

Chapter NR 216

STORM WATER DISCHARGE PERMITS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., [Register, August, 1997, No. 500](#). Chapter NR 216 as it existed on July 31, 2004 was repealed and a new chapter NR 216 was created [Register July 2004 No. 583](#), effective August 1, 2004.

NR 216.001 Purpose. The purpose of this chapter is to establish criteria defining those storm water discharges needing WPDES storm water permits, as required by s. 283.33, Stats., and to implement the appropriate performance standards of subchs. III and IV of ch. NR 151. The goal of this chapter is to minimize the discharge of pollutants carried by storm water runoff from certain industrial facilities, construction sites and municipal separate storm sewer systems as identified in this chapter.

History: CR 03-028; cr. [Register July 2004 No. 583](#), eff. 8-1-04.

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

Note: Additional definitions may be found in s. NR 205.03.

(1m) “Benchmark” means a minimum numeric or narrative level of pollution control required to demonstrate progress toward a required level of pollution control.

(1r) “Best management practices” or “BMPs” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

(2) “Construction site” means an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan such that the total disturbed area is one acre or more. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.

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

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

(5) “Discharge” has the meaning given it in s. 283.01 (4), Stats.

(6) “Discharge of pollutant” or “discharge of pollutants” has the meaning given it in s. 283.01 (5), Stats.

(7) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

(7m) “Exceptional resource water” or “ERW” means waters designated under s. NR 102.11.

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

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

(10) “Great Lakes areas of concern” means geographic areas that are severely degraded within the Great Lakes basin that include areas within the lower Fox river and Green Bay, Menominee river, Sheboygan river, St. Louis river and bay and the Milwaukee estuary.

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

irrigation, individual residential car washing, fire fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.

Note: A discharge listed in the definition above may be regulated on a case-by-case basis under s. NR 216.07 (3) (b) or s. 283.31, Stats., if the MS4 permittee, municipality, or the department identifies it as a significant source of a pollutant to waters of the state.

(12) “Impaired water” means a waterbody impaired in whole or in part and listed by the department pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7, for not meeting a water quality standard, including a water quality standard for a specific substance or the waterbody’s designated use.

(12m) “Individual permit” means a permit for the discharge of pollutants by an individual or group issued by the department under s. 283.33, Stats.

(13) “Infiltration system” means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

(14) “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in storm water runoff and lead to increased soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

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

(16) “Major outfall” means a municipal separate storm sewer system outfall that meets one of the following criteria:

(a) A single pipe with an inside diameter of 36 inches or more, or from an equivalent conveyance (cross sectional area of 1,018 inch²) which is associated with a drainage area of more than 50 acres.

(b) A municipal separate storm sewer system that receives storm water runoff from lands zoned for industrial activity that is associated with a drainage area of more than 2 acres or from other lands with 2 or more acres of industrial activity, but not land zoned for industrial activity that does not have any industrial activity present is not classified as a major outfall under this paragraph.

(17) “Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

(a) Owned or operated by a municipality.

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

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

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

(18) “Municipality” means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect,

treat or dispose of sewage, industrial wastes, storm water or other wastes.

(18m) “Notice of intent” or “NOI” means an application for coverage under a WPDES permit. Except as otherwise provided in this chapter, NOI and application mean the same thing.

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

(19m) “Outstanding resource water” or “ORW” means waters designated under s. NR 102.10.

(20) “Permittee” means a person who has applied for and received WPDES permit coverage for storm water discharge under this chapter.

(21) “Person” means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

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

(23) “Pollutant” has the meaning given it in s. 283.01 (13), Stats.

(23m) “Pollutant of concern” means a pollutant that has been identified as contributing to a water quality impairment of an impaired water.

(24) “Pollution” has the meaning given it in s. 283.01 (14), Stats.

(25) “Pollution prevention” means taking measures to eliminate or reduce pollution.

(25m) “Receiving water” means the portion of a surface water that will be affected by an existing, proposed new, or increased discharge. Receiving water includes downstream surface waters that are affected by the discharge.

(26) “Section 313 water priority chemical” means a chemical or chemical category which is all of the following:

(a) Listed at 40 CFR 372.65 pursuant to 42 USC 11023.

(b) Present at or above threshold levels at a facility subject to EPCRA s. 313 reporting requirements.

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

(27) “Sediment” means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

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

(29) “Significant contributor” means a person who discharges to waters of the state pollutants that contribute to or have the reasonable potential to contribute to an exceedence of a water quality standard.

(30) “Significant materials” means materials related to industrial activity that may contaminate storm water, including: raw materials; fuels; materials such as solvents, detergents and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under 42 USC 9601 to 9675; any chemical the facility is required to report pursuant to 42 USC 11023; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

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

(31) “Source area controls” means best management practices intended to prevent storm water runoff from contacting materials that can potentially contaminate it or if contact occurs, to reduce pollutants at the source of contamination.

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

(33) “Storm water” means runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

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

(35) “SWPPP” means storm water pollution prevention plan.

(36) “TMDL” has the meaning given it in 40 CFR 130.2(i).

(36m) “TMDL implementation plan” means a list of specific and identifiable steps and actions a permittee intends to undertake and complete to meet a TMDL wasteload allocation.

(36r) “Total Suspended Solids” or “TSS” means settleable solid material that is transported by runoff or suspended within runoff.

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

(38) “Urbanized area” means a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people, as determined by the U.S. bureau of the census based on the latest decennial federal census.

(39) “Urban storm water planning area” means the boundary defined by a municipality that serves as the appropriate planning area for the abatement of storm water runoff pollution into waters of the state.

(39g) “US EPA” means the United States environmental protection agency.

(39r) “Wasteload allocation” means the allocation resulting from the process of distributing or apportioning the total maximum load to each individual point source discharge.

(40) “Waters of the state” has the meaning given it in s. 283.01 (20), Stats.

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

(42) “WPDES permit” means a Wisconsin pollutant discharge elimination system permit issued pursuant to ch. 283, Stats.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: cr. (1m), (7m), (12m), (18m), (19m), (23m), (25m), (36m), (37m), (39g), (39r) Register March 2022 No. 795, eff. 4-1-22; (1), (37m) renum. to (1r), (36r) under 13.92 (4) (b) 1., Stats., Register March 2022 No. 795.

NR 216.003 General permits. (1) CONDITIONS AND DURATION. In addition to the terms and conditions listed under this chapter, if the department issues a storm water discharge general permit, it may in the permit require compliance with the terms and conditions identified in s. NR 205.08. The term of the permit shall be at least 2 years but no longer than 5 years in duration.

Note: A maximum time period of 5 years is allowed under federal law.

(2) **LIMITED COVERAGE OF GENERAL PERMITS.** Under s. 283.35, Stats., the department may issue a general permit that applies only to certain classes or categories of storm water discharges, or only to storm water discharges located in a designated area of the state, or both. Any limitation of the coverage of a general storm water discharge permit shall be stated in the permit.

