

## Chapter NR 203

### WISCONSIN POLLUTANT DISCHARGE ELIMINATION SYSTEM PUBLIC PARTICIPATION PROCEDURES

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**Note:** Chapter NR 3 was renumbered ch. NR 203, effective 10–1–84.

**NR 203.01 Definitions.** (1) “Department” means the department of natural resources.

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

(3) “Permit” means a permit for the discharge of pollutants issued by the department pursuant to ch. 283, Stats.

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

(5) “US EPA” United States environmental protection agency.

(6) “WPDES” Wisconsin pollutant discharge elimination system.

**History:** Cr. Register, January, 1974, No. 217, eff. 2–1–74; renum. (4) and (5) to be (5) and (6), cr. (4), Register, September, 1984, No. 345, eff. 10–1–84; renum. (2), (4), (5) and (6) to be (4), (2), (6) and (5) and am. (5) and (6), Register, February, 1996, No. 482, eff. 3–1–96; correction in (2) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491.

**NR 203.015 Exceptions.** The department may, with the consent of the permittee, revoke or modify a permit issued under s. 283.31 or 283.33, Stats., without following the notice procedures outlined in subch. I or without holding a public informational hearing as outlined in subch. II. Modification actions which qualify for this exception include:

(1) Correcting a typographical error.

(2) Requiring more frequent monitoring or reporting by the permittee.

(3) Changing an interim compliance date in a schedule of compliance to a date that is not more than 120 days after the date specified in the existing permit if the change does not delay attainment of final compliance.

(4) Reflecting a change in the owner or operator of a facility if the department determines that no other change in the permit is necessary and if the current and new owners or operators submit the department a written agreement that specifies a date for the new owner to assume responsibility for compliance with the permit and liability for violations of the permit.

(5) Changing the construction schedule for a new source if the change does not affect the permittee’s obligation to have required pollution control equipment installed and in operation before beginning to discharge.

(6) Eliminating a point source from a permit if the discharge from that point source terminates and that termination does not

cause the discharge of pollutants from other point sources to exceed permit limits.

(7) Incorporating into a permit a condition of a publicly owned treatment works pretreatment program that has been approved by the department.

**History:** Cr. Register, February, 1996, No. 482, eff. 3–1–96; corrections made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, November, 1996, No. 491.

#### Subchapter I — Notices of Completed Permit Applications and Draft Permits

**NR 203.02 Public notice of receipt of a completed permit application and draft permit.** (1) **INTENT.** Public notice of the receipt of a completed permit application and draft permit is intended to inform interested members of the public of a completed application, the tentative determination to issue or deny the permit as required in s. 283.39, Stats., and the public’s right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a draft permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Public notice procedures for the issuance of general permits are contained in s. NR 205.08.

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

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

(a) The name and address of the applicant.

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

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

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

(e) A brief description of the procedures for reaching a final decision on the draft permit, including the 30–day period for public comment, and the 30–day period for requesting an informational public hearing or the hearing date and location if the department has already decided to hold a hearing. The availability of documents including the draft permit, fact sheet and other supporting information shall also be included in the notice.

(f) The name, address, phone number, and email of the contact person issuing the notice.

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

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

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

(j) If applicable, the location of each sludge treatment works treating domestic sewage including those for “sludge only facilities,” the sludge use, the sludge disposal practices, and the location of each sludge use or disposal site known at the time of permit application.

(k) The requirements applicable to cooling water intake structures under 33 USC 1326 (b), and 40 CFR part 125, subparts I, and J.

(L) Information indicating where the completed permit application, draft permit, and fact sheet may be viewed on the department’s Internet Web site.

(m) If the applicant applied for a variance to a water quality standard, a statement regarding the tentative decision to approve or deny the variance. If the tentative decision is to grant the variance, the notice shall also specify which of the conditions specified in s. 283.15 (4) (a) 1. a. to e., Stats., were met, and shall also specify any effects of the variance on the designated use of the water body during the term of the permit.

**Note:** A sludge use site includes a site for land application. Sludge disposal sites include surface disposal sites (not permitted in Wisconsin), landfills and incineration sites.

**(4) NOTIFICATION.** Procedures for providing public notice of a completed permit application shall include all of the following:

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

(b) Mailing the notice to the applicant, any user of a privately owned treatment works that was specifically identified in the permit application, and any person or group upon request.

