CHAPTER 283

POLLUTION DISCHARGE ELIMINATION

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Cross−reference: See also NR 200− and chs. NR 102, 103, 104, and 105 Wis. adm. code.

SUBCHAPTER I

POLICY AND PURPOSE

283.001 Statement of policy and purpose. (1) Although in recent years intensive efforts have been made toward the abatement of pollution of the waters of this state, pollution of these waters continues. Unabated pollution of the waters of this state continues to arouse widespread public concern. It continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water. It is the policy of this state to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water. In order to achieve this policy, the legislature declares that:

(a) It is the goal of the state of Wisconsin to eliminate the discharge of pollutants into the waters of the state by 1985;

(b) It is also the goal of the state of Wisconsin that, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by 1983;

(c) It is also the policy of the state of Wisconsin that the discharge of toxic pollutants in toxic amounts be prohibited.

(2) The purpose of this chapter is to grant to the department of natural resources all authority necessary to establish, administer and maintain a state pollutant discharge elimination system to effectuate the policy set forth under sub. (1) and consistent with all the requirements of the federal water pollution control act amendments of 1972, P.L. 92−500; 86 Stat. 816.

History: 1973 c. 74; 1995 a. 227 s. 846; Stats. 1995 s. 283.001.

Cross−reference: See also NR 200−, chs. NR 102, 103, 104, and 105 and s. NR 1.50, Wis. adm. code.

In the context of regulating concentrated animal feeding operation (CAFO) manure applications, the broad grant of authority under sub. (2) is not limited by s. 283.11 (2). Maple Leaf Farms, Inc. v. DNR, 2001 WI App 170, 247 Wis. 2d 96, 633 N.W.2d 720, 00−1389.

A concentrated animal feeding operation (CAFO) under s. 283.01 (12) includes not only where the animals are confined, but also the equipment that applies the animal waste to fields outside the confinement area, whether the fields are owned by the CAFO operator or others. Any overapplication of manure by the operator is a discharge under 283.01 (5) whether because of runoff to surface waters or percolation to groundwater. DNR has authority to regulate discharges from overapplication of manure from a CAFO regardless of whether the discharge occurs on land owned by the CAFO. Maple Leaf Farms v. DNR, 2001 WI App 170, 247 Wis. 2d 96, 633 N.W.2d 720, 00−1389.

Fish on Morphine: Protecting Wisconsin's Natural Resources through a Comprehensive Plan for Proper Disposal of Pharmaceuticals. Christenson. 2008 WLR 141.

SUBCHAPTER II

DEFINITIONS

283.01 Definitions. In this chapter:

(1) "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristic of the effluent and at appropriate frequencies and locations.

(2) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises.

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

(4) "Discharge" when used without qualification includes a discharge of any pollutant.

(5) "Discharge of pollutant" or "discharge of pollutants" means any addition of any pollutant to the waters of this state from any point source.

(6) "Effluent limitation" means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of this state.

(6m) "Environmental pollution" means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commer-

cial or recreational use, or deleterious to fish, bird, animal or plant life.

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

(8) "New source" means any point source the construction of which commenced after the effective date of applicable effluent limitations or standards of performance.

(9) "Owner or operator" means any person owning or operating a point source of pollution.

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

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

(12) "Point source" means either of the following:

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

(b) A discernible, confined and discrete conveyance of storm water for which a permit is required under s. 283.33 (1).

(13) "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.

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

(15) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

(16) "Secretary" means the secretary of natural resources or his or her designee.

(17) "Toxic pollutants" means those pollutants or combinations of pollutants, including disease−causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction or physical deformations, in such organisms or their offspring.

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

(19) "Vessel" means any watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

(20) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface 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.

History: 1973 c. 74; 1979 c. 221; 1983 a. 189; 1987 a. 403; 1993 a. 16, 112, 482; 1995 a. 227 s. 847; Stats. 1995 s. 283.01.

A concentrated animal feeding operation (CAFO) under sub. (12) includes not only where the animals are confined, but also the equipment that applies the animal waste to fields outside the confinement area, whether the fields are owned by the CAFO operator or others. Any overapplication of manure by the operator is a discharge under sub. (5) whether because of runoff to surface waters or percolation to groundwater. Maple Leaf Farms v. DNR, 2001 WI App 170, 247 Wis. 2d 96, 633 N.W.2d 720, 00−1389.

SUBCHAPTER III

STANDARDS; EFFLUENT LIMITATIONS

283.11 State and federal standards. (1) DEPARTMENT TO ESTABLISH STANDARDS. The department shall promulgate by rule effluent limitations, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards for any category or class of point sources established by the U.S. environmental protection agency and for which that agency has promulgated any effluent limitations, toxic effluent standards or prohibitions or pretreatment standards for any pollutant.

(2) COMPLIANCE WITH FEDERAL STANDARDS. (a) Except for rules concerning storm water discharges for which permits are issued under s. 283.33, all rules promulgated by the department under this chapter as they relate to point source discharges, effluent limitations, municipal monitoring requirements, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards shall comply with and not exceed the requirements of the federal water pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.

(b) Rules concerning storm water discharges may be no more stringent than the requirements under the federal water pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.

(3) STANDARDS FOR NITROGEN, PHOSPHORUS AND DISINFECTION IN THE ABSENCE OF FEDERAL STANDARDS. (a) *Standards for nitrogen and disinfection.* Notwithstanding sub. (1) or (2), the department may promulgate by rule effluent limitations representing the best available demonstrated control technology, processes, operating methods or other alternatives concerning the discharge of nitrogen compounds and concerning the disinfection of sanitary wastewaters if the U.S. environmental protection agency has not promulgated an effluent limitation, effluent standard or prohibition concerning this type of discharge or disinfection.

(am) *Standards for phosphorus.* Notwithstanding sub. (1) or (2), the department shall promulgate by rule effluent limitations representing the best available demonstrated control technology, processes, operating methods or other alternatives concerning the discharge of phosphorus if the U.S. environmental protection agency has not promulgated an effluent limitation, effluent standard or prohibition concerning this type of discharge.

(b) *Exemptions.* The department may exempt by rule specified types of discharges from the effluent limitations concerning the discharge of phosphorus or nitrogen compounds established under par. (a) or (am) based upon:

1. The amount of phosphorus or nitrogen discharged;

2. The impact of nonpoint sources on the waters affected by the discharge;

3. The additional cost of treatment per unit of phosphorus or nitrogen removed;

4. The type of waters affected by the discharge; or

5. The impact of the discharge on the maintenance or achievement of water quality standards.

(c) *Advisory committee.* In promulgating rules under pars. (a), (am) and (b), the department shall establish an advisory committee under s. 227.13 composed of representatives of municipal dischargers, industrial point sources, farm groups, environmental groups, nonpoint sources and the public to assist in drafting the rules, evaluating technical studies and advising the department.

(d) *Impact of subsequent federal standards.* If the U.S. environmental protection agency promulgates an effluent limitation, effluent standard or prohibition concerning a type of discharge or disinfection specified under par. (a) or (am) for a category or class of point sources which is applicable to a permit holder, the department may modify, and at the request of the permit holder shall modify, the effluent limitation specified in the permit to conform with the effluent limitation, effluent standard or prohibition promulgated by the U.S. environmental protection agency.

(e) *Compliance dates.* A publicly owned treatment works shall comply with effluent limitations established under par. (a) by July 1, 1983. Any point source other than a publicly owned treatment works shall comply with effluent limitations established under par. (a) by July 1, 1984.

(4) STANDARDS FOR TOXIC POLLUTANTS IN THE ABSENCE OF FEDERAL STANDARDS. (a) *Authorization.* Notwithstanding sub. (1) or (2), the department may promulgate by rule, under s. 283.21, a toxic effluent standard or prohibition applicable to a category or class of point sources for the discharge of an identified toxic pollutant, if the U.S. environmental protection agency has not done either of the following for that identified toxic pollutant:

1. Promulgated, under 33 USC 1311 (b) (2), an effluent limitation applicable to the specified category or class of point sources.

2. Promulgated, under 33 USC 1317, an effluent standard or prohibition applicable to the specified category or class of point sources.

(b) *Identification.* An identified toxic pollutant is:

1. Any toxic pollutant or combination of pollutants on the list prepared under s. 283.21 (1) (a).

2. Any toxic pollutant or combination of pollutants on a list prepared under 33 USC 1317.

3. Any other substance which the department has proposed to be added to the list of toxic pollutants under s. 283.21 (1) (a).

(c) *Concurrent rule making.* A toxic effluent standard or a prohibition for a substance identified under par. (b) 3. may not be promulgated before the list of toxic pollutants has been revised under s. 283.21 (1) (a) to include that substance. The revision under s. 283.21 (1) (a) and the toxic effluent standard or prohibition under s. 283.21 (1) (b) may be promulgated concurrently.

(d) *Additional procedures.* As part of the rule−making process for a rule to which this subsection applies, the department shall do all of the following:

1. Specify in the proposed rule whether it applies to all waters of the state or to designated portions of the waters of the state.

2. Consider whether there are available removal technologies which provide the capability of achieving compliance at or for representative point sources likely to be affected by the rule and whether there are alternative control strategies which provide the capability of achieving compliance.

3. If the department finds that the level of pollutant control resulting from the application of available removal technologies or alternative control strategies is inadequate to protect public health, safety or welfare or the environment, consider any evidence presented on the relationship of the economic and social costs of the proposed standard or prohibition, including any social or economic dislocation in representative communities likely to be affected by the rule, to the social and economic benefits likely to be obtained, including attainment of the objectives of this chapter.

(e) *Impact of subsequent federal standards.* 1. If the U.S. environmental protection agency, under 33 USC 1317, promulgates a toxic effluent standard or prohibition for a toxic pollutant after the department promulgates a toxic effluent standard or prohibition, the department may modify its standard or prohibition to conform to the federal standard or prohibition. At the request of a permittee to which the standard or prohibition promulgated by the department applies under the terms of a permit, the department shall modify the permit to conform to the federal standard or prohibition.

2. If the U.S. environmental protection agency, under 33 USC 1311 (b) (2), promulgates an effluent limitation applicable to the discharge of a toxic pollutant from a point source after the department promulgates a toxic effluent standard or prohibition, the department may modify its standard or prohibition to conform to the federal toxic effluent limitation. A permittee to which the standard or prohibition promulgated by the department applies under the terms of a permit may request that the department modify the permit to conform to the federal effluent limitation. The department shall use the procedures specified under s. 283.53 (2) (b) to (f) to determine whether to grant the request. The department shall grant the request unless it finds that the resulting limitation, as applied to the permittee and to any other permittees subject to the department's standard or prohibition which discharge into the receiving water, would be inadequate to protect the public health, safety or welfare or the environment in the receiving water or any other waters directly affected by the discharge. A decision by the department not to grant the request is reviewable under s. 283.63.

(5) NONAPPLICABILITY. This section does not apply to any water quality based effluent limitation established under s. 283.13 (5).

History: 1973 c. 74; 1979 c. 221 ss. 650c, 650e; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 227 s. 859; Stats. 1995 s. 283.11; 2013 a. 173 s. 33.

Cross−reference: See also NR 200−, Wis. adm. code.

Sub. (2) does not unlawfully delegate legislative power. Niagara of Wisconsin Paper Corp. v. DNR, 84 Wis. 2d 32, 268 N.W.2d 153 (1978).

The DNR violated sub. (2) by adopting chlorine limitations in pollution discharge elimination system permits that were more stringent than federal limitations. Wisconsin Electric Power Co. v. DNR, 93 Wis. 2d 222, 287 N.W.2d 113 (1980).

In the context of regulating concentrated animal feeding operation manure applications, the broad grant of authority under s. 283.001 (2) is not limited by sub. (2). Maple Leaf Farms v. DNR, 2001 WI App 170, 247 Wis. 2d 96, 633 N.W.2d 720, 00−1389.

