR 200.03, shall file a complete application with the department no later than 180 days prior to the date on which the person intends to commence discharging.

(4) Any person discharging, or intending to commence discharging, into a publicly or privately owned treatment works who is or will become subject to the discharge reporting requirements of s. 283.37 (4), Stats., shall give notice of the following, to the

department and the owner or operator of the treatment works, using the form prescribed in ch. NR 202, at least 180 days prior to:

(a) Any introduction of pollutants into the treatment works from any source, or

(b) Any introduction of types or volumes of pollutants into the treatment works which were not described in the report submitted under s. 283.37 (4), Stats.

(5) The owner or operator of a publicly or privately owned treatment works receiving a notice under sub. (4) is subject to sub. (1) and shall also include in the notice information on the quality and quantity of effluent to be introduced into the treatment works, and any anticipated impact of the pollutants on the quantity and quality of effluent and sludge to be discharged from the treatment works.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (4) (intro.) and (a) and (5), Register, December, 1995, No. 480, eff. 1-1-96; correction in (1) (a) and (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; am. (intro.), (1) (b) and (4) (intro.), Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.06 Application for reissuance. (1) Pursuant to s. 283.53 (3), Stats., a permittee who wishes to continue to discharge after the expiration of the permit shall file an application with the department for reissuance of the permit at least 180 days prior to its expiration, unless permission for a later date has been granted by the department.

(2) The application for reissuance of a permit shall be submitted in a form approved by the department and shall be signed in accordance with s. NR 200.07 (4).

(3) Data or information supplied in or with the application for reissuance and additional data or information which may be requested in accordance with s. NR 200.09, will be used as set forth in s. NR 200.024.

(4) The department may require an applicant to report on application forms any information the department needs to correspond with the applicant or assemble the permit components or conditions appropriate for the particular discharge including:

(a) General facts about the applicant or facility, including coverage under other environmental permits, sources of wastewater and information on the treatment system for which a permit is requested.

(b) Data available to the applicant through information searches or measurements taken by the applicant.

(c) Information obtained by the applicant as a result of requirements in previous permits.

(d) Information on results of testing, including quality control information, obtained by the applicant through investigations, such as pilot studies or effluent or ambient monitoring.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (2), Register, November, 1996, No. 491, eff. 12-1-96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; cr. (4), Register, November, 1999, No. 527, eff. 12-1-99; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527.

NR 200.065 Application monitoring requirements for discharges to surface waters. (1) EXISTING DISCHARGES. An applicant for permit issuance or reissuance with an existing discharge to surface waters shall monitor as follows and report the monitoring results on application forms.

(a) Samples shall be as representative of normal effluent quality as possible.

(b) Minimum monitoring requirements for each type of point source that conveys a wastewater discharge are specified in Table 1.

Table 1
MINIMUM MONITORING REQUIREMENTS

Wastewater Discharge Type	Number of Monitoring Tests	Pollutants Required to be Monitored
Major municipal discharge	1	Pollutants listed in s. NR 215.03 excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
	4	Copper, ammonia, phosphorus and hardness
	1	Chloride and whole effluent toxicity
Minor municipal discharge	4	Copper, ammonia, phosphorus and hardness
	1	Chloride, arsenic, cadmium, chromium, lead, nickel and zinc
Primary industry process discharge	1	Pollutants listed in s. NR 215.031 excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105 ¹ , Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102 ¹ , Table 1
	4	Copper, ammonia, phosphorus and hardness
	3	Mercury
	1	BOD ₅ (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature (summer and winter), arsenic, cadmium, chromium, lead, mercury, nickel, zinc
	1	Fecal coliform and pollutants listed in s. NR 215.06 excluding TOC (total organic carbon) when the applicant believes the pollutant is present in the discharge for reasons other than its presence in the intake water
Secondary industry process discharge or cooling water discharge, or both	4	Copper, ammonia, phosphorus and hardness
	1	BOD ₅ (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature (summer and winter), arsenic, cadmium, chromium, lead, mercury, nickel, zinc
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon), pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
Noncontact cooling water discharge	1	Ammonia, BOD ₅ (five day biochemical oxygen demand), chloride, oil and grease, pH, phosphorus, total suspended solids and temperature (summer and winter)
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1

¹Primary industries are required to test only those GC/MS fractions that are specified in 40 CFR 122, Appendix D, revised Table 1

(c) Persons collecting multiple samples for a pollutant shall allow at least a 24 hour interval between consecutive samples.