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

(d) Publication of the notice through an electronic notification system established by the department.

(e) Publication of the notice on the department’s Internet Web site.

(f) To satisfy the mailing requirement of this subsection the department may either send a paper copy of the document in the US mail, or transmit the document electronically by email, provided the person or group does not object to electronic mailing. The document mailed may reference the department’s Internet Web site where additional referenced material can be accessed.

**(5) PUBLIC NOTICE DATE.** Public notice shall be considered to be provided on the date that the department first publishes the notice on its Internet Web site.

**History:** Cr. Register, January, 1974, No. 217, eff. 2–1–74; am. (1), r. (4) (b), renum. (4) (c) to be (4) (b), renum. (4) (d) to be (4) (c) and am., Register, November, 1976, No. 251, eff. 12–1–76; am. (1) and (4) (c), Register, September, 1984, No. 345, eff. 10–1–84; am. (1), Register, February, 1996, No. 482, eff. 3–1–96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; CR 09–123; cr. (3) (j) and (k) Register July 2010 No. 655, eff. 8–1–10; CR 14–027: am. (title), (1), (2), (3) (intro.), (e) to (h), (j), (k), cr. (L), (m), am. (4) (title), (intro.), (b), (c), cr. (4) (d) to (f), (5) Register July 2015 No. 715, eff. 8–1–15.

**NR 203.03 Notice of receipt of a completed permit application and draft permit to other government agencies.** **(1) INTENT.** The intent of providing notice of the completed permit application and draft permit to other government agencies

is to inform interested federal, state, and local government agencies of a completed application, the tentative determination to issue or deny the permit, and their right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a draft permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Notification to government agencies of the proposed issuance of general permits shall be in accordance with s. NR 205.08.

**(2) FORM.** Form shall be the same as for public notice in s. NR 203.02 (2).

**(3) CONTENT.** All government agency notices shall contain a copy of the public notice as described in s. NR 203.02, a copy of the fact sheet where available as described in s. NR 201.01, and a cover letter stating the purpose of the notice, the 30 day period for submitting comments and for requesting a public hearing pursuant to s. 283.49, Stats. In addition, the US EPA shall receive a copy of the permit application and draft permit and be provided a comment period not to exceed 90 days unless it agrees to a shorter comment period.

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

(a) US EPA.

(b) U.S. army corps of engineers, and U.S. fish and wildlife service.

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

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

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

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

(g) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States, or American Indian tribes or bands.

**(5) WAIVER OF NOTICE AND ELECTRONIC NOTICE.** Any agency in sub. (4) may waive the right to receive notice or may consent to receive notices electronically.

**History:** Cr. Register, January, 1974, No. 217, eff. 2–1–74; am. (1) and (3), Register, November, 1976, No. 251, eff. 12–1–76; am. (1), Register, September, 1984, No. 345, eff. 10–1–84; correction made in (2) and (3) under 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. (1) to (3) and (4) (a), Register, February, 1996, No. 482, eff. 3–1–96; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; CR 09–123; am. (3), cr. (4) (g) Register July 2010 No. 655, eff. 8–1–10; CR 14–027: am. (title), (1), (4) (title), (b), cr. (5) Register July 2015 No. 715, eff. 8–1–15.

## Subchapter II — Public Informational Hearings

**NR 203.04 Intent and scope.** The regulations in this chapter prescribe the policies and procedures to be followed in issuing the notice of and the conducting of a public informational hearing and deciding the final determination as to whether to issue or deny a permit authorizing discharges into the waters of the state of Wisconsin. A public informational hearing, either mandatory or discretionary on the department, is to give all interested persons an additional opportunity to make a statement with respect to a proposed permit or permit application and to have such statements considered in the final determination. Exceptions to the requirements for holding a public informational hearing are provided in s. NR 203.015. The promulgation of the regulations in this chapter is by authority of ss. 283.49 (1) (c) and (2) (b), Stats.

**History:** Cr. Register, January 1974, No. 217, eff. 2–1–74; am. Register, September, 1984, No. 345, eff. 10–1–84; am. Register, February, 1996, No. 482, eff. 3–1–96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491.

**NR 203.05 Request for public informational hearing.** **(1) DISCRETIONARY HEARING.** The department may sched-

ule a public hearing on a proposed permit or permit application if requested by:

- (a) The applicant.
- (b) A state agency.
- (c) A federal agency other than the US EPA.
- (e) Fewer than 5 persons.