283.13 Effluent limitations. (1) CATEGORIES AND CLASSES OF POINT SOURCES. The department shall promulgate a list of categories and classes of point sources which is at least as comprehensive as the list appearing in section 1316 (b) (1) (A) of the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(2) SOURCES OTHER THAN PUBLIC TREATMENT WORKS. The discharge from any point source, other than a publicly owned treatment works or a source of storm water permitted under s. 283.33, shall comply with the following requirements:

(a) *Best practicable technology.* The application of the best practicable control technology currently available.

(b) *Requirements for certain pollutants.* For pollutants identified under pars. (c), (d) and (f):

1. a. The application of the best available technology economically achievable for a point source or a category or class of point sources which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants as stated in the federal water pollution control act, as amended, 33 USC 1251 to 1376; or

b. The application of the best available technology which will result in the elimination of the discharge of all pollutants if the department finds on the basis of information available to it that the elimination is technologically and economically achievable for a category or class of point sources.

2. The application of any applicable pretreatment requirements or any other requirements under s. 283.21 to any point source discharging pollutants into a publicly owned treatment works.

(c) *Certain toxic pollutants; compliance by July 1, 1984.* Compliance with the effluent limitations under par. (b) with respect to all toxic pollutants referred to in table 1 of committee print number 95−30 of the committee on public works and transportation of the U.S. house of representatives by no later than July 1, 1984.

(d) *Other toxic pollutants; compliance within 3 years after limitations are established.* Compliance with effluent limitations under par. (b) with respect to all toxic pollutants included on the list promulgated under s. 283.21 (1) (a) but which are not included in the table referred to under par. (c) not later than 3 years after the date the effluent limitations are established.

(e) *Conventional pollutants; compliance by July 1, 1984.* The application of the best conventional pollutant control technology for pollutants identified under section 1314 (a) (4) of the federal water pollution control act, as amended, 33 USC 1251 to 1376 by no later than July 1, 1984.

(f) *Other pollutants.* Compliance with effluent limitations under par. (b) with respect to all pollutants not included under pars. (c) to (e) not later than 3 years after the date effluent limitations are established, but in no case before July 1, 1984 or after July 1, 1987.

(g) *Certain innovative processes; compliance before July 1, 1987.* 1. For a facility which proposes to comply with the requirements of par. (b) by utilizing an innovative production process, innovative control technique or innovative system by a date established by the department after consulting with U.S. environmental protection agency but not later than July 1, 1987.

2. An innovative production process is a process to replace existing production capacity with a process which will result in an effluent reduction significantly greater than that required by the applicable effluent limitation and which moves toward the goal of eliminating the discharge of all pollutants.

3. An innovative control technique is a technique which has a substantial likelihood of enabling the facility to achieve a significantly greater effluent reduction than that required by the applicable effluent limitation and which moves toward the national goal of eliminating the discharge of all pollutants as stated under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

4. An innovative system is a system which has the potential for significantly lower costs than the systems which the department has determined to be economically achievable if the department determines that the system has the potential for industrywide application.

(3) MODIFICATIONS. (a) *Maximum use of technology and reasonable progress.* The department may modify the requirements of sub. (2) (f) in accordance with s. 283.63 for any point source for which a permit application is filed after July 1, 1977 if the owner or operator of the point source satisfactorily demonstrates to the department that the modified requirements will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the national goal of elimination of the discharge of pollutants as stated in the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(b) *Minimum compliance.* 1. The department with the concurrence of the U.S. environmental protection agency shall modify the requirements of sub. (2) (f) with respect to the discharge of any pollutant other than heat from any point source upon a showing by the owner or operator of the point source satisfactory to the department in a proceeding under s. 283.63 that:

a. The modified requirements will result in compliance with the requirements of sub. (2) (a) or (5), whichever is applicable;

b. The modified requirements will not result in any additional requirements for any other point or nonpoint source; and

c. The modification will not interfere with the attainment or maintenance of water quality which assures protection of public water supplies, which assures the protection and propagation of a balanced population of shellfish, fish, and wildlife and which allows recreational activities in and on the water and that the modification will not result in the discharge of pollutants in quantities which reasonably may be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity including carcinogenicity, mutagenicity or teratogenicity or synergistic propensities.

2. If an owner or operator of a point source applies for a modification under this paragraph with respect to the discharge of any pollutant, that owner or operator is eligible to apply for modification under this subsection with respect to that pollutant only during the same time period as the owner or operator is eligible to apply for a modification under this paragraph.

(c) *Applications for modification.* 1. Any application filed under this subsection for a modification of the requirements of sub. (2) (b) as it applies to pollutants identified in sub. (2) (f) shall be filed not later than 270 days after the date of promulgation of an applicable effluent limitation by the department under this chapter.

2. Any application for a modification filed under this subsection does not operate to stay any requirement under this chapter, unless in the judgment of the department the stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities and there is a substantial likelihood that the applicant will succeed on the merits of the application. If an application is filed under this subsection, the department may condition any stay granted under this subdivision upon the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(d) *No modification for toxic pollutants.* Notwithstanding pars. (a) and (b), the department may not modify any requirement of this subsection or sub. (2) applicable to any toxic pollutant which is on the list promulgated under s. 283.21 (1).

(4) EFFLUENT LIMITATIONS FOR PUBLIC TREATMENT WORKS. Discharges from publicly owned treatment works, except storm water discharges for which a permit is issued under s. 283.33, shall comply with the following requirements:

(a) *Secondary treatment for certain works.* Secondary treatment by no later than July 1, 1977, for all publicly owned treatment works in existence on that date or approved prior to June 30, 1974, and for which construction is completed within 4 years of approval;

(b) *Best practicable waste treatment technology.* The application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this chapter by no later than July 1, 1983.

(c) *Other limitations for combined sewer overflows.* In lieu of pars. (a) and (b), effluent limitations required by subs. (2) (a) and (5) for combined sewer systems tributary to treatment works owned and operated by any metropolitan sewerage district created under ss. 200.21 to 200.65.

(5) MORE STRINGENT LIMITATIONS. The department shall establish more stringent effluent limitations than required under subs. (2) and (4) and shall require compliance with such water quality based effluent limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulation. The department shall require compliance with these water quality

based effluent limitations by no later than July 1, 1977, or by a later date as specified in the water quality standard, treatment standard, schedule of compliance or other state or federal law, rule or regulation.

(6) MODIFICATION OF TIME LIMITS. (a) Except as provided under par. (d), the department may modify the time limitations specified under subs. (4) and (5) for any publicly owned treatment works to increase the period of time for compliance with effluent limitations.

(b) The modification of the time limitations mentioned under par. (a) may be granted if the department determines that the construction of treatment works necessary to achieve compliance with effluent limitations cannot be completed within the prescribed time period due to events over which the permittee has little or no control unless the modification is prohibited under par. (d).

(c) The modification of the time limitations mentioned under par. (a) shall be granted if the department determines that the construction of treatment works necessary to achieve compliance with effluent limitations cannot be completed within the prescribed time period due to the unavailability of federal or state funds unless the modification is prohibited under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(d) Except as provided under par. (c), no modification of the time limitations under par. (a) may extend beyond December 31, 1985.

(7) ADAPTIVE MANAGEMENT. (a) In this subsection, "adaptive management option" means an approach to achieving compliance with a water quality standard adopted under s. 281.15 or a total maximum daily load under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection agency under which a permittee implements a plan to achieve the water quality standard or total maximum daily load through verifiable reductions in the amount of water pollution from point sources and nonpoint sources, as defined in s. 281.16 (1) (e), in a basin or other area specified by the department and uses monitoring data, modeling, and other appropriate information to adjust the plan if needed to achieve compliance.

(b) The department may authorize a permittee to use an adaptive management option to achieve compliance with the water quality standard for phosphorus or an approved total maximum daily load for total suspended solids, and if it does so, the department may specify a date under sub. (5) that provides 4 permit terms for the permittee to comply with its water quality based effluent limitation for phosphorus or total suspended solids.

History: 1973 c. 74; 1975 c. 206; 1979 c. 34, 221; 1981 c. 282; 1981 c. 314 s. 146; 1981 c. 393; 1987 a. 27; 1989 a. 56; 1993 a. 16; 1995 a. 227 s. 860; Stats. 1995 s. 283.13; 1997 a. 35; 1999 a. 150 s. 672; 2013 a. 378.

Cross−reference: See also NR 200− and ch. NR 106, Wis. adm. code.

283.15 Variances to water quality standard. (1) DEFINITION. In this section, "variance" means a variance to a water quality standard adopted under s. 281.15.

(2) REQUEST FOR VARIANCE. (a) If a permit contains a variance or if a permittee anticipates that a reissued permit will include a water quality based effluent limitation under s. 283.13 (5), when the permittee applies for reissuance of the permit the permittee may apply to the department for renewal of the variance or for a variance from the water quality standard that would be used to derive the water quality based effluent limitation.

(am) 1. Within 60 days after the department reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13 (5), the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

2. After an application for a variance is submitted to the department under subd. 1., and until the last day for seeking review of the secretary's final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 283.13 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 283.63. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

(b) The department shall specify by rule the information to be included in an application under this subsection.

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

(d) If the permittee does not provide information as required under par. (b) or (c), the department shall deny the application.

(3) TENTATIVE DECISION. (a) The secretary shall issue a tentative decision on an application for a variance under sub. (2) (a) in the notice under s. 283.39 for the reissuance of the permit.

(b) The secretary shall issue a tentative decision on an application for a variance under sub. (2) (am) 1. within 120 days after receipt of a completed application. The department shall circulate the tentative decision to the permittee and to the parties in s. 283.53 (2) (c). If the tentative decision is to grant a variance based upon one or more of the conditions specified in sub. (4) (a) 1. a. to e., the department shall include in the notice under this paragraph a statement on the effect of the variance, if granted, on the designated use of the water body during the term of the underlying permit. The department shall provide a 30−day period for written comments on the tentative decision.

(4) FINAL DECISION ON VARIANCE. (a) 1. The secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

a. Naturally occurring pollutant concentrations prevent the attainment of the standard;

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

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

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

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

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

2. The secretary shall deny a requested variance if the permittee fails to make the demonstration required under subd. 1.

(d) The decision under this subsection is reviewable under subch. III of ch. 227, except that ss. 227.40 to 227.46, 227.485 to 227.51 and 227.60 do not apply to the decision under this subsection.

(5) CONDITIONS ON VARIANCES. (a) A variance applies only to the permittee requesting the variance and to the pollutant specified

in the variance. A variance does not affect or require the department to modify the corresponding water quality standard adopted under s. 281.15.

(b) A variance applies for the term established by the secretary, but not to exceed 5 years. The term of the initial variance and any renewals thereof may not exceed the time that the secretary determines is necessary to achieve the water quality based effluent limitation. Initial and interim effluent limitations established under par. (c) 1. apply, as appropriate, for the term of the underlying permit as reissued or modified to implement the decision under sub. (4) (a) 1. or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s. 227.51 (2) shall apply for the purposes of continuing the provisions of a permit pending the reissuance of a permit.

(c) The department shall require all of the following in a permit reissued or modified to implement a variance:

1. Compliance with an initial effluent limitation that at the time the variance is approved represents the level currently achievable by the permittee and that is no less stringent than the effluent limitation achieved under the permit before reissuance. At the time a variance is approved a compliance schedule and an interim effluent limitation that is achievable by the permittee during the term of the variance may be specified. The initial and the interim effluent limitations may not be less stringent than a categorical effluent limitation that applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic effluent standard that applies to the permittee under s. 283.21.

2. Investigation of treatment technologies, process changes, pollution prevention, wastewater reuse or other techniques that may result in compliance by the permittee with the water quality standard adopted under s. 281.15, and submission of reports on the investigations at such times as required by the department. The secretary shall modify or waive the requirements specified in this subdivision if the secretary determines, based upon comments received on the tentative decision under sub. (3), that the requirements of this subdivision are:

a. Reasonably beyond the technical or financial capability of the permittee; or

b. Unreasonable in light of the conditions specified in sub. (4) (a) 1. a. to e.

