

## Chapter NR 216

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**Note:** Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1997, No. 500.

**NR 216.001 Purpose.** The purpose of this chapter is to establish criteria defining those storm water discharges needing WPDES storm water discharge permits, as required by s. 283.33, Stats. The goal of this chapter is to eliminate to the maximum extent practicable the discharge of pollutants carried by storm water runoff into waters of the state from certain industrial facilities as identified in this chapter, construction sites over 5 acres and municipal storm water runoff as identified in this chapter.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.002 Definitions.** For the purposes of this chapter the following definitions are applicable:

(1) “Best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, structural controls, source area controls, treatment requirements, operating procedures, outdoor storage containment and other management practices to prevent or reduce pollutants in runoff entering waters of the state.

(2) “Construction site” means an area upon which one or more land disturbing construction activities occur that in total will disturb 5 or more acres of land, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is 5 or more acres.

(3) “Contaminated storm water” means storm water that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery in the source areas listed in s. NR 216.27 (3) (e).

(4) “Department” means the department of natural resources.

(5) “Discharge” means the discharge of any pollutant into the waters of the state from any point source.

(6) “Erosion” means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

(7) “Event mean concentration” means the flow-weighted concentration over the duration of a single runoff event.

(8) “Final stabilization” means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

(9) “General WPDES permit” means a permit for the discharge of pollutants issued by the department under s. 283.35, Stats.

(10) “Illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit.

(11) “Infiltration system” means a device or practice that encourages surface water to percolate or penetrate into underlying soil, including but not limited to infiltration trenches, grassed waterways and infiltration basins.

(12) “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, which may result in storm water runoff and lead to increased soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, but does not include agricultural land uses or silviculture activities or routine maintenance for project sites that involve under 5 acres of land disturbance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(13) “Landowner” means any person holding fee title, an easement or other interest in property which allows the person to undertake land disturbing construction activity on the property.

(14) “Municipal separate storm sewer” means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets the following criteria:

(a) Owned or operated by a municipality.

(b) Designed or used for collecting or conveying storm water.

(c) Which is not a combined sewer conveying both sanitary and storm water.

(d) Which is not part of a publicly owned wastewater treatment works which provides secondary or more stringent treatment.

(15) "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, storm water or other wastes.

(16) "Outfall" means the point at which storm water is discharged to waters of the state or to a storm sewer.

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

(18) "Phase one municipality" means the cities of Madison and Milwaukee.

(19) "Point source" means a discernible, confined and discrete conveyance of storm water for which a permit is required under s. 283.33, Stats.

(20) "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.

(21) "Pollution" means man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(22) "Runoff coefficient" means the fraction of total precipitation that will leave a site as storm water runoff based on land use, soil and drainage characteristics.

(23) "Section 313 water priority chemical" means a chemical or chemical categories which:

(a) Is listed at 40 CFR 372.65 pursuant to 42 USC 11023;

**Note:** 42 USC 1023 is also known as the emergency planning and community right-to-know act (EPCRA), or as Section 313 of title III of the superfund amendments and reauthorization act (SARA) of 1986.

(b) Is present at or above threshold levels at a facility subject to EPCRA s. 313 reporting requirements; and

(c) Is listed in appendix D of 40 CFR 122 on either table II, table III or table V or is listed as a hazardous substance pursuant to 33 USC 1321 (b) (2) (A) of the clean water act at 40 CFR 116.4.

(24) "SIC" means standard industrial classification. SIC codes cited in this chapter are from the 1987 edition of the *Standard Industrial Classification Manual*.

(25) "Significant contributor" means a person who discharges to waters of the state pollutants which contribute to or have the reasonable potential to contribute to an exceedence of a water quality standard.

(26) "Significant materials" means materials related to industrial activity that may contaminate storm water, including, but not limited to: raw materials; fuels; materials such as solvents, detergents and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under 42 USC 9601 to 9675; any chemical the facility is required to report pursuant to 42 USC 11023; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

**Note:** 42 USC 9601 to 9675 is also known as the comprehensive environmental response, compensation and liability act (CERCLA). 42 USC 11023 is also known as the emergency planning and community right-to-know act (EPCRA), or as Section 313 of title III of the superfund amendments and reauthorization act (SARA) of 1986.

(27) "Source area control BMP" means best management practices intended to prevent storm water runoff from contacting materials that can potentially contaminate it.

(28) "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of such practices as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.

(29) "Storm water" means storm water runoff, snow or ice melt runoff, and surface runoff and drainage.

(30) "Storm water outfall" means the point where a municipal separate storm sewer discharges to waters of the state, or leaves one municipality and enters another.

(31) "SWPPP" means storm water pollution prevention plan.

(32) "Treatment BMP" means a storm water treatment system, works, or practice that is designed to reduce or remove pollutants from contaminated storm water.

(33) "Urban storm water planning area" means the boundary defined by a phase one municipality, great lakes area of concern municipality, or a municipality over 50,000 in a priority watershed which serves as the appropriate planning area for the abatement of storm water runoff pollution into waters of the state.

(34) "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 water 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.

(35) "WPDES" means Wisconsin pollutant discharge elimination system.

(36) "Working day" means any day except Saturday and Sunday and holidays designated in s. 230.35 (4) (a), Stats.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: am. (2), (8), (10), (12) Register September 2002 No. 561, eff. 10-1-02.

**NR 216.003 General permit conditions.** In addition to the terms and conditions listed under this chapter, if a general permit is issued, it may require compliance with the terms and conditions identified in s. NR 205.08. The term of the permit shall be the maximum period of time provided by federal law.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.004 Noncompliance. (1)** Any act of noncompliance with the provisions of any storm water permit issued under this chapter is a violation of the permit and is grounds for enforcement action or denial of continued coverage under a general permit.

(2) Permittees shall submit reports of noncompliance with requirements contained in a compliance schedule of the permit in writing within 14 days after the compliance schedule deadline. Reports of noncompliance shall include: a description of the noncompliance; its cause; the steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance; and the effect of the noncompliance on the permittee's ability to meet remaining deadlines.

(3) The permittee shall immediately notify the department or the designated statewide 24-hour emergency number provided by the division of emergency government in accordance with ch. NR 706, in the event that a spill or accidental release of any hazardous material or substance results in the discharge of pollutants to waters of the state or creates a condition that may contaminate storm water discharged to waters of the state.

(4) The permittee shall take all reasonable steps to minimize or prevent any adverse impacts on the waters of the state resulting from noncompliance with a storm water permit.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**Subchapter I — Municipal Storm Water Discharge Permits**

**NR 216.01 Purpose.** The purpose of this subchapter is to establish the requirements for municipal storm water discharge permits, as required by s. 283.33, Stats. The goal of this subchapter is to eliminate to the maximum extent practicable the discharge of pollutants into waters of the state from municipal storm water runoff from municipalities identified in s. NR 216.02. The department shall consider the other environmental problems facing municipalities and emphasize cost effective pollution prevention solutions when determining what is practicable.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.02 Applicability.** The following municipal storm water dischargers shall obtain a WPDES storm water discharge permit under this subchapter because of water quality concerns associated with urban runoff:

**(1) PHASE ONE MUNICIPALITIES.** Municipal separate storm sewer systems serving incorporated areas with a population of 100,000 or more shall obtain a permit.

**Note:** The phase one municipalities are the cities of Madison and Milwaukee. They have already completed the permit application process in accordance with the EPA regulations in 40 CFR part 122.26 (d), prior to the promulgation of ch. NR 216.

**(2) GREAT LAKES AREAS OF CONCERN.** Municipalities in the great lakes areas of concern shall obtain a permit.

**Note:** There are 5 great lakes areas of concern in Wisconsin. Areas of concern have persistent water quality problems impairing beneficial uses. Remedial action plans for reacting to the pollutants are being developed for the areas of concern. The department is designating the great lakes areas of concern for storm water permitting because of the significance of storm water runoff as a pollutant source. Municipalities in remedial action plans, except for the city of Milwaukee which is required to apply under s. NR 216.02 (1), include the following:

Area of Concern	Municipality
Lower Green Bay and Fox River	Green Bay, Allouez, Ashwaubenon, DePere
Menominee River	Marinette
Sheboygan River	Sheboygan
St. Louis River and Duluth-Superior Harbor	Superior

**(3) PRIORITY WATERSHEDS.** Municipalities in priority watersheds with a population of 50,000 or more, based on the most recent census data for the incorporated area, shall obtain a permit.

**Note:** Priority watersheds associated with municipalities with a population of 50,000 or more, except for municipalities required to apply under s. NR 216.02 (1) or (2), are listed below. Clean-up and protection of water resources through control of runoff sources of pollution are needed to improve water quality in priority watersheds. The department is designating these priority watersheds for storm water permitting because of the significance of storm water runoff as a pollutant source. Municipalities in these priority watersheds include the following:

Priority Watershed	Municipality
Duncan Creek and Lowes Creek	Eau Claire
Root River	Racine
Menomonee and Kinnickinnic Rivers	West Allis
Upper Fox River (Illinois)	Waukesha

**(4) DESIGNATED MUNICIPALITIES.** Discharges from a municipal separate storm sewer system which either contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state shall obtain a permit. All designations shall be guided by consistent statewide application of technical criteria. The department may designate discharges from municipal separate storm sewer systems on a system wide, jurisdiction wide or watershed basis. A designation for storm water permitting may be initiated by the following:

(a) The department may identify a municipality for permitting. To assist in making this determination, the department may

request information from the municipality. The department shall consider the following factors when making a designation:

1. Physical interconnections between the municipal separate storm sewers of a permitted municipality and a designated municipality.
2. Location of the discharge from a designated municipality relative to a permitted municipal separate storm sewer system.
3. The quantity and nature of pollutants discharged to waters of the state.
4. The nature of the receiving water.
5. Protection of the watershed or basin drainage area receiving the municipal discharge.
6. Population of the municipality.
7. Other relevant factors.

(b) Phase one municipalities, great lakes areas of concern municipalities, priority watershed municipalities with a population of 50,000 or more, and the public may petition the department to designate additional municipalities for permitting. The petition shall contain information to assist the department in making a determination in accordance with the factors outlined in s. NR 216.02 (4) (a).

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.03 Method of application.** The owner or operator of a discharge from a municipal separate storm sewer system may either apply individually or as a co-applicant. Permit applications may be made by the following methods:

**(1) GROUP APPLICATION.** Municipalities may be co-applicants and submit a group application with one or more other owners or operators of discharges from municipal separate storm sewer systems.

**(2) REGIONAL AUTHORITY.** A regional authority, which would administer the co-applicants for an entire urban storm water planning area, may submit a permit application.

**(3) INDIVIDUAL APPLICATION.** A municipality may submit an individual permit application which only covers discharges from the municipal separate storm sewer system it is responsible for.

**Note:** The department encourages the filing of group or regional authority applications because of the possible benefits, including: economy of size, an additional 12 months to prepare the permit application, reduced permit fees, and enhanced cooperation between municipalities to achieve the same water quality goals. During the preapplication period municipalities can pursue forming groups or regional authorities. Formation of a storm water utility district may be a mechanism for applying as a group or regional authority, and could be a source for funding.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.04 Issuance of permits. (1) TYPES OF PERMITS.** The department may issue a permit to a group of co-applicants, a permit to a regional authority, or individual permits. Permits will be issued by the department for the type of application made. The department may exclude co-applicants from coverage under a group or regional authority permit, and instead issue an individual permit to each excluded co-applicant if coverage is necessary to ensure compliance with this subchapter.

**(2) CO-PERMITTEES.** A co-permittee is only responsible for permit conditions relating to discharges from the municipal separate storm sewers for which it is the owner or operator.

**(3) CONDITIONS.** Permits may specify different conditions for different discharges covered by a permit, including distinctive management programs for different storm water drainage areas.

**(4) PRIORITIES.** The following criteria shall be used by the department to determine the order of permitting municipalities:

(a) Phase one municipalities. These permits shall be issued beginning August 1, 1994.

(b) Municipalities designated by phase one municipalities and approved by the department. Beginning July 1, 1995, the department shall notify these municipalities they are required to apply for a storm water permit.

(c) Municipalities in great lakes areas of concern. Beginning July 1, 1996, the department shall notify these municipalities they are required to apply for a storm water permit.