**(2) MANDATORY HEARING.** The department shall schedule a public hearing on any permit if any of the following occur:

- (a) If requested by the US EPA.
- (b) If requested by any state affected by the discharge.
- (c) Upon receipt of a petition signed by 5 or more persons.
- (d) If the department determines that there is significant public interest in the permit application.

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

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

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

**History:** Cr. Register, January, 1974, No. 217, eff. 2–1–74; am. (1) and (3), Register, September, 1984, No. 345, eff. 10–1–84; am. (1) (c), (2) (a) and (5), Register, February, 1996, No. 482, eff. 3–1–96; CR 14–027: r. (1) (d), am. (1) (e), (2) (intro.), (3) to (5) Register July 2015 No. 715, eff. 8–1–15.

#### **NR 203.06 Notice of public informational hearing.**

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

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

- (a) The name, address, and phone number of the governmental unit conducting the hearing.
- (b) The name and address of each applicant.
- (c) The name of the authority to which the discharge is to be made, a general statement of the location of such proposed discharge, and a statement whether such discharge is a new or existing discharge.
- (d) A brief statement that a public notice of a completed permit application has been issued, including date of such issuance.
- (e) Information regarding the date, time and location of the hearing.
- (f) The purpose and statutory authority of the hearing.
- (g) A concise statement of the issues raised by the persons requesting the hearing.
- (h) The address and phone number where interested persons may obtain further information, request a copy of each draft permit, and request a copy of each fact sheet where available, and inspect and copy forms and related documents.
- (i) A statement that reasonable costs will be charged for copies of all information excluding public notices and fact sheets.
- (j) A brief description of the nature of the hearing, including the rules and procedures to be followed, proposed time schedules and any necessary constraints to be placed on testimony at the hearing.
- (k) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions of the permit.

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

(m) The date of the notice.

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

(o) Reference to the date of previous public notices relating to the permit.

**(3) CIRCULATION AND NOTIFICATION.** Circulation and notification shall be the same as for public notice in s. NR 203.02 and government notice in s. NR 203.03.

**History:** Cr. Register, January, 1974, No. 217, eff. 2–1–74; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. (2) (L) and (3), Register, February, 1996, No. 482, eff. 3–1–96; CR 09–123: cr. (2) (o) Register July 2010 No. 655, eff. 8–1–10.

#### **NR 203.07 Location of public informational hearing.**

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

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

#### **NR 203.08 Persons entitled to participate in public informational hearings.**

In addition to the applicants named in the public notice of hearing, any interested members of the public or representatives of government agencies may participate in a public informational hearing with respect to the issuance of the proposed permit subject to any restrictions in s. NR 203.10. Persons and government agencies participating need not be represented by legal counsel.

**History:** Cr. Register, January, 1974, No. 217, eff. 2–1–74; correction made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. Register, February, 1996, No. 482, eff. 3–1–96.

#### **NR 203.09 Changes in time or place of hearing; adjournments.**

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

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

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

#### **NR 203.10 Conduct of public informational hearings.**

**(1) NONCONTESTED CASE.** Public informational hearings held pursuant to this chapter are not contested cases as defined in s. 227.01 (3), Stats.

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

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

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

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



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

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

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

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

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

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

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

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (5), Register, September, 1984, No. 345, eff. 10-1-84; correction in (2) and (3) (f) made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1984, No. 345; am. (1), (3) (a), (b) and (g), Register, February, 1996, No. 482, eff. 3-1-96.

**NR 203.11 Transcripts. (1) METHOD AND COPIES.** Public informational hearings will be transcribed either stenographically or electronically. A typed copy of the transcript will be furnished to all persons, upon request, at a reasonable cost to be determined by the department.

**(2) CORRECTIONS.** Any person, within 7 days of the date of mailing of the transcript, may file with the hearing examiner a notice in writing, claimed errors contained therein. Corrections of claimed errors shall be made at the discretion of the hearing examiner.

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

### Subchapter III — Permit Actions

**NR 203.12 Final determination to issue or deny a discharge permit.** The department shall issue or deny any permit for a discharge under ch. 283, Stats., and may modify any terms and conditions of a draft permit based on consideration of required standards, the permit application, statements by the public or by government agencies, and any other pertinent information.

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; CR 14-027: am. Register July 2015 No. 715, eff. 8-1-15.