(d) The department may require the applicant to monitor 11 times for chloride for major municipal discharges or minor municipal discharges when the source of wastewater is from hard water communities, or for industrial process wastewater discharges from dairies, canneries, meat processors, water utilities that utilize ion-exchange water softening and other industrial categories expected to have high chloride levels.

(e) The department may require the applicant to monitor 4 times for the metals arsenic, cadmium, lead, nickel and zinc for major municipal discharges or minor municipal discharges when levels of those metals measured in the wastewater treatment system sludge from a facility are abnormally high compared with other similar facilities in the state.

(f) The department may require the applicant to monitor for the dioxin and furan congeners listed in s. NR 106.16 (2) for a major municipal discharge or minor municipal discharge when sources of wastewater include a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer or for a primary industrial discharge if the industry is a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer.

(g) The department may require monitoring for any other pollutant not specified in Table 1 if its presence could be reasonably expected based on wastewater sources.

(h) An applicant for permit reissuance may apply test data collected to fulfill current permit required monitoring or data collected for other reasons to fulfill these requirements if:

1. No more than 5 years have elapsed since the monitoring; and
2. No operational changes have occurred since the monitoring.

(i) Unless the monitoring is required by federal regulations, the department may exempt applicants from some or all of the monitoring requirements in this subsection for reasons including, but not limited to, any of the following:

1. Parameters such as flow, hardness or pH measured in the discharge or receiving water would result in proposed effluent limitations for a pollutant much greater than anticipated discharge levels for that pollutant, based upon measurements from similar discharges.
2. Proposed effluent limitations for a pollutant would be much greater than anticipated discharge levels for that pollutant, based on previous measurements made since significant facility changes have occurred.
3. Previous monitoring from similar facilities indicate the absence of significant quantities of a pollutant or class of pollutants.

(2) NEW DISCHARGE. The department may require a person applying for a new discharge permit to conduct pilot studies or other tests or provide effluent data from similar facilities to project pollutant levels in the proposed discharge.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.07 Application forms. (1) Application for a discharge permit shall be in a form approved by the department. Different application forms are used to provide information from different types of sources of discharge. The department may prescribe forms prepared by the environmental protection agency for use when appropriate or may modify such forms as necessary.

(2) Application forms may be obtained by contacting the department.

Note: Persons may obtain application forms by writing to the department regional office or the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707 or by calling one of those offices. Persons requesting an application form should say they wish to apply for a WPDES permit and provide their name, address, telephone number and a brief description of the facility which will generate the wastewater discharge.

(3) Application forms shall be filed with the department at the address provided on the application.

(4) Persons submitting application forms or electronic permit application agreements to the department shall sign the form or agreement and certify to the accuracy of the information pursuant to s. NR 205.07 (1) (g).

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (1), (4) (intro.), Register, November, 1996, No. 491, eff. 12-1-96; am. (2) to (4), Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.09 Incomplete application. The department may require an applicant to submit data necessary to complete any deficient application, may require any additional data other than that requested in the application or may require the applicant to submit a complete new application where the deficiencies are extensive or the appropriate form has not been used. Within 60 days of the date of receipt of a request from the department for additional data, the applicant shall submit the data. A permit may not be issued until a complete application is submitted to the department. A permit application will not be considered complete until the requirements of s. 23.11, Stats., and ch. NR 150 are met, and all required information is submitted.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. Register, December, 1995, No. 480, eff. 1-1-96; am., Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.10 Time periods for action on permit applications and modification requests. (1) Within 100 business days of receipt of a complete permit application or request for modification of an existing permit the department shall publish a class 1 notice under ch. 985, Stats., indicating its intended action.

(2) Where a complete reissuance application has been received at least 180 calendar days prior to the permit expiration date, the department shall, at least 25 business days prior to the expiration date, publish a class 1 notice under ch. 985, Stats., indicating its intended action. Where a complete reissuance application is not received at least 180 calendar days prior to the permit expiration date, the time deadline in sub. (1) shall apply.