(d) Municipalities in priority watersheds with a population of 50,000 or more. Beginning July 1, 1997, the department shall notify these municipalities they are required to apply for a storm water permit.

(e) Other municipalities designated under s. NR 216.02 (4).

**(5) PREAPPLICATION DEADLINES.** The following time frames apply:

(a) The department shall notify a municipality when application for a storm water permit is required. Preapplication information as described in s. NR 216.05 shall be submitted by the notified municipality within 6 months of this notification.

(b) The department shall review the urban storm water planning area required in s. NR 216.05 (3), and any petition to designate other municipalities for permitting in accordance with s. NR 216.05 (4). If the department intends to designate any municipalities in the watersheds of an applicant, according to s. NR 216.02 (4), it shall do so in the process of approving the preapplication. However, the department may later designate any municipality for permitting based on that municipality having a significant change in discharge to waters of the state. The following time frame applies to the petition and designation process.

1. The department shall notify municipalities named in a petition, or which the department designates under s. NR 216.02 (4), within 30 days of receipt.

2. The department shall notify municipalities within 90 days of the department's ruling on the petition.

3. A municipality can appeal the department's designation decision by demonstrating why they are not [a] contributor to a violation of a water quality standard or a significant contributor of pollutants to waters of the state for either all or a portion of their jurisdiction. Municipalities shall appeal the department's decision within 90 days.

4. The department shall rule on an appeal within 90 days.

5. If there is no appeal of the department's designation decision, approval of the preapplication shall occur when the department issues its ruling under subd. 2. If there is an appeal of the department's designation decision, approval of the preapplication shall occur when the department issues its ruling on the appeal under subd. 4.

**(6) APPLICATION DEADLINES.** Permit applications shall be submitted according to the following time frames after the preapplication is approved by the department:

(a) Within 24 months for an individual applicant.

(b) Within 36 months for a group or regional authority applicant.

**Note:** The department's goal is to issue a permit within 12 months after receipt of a substantially complete application.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; **CR 00-035: am.** (5) (b) (intro.) Register September 2002 No. 561, eff. 10-1-02.

**NR 216.05 Preapplication requirements.** The following information shall be submitted to the department prior to applying for a municipal storm water permit:

**(1) GENERAL INFORMATION.** The applicant's name, address, telephone number of contact person, ownership status and status as a government entity. For the purpose of establishing the responsibilities of each municipality in a group or regional authority application, co-applicants shall provide an intermunicipal agreement or a proposed agreement with a schedule for execution of the agreement.

**(2) LEGAL AUTHORITY.** A description of existing local ordinances to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria in s. NR 216.06 (1), the description shall list addi-

tional authorities necessary to meet the criteria, and shall include a commitment and schedule to obtain additional authority.

**(3) URBAN STORM WATER PLANNING AREA.** A map showing the urban storm water planning area boundary, which shall take into consideration the storm water drainage basin and affected watersheds, the sewer service area and urban development area.

**(4) DESIGNATED MUNICIPALITIES.** A petition in accordance with s. NR 216.02 (4), to designate for storm water permitting any surrounding municipalities within the urban storm water planning area.

**(5) FISCAL RESOURCES.** A description of the financial resources currently available to the municipality to complete a permit application, the budget for existing storm water management programs, and sources of funds for storm water management programs.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.06 Application requirements.** Municipalities subject to the requirements of this subchapter shall apply for a storm water permit by submitting the necessary application information to the department. The municipal storm water permit application shall consist of:

**(1) ADEQUATE LEGAL AUTHORITY.** A demonstration that the applicant has legal authority established by statute, ordinance or series of contracts to, at a minimum:

(a) Control the contribution of pollutants to the municipal separate storm sewer system from storm water discharges associated with industrial activity.

(b) Prohibit illicit discharges to the municipal separate storm sewer system.

(c) Control the discharge of spills, dumping or disposal of materials other than storm water to the municipal separate storm sewer system.

(d) Control through intermunicipal agreements among co-applicants the contribution of pollutants from one municipal separate storm sewer system to another.

(e) Require compliance with conditions in ordinances, permits, contracts or orders.

(f) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer system.

**Note:** Construction site erosion control and storm water management model ordinances that may be adopted voluntarily by a municipality are available within ch. NR 152.

**(2) STORM SEWER SYSTEM MAP.** A compilation of data on the municipal separate storm sewer system and identification of potential sources of pollutants. Provide on a sufficiently sized and detailed map, such as a U.S. geological survey 7.5 minute topographic map or equivalent map with a scale suited for the level of detail, the following information:

(a) Identification and outline of the storm water drainage basins, the watersheds and municipal separate storm sewer systems. Other major municipal, government or privately owned storm water conveyance systems lying within, but not owned or operated by the permittee shall also be identified.

(b) A boundary defining the final urban storm water planning area as determined during the preapplication and all municipal borders in the area.

(c) A list and location of all known municipal storm sewer system outfalls discharging to waters of the state. Indicate the pipe size and identify those outfalls which are considered major. A major outfall means a municipal separate storm sewer outfall which meets one of the following criteria:

1. A single pipe with an inside diameter of 36 inches or more, or from an equivalent conveyance (cross sectional area of 1,018

inch<sup>2</sup>) which is associated with a drainage area of more than 50 acres.

2. A municipal separate storm sewer that receives storm water runoff from land zoned for industrial activity and discharges from a single pipe with an inside diameter of 12 inches or more, or from an equivalent conveyance (cross sectional area of 113inch<sup>2</sup>) which is associated with a drainage area of more than 2 acres.

(d) The location and a description of each currently operating or closed municipal landfill or other treatment, disposal or storage facility for municipal waste.

(e) The location and permit number of any known discharge to the municipal separate storm sewer system that has been issued a WPDES permit, or has filed a permit application with the department.

(f) The location of major structural controls for storm water discharges including retention basins, detention basins and major infiltration devices.

(g) Identification of publicly owned parks, recreational areas and other open lands.

**(3) EXISTING MANAGEMENT PROGRAMS.** Identification of existing management programs to control pollutants from municipal separate storm sewer systems. Provide the following information:

(a) A description of any existing source area controls and structural best management practices, including operation and maintenance measures. Programs may include construction site erosion control practices, floodplain management controls, wetland protection measures, roadway management, emergency spill response, best management practices for new developments and recommendations in regional water quality management plans.

(b) A description of any existing programs to identify illicit connections to the municipal separate storm sewer system. Include inspection procedures, methods for detecting and preventing illicit discharges, areas where this program has been implemented and a summary of results.

**Note:** Existing management programs that affect storm water quality may be a starting point for improving and expanding a storm water management program.

**(4) INDUSTRIAL SOURCE IDENTIFICATION.** An inventory, organized by watershed, of industrial facilities which are likely to discharge storm water runoff to the municipal separate storm sewer system. Include the name and address of each industrial facility, and a description such as a standard industrial classification which best reflects the principal products or services provided by the industry.

**Note:** The department can assist in obtaining information on industrial facilities.

**(5) DISCHARGE CHARACTERIZATION.** A characterization of the quality and quantity of storm water runoff and effects of this runoff on receiving water bodies. This information shall be used to estimate potential storm water flows and to evaluate water quality. Using existing data and conditions, provide the following information:

(a) Monthly mean rain and snow fall estimates, or summary of weather bureau data, and the monthly average number of storm events.

(b) The location and description of land use activities, with divisions indicating undeveloped, residential, commercial, agricultural and industrial uses. For each land use type, estimate the average runoff coefficient. Estimate population densities and projected growth for a 10 year period within the drainage area served by a municipal separate storm sewer system.

(c) If available, quantitative data describing the volume and quality of discharges from the municipal separate storm sewer system, including a description of the outfalls sampled, sampling procedures, and analytical methods used.

(d) A list of water bodies that receive discharges from the municipal separate storm sewer system and the locations in these water bodies, where pollutants from storm water discharges may accumulate and cause water quality degradation. Briefly describe

known water quality impacts, by providing the following information on whether the water bodies have been:

1. Assessed and reported in a water quality inventory report, required under 33 USC 1315 (b). Applicants shall reference the report as to the designated use of the water body, attainment of the goals of 33 USC 1251 to 1376, and causes of pollution which prevent attainment of goals.

2. Listed in an individual control strategies toxic pollutant report, required under 33 USC 1314 (l), as a water body that is not expected to meet water quality standards or water quality goals due to toxic pollutants.

3. Listed in a nonpoint source assessment required under 33 USC 1329 (a), indicating that without additional action to control nonpoint sources of pollution, the water body cannot reasonably be expected to meet water quality standards due to significantly polluted storm water runoff.

4. Listed as a publicly owned lake and classified according to the level of eutrophication, required under 33 USC 1324 (a).

5. Recognized as a highly valued or sensitive water, classified as an exceptional or outstanding resource water by the department in ch. NR 102, or included in a priority watershed.

6. Defined by the department or U.S. fish and wildlife service's national wetlands inventory as wetlands.

7. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

8. Identified as contaminated groundwater, because of impacts from storm water infiltration on groundwater quality, especially drinking water supplies.

**Note:** The department can assist in obtaining some of the water resources information.

**(6) POLLUTANT LOADINGS.** A proposed schedule to provide pollutant loadings to receiving water bodies and the event mean concentrations, in accordance with s. NR 216.07 (4).

**(7) PROPOSED MONITORING PROGRAM.** A proposed monitoring program for data collection for the term of the permit, in accordance with s. NR 216.07 (5).

**(8) PROPOSED MANAGEMENT PROGRAM.** A schedule to provide a proposed storm water management program that shall be developed and initiated during the term of the permit, in accordance with s. NR 216.07 (7) and (7m).

**(9) FISCAL ANALYSIS.** For each fiscal year to be covered by the permit, a fiscal analysis of the estimated capital and operation and maintenance expenditures necessary to implement the proposed management programs. The analysis shall include a description of the source of funds, including any restrictions on the use of the funds.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: am. (2) (a) and (8) Register September 2002 No. 561, eff. 10-1-02.

**NR 216.07 Permit requirements.** The department shall issue permits using the information provided by the applicant and other pertinent information when developing permit conditions. Permits shall include, but are not limited to, the following requirements (subject to the exemptions in s. NR 216.08):

**(1) APPLICATION DEFICIENCIES.** Orders to assure compliance with the permit application requirements in s. NR 216.06, if an incomplete application was submitted.

**(2) SCHEDULE OF COMPLIANCE.** A compliance schedule for the development and implementation of the storm water management program and any other requirements specified in the permit.

**(3) FIELD SCREENING.** A field screening analysis for illicit connections and illegal dumping at all major outfalls identified in the permit application, plus any additional selected field screening point designated by the municipality or the department. At a minimum, a screening analysis shall include a narrative description of visual observations made during dry weather periods. If any flow is observed, 2 grab samples shall be collected during a 24 hour period with a minimum period of 4 hours between samples. For

all samples, provide a narrative description of the color, odor, turbidity and the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping. In addition, summarize the field analysis results for pH, total chlorine, total copper, total phenol, and detergents or surfactants, along with a description of the flow rate. Additional field analysis may be conducted using other parameters, like ammonia, to enhance the detection of illicit discharges. Where the field analysis does not involve analytical methods approved under 40 CFR 136 or by the department, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the detection levels and accuracy of the test. The field screening points shall be established using the following guidelines:

(a) Field screening points shall, where possible, be located downstream of any sources of suspected illegal or illicit activity.

(b) Field screening points shall be located where practicable at the farthest manhole or other accessible location downstream in the system. Safety of personnel and accessibility of the location shall be considered in making this determination.

(c) Consideration shall be given to hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area and land use types.

**(4) POLLUTANT LOADING.** A calculation of the event mean concentration, and the annual and seasonal pollutant loadings from each major outfall and the cumulative discharges from all known municipal separate storm sewer system outfalls to waters of the state. This information will be used to monitor trends in pollutant loadings. Calculations shall be provided for the following pollutants: BOD, COD, total suspended solids, total dissolved solids, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, ammonia nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, zinc, and any other pollutant of significance detected in the storm water characterization. Provide a description of the procedures for calculating pollutant concentrations and loadings, including any modelling analysis with this calculation.