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When the department receives a notice of intent or application for general permit coverage, it shall determine whether the discharge is for a class or category of storm water discharge that is covered by a general permit and is located within an area of the state to which the general permit applies. If the discharge is for a class or category that requires permit coverage but is not covered by a general permit or is for a discharge located outside of the area to which a general permit applies, the department shall treat the notice of intent or application as an application for an individual WPDES permit, and the landowner shall obtain an individual WPDES permit under this chapter for the discharge.

(3) **COVERAGE UNDER SUBSEQUENT PERMIT.** Unless notified otherwise by the department, general permittees covered under subchs. II and III shall remain covered under an expired general permit or conveyed coverage under a reissued general permit as described under s. NR 205.08 (9) (a).

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (1), cr. (3) Register March 2022 No. 795, eff. 4-1-22.

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

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

(3) The permittee shall immediately notify the department in accordance with ch. NR 706, in the event that a spill or accidental release of any hazardous material or substance results in the discharge of pollutants to waters of the state or creates a condition that may contaminate storm water discharged to waters of the state. The department shall be notified via the 24-hour toll-free spill hotline.

Note: The department’s 24-hour toll-free spill hotline is 1-800-943-0003.

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

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.005 Long-term storm water maintenance requirements. The long-term storm water management practices installed by the landowner in accordance with a storm water management plan shall be maintained in accordance with the long-term maintenance agreement submitted to the department pursuant to s. NR 216.47 (5).

Note: Pursuant to the requirements to maintain the long-term storm water management practices in accordance with ss. NR 151.12 to 151.128 and 151.24 to 151.249, the department may take enforcement action under this section and s. 281.98, Stats., against a land owner for not maintaining long-term storm water management practices.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.006 Electronic reporting of information. (1) The department shall provide an electronic reporting system to receive information from WPDES permit applicants and WPDES permittees as required in subchs. I to III. The electronic reporting system shall comply with s. Adm 12.05 and include electronically fillable forms developed by the department.

(2) Persons applying for permit coverage under ss. NR 216.03, 216.22, and 216.43 shall submit a notice of intent to discharge under a general WPDES permit or an application for cov-

erage under a WPDES permit via the system created under sub. (1) unless granted a waiver under sub. (6) or (7).

(3) Persons applying for a no exposure certification under s. NR 216.21 (3) shall submit the information required under s. NR 216.21 (3) (b) 3. via the system created under sub. (1) unless granted a waiver under sub. (6) or (7).

(4) The department may require permittees to utilize the system created under sub. (1) to submit documents and forms required under subchs. I to III as needed to comply with s. 283.43 (1) (b), Stats., unless granted a waiver under sub. (6) or (7).

(5) The department may include terms and conditions in WPDES permits issued under this chapter to require permittees to utilize the system created under sub. (1) to submit documents and forms required by the permit to the department as needed to comply with s. 283.43 (1) (b), Stats., unless granted a waiver under sub. (6) or (7).

(6) The department may establish an episodic waiver from electronic reporting requirements for an owner, operator, or authorized representative of the regulated facility or entity in an area affected by a large-scale emergency, natural disaster, or during electronic reporting system outages lasting more than 96 hours. The department shall notify eligible parties and identify a period of up to 60 days for which the episodic waiver is in effect. The notification shall also identify whether delayed electronic submittals are allowed, if paper submittals are required, and a mailing address for paper submittals to be sent, if applicable.

(7) Any owner, operator, or authorized representative of the regulated facility or entity required to submit information electronically under subs. (2) to (5) may apply for a temporary or permanent waiver from electronic reporting through the following process:

(a) To apply for an electronic reporting waiver, the owner, operator, or authorized representative of the regulated facility or entity shall submit all of the following information in writing via certified or registered mail to the department of natural resources storm water program at WT/3, PO Box 7921, Madison, WI 53707-7921:

1. Name and contact information for the person requesting the waiver.
2. Facility or site name.
3. WPDES permit number, if applicable or the type of submittal the applicant is requesting a waiver for.
4. Facility or site address.
5. Brief statement regarding the basis for claiming a waiver.
6. Any other information required by the department.
7. Signature of the landowner, operator, or authorized representative.

(b) Within 14 business days of receipt of a complete request for a waiver, the department shall determine whether to grant a temporary or permanent waiver and provide notice of the determination to the owner, operator, or authorized representative submitting the waiver request. If the waiver is granted, the department's notice shall include all applicable forms, identify the mailing address for the submission of the information under subs. (2) to (4) and identify which submittals shall be sent via registered or certified mail. In determining whether to grant the waiver, the department shall consider all of the following:

1. For temporary waivers effective for up to 5 years, whether mandatory electronic reporting is technically infeasible due to lack of sufficient broadband availability or will otherwise be unduly burdensome or costly.
2. For permanent waivers, whether mandatory electronic reporting is an infringement of religious practices, such as for a facility owned or operated by members of religious communities that choose not to use computers, electricity, or internet services.

porting is an infringement of religious practices, such as for a facility owned or operated by members of religious communities that choose not to use computers, electricity, or internet services.

(8) Approved waivers under subs. (6) and (7) are not transferable.

History: CR 21-027: cr. Register March 2022 No. 795, eff. 4-1-22; correction in (2) made under s. 35.17, Stats., Register March 2022 No. 795.

NR 216.007 Water quality standards. The department, in individual and general WPDES permits issued under subchs. I to III, shall specify the terms and conditions under which storm water may be discharged to waters of the state for the purpose of achieving and implementing water quality standards contained in chs. NR 102 to 105, 140, and 207. The department, in individual and general permits issued under subchs. I to III, shall include an expression of the applicable wasteload allocation consistent with the assumptions and requirements laid out in the TMDL.

History: CR 21-027: cr. Register March 2022 No. 795, eff. 4-1-22.

NR 216.008 Antidegradation review. (1) **PURPOSE.** The purpose of this section is to establish the implementation procedures for the application of the antidegradation policy under s. NR 102.045 to storm water discharges regulated under ch. 283, Stats.

(2) **APPLICABILITY.** (a) This section establishes antidegradation requirements applicable to any person proposing to increase an existing storm water discharge or create a new storm water discharge to the surface waters of the state, at the time of any of the following after July 1, 2026:

1. Submittal of an application for an individual WPDES permit issuance, reissuance, or modification.
2. Departmental notice of intent under sub. (6) to issue, reissue, or modify a WPDES general permit.

(b) An antidegradation demonstration under this section is not required for a temporary discharge or for a water quality trade that results in an overall net reduction to the receiving water of the pollutant being traded.

Note: Examples of a temporary discharge, as defined under sub. (3) (k), include dewatering activities or maintenance of existing post-construction storm water treatment practices.

(3) **DEFINITIONS.** In this section:

- (a) "Designated use" has the meaning established under s. NR 102.03 (1L).
- (b) "Existing use" has the meaning established under s. NR 102.03 (1p).
- (c) "Great Lakes system" has the meaning established under s. NR 102.03 (1pr).

(d) 1. "Increased discharge" means an actual or proposed change in the area or site conditions that results in or will result in an increase in the concentration, level, or load of a pollutant associated with a currently permitted storm water discharge.