(3) The department's final decision on a permit application or request for modification shall be made within 50 business days after completion of the hearing process under s. 283.49, Stats., and consideration of the environmental impact of the project as required by s. 1.11, Stats.

(4) The time deadlines in subs. (1) to (3) are not applicable to permit applications or modification requests submitted to the department by a municipality.

Note: One hundred business days is approximately 140 calendar days; 50 business days is approximately 70 calendar days; 25 business days is approximately 30 calendar days.

(5) The time deadlines in sub. (2) are not applicable if the department determines, pursuant to s. 283.53, Stats., that the permittee is not in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expiring permit.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (3) made under s. 13.93 (2m) (b) 7, Stats., Register, November, 1996, No. 491; cr. (5), Register, November, 1999, No. 527, eff. 12-1-99.

Subchapter III — Application for Water Quality Standards Variances

NR 200.20 General. (1) When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13 (5), Stats., the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

(2) In order to obtain a variance, a permittee shall demonstrate, by the greater weight of credible evidence, that attaining the water quality standard is not feasible because of one or more of the following:

- (a) Naturally occurring pollutant concentrations prevent the attainment of the standard.

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements.

(c) Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(d) Dams, diversions or other types of hydrological modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the standard.

(e) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

(f) The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.21 Time deadline for filing variance requests. A permittee who wishes to apply for a variance shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.22 Information to be included in an application for a variance. (1) A permittee applying for a variance shall supply the following information:

- (a) Facility name, address and WPDES permit number.
- (b) The name, address and telephone [number] of a facility contact person.
- (c) The date the permit was issued, reissued or modified which gives rise to the request for a variance.
- (d) Each water quality standard, pollutant and corresponding effluent limitation for which a variance is being requested.
- (e) Results of monitoring data for the pollutant for which the permittee is seeking a variance which represents the past and current levels of effluent quality. Monitoring shall conform with the following:
 1. The submittal shall specify sample location, sample type, sampling dates, analysis dates and laboratory name and certification number.
 2. Data quantity shall be sufficient to allow appropriate statistical treatment to characterize effluent quality over time.
 3. Samples shall be collected on days when contributions from industrial, commercial or other processes or sources of wastewater are expected to be at normal levels.
 4. Results of monitoring shall be summarized in tabular or graphical format or both.
 5. Any changes, such as changes in contract lab or method of analysis or treatment or process changes that occurred which may have affected results or could explain data trends shall be noted and an explanation provided.
 6. In addition, for this data to be considered to be representative, the permittee shall supply information to demonstrate that:
 - a. Sample results fall above the limit of quantitation for the analytical method used or that the most sensitive approved analytical method listed for the pollutant in ch. NR 219 was used with proper technique to produce the results.
 - b. Proper laboratory quality control procedures were used to generate the data. To make this demonstration, the permittee shall supply, for several representative analytical runs, the raw data for samples, calibrations, calibration verifications and quality control

steps. The raw data for quality control steps shall include results of replicate samples, identity of samples used for replicate samples, matrix spikes, matrix spike concentrations used, reagent blanks, method blanks and quality control limits. Raw data, replicate sample, matrix spike and quality control limit have the meanings specified in s. NR 149.03.

c. Proper sampling quality control procedures designed to minimize sample contamination were used. This demonstration shall include a description of sampling procedures and submittal of results of field blanks. A field blank is a volume of reagent grade water which is handled in such a way so as to duplicate as closely as possible the exposure of a water sample to potential sources of contamination during sampling, preservation and transportation to the laboratory.

(f) Changes which could be made to enhance treatment or source reduction of flows coming to the treatment facility or which would reduce the level of toxicity or the discharge of the pollutant for which the permittee is seeking a variance. This information shall include the following:

1. An estimate of capital and operating costs for the changes and a reasonable schedule for planning and accomplishing the work.

2. If the source of the pollutant is believed to be from dissolution of metals from water supply distribution piping materials:

a. Information on past and current water supply treatment practices which may increase or decrease the corrosive nature of the water supply including what changes have been made and when.

b. Data on the water supply stability or corrosivity, using one of various methods of determination, for the raw and treated water supply.

c. Other potential water sources or methods of water supply treatment as an alternative.