**(5) MONITORING PROGRAM.** A storm water monitoring program that considers the program proposed in the application, and may include changes required by the department. The program shall include information on the purpose and goals of the monitoring, the location of outfalls or field screening points for sampling, why the location is representative, the frequency of sampling, parameters to be sampled, and type of sampling equipment. The monitoring program may consider 3 components:

(a) Characterization of storm water by monitoring the pollutants identified in sub. (6) (f), from locations representative of various land uses and water quality concerns. This information shall be used to calculate pollutant loadings and event mean concentrations.

(b) Program assessment using water quality analysis and in-stream monitoring of the biological community and habitat conditions in the receiving water, to determine the effectiveness and adequacy of best management practices.

(c) Wet weather screening of storm water quality to identify areas that may be significant contributors of pollutants to the municipal separate storm sewer system.

**(6) SAMPLING PROCEDURES.** Procedures for storm water sampling. When characterization data as described in sub. (5) (a) is required by the permit, sampling is subject to the following procedures:

(a) Outfalls monitored shall be representative of the commercial, residential, and industrial land use activities in the drainage area contributing to the municipal separate storm sewer system. The number and location of outfalls monitored shall be designated by the applicant in the proposed monitoring program. No more than 5 outfalls per municipality need to be monitored.

(b) Samples shall be collected from storms which are preferably at least 50% of the average rainfall amount, but no less than 0.1 inch. The runoff event sampled shall be at least 72 hours after any previous measurable storm greater than 0.1 inch rainfall. Runoff events sampled shall be at least 4 weeks apart whenever possible. The entire runoff event shall be sampled whenever possible, or at least the first 3 hours of a lengthy runoff. There is no minimum time criteria for the duration of the runoff.

(c) Samples collected shall be flow weighted composite samples using a continuous auto sampler, or using a combination of a minimum of 3 sample portions taken manually each hour of the runoff with each sample portion separated by a minimum period of 15 minutes. A grab sample shall be collected within the first 30 minutes of the runoff for those parameters being analyzed that require a grab sample, which include: pH, cyanide, total phenols, oil and grease, fecal coliform, fecal streptococcus and volatile organic compounds.

(d) A narrative description shall be provided of each storm event which is sampled, including the date and duration of the storm, rainfall amount and the interval between the storm sampled and the end of the previous measurable storm of greater than 0.1 inch rainfall.

(e) Approved analytical methods shall be used, in accordance with ch. NR 219. When no analytical method is approved, a suitable method may be used provided a description of the method is submitted to the department for concurrence prior to sampling.

(f) Quantitative data shall be provided for the pollutants listed in the following table, plus the organic priority pollutants listed in Table II (organic, toxic pollutants) and the toxic metals, cyanide and total phenols listed in table III (metals, cyanide and total phenols) of appendix D of 40 CFR 122. The number of pollutants to be analyzed may be reduced if there is reason to believe some pollutants are unlikely to be present, or if initial analysis shows some pollutants were not detected at a level of concern.

Total Suspended Solids	Total Kjeldahl Nitrogen
Total Dissolved Solids	Nitrate plus Nitrite
COD	Ammonia Nitrogen
BOD <sub>5</sub>	Dissolved Phosphorus
Oil and Grease	Total Phosphorus
Fecal Coliform	Alkalinity
Fecal Streptococcus	Chloride
pH	Color
Hardness	Odor

(g) The department may require that quantitative data be provided for additional parameters on a case-by-case basis, and may establish sampling conditions such as the location, season of sample collection, form of runoff such as snow melt, rainfall amount and other conditions necessary to insure a representative sample.

**(7) STORM WATER MANAGEMENT PROGRAM.** A storm water management program that considers the program proposed in the application, and may include changes required by the department. The program shall include a comprehensive planning process which involves public participation and, where necessary, inter-governmental coordination and a description of staff and equipment available, and priorities for implementation. The discharge of pollutants shall be reduced to the maximum extent practicable using appropriate best management practices. The program shall be consistent with the recommendations in regional water quality management plans. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Management programs may include the following requirements:

(a) Source area controls and structural best management practices to reduce pollutants in runoff from commercial and residential areas that discharge into the municipal separate storm sewer

system. An estimate of the expected reduction of pollutant loading and schedule for implementation shall be provided. The controls shall include:

1. Maintenance activities and a maintenance schedule for source area controls and structural best management practices.
2. Planning procedures including a comprehensive master plan to develop, implement and enforce controls on discharges from areas of new development and significant redevelopment, after construction is completed.
3. Practices for operating and maintaining roadways including deicing activities.
4. Procedures to assure that flood management projects assess impacts on the water quality, and that existing structural flood control devices have been evaluated to determine the feasibility of a retrofit device to provide pollutant removal from storm water.
5. A program to reduce pollutants associated with the application of pesticides, herbicides and fertilizer. The program may include educational activities, permits, certification of commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.
6. A program to promote the management of stream banks and shorelines by riparian land owners to minimize erosion, and restore or enhance the ecological values of the waterway.
  - (b) A program to detect and remove illicit discharges and improper disposal of wastes into the municipal separate storm sewer system, or require the discharger to obtain a separate WPDES permit. The program shall include:
    1. A schedule to implement and enforce an ordinance, orders or similar means to prevent illicit discharges.
    2. A strategy to address all types of illicit discharges. The following non-storm water discharges or flows are not considered illicit discharges: water line flushing, landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool water, street wash water and fire fighting. However, these discharges need to be included in the strategy when identified by the municipality as significant sources of pollutants to waters of the state.
    3. Procedures to conduct on-going field screening activities during the term of the permit, including areas or locations of storm sewers that will be evaluated.
    4. Procedures to be followed to investigate portions of the municipal separate storm sewer system that, based on the results of field screening or other information, indicate a reasonable potential for containing illicit discharges or other sources of non-storm water. Procedures may include sampling for the field screening parameters identified in sub. (3), testing with fluorometric dyes or conducting inspections inside storm sewers where safety and other considerations allow.
    5. Procedures to prevent, contain and respond to spills that may discharge into the municipal separate storm sewer system.
    6. A program to promote public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers.
    7. Information and education programs to facilitate the proper management of materials and behaviors that may pollute storm water, including: used oil, toxic materials, yard waste, lawn care and car washing.
    8. Controls to limit infiltration of leakage from municipal sanitary sewers into municipal separate storm sewer systems.

(c) A program to monitor and control pollutants in industrial and high risk runoff discharges to municipal separate storm sewer systems. These sources include landfills; hazardous waste treat-

ment, disposal, storage and recovery facilities; industrial facilities subject to 42 USC 11023; and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal separate storm sewer system. The program shall include:

1. Priorities and procedures for inspections and implementing control measures.
2. A monitoring program for storm water discharges associated with the industrial facilities and high risk runoff, to be implemented during the term of the permit. Monitoring may include the submission of quantitative data on the following constituents: any pollutants limited in effluent guideline subcategories where applicable, any pollutant listed in an existing WPDES permit for a facility, oil and grease, COD, pH, BOD, total suspended solids, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any other pollutant known or believed to be present. This monitoring program can be done in conjunction with the wet weather screening described in sub. (5) (c).

**Note:** If the industrial facility has a WPDES permit, storm water monitoring data may be available from the department.

(d) A program to implement and maintain source area controls and structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal separate storm sewer system. The program shall include:

1. Procedures for site planning which incorporate consideration of potential water quality impacts.
2. Requirements for source area controls and structural best management practices.
3. Procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, the characteristics of soil and receiving water quality.
4. Information and education programs for construction site operators.

**(7m) PERFORMANCE STANDARDS.** The storm water management program required in sub. (7) shall meet the performance standards in ss. NR 151.11, 151.12 and 151.13.

**(8) ASSESSMENT OF CONTROLS.** An assessment of the storm water management program and the effectiveness and adequacy of the best management practices implemented shall be reviewed annually. The assessment shall include the following:

- (a) Review the results of the monitoring program.
- (b) Estimate expected reductions in pollutant loadings discharged from the municipal separate storm sewer system.
- (c) Identify known impacts of storm water controls on both surface water and groundwater.
- (d) Propose modifications to the storm water management program to correct deficiencies and to improve the program.

**(9) ANNUAL REPORT.** An annual report for the preceding calendar year shall be submitted by March 31 of the next year. The municipal governing body, interest groups, and the general public shall be encouraged to review and comment on the annual report. Permittees shall consider the comments in the storm water management program. The annual report shall include the following information:

- (a) The status of implementing the storm water management program and compliance with permit schedules.
- (b) A summary of the monitoring data accumulated through the reporting year.
- (c) A summary of the assessment of controls.
- (d) Proposed modifications to the storm water management program in response to the assessment of controls.
- (e) A fiscal analysis which includes the annual expenditures and budget for the reporting year, and the budget for the next year.
- (f) A summary of the number and nature of enforcement actions, inspections, and public information and education programs.

(g) Identification of water quality improvements or degradation.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; **CR 00-035: cr. (7m) Register September 2002 No. 561, eff. 10-1-02.**

**NR 216.08 Exemptions.** The department shall have flexibility in determining application and permit requirements. When an applicant demonstrates a requirement will take more time to complete, is not practicable or applicable, or the information is not necessary for the permit, the department may give an exemption to exclude or modify the following:

(1) **DESIGNATED MUNICIPALITIES.** A petition designating additional municipalities for permitting required under s. NR 216.05 (4).

(2) **INDUSTRIAL INVENTORY.** An inventory of each industrial discharger required under s. NR 216.06 (4).

(3) **DISCHARGE CHARACTERIZATION.** Characterization data required under s. NR 216.06 (5).

(4) **POLLUTANT LOADINGS.** Calculation of event mean concentrations and pollutant loadings required under s. NR 216.07 (4).

(5) **MONITORING.** Monitoring programs for storm water data collection under s. NR 216.07 (5).

(6) **SAMPLING.** Sampling procedures for storm water characterization under s. NR 216.07 (6).

(7) **STORM WATER MANAGEMENT PROGRAM.** Management programs required under s. NR 216.07 (7).

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.09 Permit fees.** A storm water permit fee shall be paid annually by each permittee under this subchapter, or by permittees whose WPDES permit incorporates storm water management requirements under this subchapter. Permit fees are due by June 30th each year. The fees shall be assessed according to the following schedule:

(1) \$10,000 for permits serving populations of 100,000 or more.

(2) \$5,000 for permits serving populations less than 100,000.

(3) \$1,000 for state and federal permits.

**Note:** The permit fee for a group permit or regional authority permit can be shared between the co-permittees by a method determined to be equitable by the co-permittees. For example, a group permit representing 10 co-permittees with a total population of 200,000, could divide the \$10,000 fee 10 ways proportionally based on the ratio of each co-permittee's population to the total population.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.10 Permit reissuance.** Permits shall be issued for a term of no more than 5 years. Application for reissuance of a permit shall be filed at least 180 days prior to the expiration date of the permit. If the permit is not reissued by the time the existing permit expires, the existing permit remains in effect. The following information shall be submitted as the reissuance application:

(1) **APPLICABILITY.** Proposed modifications to permit applicability including the permitted area, co-permittees and storm sewer system map.

(2) **MONITORING PROGRAM.** Proposed modifications to the storm water monitoring program for the term of the next permit.

(3) **MANAGEMENT PROGRAM.** Proposed modifications to the storm water management program for the term of the next permit.

(4) **OTHER.** Any other information pertinent to permit reissuance to update the permit.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.11 Trading.** If watershed planning occurs in Wisconsin which allows the trading of pollutant discharge loadings, this trading process can be used to meet the substantive requirements of the storm water discharge permit program. Municipalities shall be allowed to demonstrate compliance with the requirements of this subchapter by meeting the requirements of an enforceable watershed management plan approved by the depart-

ment. Municipalities may be allowed to discharge a quantity or quality of storm water which, taken alone, does not assure attainment and maintenance of water quality standards, if the receiving water is part of a watershed management unit for which an enforceable management plan has been approved by the department. Implementation of storm water management practices recommended in department approved watershed plans may constitute compliance with this chapter and issuance of a storm water permit may be unnecessary.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

## Subchapter II — Industrial Storm Water Discharge Permits

**NR 216.20 Purpose.** The purpose of this subchapter is to:

(1) **PERMITTING CRITERIA.** Establish the criteria for identifying non-construction related storm water discharges associated with industrial activity for which permits are required under s. 283.33 (1) (a) and (d), Stats.;

(2) **APPLICATION REQUIREMENTS.** Establish the requirements for filing applications for storm water discharge permits for non-construction related activities defined in s. 283.33 (1) (a) and (d), Stats.;

(3) **PERMITS.** Establish the requirements and conditions for storm water individual and general permits for discharges associated with industrial activity; and

(4) **PRIORITY.** Establish a system for prioritizing the issuance of permits based on the relative impact of the discharges on water quality.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.21 Applicability and exclusions.** (1) **POINT SOURCES.** This subchapter is applicable to point sources which discharge storm water associated with industrial activity to the waters of the state, either directly or via a separate storm sewer system.