**NR 203.13 Notice of final determination to issue or deny a permit to discharge. (1) FORM.** The notice of final determination under s. NR 203.12 shall be in writing, with a title identifying the subject of the notice and the number of the permit.

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

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

(b) The name and address of the applicant for a permit, or the class or category of discharger covered by a general permit.

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

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

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

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

(g) A statement of any significant changes which have been made from terms and conditions in the draft permit. This statement shall contain all of the following:

1. A description and response to significant comments on the draft permit.

2. Explanation of the reasons for change between the draft and final permit.

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

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

(j) The address and phone number where interested persons may obtain further information and the department's response to comments, and inspect and copy forms and related documents.

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

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

(a) The applicant or applicants for a permit.

(b) All persons filling out appearance slips at the public informational hearing, or who submitted written comments with respect to issuance of the permit even if a public informational hearing was not held.

(c) US EPA.

(d) United States army corps of engineers.

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

(f) The city, town or village where the proposed discharge is located for individual permits.

(g) The county and regional planning commission of the area where the proposed discharge is located.

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

(i) All individuals and groups upon request or on a formal department mailing list. Requests to be placed on the mailing list shall be directed to the Department of Natural Resources, WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707.

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (2) (b), (c) and (3) (a), (f), (g) and (i), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (g), (3) (c) and (i), Register, February, 1996, No. 482, eff. 3-1-96; CR 09-123: am. (2) (g), (j) and (3) (b), Register July 2010 No. 655, eff. 8-1-10; CR 14-027: am. (1) Register July 2015 No. 715, eff. 8-1-15.

**NR 203.135 Modification, revocation and reissuance, or termination of permits. (1) GENERAL.** The department may modify, revoke and reissue, or terminate a permit upon request of any interested person, including the permittee, or upon the department's initiative. Permits may only be modified, revoked and reissued, or terminated for one of the causes listed in s. NR 203.136. If cause exists, the department may request an updated application if necessary.

**(2) NOTIFICATION.** Whenever, on the basis of any information available to it, the department finds that there is cause under s. NR 203.136 for modifying, revoking and reissuing, or terminating a permit, in whole or in part, the department shall notify the permittee by certified mail or personal service of its intended permit action. However, if the department proposes to modify a permit to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation, the department may notify the permittee by email. When notifying the permittee of a proposal to modify, revoke and reissue, or terminate the department shall specify the information upon which the department

relies, and if the department intends to modify the permit, shall explain the modifications which the department intends to make in the permit.

**(3) REQUESTS.** Permits may be modified, revoked and reissued, or terminated at the request of any interested person, including the permittee. All requests for a modification, revocation and reissuance, or termination by a permittee or interested person shall be in writing and shall contain facts or reasons supporting the request.

**(4) DENIAL.** If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, informational hearings or adjudicatory hearings under s. 283.63, Stats.

**(5) PERMIT ACTION PROCEDURES.** (a) If the department tentatively decides to modify or revoke and reissue a permit the department shall prepare a draft permit under s. NR 200.11 incorporating the proposed changes. For a permit modification, the department may request additional information and may require the submission of an updated application. For revoked and reissued permits, the department shall require the submission of a new application. The department shall follow the public notice, comment and hearing procedures in ch. NR 203 with respect to its intention to modify, or revoke and reissue a permit, except as otherwise provided in this section.

(b) In a permit modification only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the existing permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) Minor modifications that qualify for a procedural exemption under s. NR 203.015 are not subject to the requirements of this section, and the permit may be modified without a draft permit or public review.

**(6) TERMINATION.** (a) Except as provided in paragraph (b), if the department tentatively decides to terminate a permit, the department shall issue a notice of intent to terminate. A notice of intent to terminate is subject to the same procedures as a draft permit prepared under s. NR 200.11.

(b) If the department tentatively decides to terminate a permit due to permanent elimination of a discharge that is due to a facility closure, connection to a publicly owned treatment works or some other cause, the department may terminate the permit by written notice to the permittee. The termination of the permit shall be effective 30 days after the notice is sent, unless the permittee files a written objection of the termination with the department within the 30 day time period. If a notice of objection is filed by the permittee, then the department shall follow the procedures for preparation of a draft permit under s. NR 200.11.