2. "Increased discharge" does not include any of the following if the applicant or permittee is not proposing an increase in the concentration, level, or loading of a pollutant in the discharge:

- a. Reissuance of a WPDES individual or general permit, including reissuance of an administratively continued permit.
- b. Issuance of a WPDES individual or general permit for a category of existing discharges that did not previously require a permit under state or federal regulations.
- c. A permitted MS4 that incorporates under its jurisdiction a previously unincorporated area.

Note: Under sub. (4) (c), discharges of increased pollutants of concern are addressed in ss. NR 216.007, 216.07 (10) (b), 216.27 (3) (j) 6., and 216.49 (3).

(e) 1. "New discharge" means a storm water discharge that would first occur after the permittee's start date of coverage un-

der a permit issued under s. 283.33, Stats., to a surface water to which the facility did not previously discharge storm water.

Note: A permittee or applicant proposing a new discharge that may require coverage under multiple general permits is encouraged to contact the department for planning purposes.

2. "New discharge" does not include an increase in a storm water discharge to a surface water to which the facility discharged on or before coverage under the permit.

(f) "Practicable" means technologically possible, able to be put into practice, and economically viable.

Note: See sub. (8) (c) 2. on alternatives analysis for more information on practicality determinations.

(g) "Parameter" means a chemical, physical, or biological property that can be tested or monitored as a measure of water quality.

Note: Water quality parameters that are frequently sampled or monitored include pollutants, temperature, dissolved oxygen, biochemical oxygen demand (BOD) and pH. Parameters also include biological metrics such as chlorophyll *a* (an algal indicator) or plant, fish or insect communities; however, these are typically not applied for purposes of antidegradation review.

(h) "Receiving water" has the meaning established under s. NR 216.002 (25m).

(i) "Surface waters" means all waters of the state, as designated under s. 283.01 (20), Stats., except groundwater, as defined under s. 299.01 (5), Stats., or navigable waters used for post-construction storm water treatment meeting the criteria under s. NR 151.003 (2).

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

(k) "Temporary discharge" means a proposed new or increased discharge that may lower water quality for less than 90 days if the discharge will not lower water quality in the receiving water after the discharge ceases and best management practices applicable to the type of discharge are implemented. "Temporary discharge" does not include seasonal discharges that reoccur in subsequent years, or new or increased discharges of bioaccumulative chemicals of concern.

Note: Work in navigable waterways and wetlands may require separate authorization from the department. See more at dnr.wisconsin.gov, keywords "waterway permit process" and "wetland permit process".

(4) ANTIDEGRADATION IMPLEMENTATION. (a) *General implementation.* Consistent with the antidegradation policy under s. NR 102.045, the department shall conduct a review of any new or increased discharge and determine whether it will lower water quality in a surface water of the state.

(b) *Performance standards.* The requirements established under this chapter and the performance standards and prohibitions under ch. NR 151 shall be utilized to prevent degradation of all receiving waters. Upon issuance, reissuance, or modification of general and individual permits, the department shall impose additional permit conditions to address instances when the specific categories of a receiving water or specific characteristics of a regulated discharge require a permittee to incorporate additional practices to meet antidegradation requirements.

(c) *Pollutants of concern in an impaired water.* Where a discharge consists of a pollutant of concern as defined under s. NR 216.002 (23m), any increase in discharge is addressed through ss. NR 216.007, 216.07 (10) (b), 216.27 (3) (j) 6., and 216.49 (3) unless there is an approved TMDL for the pollutant of concern.

Note: Section NR 216.07 (10) (b) requires a permitted MS4 to identify and implement management practices and control measures to reduce, with the goal of eliminating, the discharge of pollutants that contribute to an impairment of a waterbody for which there is no U.S. EPA-approved TMDL.

Note: Section NR 216.27 (3) (j) 6. requires an industrial permittee to identify through their SWPPP the source area control best management practices that will be used to reduce, with the goal of eliminating, the discharge of the pollutant of concern that contributes to the impairment of a waterbody.

Note: Section NR 216.49 (3) requires a construction site that discharges to any receiving waters designated as an impaired water to identify and address control measures and maintenance practices that will collectively be used to reduce, with the goal of eliminating, storm water discharges containing pollutants of concern through

the erosion control plan required under s. NR 216.46 and the storm water management plan required under s. NR 216.47.

(d) *General permits.* For general permit issuance, reissuance, or modification, the department shall use the procedures under sub. (6).

(e) *Individual permit coverage and screening.* If an applicant or permittee proposing a new or increased discharge is not eligible for coverage under a general permit, the applicant or permittee shall follow the screening procedures for individual permits under sub. (7).

(5) WATER QUALITY DATA AND ADDITIONAL INFORMATION. The department may require an applicant or permittee to submit additional information for the purposes of conducting the antidegradation screening or review under subs. (7) to (9), and to determine whether coverage under a general permit is applicable or coverage under an individual permit is required under ch. 283, Stats. The permittee or applicant shall follow applicable instructions and use department-approved forms to submit any of the following information, as applicable:

(a) *Surface water identification.* Identification of all surface waters located, at a minimum, within one-quarter mile from the proposed new or increased discharge. For each identified surface water, the permittee or applicant shall identify the respective antidegradation category under s. NR 102.045 and whether the surface waters are listed as impaired on the section 303 (d) list or whether they are subject to a TMDL.

(b) *Proposed or expected parameters.* A list of the parameters that are proposed or expected to change in concentration, level, or loading in the new or increased discharge.

(c) *Background water quality data.* The department shall determine existing concentrations or levels of the parameters listed under par. (b) for the receiving water using data that are sufficient, representative, and credible. Determinations shall be made using the most recent representative data available, not to exceed 10 years old unless the department determines that those levels are still representative. If the department determines that existing data are no longer representative of current conditions based on changes at the local or watershed scale, more recent data may be required. In this case, a permittee may request that the department determine background water concentrations or levels as specified under subd. 1., or shall indicate to the department that they wish to collect the data under subd. 2. Water quality data collected shall be representative of locations upstream of the proposed discharge location, but outside the direct influence of the discharge. One of the following shall be used to determine background water quality concentrations or levels where the department determines representative data does not exist:

1. The department may determine background water concentrations or levels by collecting water quality data during the next sampling season or using other scientifically defensible methods such as data from representative sites in watersheds with similar characteristics based on the parameters listed under par. (b). The department shall consider all relevant factors listed under subd. 3.

2. If a permittee or applicant wishes to collect the background water quality data where data is not already available, sampling and reporting of the background water quality data shall be provided for the receiving waters, shall include the parameters listed under par. (b), and shall consider the factors listed under subd. 3. If the applicant wishes to obtain and submit sufficient data for the department's determination, it shall collect data in the receiving water in accordance with the department's monitoring and quality assurance protocols for each parameter. The department shall determine existing concentrations or levels of parameters of concern.