(2) **CATEGORIES.** This subchapter is applicable to discharges originating from the industrial facilities belonging to categories identified in pars. (a) to (c).

(a) Tier 1 categories:

1. Heavy manufacturers defined by their primary Standard Industrial Classification (SIC) Code, which represents the primary income-producing activity at the facility, listed in Table 1:

**Table 1  
Tier 1 Heavy Manufacturers**

SIC	Description
-24	Lumber & Wood Products
-26	Paper & Allied Products
-28	Chemicals & Allied Products
-29	Petroleum Refining & Related Industries
-311	Leather Tanning & Finishing
-32	Stone, Clay, Glass & Concrete Products
-33	Primary Metal Industries
-3441	Fabricated Structural Metal
-373	Ship & Boat Bldg. & Repair

**Note:** Facilities in SIC Codes 2434, 265, 267, 283, 285, 2951, 323, 3271, 3272 and 3273 are included in s. NR 216.21 (2) (b).

2. Facilities involved in the recycling of materials such as metal scrap yards, battery reclaimers, salvage yards and automobile junk yards, including but not limited to those classified in SIC Codes 5015 and 5093.

3. Facilities with bulk storage piles for coal, metallic and non-metallic minerals and ores, and scrap not otherwise covered under this subchapter, such as those associated with freight transportation, SIC Code 44, and wholesale trade, SIC Code 5052.

(b) Tier 2 categories:

1. Manufacturing facilities defined by Table 2, not to include their access roads and rail lines, but only if contaminated storm water results from the operation of these facilities:

**Table 2  
Tier 2 Light Manufacturers**

SIC	Description
-20	Food & Kindred Products
-21	Tobacco Products
-22	Textile Mill Products
-23	Apparel & Other Textile Products
-2434	Wood Kitchen Cabinets
-25	Furniture & Fixtures
-265	Paperboard Containers & Boxes
-267	Misc. Converted Paper Products
-27	Printing, Publishing, & Allied Industries
-283	Drugs
-285	Paints & Allied Products
-30	Rubber & Misc. Plastics Products
-31	Leather & Leather Products
-323	Products of Purchased Glass
-34	Fabricated Metal Products
-35	Industrial & Commercial Machinery & Computer Equipment
-36	Electronic & Other Electrical Equipment & Components
-37	Transportation Equipment
-38	Instruments & Related Products
-39	Misc. Manufacturing Industries
-4221	Farm Product Warehousing & Storage
-4222	Refrigerated Warehousing & Storage
-4225	General Warehousing & Storage

**Note:** Facilities in SIC Codes 311, 3441 and 373 are included in s. NR 216.21 (2) (a) 1.

2. Transportation facilities defined by Table 3 that have vehicle maintenance shops, equipment cleaning operations or airport de-icing operations. This subchapter only applies to those portions of these facilities that are either involved in vehicle maintenance including rehabilitation, mechanical repairs, painting, fueling, lubrication and associated parking areas, or involved in cleaning operations or de-icing operations, or that are listed as source areas under s. NR 216.27 (3) (e):

**Table 3  
Tier 2 Transportation Facilities**

SIC	Description
-40	Railroad Transportation
-41	Local & Interurban Passenger Transit
-42	Trucking & Warehousing
-43	U.S. Postal Service
-44	Water Transportation
-45	Transportation By Air
-5171	Petroleum Bulk Stations & Terminals

**Note:** Facilities in SIC Codes 4221–4225 are included in s. NR 216.21 (2) (b) 1.

3. Facilities defined by Table 4, including active and inactive mining operations and oil and gas exploration, production, processing or treatment operations or transmission facilities. This subchapter only applies where storm water runoff has come into contact with any overburden, raw material, intermediate product, finished product, by-product or waste material.

**Table 4  
Tier 2 Mining, Oil and Gas Operations**

SIC	Description
-10	Metal Mining
-12	Coal Mining
-13	Oil & Gas Extraction
-14	Non-metallic Minerals, except fuels

This subchapter does not apply to non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990; nor to coal mining operations released from the performance bond issued to the facility by the appropriate surface mining control and reclamation act authority under 30 USC 1201 et seq. and 16 USC 470 et seq. Production, processing or treatment operations or transmission facilities associated with oil and gas extraction are included only if there has been a discharge of storm water after November 16, 1987 containing a quantity of a pollutant reportable pursuant to 40 CFR 110.64, CFR 117.21 or 40 CFR 302.6, or if a storm water discharge contributed to a violation of a water quality standard.

4. Facilities subject to storm water effluent limitation guidelines, new or existing source performance standards or toxic pollutant effluent standards under 33 USC 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (b) and (c), 1326 (c), except Table 2 facilities, in this subparagraph, that do not discharge contaminated storm water.

5. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one million gallons per day or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 33 USC 1345.

6. Hazardous waste treatment, storage and disposal facilities, including those operating under interim status or a permit under subtitle C of the resource conservation and recovery act (RCRA) under 42 USC 6921 et seq.

7. Landfills, land application sites, and open dumps that receive or have received any industrial waste from any of the facilities identified in this section, including those subject to regulation under subtitle D of RCRA, under 42 USC 6901 et seq.

8. All steam electric power generating facilities, including coal handling sites but not including off-site transformer or electric substations.

9. Facilities described in SIC code 2951 for asphalt paving mixes and block, and facilities described in SIC codes 3271, 3272 and 3273 for cement products.

10. Facilities previously classified as tier one dischargers which are subsequently classified as tier 2 under s. NR 216.23 (6) or (9).

11. Discharges determined by the department to be significant contributors of pollutants to waters of the state.

(c) 1. Tier 3 categories shall include facilities that have certified to the department that they have no discharges of contaminated storm water and for which the department has concurred with the certification.

2. Facilities that have certified to the department, and the department concurs with the certification, that their storm water discharges contain only earthen materials from non-metallic mining operations, and that this stormwater is discharged to onsite

seepage basins that effectively remove the contaminants prior to discharge to the groundwater.

**(3) OTHER ENVIRONMENTAL PROGRAMS.** If one of the following conditions is met, the department may deem that a facility is in compliance with coverage required under s. 283.33, Stats., and will not be required to hold a separate permit under s. 283.33, Stats.:

(a) The storm water discharge is in compliance with a department permit or approval which includes storm water control requirements that are at least as stringent as regulations under this subchapter; or

(b) The storm water discharge is in compliance with a memorandum of understanding with another agency of the state that implements regulations including storm water control requirements that are at least as stringent as regulations under this subchapter.

**(4) EXCLUSIONS.** This subchapter does not apply to any of the following:

(a) Diffused surface drainage or agricultural storm water discharges.

(b) Non-storm water discharges to the outfall covered under an individual or general WPDES permit, including contact cooling water, non-contact cooling water, other process wastewaters, sewage, spills or leaks.

(c) Non-storm water discharges to the outfall for which coverage under an individual or general WPDES permit is not necessary, including water line flushing, landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool water, street wash water, and fire fighting.

(d) Inactive, closed or capped landfills which have no potential for contamination of storm water. The department shall make a determination of contamination potential on a case-by-case basis.

(e) Remedial action discharges or discharges authorized by a general permit for discharging contaminated or uncontaminated groundwater.

(f) Discharges of hazardous materials that are required to be reported under ch. NR 706.

(g) Areas located on plant lands which are segregated from the industrial activities of the plant, such as office buildings and accompanying parking lots, if the drainage from the segregated areas is not mixed with contaminated storm water drainage.

(h) Storm water discharges from industrial activities owned or operated by municipalities which are not required to apply for a municipal storm water discharge permit, not including airports, power plants or uncontrolled sanitary landfills.

(i) Storm water discharges into a municipal combined sewer system.

**(5) EXEMPTION.** Storm water discharges at facilities that are regulated by permits containing storm water effluent limitations may be exempt from the need for coverage under a general storm water permit.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; **CR 00-035: am. (2) (b) 10. and (c) Register September 2002 No. 561, eff. 10-1-02.**

**NR 216.22 Certification program. (1) VOLUNTARY.** The department may establish or approve a voluntary certification program.

**(2) PURPOSE.** The purpose of the program is to provide storm water pollution prevention training for persons designated by permitted facilities to act as the storm water pollution prevention managers. Certification is intended to provide storm water pollution prevention managers with a minimum level of competence.

The department may not require facilities to have certified storm water pollution prevention managers.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.23 Permit coverage. (1) STATEWIDE TIER ONE TYPE GENERAL PERMIT.** The department may issue a statewide general permit to cover all tier one type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. NR 216.24, or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

**(2) STATEWIDE TIER 2 TYPE GENERAL PERMIT.** The department may issue a statewide general permit to cover all tier 2 type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. NR 216.24, or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

**(3) STATEWIDE TIER 3 TYPE GENERAL PERMIT.** The department may issue a statewide general permit to cover all tier 3 type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. NR 216.24, or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

**(4) APPLICABILITY OF PERMIT COVERAGE.** Conditions of an individual permit issued under s. 283.31 or 283.33, Stats., may not be more stringent than similar conditions in general storm water permits and, specifically, individual permittees shall have the right to develop and implement their own SWPPP and BMPs in accordance with s. NR 216.27.

**(5) MONITORING AND REPORTING REQUIREMENTS.** The owner or operator of a facility subject to a:

(a) Tier one general permit issued under this subchapter or an individual permit issued under s. 283.31, Stats., containing tier one general permit requirements, or individual storm water permits issued under s. 283.33 (1) (a) and (d), Stats., shall be required to submit to the department annual chemical specific monitoring results for the first 2 years following SWPPP implementation and annual facility site compliance inspection (AFSCI) reports under s. NR 216.28 (2).

(b) Tier 2 general permit or an individual permit issued under s. 283.31 or 283.33, Stats., containing tier 2 general permit requirements shall be required by the general or individual permit to maintain the annual facility site compliance inspection reports on the site of the discharge. Facilities subject to this paragraph may be subject to fewer conditions and requirements than facilities covered by a tier one general permit and may not be required by the general permit to undertake chemical specific monitoring.

(c) Tier 3 general permit shall be required by the general permit to maintain the annual reports required under s. NR 216.28 (6) on the site of the discharge. Facilities subject to this paragraph are not required to develop or implement a SWPPP, conduct chemical specific monitoring or conduct annual site compliance and quarterly inspections.

**(6) CHANGING COVERAGE TO TIER 2.** A permittee covered by a tier one general permit issued under this section, or a permit issued under s. NR 216.24, may request that the department consider converting its coverage to a tier 2 category general storm water permit if all of the following occur:

(a) The process or operation has changed so that no storm water is contaminated with any of the pollutants identified in s. NR 216.27 (3) (i);

(b) The permittee certifies that there is no unpermitted non-storm water discharge in the outfall; and

(c) The permittee has completed a minimum of 3 years of industrial activity under a SWPPP, with no confirmed problems identified by public complaint or the AFSCI reports required under s. NR 216.28 (2).

**(7) CHANGING COVERAGE TO TIER 3.** A facility covered by a tier one or 2 general permit or a general permit issued under s. NR

216.24 may request at the time of permit reissuance that the department convert its coverage to a tier 3 general permit under s. NR 216.21 (2) (c).

**(8) EFFLUENT LIMITATIONS.** A facility covered by an individual storm water permit under s. 283.33 (1) (d), Stats. may be subject to an effluent limitation for a point source discharge, as defined in s. 283.01 (6), Stats., for storm water discharge.

**(9) MOVEMENT TO TIER 2.** The department may make the determination that a facility or an industrial activity covered under a tier 1 general permit has no significant exposure of pollutants listed under s. NR 216.27 (3) (i) and is more appropriately covered by a tier 2 general permit.

**(10) MOVEMENT TO TIER ONE.** In the event that the department makes the determination that a facility or an industrial activity, defined by the 4 digit SIC code, covered under a tier 2 permit may be discharging storm water contaminated with pollutants listed in s. NR 216.27 (3) (i), the department may determine that the facility or activity is more appropriately covered by a tier one general permit.