**(7) CAFO PERMITS.** (a) If the department proposes to modify a permit to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation (CAFO), the department is not required to provide notice of the substantial change under s. 283.39 (1) (a), Stats. The department shall provide a 14–day period, from the date on which notice is provided on the department’s Internet Web site in accordance with s. 283.39 (1) (d), Stats., for written comments on a proposed modification to authorize a substantial change to a nutrient management plan. A petition for an informational hearing on a proposed permit modification to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation shall be filed within 14 days of the date notice is provided under s. 283.39 (1) (d), Stats.

(b) Incorporation of a nutrient management plan in a CAFO general permit when a CAFO obtains coverage under a general permit is not a permit modification subject to the notice and public notice procedures in the subsection.

**History:** CR 14–027: cr. Register July 2015 No. 715, eff. 8–1–15.

**NR 203.136 Causes for a modification, revocation and reissuance, or termination.** **(1) MODIFICATION.** The department may modify a permit for any of the following causes:

(a) *Changes to facility or discharge.* There are material and substantial alterations or additions to the permitted facility or activity, including changes in sludge use or disposal which occurred after permit reissuance which would justify the application of different permit conditions or the addition of permit conditions.

(b) *New information.* The department has received new information, other than revised regulations, guidance or test methods, that was not available at the time of permit issuance or reissuance and that would have justified different permit terms or conditions.

(c) *New regulations or standards.* After permit issuance or reissuance, the standards or regulations have changed and a permittee has requested a change in a timely manner, or a judicial decision stays or remands an applicable standard or regulation that requires a change to the permit. For purposes of this paragraph, a changed standard or regulation means a change in an effluent limitation guideline, a change in secondary treatment regulations, or a change in a water quality standard that has been approved by EPA.

(d) *Judicial decision.* A decision from an administrative law judge or judicial court, or a signed stipulation to resolve a s. 283.63, Stats., contested case hearing, specifies a change to a permit term or condition that was the subject of the contested case hearing or judicial proceeding.

(e) *Compliance schedules.* The department determines good cause exists for modification of the compliance schedule such as events over which the permittee has little or no control and for which there is no reasonably available remedy. The department may also modify a compliance schedule to reflect time lost during construction of an innovative or alternative facility. The compliance schedule may not be modified to extend beyond the deadlines established under state and federal law.

(f) *Variations.* If a permittee has filed a variance request to an effluent limitation or thermal discharge, or a variance from a technology based effluent limit based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based.

(g) *Toxics.* When required to incorporate an applicable toxic effluent standard or prohibition.

(h) *Reopener.* When required by a provision in the permit that requires a modification or reopening of the permit.

(i) *Net limits.* Upon the request of a permittee for an adjustment to a technology based limitation based on pollutants in the intake water, provided the permittee qualifies for the limit adjustment, or the department may modify a technology based limitation based on an intake credit if the permittee no longer qualifies for the adjustment.

(j) *Pretreatment.* When necessary to establish a compliance schedule for development of a pretreatment program.

(k) *Failure to notify.* Upon failure of the department to notify another state whose waters may be affected by the discharge.

(L) *Non–limited pollutants.* When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology–based treatment requirements applicable to the permittee.

(m) *Errors.* To correct technical mistakes such as errors in calculations or mistakes in applying pertinent regulations to permit terms and conditions.

(n) *Unable to achieve effluent limitation.* Where the permittee has installed a treatment technology considered by the permit writer in setting effluent limitations, and where the permittee has properly operated and maintained its treatment facilities, but nevertheless has been unable to achieve compliance with those effluent limitations, the department may modify the limitations to reflect the level of pollutant control actually achieved, but in no case be less stringent than a subsequently promulgated effluent limitations guideline.

(o) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse for sewage sludge or other biosolids, to revise an existing land application plan or to add a land application.

(p) *Transfer of permit.* To reflect a change in ownership or operator of a permitted facility. A transfer of a permit to a new owner or operator is subject to all of the following procedures:

1. A permit may only be transferred after notification of the department of the proposed new permittee. The modification request shall include the "Facility Information" section of the permit application or equivalent.

2. The current permittee and proposed new permittee shall submit to the department a written agreement that specifies the date of transfer and acceptance of responsibility for compliance with the permit and liability for any violations.

3. The modification is exempt from public notice procedures under s. NR 203.015, if the department determines no other change to the permit is necessary.

(q) *Other.* One of the causes for termination in sub. (3) exists and the department determines that a modification is more appropriate than termination.