3. The following factors will be used when determining where data is sufficient, representative, and credible:

- a. The sensitivity of the receiving water to degradation of existing or designated uses.
- b. The parameters of concern in the proposed discharge.
- c. The representativeness of any surrogate water information proposed for baseline water quality relative to the receiving water under review, including geographic, hydrologic, geologic, water use, and water quality characteristics.
- d. The validity of any baseline concentrations assumed to be below detection levels.
- e. The quantity, date of analysis, analytical method, detection level, and spatial and temporal scope of any submitted data.
- f. Applicable seasonal or natural variability.

Note: The department's monitoring protocols and standard operating procedures, including quality assurance protocols, and existing data housed by the department, may be accessed through the department's SWIMS database. Contact the department at DNRSWIMS@wisconsin.gov for access to the database. More information is available by contacting the department's surface water monitoring section or on its surface water monitoring website at <https://dnr.wi.gov/topic/SurfaceWater/monitoring.html>.

(d) *Best management practices.* Practices and procedures the permittee or applicant will implement to limit impacts to specific classes of surface waters.

(e) *Modeling or other data.* Modeling or other information related to pars. (a) to (d).

(f) *Social or economic analysis and alternatives analysis.* If the department notifies an applicant under sub. (7) that information under subs. (8) and (9) are required, a social importance analysis or economic importance analysis under sub. (8) (c) 1., an alternatives analysis under sub. (8) (c) 2., and a demonstration that resulting water quality will be adequate to fully protect existing uses.

Note: An applicant may obtain the forms required under this subsection at the department website: <https://dnr.wisconsin.gov/topic/Stormwater>.

(6) ANTIDegradation PROCEDURES FOR GENERAL PERMITS. The department shall apply the antidegradation policy under s. NR 102.045 to general storm water WPDES permits issued under this chapter and ch. 283, Stats. For each new, reissued, and modified general permit, the following antidegradation implementation procedures under this subsection shall apply, as applicable:

(a) *Antidegradation review.* The department shall condition general permits to meet the antidegradation policy for new or increased discharges to surface water. Before a general permit is issued, reissued, or modified, the department shall do all of the following:

1. Obtain available information, as necessary, to support specific requirements and determinations under this section within the general permit as it relates to any new or increased discharges to satisfy the antidegradation policy.

Note: The department may consult with sector representatives to gather information necessary to conduct the antidegradation review. This may include information such as industry trends and associated changes in discharge characteristics and quantities, social or economic importance, and types of alternatives available to categories of dischargers and general costs associated with them.

2. Make determinations that the antidegradation policy and the antidegradation implementation requirements under this section are met.

(b) *Preliminary antidegradation determination.* The department shall prepare a written preliminary antidegradation determination describing how the permit conditions satisfy the antidegradation policy described under s. NR 102.045.

(c) *Public participation and opportunity for comment.* The department shall include the antidegradation determination with the public notice procedures under s. NR 205.08 (8) to (10) for issuance, reissuance, or modification of a general permit.

Note: The public notice process under par. (c) also satisfies the state's intergovernmental coordination provisions under s. 283.83 (1) (e), Stats.

(d) *Final antidegradation determination.* The department shall consider comments received from the public and govern-

ment agencies, and any other pertinent information received during the public notice period under par. (c), prior to making a final antidegradation determination. The notice of final determination under s. NR 203.13 shall include a statement specifying the conditions of the general permit that satisfy the antidegradation policy specified under s. NR 102.045.

(e) *Determination of coverage under a general permit.* 1. If the department issues a determination that a general storm water WPDES permit will achieve the antidegradation water quality standards under ch. NR 102, further antidegradation procedures are not required if the person seeking coverage under the general permit certifies that the antidegradation permit conditions will be met and the department has granted the person coverage under the general permit authorizing the discharge.

2. If a permittee or applicant identifies, or the department determines, that a discharge is unable to meet the general permit conditions, an individual permit may be required. In that case, the screening procedures under sub. (7) shall be followed unless a permittee or applicant is engaging in a water quality trade that would result in an overall net reduction to the receiving water of the pollutant being traded.

3. The department may request information under sub. (5) where additional information is needed from a permittee or applicant to demonstrate a discharge satisfies the permit conditions designed to meet the antidegradation policy.

(f) *Amendments.* 1. In this paragraph, "administrative operational changes" include changes to SWPPP contacts, changes to storm water management program contacts, and other administrative changes that do not result in a change in the operation of a site that would affect the quality or level of pollutant reduction a program would achieve.

2. Except for administrative operational changes, if a permittee proposes an amendment to a SWPPP, an amendment to plans under s. NR 216.50, or changes to storm water management programs required under s. NR 216.07 (4) to (6) that would result in a discharge of a pollutant in excess of levels previously addressed by the programs, the permittee shall provide information to the department to demonstrate that the amendment meets the conditions of the general permit.

(g) *Terms and conditions.* The department shall include in each general permit terms and conditions that require a permittee to notify the department if the permittee is unable to satisfy the permit conditions to meet the antidegradation policy described under s. NR 102.045. If the department determines that a discharge will no longer meet the permit conditions, the department may treat the application as an individual permit application under s. 283.31 or 283.33, Stats., and ss. NR 216.03 (3), 216.25, and 216.51, and the screening procedures for individual permits under sub. (7) shall be followed.

(7) ANTIDegradation SCREENING PROCEDURES FOR INDIVIDUAL PERMITS. The department shall screen proposed discharges when determining the applicability of the antidegradation policy under s. NR 102.045 for each issued, reissued, or modified individual storm water WPDES permit issued under ch. 283, Stats., and this chapter. As part of the screening process, the department shall review information provided as part of a permit issuance, permit reissuance, permit modification, or where a permittee covered under an individual permit proposes an amendment to a SWPPP, an amendment to plans under s. NR 216.50, or changes to storm water management programs required under s. NR 216.07 (4) to (6). Screening shall include all of the following steps:

(a) *New or increased discharge determination.* The department shall determine whether the proposed discharge meets the definition of a new discharge or an increased discharge under sub.

(3) (d) and (e) and whether the applicant has demonstrated that the facility's proposed or implemented best management practices to treat the proposed new or increased discharge are sufficient to prevent a lowering of water quality.

(b) *Receiving water determination.* If the proposed discharge is a new or increased discharge, the department shall determine whether the receiving water or downstream waters as identified under sub. (5) (a) affected by the proposed discharge are or may be high quality waters as defined under s. NR 102.045 (2) (b). If there is insufficient data available to make the determination under this paragraph, collection of water quality data or other information, as applicable, under sub. (5) may be necessary.

Note: Under the Clean Water Act, authorized states and tribes are required to be protective of downstream waters and water quality standards of downstream or adjacent states or tribes, including any antidegradation standards for downstream waters. Current water quality standards for states and tribes can be found at U.S. EPA's website at <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa#tb0>.