**(11) DISCONTINUING TIER 3 COVERAGE.** The department may revoke coverage of a tier 3 permitted facility if the department determines that the facility is not in compliance with s. NR 216.21 (2) (c). In this case, the permittee shall reapply for tier one or tier 2 general permit coverage.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: am. (9) Register September 2002 No. 561, eff. 10-1-02.

#### NR 216.24 Industry-specific general permits.

**(1) INDUSTRY SPECIFIC PERMITS.** In addition to statewide general permits issued under s. NR 216.23 (1) to (3), the department may issue industry-specific general permits to one or more categories of industries identified in s. NR 216.21 (2).

**(2) REQUIREMENTS.** Industry-specific storm water general permits shall differ from the statewide storm water general permits by factoring in characteristics common to the industry. The primary distinguishing characteristic shall be the requirements of the SWPPPs. Industry-specific storm water permits may contain all of the requirements of a statewide tier one general permit.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.25 Movement out of a storm water general permit.** **(1) APPLICABILITY.** The department may make the determination that a facility covered under a tier 2 or tier 3 general permit no longer needs to be covered under a storm water general permit if all of the following conditions are met:

(a) The industry is described in s. NR 216.21 (2) (b) 1.; and

(b) There are no discharges of storm water that has come into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in any of the source areas listed in s. NR 216.27 (3) (e); and

(c) The permit holder certifies that there are no unpermitted non-storm discharges in the outfall.

**(2) RENEWED COVERAGE.** Any facility described in s. NR 216.21 (2) (b) 1. that has been dropped from general permit coverage by the department shall reapply for a storm water general permit whenever there are changes in activities or site drainage patterns which could result in contamination of storm water.

**(3) INDIVIDUAL PERMIT COVERAGE.** If one or more of the following conditions are met, the department may make the determination that a storm water general permit holder is more appropriately covered by an individual WPDES permit under s. 283.31 or 283.33, Stats.:

(a) The storm water discharge is a significant source of pollution and more appropriately regulated by an individual WPDES storm water discharge permit; or

(b) The storm water discharger is not in compliance with the terms and conditions of this chapter, or the general storm water permit issued under this subchapter; or

(c) Effluent limitations or standards are promulgated for a storm water discharge.

**(4) PETITION.** Any person may submit a written request to the department that it take action under this section.

**(5) REVOCATION OF GENERAL PERMIT.** If the department determines that a general permit holder is more appropriately covered by an individual WPDES permit, the department shall explain its decision in writing to the permittee prior to revoking the general permit and issuing an individual WPDES permit.

**(6) NON-STORM WATER DISCHARGES.** If a permittee identifies an unpermitted non-storm water discharge into their outfall and is unable to remove the discharge, the permittee shall notify the department and apply for a permit, under s. 283.31 or 283.35, Stats.

**(7) NOTICE OF TERMINATION.** If a facility no longer claims coverage under any general or individual permit for the discharge of storm water from industrial activity under this subchapter, the permittee shall submit a signed notice of termination to the department.

(a) A notice of termination shall be submitted on forms supplied by the department. Data submitted in the notice of termination forms shall be used as [a] basis for terminating coverage under this subchapter.

(b) Notice of termination forms may be obtained from the district offices of the department or by writing to the Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, WI 53707-7921.

(c) Notice of termination forms shall be filed with the Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, WI 53707-7921.

(d) The notice of termination form shall be signed in accordance with the signature requirements in s. NR 216.26 (7).

(e) Termination of coverage under this subchapter shall be effective upon submittal of written confirmation by the department to the permittee.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.26 Application requirements.** **(1) APPLICABILITY.** Facility types listed in s. NR 216.21 (2), except for Table 2 facilities that discharge no contaminated storm water, shall apply for a storm water discharge permit. Application for a storm water discharge permit shall be made within the time frames specified in sub. (2), using department forms specified in sub. (3).

**(2) DATE OF APPLICATION.** Persons proposing to discharge storm water shall submit to the department a complete storm water permit application at least 6 months prior to the commencement of activities at the site.

**(3) FORMS.** Applications forms can be obtained from the following address: Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, WI 53707-7921. The following application forms are acceptable:

(a) Prior to November 1, 1994;

1. Group storm water permit application which has been submitted to the United States environmental protection agency and a duplicate copy sent to the department.

2. DNR Form 3400-151, DNR Form 3400-152 or DNR Form 3400-163 which the applicant has completed and submitted to the department for consideration. The applicant shall also submit a copy of this completed form to the owner of any separate municipal storm sewer receiving the facility's storm water discharge if the municipal separate storm sewer serves an area for which a WPDES municipal storm water discharge permit is required.

(b) Following November 1, 1994, DNR Form 3400-151 and DNR Form 3400-152 may not be used as application for a permit to discharge storm water associated with industrial activity.

**(4) PERMIT TYPE CRITERIA.** The department shall evaluate the information submitted on the application form to determine whether a facility is covered under a storm water general permit or an individual permit under s. 283.31 or 283.33, Stats.; or whether coverage under a permit should be denied. The criteria for the department's determination of coverage under a storm water general permit, coverage under an individual WPDES permit, or denial of coverage, are specified in pars. (a), (b) and (c), respectively. The criteria for determination of tier type are specified in par. (d). All permit issuances shall be accompanied by a cover letter justifying the permit type or reason for denial of coverage. The cover letter shall also indicate the date upon which coverage under the permit becomes effective at the facility.

(a) The basis for determining coverage under a storm water general permit shall be a comparison of application information on SIC code, industrial activity and the discharge of contaminated storm water, to the categories identified in s. NR 216.21 (2).

(b) If a facility has an existing WPDES permit, the department may choose to regulate storm water discharges under that permit.

(c) If the SIC code or description of industrial activity stated on the application is any of the categories defined in Table 2 of s. NR 216.21 (2), and the application states that the facility discharges no contaminated storm water, the department shall determine that no permit coverage is required under this subchapter.

(d) The basis for determining the tier type of general permit shall be a comparison of application information on SIC code, industrial activity and the discharge of contaminated storm water, to the descriptions or categories identified in s. NR 216.21 (2) (a) to (c).

**(5) ADDITIONAL INFORMATION.** The department may require more information than what is provided in the completed application in order to make a determination if coverage under a general permit is appropriate. The applicant shall provide the additional information requested by the department within 30 days from receipt of notification by the department.

**(6) FORMS.** Permit application forms shall be filed with the Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, WI 53707-7921.

**(7) SIGNATURE.** The permit application form shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice-president, or by an authorized representative responsible for the overall operation of the site for which a permit is sought;

(b) In the case of a partnership, by a general partner;

(c) In the case of a sole proprietorship, by the proprietor.

**(8) DEFICIENT APPLICATION.** The department may require an applicant to submit data necessary to complete any deficient permit application or may require the applicant to submit a complete new permit application where the deficiencies are extensive or the appropriate form has not been used. The department may take enforcement action against anyone who fails to submit a timely application or to provide requested information in a timely manner.

**(9) REAPPLICATION.** At such time that a storm water general permit is reissued, the department may require a covered facility to submit a complete new permit application in order to determine continued applicability of the permit.

**(10) LATE APPLICATION.** An operator of a storm water discharge associated with industrial activity is not precluded from submitting an application for an existing facility after October 1, 1992. In such instance, the department may bring appropriate enforcement actions.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: am. (2) Register September 2002 No. 561, eff. 10-1-02.

**NR 216.27 Storm water pollution prevention plan.**

**(1) APPLICABILITY.** Any person covered by a storm water general or individual permit, excluding coverage described in s. NR 216.21 (2) (c), shall prepare and implement a SWPPP.

**(2) INCORPORATION BY REFERENCE.** When plans, the permit application or activities developed and conducted in compliance with this chapter or other federal, state or local regulatory programs meet the requirements of this section, the plans or activities may be incorporated into the SWPPP by reference to avoid unnecessary duplication of regulatory requirements.

**(3) PLAN REQUIREMENTS.** The SWPPP shall contain, at a minimum, the following items and provisions:

(a) The SWPPP shall identify by job title the specific individual that has responsibility for all aspects of SWPPP development and implementation. The individual acting in that job title shall have the responsibility to develop, evaluate, maintain and revise the SWPPP; carry out the specific management actions identified in the SWPPP, including maintenance practices; conduct or provide for monitoring activities; prepare and submit reports; and serve as facility contact for the department.

(b) The SWPPP shall contain a short summary of the major activities conducted at various locations throughout the facility.

(c) The SWPPP shall include a drainage base map depicting how storm water drains on, through and from the facility to either groundwater, surface water or wetlands. The drainage base map shall show the facility property; a depiction of the storm drainage collection and disposal system including all known surface and subsurface conveyances, with the conveyances named; any secondary containment structures; the location of all outfalls, including outfalls recognized as permitted outfalls under another WPDES permit, numbered for reference, that discharge channelized flow to surface water, ground water or wetlands; the drainage area boundary for each outfall; the surface area in acres draining to each outfall, including the percentage that is impervious such as paved, roofed or highly compacted soil and the percentage that is pervious such as grassy areas and woods; existing structural storm water controls; the name and location of receiving waters. The location of activities and materials that have the potential to contaminate storm water shall also be depicted on the drainage base map.

(d) The SWPPP shall summarize any results of available storm water sampling data or other observations that could be useful in characterizing the quality of storm water discharges or identifying sources of storm water contamination. Available data that characterizes the quality of storm drainage discharges under dry weather flow conditions shall also be included, except when the data has or will be reported to the department under another WPDES permit.

(e) The SWPPP shall identify all potential source areas of storm water contamination including but not limited to:

1. Outdoor manufacturing areas;
2. Rooftops contaminated by industrial activity;
3. Industrial plant yards;
4. Storage and maintenance areas for material handling equipment;
5. Immediate access roads and rail lines;
6. Material handling sites (storage, loading, unloading, transportation, or conveyance of any raw material, finished product, intermediate product, by-product or waste);
7. Storage areas (including tank farms) for raw materials, finished and intermediate products;
8. Disposal or application of wastewater;
9. Areas containing residual pollutants from past industrial activity;
10. Areas of significant soil erosion;
11. Refuse sites;
12. Vehicle maintenance and cleaning areas;

13. Shipping and receiving areas;
14. Manufacturing buildings;
15. Residual treatment, storage and disposal sites; and
16. Any other areas capable of contaminating storm water runoff.

(f) The SWPPP shall identify any significant polluting materials or activities associated with the storm water contamination from source areas identified in par. (e). When possible, specific pollutants likely to be present in storm water as a result of contact with specific materials shall also be listed.

(g) The SWPPP shall identify all known contaminated and uncontaminated sources of non–storm water discharges to the storm sewer system and indicate which are covered by WPDES permits. The SWPPP shall contain the results of the non–storm water discharge monitoring required by s. NR 216.28. If monitoring is not feasible due to the lack of suitable access to an appropriate monitoring location, the SWPPP shall include a statement that the monitoring could not be conducted and an explanation of the reasons why.

(h) The SWPPP shall rely to the maximum extent practicable, and to the extent it is cost effective, on the use of source area control best management practices that are designed to prevent storm water from becoming contaminated at the site. Source area control best management practices that are either proposed or in place at the facility shall be indicated on the facility drainage base map. The SWPPP shall provide for the use of the following applicable source area control best management practices:

1. Practices to control significant soil erosion;
2. Good house–keeping measures, preventive maintenance measures, visual inspections, spill prevention and response measures and employee training and awareness;
3. Covering or enclosing salt storage piles so that neither precipitation nor storm water runoff can come into contact with the stored salt; or, for facilities that use brine and have salt storage piles on impervious curbed surfaces, a means of diverting contaminated storm water to a brine treatment system for process use;
4. Use of a combination of precipitation control, containment, drainage controls or diversions to control section 313 water priority chemicals potentially discharged through the action of storm water runoff, leaching or wind.

(hm) The SWPPP shall meet the performance standards in s. NR 151.12 for those areas that are described in s. NR 151.12 (2).