(d) The department may impose conditions in the permit as necessary to administer the variance including, but not limited to, additional monitoring requirements.

(6) RENEWAL. A variance may not be renewed if the permittee did not submit the reports required under sub. (5) (c) 2. or substantially comply with all other conditions of the variance.

(7) DELEGATION OF SECRETARY'S AUTHORITY. The secretary may designate an officer or employee of the department to make any decision that the secretary is required to make under this section.

(8) NO RIGHT TO A HEARING. Notwithstanding s. 227.42, there is no right to a hearing under this section.

(9) RELATION TO PERMIT REVIEW. If the secretary approves part or all of a variance or modifies and approves the variance under this section and the department issues a modified water quality based effluent limitation under s. 283.63 for the same substance, the permittee shall comply with the least stringent of the 2 effluent limitations.

(10) APPLICABILITY. (a) Subsections (2) to (5) do not apply if the water quality based effluent limitation results from the decision of the department under s. 283.63 to make the water quality based effluent limitation less stringent than the effluent limitation in the permit as issued, reissued or modified.

(b) Subsections (2) to (5) apply if the water quality based effluent limitation results from the decision of the department under s. 283.63 to make the water quality based effluent limitation more stringent than the effluent limitation in the permit as issued, reissued or modified.

(c) This section does not apply to the issuance, reissuance or modification of a permit to incorporate a toxic effluent standard or prohibition promulgated by rule under s. 283.11 (4) or 283.21.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15; 2011 a. 32.

Cross−reference: See also ch. NR 212 and s. NR 200.01, Wis. adm. code.

283.16 Statewide variance for phosphorus. (1) DEFINITIONS. In this section:

(a) "Basin" means the drainage area identified by an 8−digit hydrologic unit code, as determined by the U.S. Geological Survey.

(b) "Category" means a class or category of point sources specified by the department under s. 283.13 (1) or publicly owned treatment works.

(d) "Existing source" means a point source that was covered by a permit on December 1, 2010.

(e) "Major facility upgrade" means the addition of new treatment equipment and a new treatment process.

(g) "Nonpoint source" has the meaning given in s. 281.16 (1) (e).

(h) "Target value" means the following:

1. For a point source in a watershed for which a federally approved total maximum daily load under 33 USC 1313 (d) (1) (C) is in effect on April 25, 2014, the number of pounds of phosphorus that would be discharged from the point source during a year if the point source complied with its effluent limitation based on the total maximum daily load in effect on April 25, 2014.

2. For a point source in a watershed for which no federally approved total maximum daily load under 33 USC 1313 (d) (1) (C) is in effect on April 25, 2014, the number of pounds of phosphorus that would be discharged from the point source during a year if the average concentration of phosphorus in the effluent discharged by the point source during the year was 0.2 milligrams per liter.

(i) "Water quality based effluent limitation" means an effluent limitation under s. 283.13 (5), including an effluent limitation based on a total maximum daily load under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection agency.

(2) INITIAL DETERMINATION CONCERNING THE WATER QUALITY STANDARD FOR PHOSPHORUS. (a) The department of administration, in consultation with the department of natural resources, shall determine whether attaining the water quality standard for phosphorus, adopted under s. 281.15, through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible because it would cause substantial and widespread adverse social and economic impacts on a statewide basis. The department of administration may make separate determinations under this paragraph for statewide categories of point sources.

(b) The department of administration shall include all of the following in its determination under par. (a), based on water quality based effluent limitations for phosphorus determined by the department of natural resources:

1. A calculation of the statewide cost of compliance with water quality based effluent limitations for phosphorus by point sources that cannot achieve compliance without major facility upgrades.

2. A calculation of the statewide per household cost for water pollution control by publicly owned treatment works that cannot achieve compliance with water quality based effluent limitations for phosphorus without major facility upgrades, including the projected costs of compliance with those water quality based effluent limitations, and a calculation of the percentage of median household income the per household cost represents.

4. A determination of whether the cost of compliance with water quality based effluent limitations for phosphorus by point sources that cannot achieve compliance without major facility

upgrades would cause substantial adverse social and economic impacts on a statewide basis.

5. A determination of whether the cost of compliance with water quality based effluent limitations for phosphorus by point sources that cannot achieve compliance without major facility upgrades would cause widespread adverse social and economic impacts on a statewide basis.

(c) The department of administration shall make a preliminary determination under par. (a) no later than the 240th day after April 25, 2014. The department of administration shall provide public notice, through an electronic notification system that it establishes or selects, of its preliminary determination and shall provide the opportunity for public comment on the preliminary determination for at least 30 days following the public notice.

(d) The department of administration shall consider any public comments in making its final determination under par. (a) and shall make the final determination no later than the 30th day after the end of the public comment period.

(e) The department of administration shall send a notice that describes its final determination under par. (a) to the legislative reference bureau for publication in the administrative register.

(em) If the department of administration determines under par. (a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible, the department of natural resources shall seek approval under 40 CFR Part 131 from the federal environmental protection agency for the variance under this section.

(f) If the department of administration determines under par. (a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible, the determination remains in effect until the department of administration finds under sub. (3) (c) that the determination is no longer accurate.

(2m) WATER QUALITY STANDARDS REVIEW. Every 3 years as part of the review of water quality standards required by 33 USC 1313 (c) (1), if the variance under this section is in effect, the department shall determine whether formal review under sub. (3) should be undertaken, considering any comments it receives on the variance under this section.

(3) REVIEW OF FINDINGS AND REQUIREMENTS OF VARIANCE. (a) In 2024, if a determination under sub. (2) (a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible is in effect, or upon a determination under sub. (2m) that review under this subsection should be undertaken, the department of administration, in consultation with the department of natural resources, shall prepare a report, no later than September 1, to evaluate whether the determination under sub. (2) (a) remains accurate. The department of administration shall consult with permittees that would be subject to water quality based effluent limitations for phosphorus and other interested parties in preparing the report.

(b) The department of natural resources shall provide all of the following to the department of administration for the report under par. (a):

1. A determination of whether technology is reasonably available for point sources to comply with effluent limitations for phosphorus that are more stringent than those in sub. (6) (a).

2. A determination of whether technology is reasonably available for any category of point sources to comply with effluent limitations for phosphorus that are more stringent than those in sub. (6) (a).

3. A determination of whether any technology that is reasonably available for compliance with effluent limitations for phosphorus that are more stringent than those in sub. (6) (a) is cost effective.

(c) Based on its report under par. (a), the department of administration, in consultation with the department of natural resources, shall decide whether the determination that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible remains accurate.

(cm) If the department of administration decides under par. (c) that the determination remains accurate, the department of natural resources shall decide whether it is appropriate to apply more stringent effluent limitations than those in sub. (6) (a) to all point sources or to any category of point sources, based on the availability and cost effectiveness of technology for compliance and, if so, specify those more stringent effluent limitations based on the report under par. (a).

(d) The department of administration shall provide public notice of its preliminary decisions under par. (c) no later than the 60th day after preparing the report under par. (a) and shall provide the opportunity for public comment on the decisions for at least 30 days following the public notice.

(e) The department of administration shall consider any public comments in making its final decisions under par. (c) and shall make the final decisions no later than the 30th day after the end of the public comment period.

(f) The department of administration shall send a notice that describes its final decisions under par. (c) to the legislative reference bureau for publication in the administrative register.

(g) If the department of administration decides under par. (c) that the determination described in that paragraph remains accurate, the department of natural resources shall seek aproval from the federal environmental protection agency under 40 CFR 131.21 for renewal of the variance under this section.

(4) AVAILABILITY OF VARIANCE. (a) When a determination under sub. (2) (a) that attaining the water quality standard for phosphorus through compliance with water quality based effluent limitations by point sources that cannot achieve compliance without major facility upgrades is not feasible and approval of the variance under this section by the federal environmental protection agency are in effect, a permittee is eligible for a variance to the water quality standard for phosphorus for an existing source if all of the following apply:

1. The determination applies to the existing source.

2. Subject to par. (am) 1., the permittee certifies that the existing source cannot achieve compliance with the water quality based effluent limitation for phosphorus without a major facility upgrade.

3. The permittee agrees to comply with the requirements under sub. (6).

(am) 1. The department shall approve an application for a variance if the requirements in pars. (a) and (b) are complied with, unless the department determines that the certification under par. (a) 2. is substantially inaccurate.

2. The department shall act on an application for a variance under this section no later than the 30th day after the day on which the department receives the application for the variance.

3. If the department does not act on the application for a variance by the deadline under subd. 2., the application is approved.

(b) A permittee may apply for the variance under this section in any of the following ways:

1. By requesting the variance in the application for reissuance of the permit.

2. By requesting the variance within 60 days after the department reissues or modifies the permit to include a water quality based effluent limitation for phosphorus.

3. If the department issued a permit to the permittee before April 25, 2014, that includes a water quality based effluent limitation for phosphorus, by requesting a modification of the permit.

4. If the department issued a permit to the permittee before April 25, 2014, that includes a water quality based effluent limitation for phosphorus and that requires the permittee to submit to the department options for complying with the water quality based effluent limitation, by submitting a request for the variance as a compliance option.

(c) After an application for a variance is submitted to the department under par. (b) 2., 3., or 4., and until the last day for seeking review of the department's final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation for phosphorus and any corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 283.63.

(d) The variance under this section remains in effect for a point source until the permit is reissued, modified, or revoked and reissued.

(e) Notwithstanding s. 227.42, there is no right to a hearing under this subsection.

(f) If the department approves a variance under this section and the department issues a modified water quality based effluent limitation under s. 283.63 for phosphorus, the permittee shall comply with the least stringent of the 2 effluent limitations.

(6) VARIANCE PROVISIONS. (a) Except as provided in par. (ae) or (am) or sub. (7), in the permit for a point source for which the department approves the variance under this section the department may include a requirement that the permittee optimize the performance of the point source in controlling phosphorus discharges and shall include the following interim limits:

1. In the first permit for which the department approves the variance, a requirement to achieve, by the end of the term of that permit, compliance with an effluent limitation for phosphorus equal to 0.8 milligrams per liter as a monthly average.

2. In the 2nd permit for which the department approves the variance, a requirement to achieve, by the end of the term of that permit, compliance with an effluent limitation for phosphorus equal to 0.6 milligrams per liter as a monthly average.

3. In the 3rd permit for which the department includes the variance, a requirement to achieve, by the end of the term of that permit, compliance with an effluent limitation for phosphorus equal to 0.5 milligrams per liter as a monthly average.

4. In the 4th permit for which the department includes the variance, a requirement to achieve, by the end of the term of that permit, compliance with the water quality based effluent limitation for phosphorus.

(ae) If a permittee who chose an option for complying with a water quality based effluent limitation for phosphorus other than the variance under this section applies for the variance under this section, the department shall count a permit that included the other compliance option as though the permit had included the variance, for the purposes of par. (a), including determining the applicable interim limit.

(am) If a permittee certifies that the point source cannot achieve compliance with an interim limit in par. (a) 1., 2., or 3. without a major facility upgrade, the department shall include in the permit a requirement to achieve compliance with the most stringent achievable interim limit, except that the department may not include an interim limit that is higher than the limit established under s. 283.11 (3) (am).

(b) In the permit for a point source for which the department approves the variance under this section, in addition to the requirements under par. (a) or (am) or sub. (7), the department shall require the permittee to implement the permittee's choice of the following measures to reduce the amount of phosphorus entering the waters of the state:

1. Making payments to counties as provided in sub. (8).

2. Entering into a binding, written agreement with the department under which the permittee constructs a project or implements a plan that is designed to result in an annual reduction of phosphorus pollution from other sources in the basin in which the point source is located, in an amount equal to the difference between the annual amount of phosphorus discharged by the point source and the target value.

3. Entering into a binding written agreement, that is approved by the department, with another person under which the person constructs a project or implements a plan that is designed to result in an annual reduction of phosphorus pollution from other sources in the basin in which the point source is located, in an amount equal to the difference between the annual amount of phosphorus discharged by the point source and the target value.