(c) *Pollutants that are allocated under a U.S. EPA-approved TMDL.* For a proposed new or increased discharge of a pollutant to a receiving water where the pollutant has an allocation under a U.S. EPA-approved TMDL, the department shall determine whether a lowering of water quality may be permissible, and if so, whether it requires further antidegradation review under this subsection using the following procedures:

1. For a construction or industrial discharger:

a. If there is reserve capacity available for the pollutant, an antidegradation demonstration is required under subs. (8) and (9) to demonstrate the need for a new or increased wasteload allocation and that water quality degradation has been lessened to the extent practicable. Proposed discharges that may be considered in a TMDL area include discharges to a receiving or downstream water that is listed as impaired on the section 303 (d) list.

b. If there is no reserve capacity available for the pollutant, the department may not approve a new or increased discharge unless the new or increased discharge is offset through a trade authorized under s. 283.84, Stats., or other means such that the discharge does not result in a lowering of water quality.

2. For a municipal discharger, the requirements under s. NR 216.07 (10) (c) and the conditions of the permit designed to meet the TMDL apply. When a discharger is unable to meet these conditions or s. NR 216.07 (10) (c), the new or increased discharge shall be offset through a trade authorized under s. 283.84, Stats., or other means such that the discharge does not result in a lowering of water quality.

(d) *Other impacts to the receiving water.* If the determinations under pars. (a) to (c) indicate that the proposal to discharge requires an antidegradation review, the department shall determine whether point source and state-regulated nonpoint source requirements are being administered in accordance with state law for discharges to the receiving water to ensure that the antidegradation policy under s. NR 102.045 (5) (c) is satisfied. To make the determination under this paragraph, the department shall complete all of the following:

1. Identify point sources and state-regulated nonpoint sources that are discharging a pollutant of concern under the antidegradation review that may be negatively impacting the quality of the receiving water. For those parameters that the department determines may be negatively impacting the quality of the receiving water, the department shall evaluate whether required regulatory actions under state law are being taken to reduce the impacts from the pollutant.

2. If pollutant sources are identified under subd. 1., to the extent feasible given agency resources, evaluate whether there are noncompliance issues with point source WPDES permits or nonpoint source performance standards and prohibitions in ch. NR 151. The department shall also evaluate existing data that may

inform whether receiving water quality in the area of the proposed discharge has improved or degraded over time. If there are significant noncompliance issues with point or nonpoint sources that are causing a negative impact to the receiving water, the department shall to the extent feasible and in consideration of available resources, initiate actions required under state law.

(e) *Notification to applicant.* If there is potential to lower water quality, the department shall notify the applicant of one or more of the following:

1. That requirements for an antidegradation review under subs. (8) and (9) apply.

2. That further information is needed, as applicable under sub. (5), to complete the screening process or antidegradation review, and what additional information may be required.

3. That the proposed lowering of water quality is prohibited under this section, in which case the department shall issue a preliminary determination under sub. (9) (b).

Note: Examples where a new or increased discharge that would lower water quality is prohibited include where the discharge is to an outstanding resource water or certain exceptional resource waters, or in a TMDL area with no reserve capacity or available allocations.

(8) REQUIREMENTS FOR SPECIFIC CATEGORIES OF SURFACE WATERS. When the department issues a notification to a permittee or applicant under the screening procedures in sub. (7), the following requirements apply to specific categories of waters:

(a) *Requirements for outstanding state or national resource waters and exceptional resource waters.* 1. 'Outstanding national resource waters and outstanding resource waters.' For proposed new or increased discharges to or impacting downstream outstanding national resource waters or outstanding resource waters, as defined under s. NR 102.045 (2) (b) 1. and 2., a permittee shall implement best management practices designed to prevent a lowering of water quality by discharging water that is equal to or better than the receiving water, according to one of the following:

a. Discharges from a municipal facility regulated under subch. I shall achieve a discharge less than or equal to the average annual load previously discharged from the municipality based on achieved pollutant load reductions.

b. Discharges from an industrial site regulated under subch. II shall implement best management practices that achieve a discharge at or below background concentrations of the receiving water.

c. Discharges from a construction site regulated under subch. III shall achieve a discharge less than or equal to the average annual load from the construction site based on the applicable development conditions as defined under s. NR 151.002.

2. 'Exceptional resource waters.' a. Except as specified under subd. 2. b., for proposed new or increased discharges to, or impacting downstream exceptional resource waters, a permittee shall implement best management practices designed to prevent a lowering of water quality by discharging water that is equal to or better than the receiving water in accordance with the applicable requirement under subd. 1. a. to c.

b. When a lowering of water quality in an exceptional resource water is necessary to prevent or correct contamination or a public health problem, requirements under par. (d) apply.

(b) *Great Lakes system waters.* The department shall prohibit new or increased discharges of bioaccumulative chemicals of concern to a Great Lakes system water unless the applicant demonstrates the necessity to lower water quality through an antidegradation review following the procedures under par. (c).

Note: Bioaccumulative chemicals of concern that have been identified by the department are those substances noted with an asterisk in ch. NR 105, Tables 8 and 9.

(c) *Requirements for other high quality waters.* If the department finds a proposed new or increased discharge will lower water quality in a receiving or downstream water that is a high qual-

ity water other than those specified in par. (a), the applicant shall submit all of the following documentation in addition to the data required under sub. (5):

1. ‘Social or economic importance analysis.’ An applicant applying for coverage under an individual permit that would constitute a proposed new or increased discharge to a high quality water shall submit a social importance analysis under subd. 1. a. or economic importance analysis under subd. 1. b. to demonstrate that the project is necessary to accommodate important social or economic development in the area where the receiving water is located. The applicant shall include the following information in the social or economic importance analysis, as applicable:

a. The social importance analysis shall identify each affected community and include any of the following factors to demonstrate a lowering of water quality is necessary to accommodate important social development: community services provided; public health or safety improvements; infrastructure improvements; education and training; cultural amenities; recreational opportunities; other areas that will accommodate important social development not specified under this subd. 1. a.

b. The economic importance analysis shall identify each affected community and include any of the following factors to demonstrate a lowering of water quality is necessary to accommodate important economic development: employment, job availability, and salary impacts; impacts to the tax base or municipal utility customers; increases in production or energy efficiency; expanded leases and royalties; commercial activities; agricultural activities; access to resources; access to a transportation network; other areas that would accommodate important economic development not specified under this subd. 1. b.

2. ‘Practicable alternatives analysis.’ For a proposed new or increased discharge that would result in a lowering of water quality, the applicant shall submit sufficient information to evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed discharge. The department shall evaluate the alternatives analysis under sub. (9) (a) 4. to determine whether the applicant’s preferred alternative is approvable. The amount of information submitted by the applicant and level of detail necessary shall be relative to the size of the project or facility, the characteristics of the proposed discharge, and the characteristics of and potential risk to the receiving water. The applicant shall submit all of the following to the department:

a. A description and analysis of a range of practicable alternatives that have the potential to prevent or lessen the degradation associated with the proposed discharge. Practices may include source reduction or other methods of pollution prevention, facility optimization, and other control or treatment practices.

b. A description of any alternative determined to be impracticable, and an analysis of why that determination was made. Reasons for determining that an alternative is impracticable may include land availability or site constraints, cost or affordability, available technologies and limitations of those technologies, or logistics. An applicant need not include shifting production to another site if that is not practicable. If practicable alternatives have been identified under this subdivision that will prevent or lessen water quality degradation, the applicant shall identify its preferred practicable alternative.