(i) The SWPPP shall identify storm water pollutants that are likely to contaminate storm water discharges to waters of the state following implementation of source area control best management practices. Past sampling data collected at the facility or at sufficiently similar outfalls at other facilities may be used in making this determination. At a minimum, the following pollutants shall be considered for their potential to contaminate storm water:

1. Any pollutant for which an effluent limitation is contained in any discharge permit issued to the facility by the department;
2. Any pollutant contained in a categorical effluent limitation or pre–treatment standard to which the facility is subject;
3. Any section 313 water priority chemical for which the facility has reporting requirements and which has the potential for contaminating storm water;
4. Any other toxic or hazardous pollutants from present or past activity at the site that remain in contact with precipitation or storm water and which could be discharged to the waters of the state and which are not regulated by another environmental program;
5. Any of the following parameters which might be present in significant concentrations: oil and grease; pH; total suspended solids; 5–day biological oxygen demand; chemical oxygen demand.

(j) When source area control best management practices are not feasible, not cost effective or are inadequate to control storm water pollution, or when the department determines source area control best management practices are inadequate to achieve a water quality standard, the SWPPP shall prescribe appropriate storm water treatment practices as needed to reduce the pollutants in contaminated storm water prior to discharge to waters of the state. Proposed or existing storm water treatment practices shall be shown on the facility drainage basin map. The SWPPP shall provide for the following types of storm water treatment practices:

1. Storm water significantly contaminated with petroleum products shall be treated for oil and grease removal by an adequately sized, designed and functioning wastewater treatment device. Coverage under a separate individual or general permit is required for discharges of storm water from oil/water treatment devices.

2. Point source discharges of storm water contaminated by significant amounts of sediment from eroding areas, including bare earth industrial lots and ongoing industrial processes, shall be treated by filtration or sedimentation type practices.

(k) The SWPPP shall include provisions for complying with the monitoring requirements specified in s. NR 216.28. The SWPPP shall include a checklist of inspections to be made during the annual facility site inspection described in s. NR 216.28 (2). The SWPPP shall also identify for each outfall the type of monitoring that will be conducted, such as non–storm discharge monitoring; storm water discharge quality inspections; or chemical pollutant monitoring for facilities covered under a tier one permit. The following are requirements for facilities covered under a tier one permit:

1. A list of chemical parameters proposed for testing at each outfall shall be included along with the analytic sample testing procedures from ch. NR 219 that will be used to determine pollutant concentrations.

2. The list of chemical parameters shall include each of the residual pollutants identified in par. (i), or an explanation of why the pollutant should not be included in the chemical testing.

(L) The SWPPP shall include an implementation schedule that is consistent with the compliance schedule in the storm water general permit.

(m) The SWPPP shall be signed in accordance with s. NR 216.26 (7) prior to submittal to the department.

**(4) PLAN AMENDMENT.** A permittee shall amend a SWPPP if any of the following circumstances occur:

(a) When expansion, production increases, process modifications, changes in material handling or storage or other activities are planned which will result in significant increases in the exposure of pollutants to storm water discharged either to waters of the state or to storm water treatment devices. The amendment shall contain a description of the new activities that contribute to the increased pollutant loading, planned source control activities that will be used to control pollutant loads, an estimate of the new or increased discharge of pollutants following treatment and, when appropriate, a description of the effect of the new or increased discharge on existing storm water treatment facilities.

(b) The facility finds through its comprehensive annual facility site compliance inspection, quarterly visual inspection of storm water quality, annual chemical storm water sampling or other means that the provisions of the SWPPP are ineffective in controlling storm water pollutants discharged to waters of the state.

(c) Upon written notice that the department finds the SWPPP to be ineffective in achieving the conditions of the storm water permit issued to the facility.

**History:** Cr. Register, October, 1994, No. 466, eff. 11–1–94; CR 00–035: cr. (3) (hm) Register September 2002 No. 561, eff. 10–1–02.

**NR 216.28 Monitoring requirements. (1) NON–STORM WATER DISCHARGES.** The permittee shall evaluate all outfalls for

non-storm water discharges into the storm drainage system. Evaluations shall take place during dry periods. The following are additional requirements for evaluating non-storm water discharges:

(a) Any monitoring shall be representative of non-storm water discharges from the facility.

(b) Either of the following monitoring procedures are acceptable:

1. End of pipe screening shall consist of visual observations made at least twice per year at each outfall of the storm sewer collection system. Observations shall be made at times when non-storm water discharges from the facility are considered most likely to occur. Instances of dry weather flow, stains, sludges, color, odor or other indications of a non-storm water discharge shall be recorded; or

2. A detailed testing of the storm sewer collection system may be performed. Testing methods include dye testing, smoke testing or video camera observation. Should the permittee use detailed testing as an alternative, the department shall require a re-test after 5 years or a lesser period as deemed necessary by the department.

(c) Tier one and tier 2 facilities shall include the results of the non-storm water evaluations in their SWPPP. Tier 3 facilities shall maintain the results of their non-storm water evaluations on site. Information reported shall include: date of testing, test method, outfall location, testing results and potential significant sources of non-storm water discovered through testing. The department may provide a standard form for recording the information.

(d) Any permittee, excluding tier 3 permittees, unable to evaluate outfalls for non-storm water discharges shall sign a statement certifying that this requirement could not be complied with, and include a copy of the statement in the SWPPP. In this case, the entire SWPPP shall be submitted to the department.

(e) Any tier 3 permittee unable to evaluate outfalls for non-storm water discharges shall sign a statement certifying that this requirement could not be complied with, and shall submit the statement to the department.

**(2) ANNUAL SITE INSPECTION.** Facilities, except facilities covered under a tier 3 general permit, shall perform and document the results of an annual facility site compliance inspection (AFSCI). The inspection shall be adequate to verify that the site drainage conditions and potential pollution sources identified in the SWPPP remain accurate, and that the best management practices prescribed in the SWPPP are being implemented, are being properly operated and are being adequately maintained. Information reported shall include: the inspection date, inspection personnel, scope of the inspection, major observations and revisions needed in the SWPPP.

**(3) QUARTERLY VISUAL INSPECTION.** Facilities, except facilities covered under a tier 3 general permit, shall perform and document quarterly visual inspections of storm water discharge quality at each outfall. Inspections shall be conducted within the first 30 minutes or as soon thereafter as practical, but not to exceed 60 minutes, after runoff begins discharging to the outfall. The inspections shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen or other obvious indicators of storm water pollution. Information reported shall include: the inspection date, inspection personnel, visual quality of the storm water discharge and probable sources of any observed storm water contamination.

**(4) STORM WATER SAMPLING AND ANALYSIS.** Unless an alternative monitoring plan is required as part of the SWPPP, facilities covered under a tier one permit shall perform annual chemical storm water sampling at each outfall for those residual pollutants listed in the permittee's SWPPP as required by s. NR 216.27 (3) (i). The following are specific requirements for chemical storm water monitoring:

(a) The list of pollutants to be tested in the outfall shall be identified in the facility monitoring plan portion of the SWPPP.

(b) When a facility has more than one outfall which have storm water discharges substantially similar based on consideration of industrial activity, significant materials, and management, one outfall may be selected to represent the group of similar outfalls provided that this strategy has been clearly stated in the facility monitoring plan and that the representative outfall is clearly identified as such on the drainage base map. No more than 5 outfalls with discharges representative of storm water discharged from the facility need to be sampled. A permittee may voluntarily collect and analyze additional samples, and may at the permittee's discretion submit this information to the department.

(c) After review of the facility monitoring plan portion of the SWPPP, the department may add additional pollutants to the monitoring list if it has cause to do so based on a reasonable probability that the pollutants will be present in storm water discharges from the facility. The department may also remove pollutants from the monitoring list if it determines that continued monitoring for the pollutant serves no further purpose. Chemical monitoring may be discontinued after submitting the second annual facility site compliance inspection report.

(d) Storm water samples shall be collected during the period of March through November from rainfall events that produce greater than 0.1 inch of rainfall and occur at least 72 hours after a previous rainfall of 0.1 inch or greater.

(e) Storm water samples shall be representative of either:

1. The "first flush" of storm water runoff from the outfall. Composite samples are required for all pollutants except those for which analytic techniques require grab samples. The composite sample shall be collected during the first 30 minutes of runoff. At least 3 separate samples shall be collected for compositing, and the collection of samples shall be evenly spaced throughout the sampling period, or

2. The storm water discharged from a detention pond that has greater than a 24 hour holding time for a representative storm. A grab sample is required for all pollutants. The grab sample shall be representative of the storm water discharge from the pond outfall.

(f) Monitoring samples shall be representative of the volume and nature of the monitored discharge. Analytic testing shall be in conformance with ch. NR 219, unless an alternate procedure is approved by the department prior to the initiation of sampling.

(g) For each storm water measurement or sample taken, the permittee shall record and submit the following information to the department. This information shall be included in the annual facility site compliance inspection reports described in s. NR 216.29 (2):

1. The date, exact place, method and time of sampling or measurements;

2. The individual who performed the sampling or measurements;

3. The date the analysis was performed;

4. The name of the certified laboratory which performed the analysis;

5. The analytical techniques or methods used;

6. The results of the analysis;

7. The estimated duration of the rainfall event, in hours, and the estimated total amount of precipitation falling during the rainfall event, in inches.

**(5) SAMPLING EXCEPTIONS.** The department may waive specific monitoring requirements for the following reasons:

(a) The permittee indicates that either an employee could not reasonably be present at the facility at the time of the snow-melt or runoff event, or that attempts to meet the monitoring requirement would endanger employee safety or well-being.

(b) The permittee indicates that there were no snow melt or runoff events large enough to conduct a quarterly visual inspection at an outfall.

(c) The facility is inactive or remote, such as inactive mining operations where monitoring and inspection activities are impractical or unnecessary. At a minimum, the department shall establish an alternative requirement that the facilities make site inspections by a qualified individual at least once in every 3 year period.

(d) The permittee can demonstrate to the department's satisfaction that the sources of storm water contamination are outside of the facility's property boundary and are not associated with the facility's activities. The demonstration shall be presented in the SWPPP and submitted to the department for evaluation.

(6) **TIER 3 INSPECTION.** Tier 3 facilities shall perform and maintain for 3 years the results of an annual facility source exposure inspection (FSEI). The inspection shall be adequate to verify that storm water discharged from the facility is not contaminated by industrial activity in the source areas identified in s. NR 216.27 (3) (e).

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

### NR 216.29 Compliance and reporting requirements.

(1) **REQUIREMENTS.** Facilities covered under s. NR 216.23 (1) and (2) shall be subject to the following requirements:

(a) Existing facilities shall develop a SWPPP and submit a SWPPP summary to the department within 12 months from the effective date of coverage under the storm water general permit.

(b) Facilities constructed on or after November 1, 1994 shall develop a SWPPP and submit a SWPPP summary to the department prior to initiating construction.

(c) The SWPPP shall conform to the requirements specified in s. NR 216.27 (3).

(d) The SWPPP shall be kept at the facility and made available to the department upon request.

(e) The SWPPP summary shall be submitted on a standardized department form, which the department shall provide with the permit.

(f) If a SWPPP summary is incomplete, the department shall notify the permittee, and may request to review the complete SWPPP.

(g) The SWPPP summary shall include the results of the non-storm water discharge testing, under s. NR 216.28 (1), and shall indicate whether the SWPPP includes a storm water treatment practice. If a SWPPP includes a storm water treatment practice, the department may require the submittal of plans and specifications for review and approval pursuant to s. 281.41 (1), Stats.

(2) **FIRST ANNUAL SITE INSPECTION.** The first annual facility site compliance inspection shall be conducted by the permittee within 24 months of the effective date of coverage under the general permit. Facilities covered under a tier one permit shall submit their first inspection report to the department within 30 months of the effective date of coverage under the permit. The report shall be written on department forms, and shall contain information from the inspection, the quarterly visual inspection and the annual chemical monitoring. Facilities covered under the tier 2 permit shall keep the results of their AFSCI and quarterly visual inspections on site for department inspection. Facilities covered under a tier one permit are not required to submit inspection reports after submittal of the second inspection report, unless so directed by the department. However, these inspections and quarterly visual inspections shall still be conducted; and results shall be kept on site for department inspection.

(3) **INSPECTION DATES.** The first quarterly visual inspection of storm water discharge quality shall be conducted within 24 months of the effective date of coverage under the permit.

(4) **SAMPLING DATES.** Facilities covered under the tier one permit shall submit their first annual chemical monitoring results

with their first inspection report. The monitoring results shall include all of the information specified in s. NR 216.28 (4) (g).