(7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department determines under sub. (3) (cm) that it is appropriate to apply more stringent effluent limitations than those in sub. (6) (a) to all point sources or to a category of point sources, the department shall include the more stringent effluent limitations specified under sub. (3) (cm) in permits reissued, modified, or revoked and reissued after that determination for all point sources or for the category of point sources to which the more stringent effluent limitations apply.

(8) PAYMENTS TO COUNTIES. (a) 1. A permittee that chooses to make payments for phosphorus reduction under sub. (6) (b) 1. shall make the payments to each county that is participating in the program under this subsection and that has territory within the basin in which the point source is located in proportion to the amount of territory each county has within the basin. The permittee shall make a total payment by March 1 of each calendar year in the amount equal to the per pound amount under subd. 2. times the number of pounds by which the amount of phosphorus discharged by the point source during the previous year exceeded the point source's target value or $640,000, whichever is less. If no county that has territory within the basin is participating in the program under this subsection, the department shall direct the permittee to make payments to participating counties selected by the department.

2. The per pound payment for this subsection is $50 beginning on April 25, 2014. Beginning in 2015, the department shall adjust the per pound payment each year by a percentage equal to the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor, for the 12 months ending on the preceding December 31. The adjusted amount takes effect for permits reissued on April 1. The per pound payment in effect when a permit is reissued applies for the term of the permit.

(b) 1. A county shall use payments received under this subsection to provide cost sharing under s. 281.16 (3) (e) or (4) for projects to reduce the amount of phosphorus entering the waters of the state, for staff to implement projects to reduce the amount of phosphorus entering the waters of the state from nonpoint sources, or for modeling or monitoring to evaluate the amount of phosphorus in the waters of the state for planning purposes.

2. A county shall use at least 65 percent of the amounts received under this subsection to provide cost sharing under s. 281.16 (3) (e) or (4).

2m. No later than March 1 of each year, a county shall develop a plan for using the payments received under this subsection in the previous year that is consistent with the county's land and water resource management plan under s. 92.10. A county shall do all of the following in the plan under this subdivision:

a. Identify projects that have, or watersheds in which there exists, the greatest potential to reduce the amount of phosphorus per acre entering the waters of the state, based on an assessment of the land and land use practices in the county.

b. Describe the measures it will take to ensure that each project that it funds is completed and evaluated.

3. No later than May 1 of the 2nd year following a year in which a county receives payments under this subsection, the county shall submit an annual report to the department of natural resources, the department of administration, the department of agriculture, trade and consumer protection, and each permittee from which it received those payments. In the annual report, the county shall describe the projects for which it provided cost sharing, quantify, in pounds, the associated phosphorus reductions achieved using accepted modeling technology, and identify any staff funded with the payments.

4. The department shall evaluate reports submitted under subd. 3. If the department determines that a county is not using the payments to effectively reduce the amount of phosphorus entering the waters of the state from nonpoint sources, the department may require permittees who made the payments to eliminate or reduce future payments to the county.

5. A county shall notify the department by January 1 of each year if it chooses not to participate in the program under this subsection.

(8m) PROJECTS OR PLANS. (a) A person who constructs a project or implements a plan under an agreement under sub. (6) (b) 2. or 3. that involves activities for which performance standards and prohibitions have been prescribed under s. 281.16 (2) or (3) shall comply with those performance standards and prohibitions and any associated technical standards.

(b) A person who constructs a project or implements a plan under an agreement under sub. (6) (b) 2. or 3. shall annually submit a report to the department that quantifies, in pounds, the phosphorus reductions achieved through the project or plan, using accepted modeling technology. The department shall review reports submitted under this paragraph. If the department determines, based on the results of the modeling, that a project or plan is not effectively reducing the amount of phosphorus entering the waters of the state, the department shall terminate or modify the agreement.

History: 2013 a. 378.

283.17 Thermal effluent limitations. (1) Any thermal effluent limitation proposed by the department may be modified by it in accordance with s. 283.63, if the owner or operator of the point source which is the subject of the proposed limitation demonstrates to the satisfaction of the department that the proposed limitation is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) Any point source of a discharge having a thermal component, the modification of which is commenced after October 18, 1972, and which, as modified, meets the most stringent effluent limitation established under s. 283.13 or sub. (1) and this subsection, where the limitation assures protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component during either the 10−year period beginning on the date of completion of the modification or the period of depreciation or amortization of the facility for the purpose of section 167 or 169 of the internal revenue code, whichever ends first.

History: 1987 a. 27 ss. 1846mg, 1846ms; Stats. 1987 s. 147.055; 1991 a. 39; 1995 a. 227 s. 862; Stats. 1995 s. 283.17.

283.19 Standards of performance. (1) The department shall, by rule, promulgate standards of performance, for each class or category of sources referred to under s. 283.13 (1) that is required to be covered by permits issued under s. 283.31, which shall reflect the greatest degree of effluent reduction achievable through the application of the best available demonstrated control technology, processes, operating methods, or other alternatives. Where practicable, a standard of performance permitting no discharge of pollutants shall be adopted.

(2) (a) Standards of performance adopted under this section shall apply to all new sources within each class or category of sources for which a standard of performance has been adopted under this section.

(b) The term "new source" means any source, the construction of which commenced after the adoption of the standard of performance applicable to the category of sources of which it is a member.

(3) The department shall revise such standards to reflect changes in control technology, processes, operating methods or other alternatives. When establishing or revising standards of performance under this section, the department shall consider the cost of achieving such effluent reductions and the nonwater quality environmental impact and energy requirements of such reductions.

(4) The department may distinguish among classes, types and sizes within categories of sources for the purpose of establishing or revising standards of performance under this section.

(5) After the effective date of any standard of performance promulgated by the department under this section, no owner or operator of any new source may operate such source in violation of any standard of performance applicable to such a source.

History: 1973 c. 74; 1993 a. 16.; 1995 a. 227 s. 863; Stats. 1995 s. 283.19

Cross−reference: See also NR 200−, Wis. adm. code.

283.21 Toxic and pretreatment effluent standards. (1) TOXIC EFFLUENT LIMITATIONS AND STANDARDS. (a) *List.* The department shall promulgate by rule a list of toxic pollutants or combinations of pollutants subject to this chapter which consists of those toxic pollutants referred to in table 1 of committee print number 95−30 of the committee on public works and transportation of the U.S. house of representatives. After promulgation of this list, the department may revise by rule the list periodically and may add to or remove from the list any pollutant. In revising this list the department shall consider the toxicity of the pollutant, its persistence, degradability, the usual or potential presence in any waters of any organisms affected by the discharge of the toxic pollutant or combination of pollutants, the importance of the affected organism and the nature and extent of the effect of the toxic pollutant on these organisms. A determination by the department under this subsection is subject to declaratory judgment proceedings under s. 227.40.

(b) *Effluent standards.* The department may promulgate by rule an effluent standard, which may include a prohibition, establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, is applicable to that category or class of point sources only if this effluent standard imposes more stringent requirements than are imposed under s. 283.13 (2) (b). An effluent standard promulgated under this section shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of affected organisms in any waters, the importance of affected organisms, the nature and extent of the effect of the toxic pollutant on these organisms and the extent to which effective control is being or may be achieved under other regulatory authority.

(c) *Promulgation; review.* The department shall promulgate by rule an effluent standard which may include a prohibition in accordance with par. (a) for each toxic pollutant referred to in table 1 of committee print number 95−30 of the committee on public works and transportation of the U.S. house of representatives as soon as practicable but no later than one year after the U.S. environmental protection agency promulgates an effluent standard for the pollutant. The department shall establish effluent standards for any other toxic pollutant listed under par. (a) as soon as practicable after it is listed. Each effluent standard promulgated under this paragraph shall be reviewed and, if appropriate, revised every 3 years.

(d) *Ample margin of safety.* An effluent standard promulgated under this subsection shall be established at that level which the department determines provides an ample margin of safety.

(e) *Applicability to classes or categories of sources.* If the department proposes or promulgates an effluent standard under this subsection, it shall designate the class or category of point sources to which the effluent standard applies. The department may include the disposal of dredged material in a class or category of point sources.

(f) *Effective date.* An effluent standard promulgated under this subsection takes effect on the date specified in the order promulgating the standard, but not more than one year after the date of the order. If the department determines that compliance within one year after the date of the order is technologically infeasible for a class or category of sources, the department may establish the effective date for the effluent standard for that class or category of sources at the earliest date upon which compliance can be feasibly attained by those sources, but in no case more than 3 years after the date of the order.

(g) *Procedure for promulgation in absence of federal standards.* In promulgating rules establishing a toxic effluent standard or prohibition for which the U.S. environmental protection agency has not promulgated a toxic effluent limitation, standard or prohibition, the department shall follow the additional procedures specified in s. 283.11 (4) (d).

(2) PRETREATMENT STANDARDS. (a) The department shall by rule promulgate pretreatment standards to regulate the introduction into publicly owned treatment works of pollutants which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

(b) Pretreatment standards promulgated under this section shall specify a time for compliance, not to exceed 3 years after the date of promulgation, and shall be established to prevent the discharge through any publicly owned treatment work of any pollutant which interferes with, passes through, or otherwise is incompatible with the treatment works. If any toxic pollutant under sub. (1) is introduced by a source into a publicly owned treatment works, if the treatment by the works removes all or any part of that toxic pollutant, if the discharge from the works does not violate the effluent limitation or standard which would be applicable to that toxic pollutant if it were discharged by the source other than through a publicly owned treatment works and if the treatment of that toxic pollutant does not prevent sludge use or disposal by the works in accordance with section 1345 of the federal water pollution control act, as amended, 33 USC 1251 to 1376, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of that toxic pollutant by the works.

(c) The department shall by rule promulgate the classes or categories of sources to which the pretreatment standards adopted under this section shall apply.

(d) The department shall revise the pretreatment standards adopted under this section to reflect changes in control technology, processes, operating methods or other alternatives.

History: 1973 c. 74; 1979 c. 221; 1985 a. 29; 1985 a. 182 ss. 11, 57; 1995 a. 227 s. 864; Stats. 1995 s. 283.21.

Cross−reference: See also NR 200−, Wis. adm. code.

SUBCHAPTER IV

PERMITS

283.31 Water pollutant discharge elimination system; permits, terms and conditions. (1) The discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person is unlawful unless such discharge or disposal is done under a permit issued by the department under this section or s. 283.33. The department may by rule exempt certain classes or categories of vessels from this section.

(2) No permit shall be issued by the department for the discharge into the waters of the state of any of the following:

(a) Any radiological, chemical or biological warfare agent or high−level radioactive waste.

(b) Any discharge which the secretary of the army acting through the chief of the army corps of engineers has objected to in writing on the ground that anchorage and navigation would be substantially impaired.

(c) Any discharge to which the U.S. environmental protection agency has objected to in writing pursuant to s. 283.41.

(d) Any discharge from a point source which is in conflict with any existing area−wide waste treatment management plan approved by the department. No area−wide waste treatment management plan may require the abandonment of existing waste treatment facilities which meet the requirements of this chapter unless the abandonment of such facilities clearly represents the most efficient and cost−effective method of providing waste treatment for the entire planning area.

(3) The department may issue a permit under this section for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon condition that such discharges will meet all the following, whenever applicable:

(a) Effluent limitations.

(b) Standards of performance for new sources.

(c) Effluent standards, effluents prohibitions and pretreatment standards.

(d) Any more stringent limitations, including those:

1. Necessary to meet federal or state water quality standards, or schedules of compliance established by the department; or

2. Necessary to comply with any applicable federal law or regulation; or

3. Necessary to avoid exceeding total maximum daily loads established pursuant to a continuing planning process developed under s. 283.83.

(e) Any more stringent legally applicable requirements necessary to comply with an approved areawide waste treatment management plan.

(f) Groundwater protection standards established under ch. 160.