Note: The U.S. EPA publishes resources such as its *Clean Water Act Financial Capability Assessment Guidance* and *Interim Economic Guidance for Water Quality Standards* and their associated worksheets and spreadsheets that may be used to guide determinations of impracticability based on cost.

c. For proposed new or increased discharges of BCCs to Great Lakes system waters, identification of any cost-effective pollution prevention alternatives and techniques that would prevent or lessen the extent to which the increased loading results in a lowering of water quality. For new or increased discharges to

the Lake Superior Basin, the applicant shall follow the procedures under s. NR 102.12 (3) for the pollutants identified in that subsection.

d. For each of the practicable alternatives under subd. 2. a. and b., identification of the receiving water quality and accompanying environmental impacts on the receiving and downstream waters, including impacts to aquatic life and public health in downstream communities. The applicant should also identify whether the alternatives are expected to have other types of environmental impacts that are not water quality based.

Note: An example of other environmental impacts under subd. 2. d. would be a proposed discharge treatment alternative that would also increase or decrease impacts to air quality. An applicant may indicate whether regulations for other departmental environmental programs will be met under their proposal, and may include information about other positive environmental impacts.

e. Evaluation of the cost for each of the practicable alternatives under subd. 2. a. and b.

f. Any additional information or analysis of specific alternatives that the department determines necessary to assess the submitted social importance analysis or economic importance analysis under subd. 1. and alternatives analysis under this subdivision.

(d) *Performance standards.* The applicant shall submit information demonstrating that the respective requirements of this chapter and the performance standards and prohibitions of ch. NR 151 are met. The department shall impose additional permit conditions to address instances when the specific categories of a receiving water or specific characteristics of a regulated discharge require a permittee to incorporate additional practices to demonstrate that antidegradation requirements are met.

(e) *Amendments.* 1. In this paragraph, “administrative operational changes” means changes to SWPPP contacts, changes to storm water management program contacts, and other administrative changes that do not result in a change in the operation of a site that would affect the quality or level of pollutant reduction a program would achieve.

2. Except for administrative operational changes, if a permittee proposes an amendment to a SWPPP, an amendment to plans under s. NR 216.50, or changes to storm water management programs required under s. NR 216.07 (4) to (6) that would result in a discharge of a pollutant in excess of levels previously addressed by the programs, the permittee shall provide information to the department that demonstrates the amendment meets the conditions of the permit.

(9) DEPARTMENT ANTIDEGRADATION REVIEW AND DETERMINATION FOR INDIVIDUAL PERMITS. The department shall apply the antidegradation policy under s. NR 102.045 and shall conduct an antidegradation review for each new or increased discharge seeking coverage under an individual WPDES permit issued under this chapter where the department has determined under sub. (7) (e) there is potential to lower water quality in a high quality water and the department determines that such a lowering may be permissible under sub. (8). The department shall condition individual permits to meet the antidegradation policy. The department shall follow the antidegradation review procedures as follows:

(a) *Antidegradation review.* If, after review of available information, the department finds that the proposed discharge will lower water quality in a high quality receiving or downstream water, the department shall only authorize lowering of the receiving or downstream water quality if the department finds that all of the following are met:

1. The reduction of water quality meets the applicable water quality criteria to protect existing and designated uses under chs. NR 102 to 105.

2. If the proposed discharge will lower water quality in a high quality water identified under s. NR 102.045 (2) (b) 1. to 3., each

applicable requirement to protect a high quality water under sub. (8) (a) to (d) is met.

3. If required under sub. (8) (c), the social importance analysis or economic importance analysis demonstrates that a lowering of water quality is necessary to accommodate important social or economic development in the area of the discharge.

4. If required under sub. (8) (c), the alternatives analysis demonstrates that all of the following are met:

a. A lowering of water quality under the antidegradation policy is necessary under sub. (8) (c) 2. a.

b. When the analysis of alternatives identifies one or more practicable alternatives that the department determines will effectively lessen degradation from the proposed activity, one of these alternatives is selected for implementation. If degradation can be lessened through implementation of best management practices, the department may find that those methods are acceptable as the practicable alternative.

5. If an alternative meeting the requirements under sub. (8) (c) 2. is approvable by the department, permit conditions used in the preliminary antidegradation determination shall reflect a less degrading alternative selected, or if there is no degradation to the receiving water, the preliminary antidegradation determination shall reflect that there is no lowering of water quality.

6. Point source and state-regulated nonpoint source discharges to the receiving water will meet requirements of the antidegradation policy under s. NR 102.045 (5) (c), as determined under sub. (7) (d).

7. The antidegradation policy and procedures under this subchapter have been applied consistent with section 316 (a) of the Clean Water Act, 33 USC 1326 (a), with regard to potential thermal discharge impairments.

8. The requirements under this chapter related to water quality and the performance standards and prohibitions under ch. NR 151 are met.

(b) *Preliminary antidegradation determination.* 1. Based upon the antidegradation review described under par. (a), the department shall prepare a written draft antidegradation determination as to whether the antidegradation policy under s. NR 102.045 has been satisfied.

2. If the department finds that the antidegradation policy is not satisfied, the department shall provide written notification to the applicant identifying the reasons for this determination and shall provide the applicant the opportunity to modify the application to meet the requirements under sub. (8).

(c) *Opportunity for comment.* The department shall do all of the following to solicit public input on the preliminary antidegradation determination:

1. Include the draft antidegradation determination with the public notice regarding the WPDES permit according to s. NR 203.02.

2. Distribute the public notice according to subch. I of ch. NR 203.

Note: The public notice process under subd. 2. also satisfies the state's intergovernmental coordination provisions under s. 283.83 (1) (e), Stats.

3. Provide opportunity for comment on the draft antidegradation determination.

(d) *Final antidegradation determination.* The department shall consider comments received under par. (c) before preparing a written final antidegradation determination. The final antidegradation determination shall include a statement of whether the proposed activity satisfies or fails to satisfy the antidegradation policy specified under s. NR 102.045 and implementation requirements in this section. The final antidegradation determination shall be included with the department's notice of final determination regarding the WPDES permit under s. NR 203.13.

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Note: This section is created eff. 7-1-26 by CR 23-010.

History: CR 23-010: cr. Register January 2026 No. 841, eff. 7-1-26; correction in (3) (k), (5) (b), (6) (a) (intro.), (f) 1., (7) (e) 1., (8) (c) 2. d., e., (d), (e), (9) (b) 2. made under s. 35.17, Stats., Register January 2026 No. 841.