(5) **BMP IMPLEMENTATION.** Unless an alternate implementation schedule is required as part of the SWPPP, the BMPs identified in the SWPPP shall be implemented within 24 months of the effective date of coverage under the permit. Facilities constructed on or after November 1, 1994 shall implement the BMPs identified in the SWPPP within 12 months of the effective date of coverage under the permit, unless an alternate implementation schedule is required as part of the SWPPP.

(6) **SWPPP AMENDMENTS.** The permittee shall keep the SWPPP current to correct deficiencies in the original SWPPP. The permittee shall amend the SWPPP and notify the department in the event of any facility operational changes that could result in additional significant storm water contamination.

(7) **RECORD RETENTION.** Records required under this subchapter shall be retained for 5 years beyond the date that the report was made and shall be made available to the department upon request.

(8) **SIGNATURE.** Reports required under this subchapter shall be signed in accordance with s. NR 216.26 (7).

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: am. (7) Register September 2002 No. 561, eff. 10-1-02.

### NR 216.30 Industrial storm water discharge permit fees.

A storm water discharge permit fee shall be paid annually by each industrial facility holding a permit under this chapter or a wastewater discharge permit that incorporates storm water management requirements under this chapter. Permit fees are due June 30 of each year. The fee shall be:

(1) \$200 for coverage under a tier 1 industrial general permit under s. NR 216.21 (2) (a), an industry-specific general permit under s. NR 216.24 with tier 1 requirements, or an individual WPDES permit under s. 283.31, Stats., with tier 1 requirements; or

(2) \$100 for coverage under a tier 2 industrial general permit under s. NR 216.21 (2) (b), an industry-specific general permit under s. NR 216.24 or an individual WPDES under s. 283.31, Stats., with tier 2 requirements; or

(3) \$0 for coverage under a tier 3 industrial general permit under s. NR 216.21 (2) (c); or

(4) \$500 for coverage under an individual WPDES permit issued under s. 283.33 (1), Stats.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; corrections in (1) to (4) made under s. 13.93 (2m) (b) 1., Stats., Register, November, 1999, No. 527; CR 00-035: am. Register September 2002 No. 561, eff. 10-1-02.

## Subchapter III — Construction Site Storm Water Discharge Permits

**NR 216.41 Purpose.** The purpose of this subchapter is to establish criteria defining those construction site activities that constitute discharges needing a WPDES storm water discharge permit for landowners of construction sites that require coverage under a WPDES permit for storm water discharges; and the requirements for filing a WPDES permit application for a construction site as required by s. 283.33, Stats.; to prescribe the form of the WPDES permit application pursuant to s. 283.37, Stats.; to specify the number of working days within which the department will indicate its intended action on a WPDES permit application or request for modification, pursuant to s. 227.116 (1), Stats., and to specify the storm water erosion control and management that is required at construction sites regulated under this subchapter.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: am. Register September 2002 No. 561, eff. 10-1-02.

**NR 216.42 Applicability.** (1) **CONSTRUCTION SITES.** Except as provided in subs. (2) to (4), a notice of intent shall be filed by any landowner who intends to create a point source dis-

charge of storm water associated with a construction site activity to the waters of the state.

**(2) AGRICULTURE.** Storm water discharges from agricultural land uses, including use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock, including sod farms and tree nurseries are not covered by this subchapter.

**(2m) SILVICULTURE.** Storm water discharges from silviculture activities, including tree nursery operations, tree harvesting road construction and maintenance, tree harvesting site preparation, tree harvesting operations, reforestation, tree thinning, prescribed burning and pest control are not covered by this subchapter. Clearing and grubbing of an area of a construction site is not considered a silviculture activity.

**Note:** Certain lumber, wood and paper product manufacturers may require coverage under an industrial general WPDES permit for storm water discharges pursuant to subch. II. A silviculture activity may require approval pursuant to ch. 30 or 31, Stats., or an U.S. army corps of engineers section 404 permit.

**(3) COMMERCIAL BUILDINGS.** Storm water discharges from commercial building sites regulated by chs. Comm 61 to 65 in a manner which is in compliance with this chapter shall be deemed to hold a WPDES permit and shall be in compliance with this chapter. The department of commerce shall notify the department of projects covered under this subsection which shall constitute the notice of intent for these projects. Storm water discharges which occur after November 1, 1994 from commercial building sites prior to the adoption of the erosion control requirements in s. Comm 61.115 shall require coverage under a permit issued pursuant to this chapter.

**(4) DEPARTMENT OF TRANSPORTATION PROJECTS.** Storm water discharges from projects administered by the department of transportation, regulated by ch. Trans 401, and subject to the department of transportation and department of natural resources liaison cooperative agreement, if in compliance with ch. Trans 401 and the liaison cooperative agreement shall be deemed to be in compliance with s. 283.33, Stats., and the requirements of this chapter. The department of transportation shall notify the department of projects covered under this subsection which shall constitute the notice of intent for these projects.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; corrections in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527; **CR 00-035: cr. (2m) Register September 2002 No. 561, eff. 10-1-02; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561.**

**NR 216.43 Notice of intent requirements. (1) FORMS.** A notice of intent shall be submitted on forms supplied by the department. Data submitted in the notice of intent forms shall be used as the basis for conferring coverage under the general WPDES permit for storm water discharges.

**(2) OBTAINING FORMS.** Notice of intent forms may be obtained from the regional offices of the department or by writing to the Department of Natural Resources, Storm Water Program - WT/2, Box 7921, Madison, WI 53707-7921.

**(3) REQUIRED INFORMATION.** The notice of intent shall include at a minimum the following information:

- (a) The name and mailing address of the construction site landowner;
- (b) The name and telephone number of the contact person;
- (c) The mailing address and location of the construction site for which the notification is submitted;
- (d) When known, the name, address and telephone number of the general contractor;
- (e) Proposed start and end dates for construction; and
- (f) The following certification: "I certify under penalty of law that this document and attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person, or persons, who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to

the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including development and implementation of the construction site erosion control and storm water management plans, will be complied with."

**(4) APPLICATION FEE.** A storm water construction site application fee of \$200 shall be paid to the department with the notice of intent, excluding notices filed under s. NR 216.42 (3) or (4).

**(6) FILING.** Notice of intent forms shall be filed with the regional office of the department in which the construction site activity is located or with the Department of Natural Resources, Storm Water Program - WT/2, Box 7921, Madison, WI 53707-7921.

**Note:** It is intended that when these forms are changed, input from affected individuals and parties will be sought.

**(7) SIGNATURE REQUIREMENTS.** The notice of intent form shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice-president, or by his or her authorized representative responsible for the overall operation of the site for which a permit is sought;

(b) In the case of a partnership, by a general partner;

(c) In the case of a sole proprietorship, by the proprietor.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; **CR 00-035: am. (1), (2), (4) and (6) Register September 2002 No. 561, eff. 10-1-02.**

**NR 216.44 Notice of intent deadlines.** Persons required to obtain coverage for storm water discharge associated with land disturbing construction activity under a general WPDES permit shall submit a completed notice of intent, via certified or registered mail, in accordance with the requirements of this chapter prior to commencing any land disturbing construction activities. Unless notified by the department to the contrary, applicants who submit a notice of intent in accordance with the provisions of this subchapter are authorized to discharge storm water from construction sites under the terms and conditions of the general WPDES permit 14 working days after the date that the department receives the notice of intent. The department may require the landowner to submit plans and specifications for approval of storm water treatment practices, pursuant to s. 281.41, Stats.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.45 Incomplete notice of intent and time limit for department decision. (1)** Within 14 working days after the date the department receives the notice of intent, the department may require an applicant to submit data the department has identified as being necessary to complete any deficient notice of intent or may require the applicant to submit a complete new notice of intent when the deficiencies are extensive or the appropriate form has not been used.

**(2)** The department shall refund to the applicant the stormwater construction site permit application fee paid under s. NR 216.43 (4) if the department does not make a determination on the permit application within 45 business days of receipt of the information required under sub. (1). In this subsection, "business day" means any day except Saturday, Sunday and state holidays as designated in s. 230.35 (4) (a), Stats. This subsection does not apply to permits issued under this chapter related to mining, as defined in s. 293.01(9), Stats., prospecting, as defined in s. 293.01(18), Stats., or nonmetallic mining, as defined in s. 295.11(3), Stats. This subsection applies only to complete responses that are received by the department on or after September 1, 2000.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; renum. to be (1) and am., cr. (2), Register, August, 2000, No. 536, eff. 9-1-00; **correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561.**

**NR 216.46 Erosion control plan requirements. (1) SITE SPECIFIC PLAN.** The permittee shall develop a construc-

tion site erosion control plan for each site covered by this subchapter and shall perform all activities required by the plan and shall maintain compliance with the plan thereafter. The construction site erosion control plan shall address pollution caused by soil erosion and sedimentation during construction, and up to final stabilization of the site. The construction site erosion control plan shall be prepared in accordance with good engineering practices and the design criteria, standards and specifications outlined in the *Wisconsin Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993 Revision).

**(1m) PERFORMANCE STANDARDS.** The construction site erosion control plan shall meet the applicable performance standards in either s. NR 151.11 or 151.23.

**Note:** Section NR 151.11 applies to construction sites that are not transportation facilities and s. NR 151.23 applies to transportation facility construction sites.

**(2) HANDBOOK.** The *Wisconsin Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993 Revision) contains limitations on suitable conditions where best management practices can be applied. Tributary area limitations on the use of practices for trapping sediment in channelized flow conflict with the practices suggested in the January 7, 1987 version of the State Model Construction Site Erosion Control Ordinance. Also, best management practices within ch. NR 154 may conflict with the *Wisconsin Construction Site Best Management Practice Handbook*. Where this occurs, the specifications contained in the *Wisconsin Construction Site Best Management Practice Handbook* shall take precedence over erosion and other pollutant control requirements contained in the State Model Construction Site Erosion Control Ordinance and in ch. NR 154.

**Note:** The *Wisconsin Construction Site Best Management Practice Handbook* is available through WI Department of Administration, Document Sales, 202 S. Thomson Ave., Madison, WI 53707.

**(3) PLAN COMPLETION.** The plan shall be completed prior to the submittal of a notice of intent to be covered by a permit and shall be updated as appropriate pursuant to s. NR 216.50.

**(4) REQUIRED INFORMATION.** The construction site erosion control plan shall include, at a minimum, the following items:

(a) Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a USGS 7.5-minute series topographic map.

(b) Description of the intended sequence of major activities which disturb soils for major portions of the site, such as grubbing, excavation or grading;

(c) Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities;

(d) Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed;

(e) Existing data describing the surface soil as well as subsoils;

(f) Depth to groundwater, as indicated by natural resources conservation service soil information where available, except when permanent infiltration systems are used, the depth to groundwater shall be identified as outlined in sub. (5); and

(g) Name of immediate named receiving water from the United States geological service 7.5 minute series topographic maps.

**(5) GROUNDWATER LIMITATIONS.** When permanent infiltration systems are used, appropriate on-site testing shall be conducted to determine if seasonal high water is within 5 feet of the bottom of the proposed practice. If permanent infiltration structures are to be used and there is a municipal well within 400 feet or a non-public well within 100 feet, the groundwater flow shall be identified in accordance with the provisions specified in either ch. NR 110 or 214.

**(6) SITE MAP REQUIREMENTS.** Each site map shall include a map showing the following items:

(a) Existing topography and drainage patterns, roads and surface waters;

(b) Boundaries of the construction site;

(c) Drainage patterns and approximate slopes anticipated after major grading activities;

(d) Areas of soil disturbance;

(e) Location of major structural and non-structural controls identified in the plan;

(f) Location of areas where stabilization practices will be employed.

(g) Areas which will be vegetated following construction; and

(h) Wetlands, area extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.

(i) Locations of all surface waters and wetlands within one mile of the construction site.

(j) An alphanumeric or equivalent grid overlying the entire construction site.