(4) The department shall prescribe conditions for permits issued under this section to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following:

(a) That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(b) That facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants at frequencies or levels in excess of the maximum discharges described in the permit shall be reported to the department under s. 283.59 (1);

(c) That the permittee shall permit authorized representatives of the department upon the presentation of their credentials to enter upon any premises in which an effluent source is located or in which any records are required to be kept for the purpose of administering s. 283.55;

(d) That the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit;

(e) That if a toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is established under s. 283.21 (1) for a toxic pollutant present in the permittee's discharge and, if such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the department shall revise or modify the permit in accordance with the toxic effluent standard or prohibition;

(f) That, if the permit is for a discharge from a publicly owned treatment work, the permittee shall:

1. Inform the department of any new introduction of pollutants into the treatment works under s. 283.59 (2);

2. Require that any industrial user of such treatment work comply with the requirements of ss. 283.21 (2), 283.55 and 283.57.

(5) Each permit issued by the department under this section shall, in addition to those criteria provided in subs. (3) and (4), specify maximum levels of discharges. Maximum levels of discharges shall be developed from the permittee's reasonably foreseeable projection of maximum frequency or maximum level of discharge resulting from production increases or process modifications during the term of the permit.

(5m) PERMITS FOR CERTAIN CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES. The department shall include in permits issued under this section for concentrated aquatic animal production facilities described in 40 CFR 451.10 requirements that are based on, and are not more stringent than, the requirements in 40 CFR 451.11.

(6) Any permit issued by the department under this chapter which by its terms limits the discharge of one or more pollutants into the waters of the state may require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impact.

(7) The holder of a permit under this section shall pay $100 to the department as a groundwater fee on January 1 if the permittee discharges effluent on land or if the permittee produces sludge from a treatment work which is disposed of on land. If the permittee discharges effluent on land and disposes of sludge from a treatment work on land, the permittee shall pay $200 to the department as a groundwater fee on January 1. The moneys collected under this subsection shall be credited to the environmental fund for environmental management.

(8) (a) The holder of a permit under this section for a concentrated animal feeding operation shall annually pay to the department a fee of $345.

(b) Of each fee paid under par. (a), $95 shall be credited to the appropriation account under s. 20.370 (4) (mi).

(c) The department shall annually submit a report to the joint committee on finance and, under s. 13.172 (3), to the standing committees of the legislature with jurisdiction over agricultural and environmental matters describing the use of the moneys credited to the appropriation account under s. 20.370 (4) (mi) under par. (b).

History: 1973 c. 74; 1975 c. 349; 1983 a. 410; 1993 a. 16.; 1995 a. 227 s. 851, 857; Stats. 1995 s. 283.31; 1997 a. 27; 1999 a. 85; 2009 a. 28; 2011 a. 207; 2013 a. 70.

Cross−reference: See also chs. NR 203, 204, 206, 208, 213, 214, 231, and 236 and s. NR 200.01, Wis. adm. code.

This section does not govern dam removal. Chapter 31 does. Froebel v. DNR, 217 Wis. 2d 652, 579 N.W.2d 774 (Ct. App. 1998), 97−0844.

A concentrated animal feeding operation (CAFO) under s. 283.01 (12) includes not only where the animals are confined, but also the equipment that applies the animal waste to fields outside the confinement area, whether the fields are owned by the CAFO operator or others. Any overapplication of manure by the operator is a discharge under s. 283.01 (5) whether because of runoff to surface waters or percolation to groundwater. DNR has authority to regulate discharges from overapplication of manure from a CAFO regardless of whether the discharge occurs on land owned by the CAFO. Maple Leaf Farms v. DNR, 2001 WI App 170, 247 Wis. 2d 96, 633 N.W.2d 720, 00−1389.

The DNR has authority under sub. (1) to issue permits to federal agencies. 68 Atty. Gen. 52.

283.33 Storm water discharge permits. (1) REQUIREMENT. An owner or operator shall obtain a permit under this section for any of the following:

(a) A discharge from a discernible, confined, and discrete conveyance of storm water associated with an industrial activity that meets criteria in rules promulgated by the department.

(am) A discharge from a discernible, confined, and discrete conveyance of storm water associated with a construction site, including a construction site for a building, that meets criteria in rules promulgated by the department.

(b) A discharge of storm water from a municipal separate storm sewer system serving an incorporated area with a population of 100,000 or more, as determined by the 1990 federal census.

(c) A discharge of storm water from a municipal separate storm sewer system serving an area located in an urbanized area, as determined by the U.S. bureau of the census based on the latest decennial federal census.

(cg) A discharge of storm water from a municipal separate storm sewer system serving an area with a population of 10,000 or more and a population density of 1,000 or more per square mile, if the system is designated by the department to be regulated under this section based on an evaluation of whether the storm water discharge results in, or has the potential to result in, water quality standards being exceeded, including impairment of designated uses, or in other significant water quality impacts, including habitat and biological impacts.

(cr) A discharge of storm water from a municipal separate storm sewer system that is designated by the department to be regulated under this section because the system contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated under this section.

(d) A discharge of storm water from a facility or activity, other than a facility or activity under pars. (a) to (cr), if the department determines that the discharge either contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the state.

(2) MUNICIPAL SEPARATE STORM SEWER SYSTEMS; APPLICATIONS. The owner or operator of a portion of a municipal separate storm sewer system for which a permit is required under sub. (1) shall do one of the following:

(a) Submit a permit application for its portion of the municipal separate storm sewer system.

(b) Submit a permit application jointly with one or more other owners or operators of the municipal separate storm sewer system.

(c) Authorize a regional authority with control over discharges to a separate storm sewer system that serves areas in more than one municipality to submit an application for a permit that covers the owner's or operator's portion of the municipal separate storm sewer system and other portions of the system if all of the following apply:

1. The regional authority, together with the owners or operators, has authority over a storm water management program that will be in operation by the deadline established by the department.

2. The regional authority or the owners or operators demonstrate their ability to supply all of the required application information by the deadlines established by the department.

3. Each of the owners or operators of a portion of the system covered by the application provides the information required by the department.

(3) MUNICIPAL SEPARATE STORM SEWER SYSTEMS; PERMITS. (a) The department may issue one permit for all discharges from a municipal separate storm sewer system for which a permit is required under sub. (1) or may issue separate permits for each municipality served by the system, for each type of discharge from the system, for individual discharges from the system or for other categories specified by the department.

(b) If the department issues more than one permit for discharges from a municipal separate storm sewer system, the permits may specify differing requirements.

(c) In a permit for part or all of a municipal separate storm sewer system, the department may specify differing conditions relating to different discharges covered by the permit, including differing management programs for the various drainage areas that contribute storm water to the system.

(4) DISCHARGES THROUGH MUNICIPAL SEPARATE STORM SEWER SYSTEMS. (a) In addition to obtaining a permit under this section, the owner or operator of an activity described in sub. (1) (a) or (am) that discharges storm water through a municipal separate storm sewer system described in sub. (1) (b) to (cr) shall submit the following information to the owner or operator of the municipal separate storm sewer system:

1. The name of the facility from which the release occurs.

2. The name and address of a person to contact for information about the discharge.

3. The location of the discharge.

4. A description of the principal products or services provided by the facility and the number of any permit covering the facility.

(b) 1. If a person required to provide information under par. (a) is releasing storm water into the municipal separate storm sewer system before the system is subject to sub. (1), the person shall provide the information no later than 60 days after the system becomes subject to sub. (1).

2. If a person required to provide information under par. (a) is not releasing storm water into the municipal separate storm sewer system before the system is subject to sub. (1), the person shall provide the information no later than 180 days before beginning to release storm water into the system.

(5) OTHER DISCHARGERS. A person who is required to obtain a permit under sub. (1) (a), (am), or (d) may apply for an individual permit or request coverage under a general permit issued by the department under s. 283.35.

(6) OTHER COVERAGE. (a) A municipal separate storm sewer system that is combined with a sanitary sewer system is not required to be covered by a permit under this section but is required to be covered by a permit under s. 283.31.

(b) The department may include coverage of a storm water discharge in a permit issued under s. 283.31. For the purposes of this chapter, the portion of a permit issued under s. 283.31 that covers a storm water discharge is considered a permit issued under this section.

(7) PETITIONS. The owner or operator of a municipal separate storm sewer system may petition the department to require a permit under this section for any discharge through the municipal separate storm sewer system. The department may approve the petition only if a permit for the discharge is required under sub. (1) (a), (am), or (d).

(7m) ISSUANCE. The department shall base the priority for the initial issuance of permits under this section on the relative impact of the discharges on water quality.

(8) RULE MAKING. The department shall promulgate rules for the administration of this section. The department may not require a permit under this section for diffused surface drainage or agricultural storm water discharges.

(9) STORM WATER FEES. (a) The department shall promulgate rules setting all of the following:

1. A storm water construction permit fee to be paid by any person who applies for a permit under this section for the discharge of storm water from a construction site.

2. A storm water permit annual fee that is to be paid upon issuance of the permit and annually thereafter by a person who holds a permit under this section for the discharge of storm water, other than for the discharge of storm water from a construction site.

(b) The department shall establish the amount of the fee under par. (a) for permits for construction sites, other industrial permits and municipal separate storm sewer permits based on the costs associated with each type of permit.

(bm) The annual fees under par. (a) are due on June 30 annually, beginning with 1994.

(c) All moneys collected under par. (a) shall be credited to the appropriation under s. 20.370 (4) (bj).

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16; 2013 a. 20.

Cross−reference: See s. NR 216.41, Wis. adm. code.

283.35 General permits. (1) AUTHORIZATION. Instead of issuing a separate permit to an individual point source, the department may issue a general permit applicable to a designated area of the state authorizing discharges from specified categories or classes of point sources located within that area.

(1m) BALLAST WATER DISCHARGES. (a) The department may issue a general permit authorizing a vessel that is 79 feet or greater in length to discharge ballast water into the waters of the state. A general permit issued under this subsection may contain effluent limitations.

(b) If the department issues a general permit under par. (a), the department shall charge the following fees:

1. An application fee of $1,200 to be paid by any person who applies for coverage under a general permit issued under this subsection.

2. An annual fee of $345 to be paid upon initial coverage under the permit and annually thereafter.

(c) Paragraph (b) does not apply after December 31, 2015.

(e) Coverage under a general permit issued under this subsection is valid for a period of 5 years. The department may renew coverage under a general permit issued under this subsection upon application.

(f) The department shall credit the fees collected under this subsection to the appropriation account under s. 20.370 (4) (aj).

(2) VOLUNTARY WITHDRAWAL. Upon the request of the owner or operator of a point source, the department shall withdraw the point source from the coverage of the general permit and issue a separate permit for that source.

(3) WITHDRAWAL. The department may withdraw a point source from the coverage of a general permit and issue a separate permit for that source if:

(a) The point source is a significant contributor of pollution;

(b) The point source is not in compliance with the terms and conditions of the general permit;

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

(d) Effluent limitations or standards are promulgated for a point source covered by the general permit after the issuance of that permit; or

(e) A water quality management plan containing requirements applicable to the point source is approved.

History: 1979 c. 221; 1995 a. 227 s. 853; Stats. 1995 s. 283.35; 2009 a. 28; 2013 a. 20.

283.37 Applications for permit. (1) The department shall promulgate rules relating to applications for permits under this chapter which shall require at a minimum that every owner or operator of a point source discharging pollutants into the waters of the state shall have on file either a completed permit application on forms provided by the department or a completed permit application under section 13 of the rivers and harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as amended, 33 USC 1251 to 1376. The rules may specify different requirements for permits issued under s. 283.31 and for permits issued under s. 283.33.

(2) Any owner or operator of a point source for which a permit is required by s. 283.31 (1) wishing to commence discharging pollutants into state waters from a new source, the construction of which commenced after July 22, 1973, shall submit a completed application not later than 180 days prior to the date on which it is desired to commence discharges.