(g) Information which establishes the significance of industrial and commercial wastewater sources versus domestic wastewater sources of the pollutant for which a variance is requested. This may include an approximate mass-balance calculation of treatment system loadings from all sources.

(h) For facilities which monitor the treatment system sludge pursuant to requirements in ch. NR 204 or 214 for the pollutant for which a variance is requested, results of the most recent 3 years of sludge testing, along with volumes disposed of so as to perform an approximate mass balance of the pollutant entering and leaving the plant.

(i) If a variance is being requested for whole effluent toxicity in conjunction with a specific chemical pollutant or if whole effluent toxicity failures have been experienced and they are believed to have resulted from the pollutant for which the variance is being requested, evidence which points to the pollutant as the cause of the whole effluent toxicity failures.

(j) Effluent limitations which the permittee believes it can currently achieve.

(k) Effluent limitations which the permittee believes it can achieve at some later date during the term of the variance and the corresponding schedule which would be followed to meet these limitations.

(L) Whether the permittee believes it can meet the effluent limitations that give rise to the variance request at any time during the term of the permit.

(m) A detailed discussion of evidence and reasons why the permittee believes a variance is warranted based on one or more of the grounds listed in s. NR 200.20 (2).

(n) Demonstration that the variance requested conforms with antidegradation requirements specified in ch. NR 207.

(o) Characterization of the extent of any increased risk to human health and the environment associated with granting the

variance so as to allow the department to decide if such increased risk is consistent with protection of the public health, safety and welfare.

(p) For variance requests based on s. NR 200.20 (2) (f), the permittee shall conduct a financial impact analysis which shall include an estimate of the capital, operation and maintenance and financing costs, translated into an annualized cost, of potential changes identified in par. (g) compared with an analysis of financial affordability. The analysis of financial affordability shall include:

1. For publicly owned systems, an estimate of how much annual municipal revenue would need to increase, taking into account any offsetting state shared revenues if the most cost-effective pollutant control option was implemented and how this would affect user fees if user fees were used to finance the costs. This analysis shall also compare projected user fees with user fees in similar communities. If industrial or commercial contributions comprise a significant source of the pollutant, information requested in subd. 2. shall also be provided.

2. For privately owned systems or if the most cost-effective pollutant control option for a publicly owned system involves additional regulation of privately owned contributors as the impacted parties, an estimate of how implementing the most cost-effective pollutant control option would affect profitability and other financial health indicators of the private entity.

3. An analysis of the socioeconomic impacts to the community where the entity is located.

Note: Permittees may find helpful a United States Environmental Protection Agency publication titled Interim Economic Guidance for Water Quality Standards - Workbook, EPA-823-B-95-002, March 1995. Information on ordering EPA publications can be found on the World Wide Web at <http://www.epa.gov/>.

(2) In addition to the information required in sub. (1), the permittee may, within the 60-day time limits specified in s. NR

200.21, submit to the department any other information to support the request for a variance.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.23 Signature of authorized representative.

Pursuant to s. NR 205.07 (1) (g), a person submitting an application for a variance shall include a signed statement by an authorized representative that certifies to the accuracy of the information.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.24 Application completeness. When the department receives an application for a variance:

(1) The department may request additional information from the permittee within 30 days after receiving the application. The permittee shall provide the additional information within 30 days of receipt of the department's request. An application is not complete until the additional information is provided to the department.

(2) If the permittee does not provide information as required under s. NR 200.22 or sub. (1), the department shall deny the application.

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

NR 200.25 Time periods for department action on applications. The department shall adhere to the time deadlines specified in s. 283.15, Stats., in making determinations of application completeness and tentative and final decisions on variance requests.

Note: These time deadlines are as follows: (1) Public notice of receipt of an application for a variance within 30 days after receipt of the information specified in s. NR 200.22 or 200.24 (1), if applicable. (2) Public notice of a tentative decision within 120 days after receipt of the information specified in s. NR 200.22 or 200.24 (1), if applicable. (3) Final decision within 90 days after expiration of the 30-day public notice comment period under sub. (2).

History: Cr. Register, November, 1999, No. 527, eff. 12-1-99.