Subchapter I — Municipal Storm Water Discharge Permits

NR 216.01 Purpose. The purpose of this subchapter is to identify municipalities that are required to obtain WPDES municipal storm water permits, and to establish the application and permit requirements for municipal storm water discharge permits, as required by s. 283.33, Stats. The goal of this subchapter is to address storm water quality concerns associated with urban runoff and prevent to the maximum extent practicable the discharge of pollutants from municipal separate storm sewer systems as identified in s. NR 216.02. The department shall consider other environmental problems facing municipalities and emphasize cost effective best management practices when determining what is practicable.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.02 Permit coverage required. The following owners or operators of municipal separate storm sewer systems shall obtain coverage under a WPDES municipal storm water permit under this subchapter:

Note: A city, village or town is not responsible for a county, state and federally operated MS4 that lies within its jurisdiction.

(1) OWNERS AND OPERATORS OF MUNICIPAL SEPARATE STORM SEWER SYSTEMS SERVING POPULATIONS OF 100,000 OR MORE. The owner or operator of a municipal separate storm sewer system serving incorporated areas with a population of 100,000 or more as determined by the 1990 decennial census.

(2) PREVIOUSLY NOTIFIED OWNERS OR OPERATORS OF MUNICIPAL SEPARATE STORM SEWER SYSTEMS. The owner or operator of a municipal separate storm sewer system notified in writing by the department prior to August 1, 2004, to obtain a WPDES municipal storm water permit.

(3) URBANIZED AREAS. Unless exempted pursuant to s. NR 216.023, the owner or operator of a municipal separate storm sewer system within an urbanized area as defined by the U.S. bureau of the census.

(4) MUNICIPAL SEPARATE STORM SEWER SYSTEMS SERVING OVER 10,000. An owner or operator of a municipal separate storm sewer system serving a population of 10,000 or more and a population density of 1,000 or more per square mile, as determined by the U.S. bureau of the census based on the latest decennial census unless it is exempted under s. NR 216.024.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.023 Urbanized area exemption. The department may waive the requirement to obtain permit coverage under this subchapter for a municipal separate storm sewer system within an urbanized area listed under s. NR 216.02 (3) that meets all of the following:

(1) The owner or operator of the system is not otherwise required to obtain permit coverage pursuant to s. NR 216.02 (2).

(2) The system serves a population less than 1,000.

(3) The system is not contributing substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer system that is regulated under this subchapter.

(4) If the system discharges a pollutant that has been identified as a cause of impairment of any water body to which it discharges, storm water controls must not be needed based on wasteload allocations that are part of a U.S. EPA approved or established TMDL that addresses any pollutant of concern.

Note: The department has a list of impaired waters with pollutants of concern

available on its website. If an MS4 is exempted from permit coverage under this section, the owner or operator does not need to satisfy the exemption requirements of s. NR 216.024.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.024 Non-urbanized area exemption. (1) The owner or operator of a municipal separate storm sewer system required to have permit coverage under s. NR 216.02 (4) may request that its municipal separate storm sewer system be exempted by the department from the requirement to obtain permit coverage under this subchapter. This request shall demonstrate all of the following:

(a) The municipal separate storm sewer system is not required to have permit coverage pursuant to s. NR 216.02 (1), (2) or (3);

(b) The municipal separate storm sewer system receives runoff from less than 320 total acres from any combination of the following land uses including all pervious and impervious land covers such as roof tops, parking lots, roads, sidewalks and grassed areas:

1. Commercial.
2. Industrial.
3. Institutional.
4. Residential with greater than 4.0 homes per acre.

(c) The rate of population growth of the area served by the municipal separate storm sewer system is less than 10% between the 2 most recent decennial censuses as determined by the U.S. bureau of the census.

(d) The municipal separate storm sewer system does not discharge directly into any outstanding resource water listed under s. NR 102.10, exceptional resource water listed under s. NR 102.11, a cold water stream as listed under s. NR 102.04 (3) (a), Great Lakes area of concern pursuant to 33 USC 1268 or a wetland in an area of special natural resource interest as specified in s. NR 103.04.

(e) If the system discharges a pollutant that has been identified as a cause of impairment of any water body to which it discharges, storm water controls must not be needed based on wasteload allocations that are part of a U.S. EPA approved or established TMDL that addresses any pollutant of concern.

(2) An exemption request under this section shall be made by the owner or operator of the municipal separate storm sewer system within 90 days of the department letter notifying the owner or operator to apply for permit coverage under this subchapter. The department letter shall indicate that the owner or operator has 90 days to submit an exemption request pursuant to this section. The exemption request shall be submitted to the department together with the application required under s. NR 216.03.

(3) The department shall exempt the owner or operator of a municipal separate storm sewer system from the requirement to obtain permit coverage under this subchapter for requests that comply with subs. (1) and (2), unless either of the following occurs:

(a) The department has site-specific information that the municipal separate storm sewer system has a physical, chemical or biological impact that threatens or impairs the designated uses of waters of the state.

(b) The department has determined that controls are needed on the municipal separate storm sewer system based on wasteload allocations that are part of a U.S. EPA approved or established TMDL or equivalent analysis that addresses the pollutants of concern.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.025 Designation criteria. The department may require the owner or operator of any municipal separate storm

sewer system to obtain permit coverage under this subchapter if the system meets any of the following:

(1) It serves an area contiguous to an area served by a municipal separate storm sewer system that is required to have permit coverage under this subchapter and it receives runoff from 320 or more total acres from any combination of the following land uses including all pervious and impervious land covers such as roof tops, parking lots, roads, sidewalks and grassed areas:

- (a) Commercial.
- (b) Industrial.
- (c) Institutional.
- (d) Residential with greater than 4.0 homes per acre.

(2) The department has site-specific information that the municipal separate storm sewer system has a physical, chemical or biological impact that threatens or impairs the designated uses of waters of the state.

(3) The department determines that controls are needed on the municipal separate storm sewer system based on wasteload allocations that are part of a U.S. EPA approved or established TMDL or equivalent analysis that addresses the pollutants of concern.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.026 Petition for permit coverage. Any person may petition the department to evaluate a municipal separate storm sewer for the need to obtain permit coverage using the criteria under s. NR 216.025. The petition shall contain relevant information to assist the department in this evaluation in accordance with the criteria contained in s. NR 216.025. In response to a petition, the department may perform an evaluation of the municipal separate storm sewer system for which the petition is received.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.03 Application for permit coverage. (1) The owner or operator of a municipal separate storm sewer system identified as needing a permit under s. NR 216.02 shall submit an application under sub. (2) for coverage under a WPDES permit under this subchapter to the department within 90 days of a department letter notifying the owner or operator that a permit application is required. The application shall be submitted on forms made available from the department as specified under s. NR 216.006.

Note: Application forms may be obtained from the department website at <https://dnr.wisconsin.gov/topic/Stormwater/municipal> or by calling 1-888-936-7463.

(2) The owner or operator of a municipal separate storm sewer system identified as needing a permit under s. NR 216.02 shall submit a permit application to the department requesting to be covered by one of the following methods:

(a) Under a general permit. Applications for coverage under a general permit shall be submitted in accordance with s. NR 216.031.

(b) Under an individual permit by themselves or as a co-applicant. Applications for coverage under an individual permit shall be submitted in accordance with s. NR 216.032.