(3) The 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 the principal executive officer's authorized representative responsible for the overall operation of the point source for which a permit is sought.

(aL) In the case of a limited liability company, by a member or manager.

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

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

(d) In the case of publicly owned treatment works or a municipal separate storm sewer system by a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Prior to the submittal of a permit application for a publicly owned treatment works, each person discharging into such works who is subject to s. 299.15 and rules promulgated thereunder shall submit a discharge report to the owner or operator of such works upon request. The report shall state the person's current discharges, and maximum discharges based on reasonably foreseeable projections of production increases, process modification or facility expansions during the next 5 years. The owner or operator of such publicly owned treatment works shall submit the discharge reports to the department as part of the permit application. The form of the discharge report shall be prescribed by department rule.

(5) The department may require the applicant to submit information in addition to that supplied on the permit application.

(6) Subsections (1) to (5) do not apply to an owner or operator of a point source eligible for coverage under a general permit under s. 283.35 and rules promulgated by the department under that section. The department may require the owner or operator to submit information regarding any discharge.

History: 1973 c. 74; 1979 c. 221 ss. 650d, 650dg, 2202 (39); 1993 a. 16, 112, 482; 1995 a. 227 s. 854; Stats. 1995 s. 283.37.

Cross−reference: See also s. NR 200.01, Wis. adm. code.

283.39 Public notice. (1) The department shall promulgate by rule procedures for providing to interested members of the public notices of each complete application for a permit. Procedures for providing public notices shall include at least the following:

(a) Publication of the notice as a class 1 notice under ch. 985;

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

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

(d) Publication of the notice on the department's Internet Web site.

(1m) Public notice under this section shall be considered to be provided on the date that the department first publishes the notice on its Internet Web site.

(2) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the permit application. All written comments submitted during the period for comment shall be retained by the department and considered in the formulation of the final determinations for the permit application.

(3) The department shall by rule prescribe the form and content of public notices issued under sub. (1). Every such notice issued by the department shall include at least the following information:

(a) The name and address of each applicant;

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

(bg) Information indicating where the complete application may be viewed on the department's Internet Web site.

(c) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating 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;

(dm) If the applicant applied, under s. 283.15 (2) (a), for a variance, as defined in s. 283.15 (1), a tentative decision to approve or deny the variance, including, if the tentative decision is to grant the variance based upon one or more of the conditions specified in s. 283.15 (4) (a) 1. a. to e., a statement on the effect of the variance, if granted, on the designated use of the water body during the term of the permit;

(e) A brief description of the procedures for the formulation of final determinations, including the 30−day comment period required under sub. (2).

History: 1973 c. 74; 1975 c. 349; 1995 a. 227 s. 866; Stats. 1995 s. 283.39; 2011 a. 32, 167.

283.41 Notice to other government agencies. (1) The department shall promulgate by rule procedures for notifying the U.S. environmental protection agency, the U.S. army corps of engineers, other states potentially affected by the proposed discharge, and any other interested agency or unit of government of any complete application or proposed modification thereof for a permit.

(2) The department shall provide the U.S. environmental protection agency a period of time not to exceed 90 days to submit to the department its written views, recommendations or objections. All other interested government agencies and affected states shall be given 30 days to submit to the department written views or recommendations.

(3) When the department receives an application for a permit for a discharge that would return water transferred from the Great Lakes basin to the source watershed through a stream tributary to one of the Great Lakes, the department shall provide notice of the application to the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream.

History: 1973 c. 74; 1975 c. 349; 1995 a. 227 s. 869; Stats. 1995 s. 283.41; 2007 a. 227.

283.43 Public access to information. (1) (a) The department shall make available to and provide facilities for the public to inspect and copy completed permit application forms, fact sheets, draft permits, or any public document thereon.

(b) The department shall make available to the U.S. environmental protection agency any completed permit application forms, fact sheets, draft permits, or any public comments thereon, and shall also make available any other records, reports, plans or other information obtained by the department under this chapter.

(2) The department shall protect as confidential any information, other than effluent data, contained in permit application forms, or in other records, reports or plans, that is found to be confidential under s. 283.55 (2) (c).

(3) Any information afforded confidential status may be disclosed by the department to the U.S. environmental protection agency or its authorized representative.

History: 1973 c. 74; 1995 a. 227 s. 870; Stats. 1995 s. 283.45.

283.45 Fact sheets. (1) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, except a storm water discharge for which a permit is issued under s. 283.33, the department shall, following public notice, prepare and send to any person who so requests, a fact sheet concerning the application described in the public notice.

(2) The contents of such fact sheets shall be established by the department by rule and shall include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;

(b) A quantitative description of the discharges described in the application;

(c) A statement of the tentative determination to issue or deny the permit application;

(d) If a determination to issue a permit is made, then the following information shall also be included:

1. The proposed effluent limitation for those pollutants proposed to be limited;

2. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations;

3. A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application;

(e) A brief description of the uses for which the receiving waters have been classified, of the applicable water quality standards and effluent standards;

(f) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice.

(3) If the department proposes to include a water quality based effluent limitation in the permit, a fact sheet prepared under this section shall include all of the following:

(a) A description of the calculation used by the department to derive the water quality based effluent limitation.

(b) A discussion of the rationale used by the department to determine whether or not a compliance schedule for the water quality based effluent limitation shall be included in the proposed permit and the rationale used to develop any such schedule. The discussion shall include a description of treatment technologies or control strategies that may be available to the permittee for achieving compliance with the water quality based effluent limitation.

(c) The assumptions and information used by the department to calculate the mixing zone for the discharge.

History: 1973 c. 74; 1987 a. 60; 1993 a. 16; 1995 a. 227 s. 867; Stats. 1995 s. 283.45.

Cross−reference: See also ch. NR 201, Wis. adm. code.

283.47 Requests for information by permittee. When a permit for which a fact sheet is required to be prepared under s. 283.45 is issued, reissued or modified, if the permittee submits, during the public comment period afforded under s. 283.39, to the department a written request for information on the background levels in the receiving water of substances for which a water quality based effluent limitation under s. 283.13 (5) is included in the proposed permit, the department shall, to the extent the information is available, provide to the permittee no later than the time that the permit is issued, reissued or modified such information or list of documents which present such information. Nothing in this section limits rights under ss. 19.31 to 19.37.

History: 1987 a. 60; 1995 a. 227 s. 868; Stats. 1995 s. 283.47.

283.49 Public hearing. (1) (a) The department shall provide an opportunity for the applicant, any affected state, the U.S. environmental protection agency, any interested state or federal agency, person or group of persons to request a public hearing with respect to a permit application. Such request for a public hearing shall be filed with the department within 30 days after the public notice of the complete permit application is provided and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(b) The department shall hold a public hearing on a permit application or a group of applications if requested by the U.S. environmental protection agency, any affected state, on the petition of 5 or more persons or if the department deems that there is a significant public interest in holding such a hearing.

(c) The department shall promulgate by rule procedures for the conduct of public hearings held under this section. Hearings held under this section are not contested cases under s. 227.01 (3).

(2) (a) Public notice of any hearing held under this section shall be provided in accordance with the requirements of s. 283.39 (1) and the public notice shall be considered to be provided on the date specified in s. 283.39 (1m).

(b) The form and content of such public notice shall be established by departmental rule.

History: 1973 c. 74; 1985 a. 182 s. 57; 1995 a. 227 s. 871; Stats. 1995 s. 283.49; 2011 a. 167.

Cross−reference: See also s. NR 203.04, Wis. adm. code.

283.51 Mining hearing. If a hearing on the permit application is conducted as a part of a hearing under s. 293.43, the notice, comment and hearing provisions in that section supersede the notice, comment and hearing provisions of ss. 283.39, 283.41 and 283.49.

History: 1979 c. 221; 1995 a. 227 s. 872; Stats. 1995 s. 283.51.

283.53 Permit duration, modification, revocation and reissuance. (1) No permit issued by the department under s. 283.31 or 283.33 shall have an initial term for more than 5 years. Upon the request of a permit holder, the department may renew the permit for a term of not more than 5 years, subject to sub. (3).

(2) (a) Any permit issued by the department under s. 283.31 or 283.33 may, after an opportunity for hearing, be modified, terminated, or revoked and reissued, in whole or in part, for cause, including but not limited to:

1. Violation of any terms or conditions of the permit;

2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(b) Whenever, on the basis of any information available to it, the department finds that there is cause for modifying, terminating, or revoking and reissuing a permit, in whole or in part, the department shall notify the permittee by certified mail or personal service of its intention to modify, terminate, or revoke and reissue the permit, in whole or in part, except that 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 electronic mail. Such notice 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.

(c) The department shall also notify the U.S. environmental protection agency, the U.S. army corps of engineers, any affected state, any interested agency of this state, and any interested members of the public of its intention to modify, terminate, or revoke and reissue a permit. Such notice shall incorporate the terms of the notice sent to the permittee and shall be provided to members of the public in accordance with s. 283.39 (1), except that 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 is not required to provide notice of the substantial change under s. 283.39 (1) (a). The department shall provide a 14−day period, from the date on which notice is provided under s. 283.39 (1) (d), for written comments on a proposed modification to authorize a substantial change to a nutrient management plan.

(d) The department may hold a public hearing on a proposed permit modification, termination, or revocation and reissuance if the department determines that there is a significant public interest in holding such a hearing or upon the petition of 5 or more persons. The petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted. A petition for a 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).

(e) Public notice of any hearing held under this section shall be provided in accordance with the requirements of pars. (b) and (c).

(f) Hearings held under this section are not contested cases under s. 227.01 (3).

(2d) The department may, with the consent of the permittee, modify a permit issued under s. 283.31 or 283.33 without following the procedures in sub. (2) (b) to (f) in order to do any of the following:

(a) Correct a typographical error.

(b) Require more frequent monitoring or reporting by the permittee.

(c) Change 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.

(d) Reflect 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 to 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.

(e) Change 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.

(f) Eliminate 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.

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

(2h) The department may, with the consent of the permittee, revoke a permit issued under s. 283.31 or 283.33 without following the procedures in sub. (2) (b) to (f).

(2m) The department may, upon request of the permittee, revise or modify a schedule of compliance in an issued permit if it determines that the revision or modification is necessary because of the happening of an event over which the permittee has little or no control. The first revision made under this subsection during the term of a permit need comply only with sub. (2) (c). Subsequent requests shall be subject to sub. (2) (b) to (f).

(3) (a) Any permittee who wishes to continue to discharge after the expiration date of the permittee's permit shall file an application for reissuance of the permit at least 180 days prior to its expiration.

(b) The department shall review each application for reissuance of a permit to ensure that:

1. The permittee is in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expired permit;

2. The department has current information on the permittee's production levels, waste treatment practices, and the nature, volume, content and frequency of the permittee's discharge;

3. The discharge is consistent with applicable effluent limitations and standards, water quality standards and any other legally applicable requirements, including any additions to, or revisions or modifications of such effluent limitations and standards, water quality standards, or other legally applicable requirements made during the term of the permit.

(c) If, after such review, the department finds that the requirements of par. (b) have not been met, the department shall not reissue such a permit.

(d) The department shall adhere to the notice and public participation procedures specified in ss. 283.39 to 283.49 in connection with each request for reissuance of a permit.

(e) Notwithstanding any other provisions of this section, any new source the construction of which is commenced after October 18, 1972, and which is so constructed to meet all standards of performance adopted under s. 283.19 shall not be subject to any more stringent standard of performance during either the 10−year period beginning on the date of completion of such construction or the period of depreciation or amortization of such facility for the purposes of section 167 or 169 of the internal revenue code, whichever period ends first.

(f) For the purposes of s. 283.63, denial of any application for the reissuance of a permit shall be treated as a denial of an application for a permit.

History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53; 2011 a. 167.

Timely review under s. 147.20 [now s. 283.63] of a modified permit does not reopen for consideration those unmodified portions of the permit for which the review period has expired. Village of Theinsville v. DNR, 130 Wis. 2d 276, 386 N.W.2d 519 (Ct. App. 1986).