**(7) CONTROL MEASURES.** Each plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity identified in the notice of intent and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

(a) Description of interim and permanent stabilization practices, including a schedule for implementing the practices. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized;

(b) Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing, structural measures shall be installed on upland soils;

(c) Management of overland flow at all sites, unless otherwise controlled by outfall controls;

(d) Trapping of sediment in channelized flow;

(e) Staging construction to limit bare areas subject to erosion;

(f) Protection of downslope drainage inlets where they occur;

(g) Minimization of tracking at all sites;

(h) Clean up of off-site sediment deposits;

(i) Proper disposal of building and waste material at all sites;

(j) Stabilization of drainage ways;

(k) Installation of permanent stabilization practices as soon as possible after final grading; and

(L) Minimization of dust to the maximum extent practicable.

**(8) No solid materials, including building materials, may be discharged in violation of chs. 30 and 31, Stats., or U.S. army corps of engineers section 404 permit requirements.**

**(9) PROHIBITED DISCHARGES.** Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

**(10) PROOF OF PERMIT COVERAGE.** A copy of the notice of intent or other indication that storm water discharges from the site are covered under a general WPDES permit shall be kept with building plans on the construction site and with the landowner. Where appropriate, notification under s. Comm 61.115 or ch. Trans 401 or a county, city, village or town ordinance in effect prior to January 1, 1994 that establishes standards for erosion control at commercial building sites may be used in lieu of the department's notice of intent.

**(11) PERMIT MODIFICATION.** The department may, upon request of a permittee or upon finding of just cause, grant modifi-

cations to the compliance and reporting schedules or any requirements of a storm water discharge permit.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; correction in (10) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527; CR 00-035: cr. (1m), (6) (i) and (j), am. (2), (4) (a), (f) and (g) Register September 2002 No. 561, eff. 10-1-02; correction in (10) made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561.

**NR 216.47 Storm water management plan requirements.** Pollution caused by storm water discharges from the site after construction is completed, including, but not limited to, rooftops, parking lots, roadways and the maintenance of grassed areas shall be addressed by a storm water management plan. Inclusion in the plan of post construction management may not bind either future owners of the property nor any municipalities to implement the management practices. A storm water management plan is not required for projects that do not alter runoff volumes or runoff quality from existing conditions and that do not include new development or redevelopment.

**Note:** Projects that may be excluded from the storm water management plan primarily involve highway maintenance projects related to ditching.

**(1) PRACTICES DURING CONSTRUCTION.** The plan shall include a description of the management practices that will be installed during the construction process to control peak flow, pollutants and runoff volume that will occur after construction operations have been completed. Storm water management practices shall be in accordance with applicable state and local regulations. To the extent feasible, the plan shall consider efforts to increase on-site infiltration through conveyance, depression storage and reduction of impervious area, consistent with any site or local development standards.

**(2) LONG TERM PRACTICES.** For any permanent structures, provisions shall be made for long-term maintenance. Long term maintenance provisions for storm water management structures should be made with the local municipality. If the local municipality agrees to take over long term maintenance responsibilities, a copy of the agreement shall be attached to the notice of termination. If the local municipality will not make such an agreement, alternative provisions that will be made for long-term maintenance of storm water management structures shall be identified, and a copy of the document mechanism by which it shall be enacted attached to the notice of termination.

**Note:** These are interim measures only. In the future, the department will be working to address this issue more fully.

**(3) MANAGEMENT PRACTICES.** Storm water management practices to control impacts from runoff volume and pollutants may include, but are not limited to: infiltration systems, flow attenuation, constructed wetlands, temporary or permanent ponds, combinations of these practices, or other methods which do not cause significant adverse impact on the receiving surface water or groundwater. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

**(4) PERFORMANCE STANDARDS.** The storm water management plan shall meet the applicable performance standards in either s. NR 151.12 or 151.24.

**Note:** Section NR 151.12 applies to sites that are not transportation facilities and s. NR 151.24 applies to transportation facility sites.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; CR 00-035: cr. (4) Register September 2002 No. 561, eff. 10-1-02.

#### **NR 216.48 Reporting and monitoring requirements.**

**(1) RECORDS.** The permittee shall retain records of all monitoring information, copies of all reports and plans required by the permit, and records of all data used to obtain coverage under the permit. Minimum periods of retention are as follows:

(a) The construction site erosion control and storm water management plan, and amendments to the construction site erosion control and storm water management plan shall be retained at the site until construction is completed, the site has undergone final stabilization and permit coverage is terminated.

(b) All reports required by this subchapter or information submitted to obtain coverage under this subchapter, including the construction site erosion control and storm water management plan, amendments and background information used in their preparation, shall be kept by the permittee for a period of at least 3 years from the date of notice of termination.

**(2) LOCAL APPROVALS.** Persons operating a construction site under approved local sediment and erosion plans, grading plans or storm water management plans shall also submit signed copies of the notice of intent to the local agency approving the plans. If storm water from the construction site discharges to a separate storm sewer system that is operating pursuant to a general WPDES permit, then a signed copy of the notice of intent shall also be sent to the operator of the system.

**(3) ADDITIONAL INFORMATION.** Upon request by the department, the permittee shall provide a copy of the plan, and any additional data requested, within 5 working days to the department, to the operator of the storm sewer system which receives the discharge, and any local agency approving sediment and erosion plans, grading plans or storm water management plans. The additional information shall be submitted in accordance with s. NR 200.09. Additional information may be requested by the department for resource waters that require additional protection such as outstanding or exceptional resource waters, or other sensitive water resources.

**(4) PERMITTEE RESPONSIBILITIES.** For the purposes of monitoring, the permittee shall:

(a) Conduct the following inspections:

1. Weekly inspections of implemented erosion and sediment controls; and

2. Inspections of erosion and sediment controls within 24 hours after a precipitation event 0.5 inches or greater which results in runoff during active construction periods.

(b) Maintain weekly written reports of all inspections conducted by or for the permittee that include:

1. The date, time and exact place of the inspection;

2. The name of the individual who performed the inspection;

3. An assessment of the condition of erosion and sediment controls;

4. A description of any erosion and sediment control implementation and maintenance performed; and

5. A description of the present phase of construction at the site.

**(5) SUBMITTAL OF INFORMATION.** The information maintained in accordance with sub. (4) shall be submitted, upon request of the department.

Wisconsin Department of Natural Resources  
Bureau of Watershed Management  
101 South Webster P.O. Box 7921  
Madison, WI 53707-7921

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

#### **NR 216.49 Conformance with other applicable plans.** (1) LOCAL COMPLIANCE. The plan shall document other applicable county and local regulatory provisions, compliance with which will also meet the requirements of the permit. If these additional provisions are more stringent than those provisions appearing in a permit issued pursuant to this subchapter, the plan shall include a description of how it will comply with these provisions.

(2) SANITARY REGULATIONS. The plan shall ensure and demonstrate compliance with applicable state and local waste disposal, sanitary sewer or septic system regulations.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.50 Amendments.** (1) APPLICABILITY. The permittee shall amend the plan if either of the following occur:

(a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan; and

(b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site storm water runoff.

(2) DEPARTMENT NOTIFICATION. If the department notifies the permittee of changes needed in the plan, the permittee shall submit, within the date specified in the notice, the changes in the plan.

(3) SUBMITTAL REQUIREMENTS. For those projects for which there has been earlier department review of the project, if the permittee identifies changes needed in the plan, the permittee shall notify the department within 5 days of an intent to change the plan.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.51 Department actions.** (1) INADEQUATE PLANS. The department may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this subchapter, or a permit issued pursuant to this subchapter, for reducing and preventing soil erosion. The notification shall identify those provisions which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements.

(2) REQUIRED PLAN REVISIONS. Within the time frame identified by the department in its notice, the permittee shall make the required changes to the plan, perform all actions required by the revised plan, and submit to the department a written certification that the requested changes have been made and implemented, and such other information as the department requires. Failure to comply shall terminate authorization to discharge pollutants under the general WPDES permit program.

(3) OTHER STORM WATER DISCHARGERS. The department may require the landowner of any storm water discharge to apply for and obtain a storm water permit if the storm water discharge is determined to be a significant contributor of pollution.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.52 Use of information.** All information contained in the notice of intent other than that specified as confidential shall be available to the public for inspection and copying. All confidential information, so identified, shall be in separate documents. Effluent data is not confidential information. Confidential treatment will be considered only for that information identified as confidential 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, October, 1994, No. 466, eff. 11-1-94.

**NR 216.53 Time periods for action on permit applications and modification requests.** (1) EFFECTIVE DATE OF PERMIT. Unless notified by the department to the contrary, applicants who submit a notice of intent in accordance with the provisions of this subchapter are authorized to discharge storm water from construction sites under the terms and conditions of the general WPDES permit 14 working days after the date that the department receives the notice of intent. The department may require the landowner to submit plans and specifications for approval of storm water treatment practices, pursuant to s. 281.41, Stats.

(2) DENIAL OR REVOCATION OF GENERAL PERMIT. The department may deny or revoke coverage under a general WPDES permit and require submittal of an application for an individual WPDES storm water discharge permit based on a review of the completed notice of intent or other information.

(3) INDIVIDUAL PERMIT. The department may require the landowner of any storm water discharge covered by a general WPDES permit issued pursuant to this subchapter to apply for and obtain an individual WPDES storm water discharge permit if any of the following occur:

(a) The storm water discharge is determined to be a significant source of pollution and more appropriately regulated by an individual WPDES storm water discharge permit;

(b) The storm water discharge is not in compliance with the terms and conditions of this chapter, or of a general WPDES permit issued pursuant to this chapter;

(c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants from the storm water discharge; or

(d) Effluent limitations or standards are promulgated for a storm water discharge that are different than the conditions contained in this chapter.

(4) PETITION. Any person may submit a written request to the department that it take action under sub. (3).

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.54 Transfers.** A person who has submitted a completed notice of intent and does not intend to control the permitted activities on the site may transfer authorization under a general WPDES permit to the person who will control the permitted activities. The transfer shall occur upon written notification, signed by both the transferor and transferee and sent via certified or registered mail to the department. Unless the permittee is notified to the contrary by the department, the department will recognize this permit coverage transfer upon receipt of written notification. The department may require additional information to be filed prior to granting coverage under the general WPDES permit. The department may, if appropriate, require an application for an individual WPDES storm water discharge permit to be submitted.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94.

**NR 216.55 Notice of termination.** When a site has undergone final stabilization and all storm water discharges associated with construction site activities that were required to have a general WPDES permit under this subchapter have ceased, the permittee shall submit a signed notice of termination to the department.

(1) FORMS. A notice of termination shall be submitted on forms supplied by the department. Data submitted in the notice of termination forms shall be used as [a] basis for terminating coverage of a storm water discharge permit. Different notice of termination forms are used to provide information from different sources of storm water discharge.

(2) OBTAINING FORMS. Notice of termination forms shall be obtained from the regional offices of the department or by writing to the Department of Natural Resources, Storm Water Program - WT/2, Box 7921, Madison, WI 53707-7921.

(3) FILING. Notice of termination forms shall be filed with the regional office of the department in which the construction site activity is located or to the Department of Natural Resources, Storm Water Program - WT/2, Box 7921, Madison, WI 53707-7921.

**Note:** It is intended that when these forms are changed, input from affected individuals and parties will be sought.

(4) SIGNATURE REQUIREMENTS. The notice of termination form shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice-president, or by his or her authorized representative responsible for the overall operation of the site for which a permit is sought;

(b) In the case of a partnership, by a general partner; or

(c) In the case of a sole proprietorship, by the proprietor.

(5) REQUIRED INFORMATION. The notice of termination shall include the following information:

(a) The mailing address and location of the construction site for which the notification is submitted.

(b) The name, address, telephone number of the current permittee, as well as any transferee;

(c) The name, address and telephone number of the general contractor; and

(d) The following signed certification:

“I certify under penalty of law that disturbed soils at the identified site have undergone final stabilization and temporary erosion and sediment control measures have been removed or that all storm water discharges associated with construction activity that are authorized by a general WPDES permit have otherwise been eliminated. I understand that by submitting this notice of ter-

mination, I am no longer authorized to discharge storm water associated with construction activity by the general WPDES permit, and that discharging pollutants in storm water associated with construction activity to waters of Wisconsin is unlawful where the discharge is not authorized by a general WPDES permit.”

**(6) EFFECTIVE DATE.** Termination of coverage under the permit shall be effective upon submittal of written confirmation of final stabilization by the department to the permittee.

**History:** Cr. Register, October, 1994, No. 466, eff. 11-1-94; **CR 00-035: am. (2) and (3) Register September 2002 No. 561, eff. 10-1-02.**