(2) **REVOCATION AND REISSUANCE.** The department may revoke and reissue a permit for any of the following causes:

(a) For any of the causes for a modification listed in sub. (1) provided the permittee agrees to the revocation and reissuance.

(b) Based on one of the causes for termination in sub. (3) if the department determines that a revocation and reissuance is the appropriate action to take.

(3) **TERMINATION.** The department may terminate a permit, or deny an application for reissuance, for any of the following causes:

(a) Substantial noncompliance by the permittee with any condition of a permit.

(b) Failure by the permittee in the permit application or during the permit issuance process to fully disclose all relevant facts, or the permittee's misrepresentation of any relevant facts at any time.

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation and reissuance, or termination.

(d) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice regulated by the permit.

**Note:** Refer to 40 CFR 122.62, 122.63, and 122.64 for federal regulations on the causes for a permit modification, revocation and reissuance, or termination.

**History:** CR 14-027; cr. Register July 2015 No. 715, eff. 8-1-15; correction in (1) (c) made under s. 35.17, Stats., Register July 2015 No. 715.

### Subchapter IV — Public Adjudicatory Hearings

**NR 203.14 Intent.** The purpose of this subchapter is to provide adequate procedures to insure as broad a degree of public participation in administrative adjudication of WPDES permits and their conditions as is consistent with procedural due process to the parties involved in the proceedings.

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. Register, February, 1996, No. 482, eff. 3-1-96.

**NR 203.15 Applicability of subchapter.** (1) This subchapter is applicable only to the review of the following:

(a) The denial, modification, suspension or revocation of a WPDES permit pursuant to s. 283.31, 283.33, 283.35 or 283.53, Stats.

(b) The reasonableness of or necessity for any term or conditions of any issued or modified WPDES permit.

(c) The establishment of a proposed thermal effluent limitation pursuant to s. 283.17, Stats.

(d) The establishment of any proposed water quality related limitation pursuant to s. 283.15 (1), Stats.

(2) If the hearing is a contested case pursuant to s. 227.01 (3), Stats., the rules in ch. NR 2, will be applicable to the extent that they are not in conflict with the specific procedures in this subchapter for WPDES adjudicatory hearings.

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (1) (a), Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (a), (b) and (2), Register, February, 1996, No. 482, eff. 3-1-96; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register February 2021 No. 782.

**NR 203.16 Who may petition; when.** (1) A review hearing pursuant to this subchapter may be petitioned by any permit applicant, a permittee, a state affected or to be affected by a discharge or 5 or more persons.

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

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (2), Register, February, 1996, No. 482, eff. 3-1-96.

### NR 203.17 Form of petition.

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby petition(s) for a review of the department's (proposed rule) (decision) entitled \_\_\_\_\_ and dated \_\_\_\_\_, 2\_\_\_. The specific issue(s) requested to be reviewed (is) (are): The specific interest(s) of the petitioner(s) (is) (are): \_\_\_\_\_.

The reasons why a hearing is warranted are: \_\_\_\_\_.

Date \_\_\_\_\_

Signature(s) \_\_\_\_\_

Verification \_\_\_\_\_

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

**NR 203.18 Form of hearing notice; content.** (1) **FORM OF HEARING NOTICE.** Notice of a scheduled public hearing shall be in writing, with a title identifying the subject of the notice and the number of the proposed rule, and the number of the subject permit or permit application.

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

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

(b) The name and address of each petitioner.

(c) The substance of the petition for review.

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

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

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

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

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

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

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

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

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

(m) The date of the notice.

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

**(3) CIRCULATION OF NOTICE.** The notice of hearing shall be circulated pursuant to the provisions of ss. NR 203.02 (4) and 203.03

(4), at least 30 days prior to the hearing. If it is necessary to allow less than 30 days' notice prior to a hearing, the hearing notice shall state the reasons for the shorter time period.

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; am. (3), Register, September, 1984, No. 345, eff. 10-1-84; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345; am. (2) (d) and (f), (3), Register, February, 1996, No. 482, eff. 3-1-96.

**NR 203.19 Location of hearing.** The location of the hearing shall be in conformance with s. NR 203.07.

**History:** Cr. Register, January, 1974, No. 217, eff. 2-1-74; correction made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1984, No. 345.

**NR 203.20 Final decision.** The final decision on the issues raised by the petitioners shall be made within 90 days of the close of the hearing.

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