283.55 Monitoring and reporting; access to premises.

(1) MONITORING AND REPORTING REQUIREMENTS. Every owner or operator of a point source who is required to obtain a permit issued under s. 283.31 shall do all of the following:

(a) Establish and maintain records of the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control.

(b) Make regular reports to the department on the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control.

(c) Install, use and maintain such monitoring equipment or methods, including where appropriate, biological monitoring methods, as are necessary to determine the volume of effluent discharged and to identify and determine the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control.

(d) Sample the effluents discharged from each point source under the owner's or operator's ownership or control in accordance with such methods, at such locations and in such manner as the department shall by rule prescribe.

(dm) Report any unscheduled discharge of untreated sewage or other wastewater to the department orally within 24 hours of the discharge and in writing within 5 days after the discharge.

(e) Provide such other information as the department finds is necessary to identify the type and quantity of any pollutants discharged from the point source.

(1m) REPORTS TO WATER UTILITIES. The department shall determine, after consultation with the owner or operator of the point source, whether to notify a public utility, as defined in s. 196.01 (5), that furnishes water to the public about a discharge reported under sub. (1) (dm) that may affect the public utility. The department shall base the determination on the public health risk caused by the discharge.

(2) ACCESS TO MONITORING EQUIPMENT AND RECORDS. (a) Any duly authorized officer, employee or representative of the department shall have right to enter upon or through any premises in which an effluent source that is required to be covered by a permit issued under s. 283.31 is located or in which any records required to be maintained by this section are located, and may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required by this section, and sample any effluents which the owner and operator of such source is required to sample under this section.

(b) No person shall refuse entry or access to any authorized representative of the department who requests entry under this subsection, and who presents appropriate credentials nor shall any person obstruct, hamper or interfere with any such inspection.

(c) Any records or other information furnished to or obtained by the department in the administration of this chapter, including effluent data, shall be a public record as provided in subch. II of ch. 19. Any records or other information, except effluent data, provided to the department may be treated as confidential upon a showing to the secretary that said records or information is entitled to protection as a trade secret as defined in s. 134.90 (1) (c). Noth-

ing herein shall prevent the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if such analyses or summaries do not identify a specific owner or operator.

(3) CONSTRUCTION OF LAW. Subsection (1) shall be construed so as not to require actions unnecessarily redundant with s. 299.15. When a publicly owned treatment facility is required under state or federal law to monitor discharges into its system, records of such monitoring provided to the department, if substantially in compliance with the requirements of this section, shall serve in the place of the monitoring which would ordinarily be required of a person discharging into such system. Nothing in this section shall be construed to affect the validity of s. 299.15, nor shall that section be construed to limit the application of this section.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26; 1985 a. 236; 1993 a. 16, 482; 1995 a. 227 s. 865; Stats. 1995 s. 283.55; 1999 a. 85.

Cross−reference: See also chs. NR 210, 211, 218, and 219, Wis. adm. code.

283.57 Waste treatment service charges. No permit shall be issued to any publicly owned treatment works any part of which was constructed with the aid of federal grants made after March 1, 1973, unless it has adopted or will adopt a system of charges to assure that:

(1) Each recipient of waste treatment services shall pay its proportionate share of the cost of operation and maintenance, including replacement, of any waste treatment services provided by such treatment works;

(2) Each industrial user of the treatment works shall pay that portion of the cost of construction of the treatment works paid by the federal government allocable to the treatment of its industrial waste.

History: 1973 c. 74; 1995 a. 227 s. 874; Stats. 1995 s. 283.57.

283.59 Reporting of new discharges. (1) Any permittee discharging pollutants into the waters of the state shall report to the department any facility expansion, production increases, or process modifications which result in new or increased discharges of pollutants exceeding the terms of the permit. Such report shall be by submission of a new permit application or, if the new or increased discharge does not violate the effluent limitations specified in the permit, by submission of notice to the department of the nature of such new or increased discharge. The form and content of such notice shall be prescribed by departmental rule.

(2) Any person discharging, or intending to begin discharging, into a publicly owned treatment works who is or will become subject to the discharge reporting requirements of s. 283.37 (4), shall give notice to the department and the owner or operator of such works the following:

(a) Any introduction of pollutants into such treatment works from any new source; or

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

(3) The owner or operator of a publicly owned treatment works receiving a notice under sub. (2) is subject to sub. (1), and shall also include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such pollutants on the quantity or quality of effluent to be discharged from such works.

(4) Notice of a new or increased discharge submitted to the department under this section shall be given at least 180 days prior to the date such new or increased discharge shall commence. The department, through the department of justice as provided under s. 283.89, may enforce violations of this section directly against persons subject to s. 283.37 (4).

History: 1973 c. 74; 1995 a. 227 s. 873; Stats. 1995 s. 283.59.

283.60 Waiver for certain nutrient management research projects. (1) The department may waive compliance with any requirement of this chapter or of a permit issued under this chapter for a research project for the purpose of evaluating advanced agricultural nutrient management tools and precision agricultural technology, if all of the following conditions are met:

(a) The department determines that the project is unlikely to have a negative impact on, or to threaten, the environment or public health.

(b) The department reviews and approves the project before the project begins.

(c) The person who will operate the project agrees to take necessary actions to maintain compliance with surface water and groundwater requirements under ch. 281 and this chapter, other than a requirement waived under this section, and to take necessary actions to regain compliance with those requirements if a violation occurs in the course of the project.

(2) A person seeking a waiver under sub. (1) shall apply to the department in writing. The department shall approve or deny an application in writing no more than 45 days after receiving a complete application. The department may approve an application with conditions, including requirements for reporting project activities to the department and limitations on the duration of the project or the waiver for the project.

(3) A project for which the department grants a waiver under sub. (1) is an agricultural practice for the purposes of s. 823.08.

History: 2011 a. 32, 188.

283.61 Exemption for certain alcohol fuel production systems. (1) DEFINITIONS. As used in this section:

(a) "Distillate waste product" has the meaning designated under s. 289.44 (1) (a).

(b) "Environmentally sound storage facility" has the meaning designated under s. 289.44 (1) (b).

(c) "Private alcohol fuel production system" has the meaning designated under s. 289.44 (1) (c).

(2) EXEMPTION. No permit is required under this chapter for the owner of a private alcohol fuel production system to discharge or dispose of any distillate waste product if the waste product is stored in an environmentally sound storage facility and disposed of using an environmentally safe land spreading technique and the discharge or disposal is confined to the property of the owner.

History: 1979 c. 221; 1995 a. 227 s. 848; Stats. 1995 s. 283.61.

283.62 Exemption for certain fruit and vegetable washing facilities. (1) DEFINITIONS. As used in this section:

(b) "Washing station" means a facility where fruits or vegetables are washed or cleaned after harvesting and before further processing.

(c) "Wash water" means water that has been used at a washing station to wash or clean fruits or vegetables and that may contain dirt or other substances removed from the fruits or vegetables during the washing process or biodegradable additives used during the washing process.

(d) "Wash water storage facility" means a facility, including a settling pond or lagoon, that is used to store wash water.

(2) EXEMPTION. The owner of a washing station may discharge or dispose of wash water, and may land spread or compost plant parts separated from the wash water, without a permit under this chapter if all of the following requirements are met:

(a) The washing station is not adjacent to or operated as part of a food processing plant, as defined in s. 97.29 (1) (h).

(b) All wash water is either stored in a sealed wash water storage facility or is dispersed on land owned or leased by the owner of the washing station in a manner which avoids ponding, runoff and nuisance conditions and in accordance with acceptable agricultural practices or acceptable practices for the land spreading of waste.

(c) All plant parts that are separated from the wash water are either composted or stored in a plant parts storage facility and dis-

posed of using an environmentally safe land spreading technique. The disposal or composting must be confined to property owned or leased by the owner of the washing station.

(d) For a washing station that anticipates operating at least 100 days per year or that operated at least 100 days during the immediately preceding year, do all of the following:

1. Register annually with the department as a washing station.

2. Submit annually an operating plan that implements best management practices and that is approved by the department.

3. Operate only in accordance with the approved operating plan.

History: 1995 a. 99; 1995 a. 227 s. 849; Stats. 1995 s. 283.62.

283.63 Review of permits, decisions, terms and conditions. (1) Any permit applicant, permittee, affected state or 5 or more persons may secure a review by the department of any permit denial, modification, termination, or revocation and reissuance, the reasonableness of or necessity for any term or condition of any issued, reissued or modified permit, any proposed thermal effluent limitation established under s. 283.17 or any water quality based effluent limitation established under s. 283.13 (5). Such review shall be accomplished in the following manner:

(a) A verified petition shall be filed with the secretary setting forth specifically the issue sought to be reviewed by the department. Such petition must be filed within 60 days after notice of any action which is reviewable under this section is issued by the department. The petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted. Upon receipt of such petitions, the department shall provide a notice of public hearing in accordance with the requirements of s. 283.39 (1) at least 10 days prior to holding a public hearing thereon. The public notice shall be considered to be provided on the date specified in s. 283.39 (1m).

(am) After a verified petition for review is filed and until the last day for seeking review of the department's decision or a later date fixed by order of the reviewing court, any term or condition, thermal effluent limitation or water quality based effluent limitation which is the subject of the petition is not effective. All other provisions of the permit continue in effect except those for which an application for a variance has been submitted under s. 283.15 or 283.16. For those provisions for which a petition for review has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

(b) The department shall hold a public hearing at the time and place designated in the notice of hearing. At the beginning of each such hearing the petitioner shall present evidence to the department which is in support of the allegation made in the petition. All interested persons or their representative shall be afforded an opportunity to present facts, views or arguments relevant to the issues raised by the petitioners, and cross−examination shall be allowed. The department shall consider anew all matters concerning the permit denial, modification, termination, or revocation and reissuance. No person may be required to appear by attorney at any hearing under this section.

(c) Any duly authorized representative of the department may administer oaths or affirmations, compel the attendance of witnesses and the production of information by subpoena and continue or postpone the hearing to such time and place as the department determines.

(d) The department shall issue its decision on the issues raised by the petitioner within 90 days after the close of the hearing.

(2) The decisions of the department issued under this section shall be subject to judicial review as provided in ss. 227.52 to 227.58.

(3) Subsections (1) and (2) do not apply if a hearing on the permit application is conducted as a part of a hearing under s. 293.43.

(4) Subsections (1) and (2) do not apply to the modification of a permit which implements a decision under s. 283.15 or 283.16 or the denial of a request for a variance under s. 283.15 or 283.16. A proceeding under subs. (1) and (2) shall not be delayed pending completion of the review of a variance request under s. 283.15 or 283.16.

(5) Rules promulgated under s. 281.15 may not be reviewed under this section. The application of rules promulgated under s. 281.15 may be reviewed under this section.

History: 1973 c. 74; 1979 c. 110, 221; 1985 a. 182 s. 57; 1987 a. 27, 60; 1995 a. 227 s. 875; Stats. 1995 s. 283.63; 2011 a. 167; 2013 a. 378.

The judicial review procedure under this section, in conjunction with s. 227.05, 1983 stats [now s. 227.40], is exclusive. Sewerage Commission of Milwaukee v. DNR, 102 Wis. 2d 613, 307 N.W.2d 189 (1981).

Timely review under s. 147.20 [now s. 283.63] of a modified permit does not reopen for consideration those unmodified portions of the permit for which the review period has expired. Village of Theinsville v. DNR, 130 Wis. 2d 276, 386 N.W.2d 519 (Ct. App. 1986).

This section does not require DNR to hold a public hearing on a petition for review when the premise of the petition is that the permit fails to comply with basic requirements of the federal Clean Water Act and federal regulations promulgated thereunder. By approving the WPDES permit program and by failing to object to the permit, the EPA effectively determined that the permit complies with federal regulations. Requiring DNR to subsequently determine whether the permit complies with those same federal regulations would be to empower DNR to undercut the EPA's determination. Andersen v. Department of Natural Resources, 2011 WI 19, 332 Wis. 2d 41, 796 N.W.2d 1, 08−3235.

Sewerage Commission of Milwaukee explicitly held that the commission's failure to follow the procedure set forth in this section precluded a later challenge under ch. 227, because this section is the exclusive method of administrative and judicial review of the DNR's action. Because the contested case procedure to challenge a pollution discharge elimination system permit is exclusive, it follows that no other procedure, whether a rule challenge, a declaratory judgment, or as here, a premature judicial review petition, can circumvent it. Clean Water Action Council of Northeast Wisconsin v. Department of Natural Resources, 2014 WI App 61, ___ Wis. 2d ___, ___ N.W.2d ___, 13−2112.

SUBCHAPTER V

GENERAL PROVISIONS; ENFORCEMENT

283.81 Waiver. The department may waive compliance with any requirement of this chapter or shorten the time periods under this chapter to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

History: 1983 a. 410; 1995 a. 227 s. 850; Stats. 1995 s. 283.81.

283.82 Land application of sewage sludge. (1) The department shall oversee, set technical standards for, and regulate the application of sewage sludge to land.

(2) No city, village, town, or county may prohibit, through zoning or any other means, the application of sewage sludge to land if that application complies with this section and rules promulgated under this section.

(3) A city, village, town, or county may regulate the application of sewage sludge to land if the regulation is identical to regulations of the department under sub. (1).

History: 2005 a. 347.

283.83 Continuing planning process. (1) The department shall establish a continuing water pollution control planning process which is consistent with applicable state requirements. The continuing planning process shall result in plans for all waters of the state, which plans shall include:

(a) Adequate effluent limitations and schedules of compliance;

(b) The incorporation of all elements of any applicable areawide waste management plans, basin plans and statewide land use plans;

(c) Total maximum daily load for pollutants;

(d) Procedures for revision;

(e) Procedures for intergovernmental cooperation;

(f) Implementation procedures, including schedules of compliance, for revised or new water quality standards;

(g) Controls over the disposition of all residual waste from any water treatment processing;

(h) An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet applicable requirements.

(2) When the department receives for review or prepares a new plan under sub. (1) or a revision to a plan under sub. (1) that includes a proposal to return water transferred from the Great Lakes basin to the source watershed through a stream tributary to one of the Great Lakes, the department shall provide notice of the plan or revision to the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream.

History: 1973 c. 74; 1995 a. 227 s. 878; Stats. 1995 s. 283.83; 2007 a. 227.

Cross−reference: See also chs. NR 121 and 212, Wis. adm. code.

283.84 Trading of water pollution credits. (1) The department shall administer a program for the trading of water pollution credits that is consistent with the federal Water Pollution Control Act, 33 USC 1251 to 1387. Subject to sub. (1m), under the program the department may authorize a person required to obtain a permit to increase the discharge of pollutants above levels that would otherwise be authorized in the permit if the person does one of the following:

(a) Reaches a binding, written agreement with another person who is required to obtain a permit under which the other person agrees to reduce the discharge of pollutants below the levels that would otherwise be authorized in the other person's permit.

(b) Reaches a binding, written agreement with another person who is not required to obtain a permit under which the other person agrees to reduce the amount of water pollution that it causes below the levels of water pollution that it causes when the agreement is reached.

(c) Reaches a binding, written agreement with the department or a local governmental unit, as defined in s. 16.97 (7), under which the person pays money to the department or local governmental unit and the department or local governmental unit uses the money to reduce water pollution or to provide cost−sharing, for the purposes of s. 281.16 (3) (e) or (4), for projects to reduce water pollution.

(d) Reaches a binding, written agreement with the department under which the person reduces the discharge of pollutants under another permit that the person holds below the levels that would otherwise be authorized in the other permit.

(e) Reaches a binding, written agreement with the department under which the person constructs a project or implements a plan that results in reducing the amount of water pollution from sources other than the source covered by the permit.

(1m) Under the program, the department may authorize a person to increase a discharge of pollutants above levels that would otherwise be authorized in the permit only if all of the following apply:

(a) The agreement under sub. (1) results in an improvement in water quality.

(b) The increase in pollutants and the reduction in pollutants provided for in the agreement under sub. (1) involve the same pollutant or the same water quality standard.

(d) The increase in pollutants and the reduction in pollutants occur within the same basin or portion of a basin, as determined by the department.

(3m) A person engaged in mining, as defined in s. 293.01 (9) or 295.41 (26), prospecting, as defined in s. 293.01 (18), bulk sampling, as defined in s. 295.41 (7), or nonmetallic mining, as defined in s. 295.11 (3), may not enter into an agreement under sub. (1).

(3r) The department shall include terms and conditions related to agreements under sub. (1) in new and reissued permits.

(4) The department shall modify the permits of persons entering into agreements under sub. (1) to enable the agreements to be implemented and to include terms and conditions related to the agreements.

(6) The department may promulgate rules for the administration of this section.

History: 1997 a. 27; 2001 a. 16; 2003 a. 33; 2011 a. 151; 2013 a. 1.

283.85 Design of publicly owned treatment facilities. (1) The department shall encourage the design of publicly owned treatment works which provide for:

(a) The recycling of sewage pollutants by using them in agriculture, silviculture or aquaculture;

(b) The confined and contained disposal of those pollutants not recycled;

(c) The reclamation of wastewater;

(d) The ultimate disposal of sludge in a manner not resulting in environmental hazards; and

(e) The integration of facilities for sewage disposal with other facilities designed to dispose of solid waste and thermal pollution, for the purpose of producing revenues in excess of cost in the operation of the integrated facility.

(2) All plans submitted under s. 281.41 after July 22, 1973, for new treatment works, or modifications of treatment works, which will be eligible for construction grants or loans under s. 281.55 or 281.57 or under ss. 281.58 and 281.59, shall contain:

(a) Adequate analysis and data establishing that the works or modification is the most cost efficient method of meeting limitations and standards required of the facility; and

(b) A feasibility plan on using ultimate disposal of pollutants to land rather than to air or the waters of the state.

History: 1973 c. 74; 1979 c. 34 s. 2102 (39) (d); 1987 a. 399; 1989 a. 366; 1995 a. 227 s. 879; Stats. 1995 s. 283.85.

283.87 Liability for water pollution. (1) DEPARTMENT MAY RECOVER COSTS. In an action against any person who violates this chapter or any provision of s. 29.601 or chs. 30, 31, 281, 285 or 289 to 299 relating to water quality the department may recover the cost of removing, terminating or remedying the adverse effects upon the water environment resulting from the unlawful discharge or deposit of pollutants into the waters of the state, including the cost of replacing fish or other wildlife destroyed by the discharge or deposit. All moneys recovered under this section shall be deposited into the environmental fund.

(2) ADVERSE EFFECTS. The department may introduce evidence of the environmental pollution that resulted from the unlawful discharge or deposit and evidence of the potential of the water environment for public use if the unlawful discharge or deposit had not occurred in order to assist the court in determining the adverse effects upon the water environment resulting from the unlawful discharge or deposit and in determining the amount of liability under sub. (1).

(3) ADMINISTRATION OF AWARD. The court shall administer an award made under this section. An award made under this section may be used to remove, terminate or remedy the adverse effects of the discharge or deposit, to restore or develop the water environment for public use or to provide grants to municipalities consistent with any court order.

(4) AIDS TO MUNICIPALITIES; ENVIRONMENTAL DAMAGE COMPENSATION. The department may make grants to any county, city, village or town for the acquisition or development of recreational lands and facilities from moneys appropriated under s. 20.370 (2) (dv). Use and administration of the grant shall be consistent with any court order issued under sub. (3). A county, city, village or town which receives a grant under this section is not required to share in the cost of a project under this section.

History: 1973 c. 74; 1979 c. 221; 1995 a. 27; 1997 a. 248; 1999 a. 150 s. 375; 2005 a. 347.

Note: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

283.89 Enforcement. (1) Except as provided in sub. (2m), whenever on the basis of any information available to it the depart-

ment finds that any person is violating this chapter, any rule adopted thereunder or any term or condition of any permit issued pursuant to this chapter, including general permits issued under s. 283.35, the department shall refer the matter to the department of justice for enforcement under s. 283.91.

(2) The department of justice shall initiate the legal action requested by the department under sub. (1). In any action commenced by it under this subsection, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice shall not enter into a final disposition different than that previously discussed without first informing the department.

(2m) If the department finds a violation of s. 283.33 (1) to (8) for which a person is subject to a forfeiture under s. 283.91 (2), the department may issue a citation and, if the department does issue a citation, the procedures in ss. 23.50 to 23.99 apply.

(3) In any criminal action commenced under s. 283.91, the department of justice may request the assistance of the district attorney of any county in which the violation occurred, and the district attorney shall provide the requested assistance.

(4) Any civil action on a violation shall be commenced in the circuit court for the county in which the violation occurred in whole or in part, unless all the parties consent to the commencement of the action in the circuit court for Dane County. Any criminal action on a violation shall be commenced in the circuit court for the county in which the violation occurred.

History: 1973 c. 74; 1979 c. 34; 1993 a. 16; 1995 a. 227 s. 881; Stats. 1995 s. 283.89; 1997 a. 193; 2001 a. 16.

283.91 Civil and criminal remedies. (1) The department of justice, upon a referral pursuant to s. 283.89, may initiate a civil action for a temporary or permanent injunction for any violation of this chapter or any rule promulgated thereunder or of a term or condition of any permit issued under this chapter.

(2) Any person who violates this chapter, any rule promulgated under this chapter, any term or condition of a permit issued under this chapter, or any rule promulgated or order issued under s. 200.45 (1) or (2) shall forfeit not less than $10 nor more than $10,000 for each day of violation, except that the minimum forfeiture does not apply if the point source at which the violation occurred is an animal feeding operation.

(3) Any person who willfully or negligently violates this chapter, any rule promulgated under this chapter or any term or condition of a permit issued under this chapter shall be fined not less than $10 nor more than $25,000 per day of violation, or imprisoned for not more than 6 months or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, the person shall be fined not less than $10 nor more than $50,000 per day of violation, or imprisoned for not more than one year in the county jail or both. The minimum forfeiture does not apply if the point source at which the violation occurred is an animal feeding operation. In determining the amount of the fine under this subsection, the court shall assess an amount which represents an actual and substantial economic deterrent to the action which was the basis of the conviction.

(4) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall be fined not less than $10 nor more than $10,000 or imprisoned for not more than 6 months or both.

(5) In addition to all other civil and criminal penalties prescribed under this chapter, the court may assess as an additional penalty a portion or all of the costs of the investigation, including monitoring, which led to the establishment of the violation. The court may award the department of justice the reasonable and necessary expenses of the prosecution, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

(6) For the purposes of subs. (3) and (4), the term "person" means in addition to the definition under s. 283.01 (11), any responsible corporate officer.

History: 1973 c. 74; 1983 a. 189 s. 329 (16); 1987 a. 157; 1989 a. 337; 1995 a. 27; 1995 a. 227 s. 876; Stats. 1995 s. 283.91; 1999 a. 150 s. 672; 2001 a. 109; 2003 a. 309.

283.93 Environmental pollution. Regulatory actions taken by the department to eliminate or control environmental pollution shall be exempt from the provisions of s. 1.11, other than:

(1) Involvement in federal financial assistance grants for the construction of publicly owned treatment works;

(2) Financial assistance under s. 281.55 or 281.57 or under ss. 281.58 and 281.59; and

(3) Issuance of permits or approvals for new sources of environmental pollution.

History: 1973 c. 74; 1979 c. 34 s. 2102 (39) (d); 1987 a. 399; 1989 a. 366; 1995 a. 227 s. 882; Stats. 1995 s. 283.93.

283.95 Savings clause. Except as provided in this chapter, nothing in this chapter shall be deemed to supersede any other statute or session law.

History: 1973 c. 74; 1995 a. 227 s. 880; Stats. 1995 s. 283.95.