(c) If the application for individual permit coverage includes one or more co-applicants, then all of the following apply:

1. All owners or operators of municipal separate storm sewer systems that are interested in obtaining coverage under the permit shall be listed.

2. The expected benefits of having individual permit coverage shall be described in the application.

(d) One application may be submitted by multiple owners or operators of municipal separate storm sewer systems when re-

questing to be covered as co-applicants under an individual permit.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (1), (2) (a), (b) Register March 2022 No. 795, eff. 4-1-22.

NR 216.031 General permit application requirements. Municipalities subject to the requirements of this subchapter seeking coverage under a general permit shall submit an application for permit coverage to the department. The contents of the application shall be specified in the general permit, shall require the submission of information necessary to demonstrate adequate program implementation, and at a minimum shall include all of the following:

(1) GENERAL INFORMATION. (a) The legal name, address, and telephone number of the municipal owner or operator, and additional contact persons.

(b) Status as a government entity.

(c) Type of facility or discharges.

(d) The receiving waterbodies.

(e) Any additional relevant information that the department requests.

(2) MINIMUM CONTROL MEASURE INFORMATION. Descriptions of how the applicant intends to comply with all of the following permit requirements:

(a) *Public education and outreach.* A public education and outreach program pursuant s. NR 216.07 (1).

(b) *Public involvement and participation.* A public involvement and participation program pursuant to s. NR 216.07 (2).

(c) *Illicit discharge detection and elimination.* An illicit discharge detection and elimination program pursuant to s. NR 216.07 (3), including a list of existing legal authorities to enforce this program.

(d) *Construction site pollution control.* A program to reduce pollutants in runoff from construction sites pursuant to s. NR 216.07 (4).

(e) *Post-construction site storm water management.* A program to reduce pollutants in runoff from new development and redevelopment sites after construction pursuant to s. NR 216.07 (5).

(f) *Pollution prevention.* A pollution prevention program for municipal operation and maintenance areas pursuant to s. NR 216.07 (6) (a).

(3) STORM SEWER SYSTEM MAP. A street map showing corporate boundaries, U.S. census urbanized area boundaries, and limits of any sanitary sewer service area.

(4) OTHER REQUIREMENTS. A list of MS4 discharges to an outstanding resource water, exceptional resource water, impaired waters, and discharges of a pollutant of concern covered by a US EPA-approved TMDL. A description of the current control measures being implemented to meet applicable requirements for those discharges pursuant s. NR 216.07 (10).

Note: A list of outstanding resource waters and exceptional resource waters may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/orwerw.html>. A list of Wisconsin impaired waterbodies is updated every two years and may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/ConditionLists.html>. A list of Wisconsin US EPA approved TMDLs may be found on the department website at: <https://dnr.wisconsin.gov/topic/TMDLs>.

History: CR 21-027: NR 216.031 (intro.) renum. from NR 216.06 (intro.) and am., r. (1) (intro.), cr. (1) (a) to (e), NR 216.031 (2), (3) renum. from NR 216.06 (2), (3) and, as renumbered, am. (2) (intro.), (3), cr. (4) Register March 2022 No. 795, eff. 4-1-22.

NR 216.032 Individual permit application requirements. Municipalities subject to the requirements of this subchapter seeking coverage under a storm water discharge individual permit shall apply by submitting the necessary application in-

formation to the department. The individual permit application shall include all of the following:

(1) The information listed in s. NR 216.031 (1).

(2) The best management practices that the municipality proposes to implement for each of the programs described in s. NR 216.07 (1) to (6).

(3) Information on any discharges to designated waters as described in s. NR 216.031 (4).

(4) The proposed measurable goals for each of the BMPs including, as appropriate, the months and years in which the municipality proposes to undertake required actions, including interim milestones and the frequency of the action.

(5) The person or persons responsible for implementing or coordinating the storm water management program.

(6) An estimate of square mileage served by the municipality.

(7) A storm sewer map that satisfies the requirements of s. NR 216.07 (7).

(8) Any additional relevant information that the department requests.

History: CR 21-027: cr. Register March 2022 No. 795, eff. 4-1-22; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register March 2022 No. 795.

NR 216.04 Issuance of permits. (1) The department shall determine whether a general permit or an individual permit will be used to authorize coverage for each applicant, group of co-applicants or regional authority. The department may exclude co-applicants from coverage under an individual permit, and instead issue a separate individual permit to an excluded co-applicant if coverage is necessary to ensure compliance with this subchapter.

(2) For each applicant or permittee subject to a US EPA-approved TMDL, the department shall include in the permit an expression of the wasteload allocation, or may derive a percent reduction for the pollutant of concern, consistent with the wasteload allocation and assumptions contained in the US EPA-approved TMDL that is designed to achieve water quality standards. If applicable, the TMDL-based percent reduction for TSS shall be included in a permit in addition to the requirements under s. NR 151.13 (2) (b).

(3) For each applicant or permittee discharging to an impaired water for which a TMDL is under development at the time of permit issuance, the department may include in the permit a requirement to begin development of a TMDL implementation plan once the TMDL is approved. Implementation will not be required until the permit term following TMDL approval.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: renum. to (1), cr. (2), (3) Register March 2022 No. 795, eff. 4-1-22.

NR 216.065 Permittee responsibility and permit conditions. (1) CO-PERMITTEES. For a group of co-permittees, a single co-permittee is responsible only for permit conditions relating to discharges from the municipal separate storm sewer systems for which it is the owner or operator.

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

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.07 Permit requirements. The department shall establish permit conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to achieve and implement the water quality standards contained in chs. NR 102 to 105, 140, and 207. The department shall issue permits using the information provided by the applicant and other pertinent information when developing per-

mit conditions. Permit conditions shall be expressed in clear, specific, and measurable terms. Permits shall, at a minimum, require development and implementation of written storm water management programs that address all of the following:

(1) PUBLIC EDUCATION AND OUTREACH. (a) A public education and outreach program using a variety of delivery mechanisms to increase awareness of storm water impacts on waters of the state. The program shall at a minimum be designed to achieve all of the following:

1. Promote detection and elimination of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewer systems.

2. Inform and educate the public to facilitate the proper management of materials and encourage the public to change their behavior that may cause storm water pollution from sources including automobiles, pets, household hazardous waste and household practices.

3. Promote beneficial onsite reuse of leaves and grass clippings and proper use of lawn and garden fertilizers and pesticides.

4. Promote the management of stream banks and shorelines by riparian landowners to minimize erosion, and restore and enhance the ecological values of the waterway.

5. Promote infiltration of residential storm water runoff from rooftop downspouts, driveways and sidewalks.

(b) A program that includes elements to achieve all of the following:

1. Inform and educate those responsible for the design, installation or maintenance of construction site erosion control and storm water management practices on how to design, install and maintain the practices.

2. Target businesses and activities that may pose a storm water contamination concern, and where appropriate, educate specific audiences such as lawn care companies and restaurants on methods of storm water pollution prevention.

3. Promote environmentally sensitive land development designs by developers and designers.

Note: The public education and outreach program should be tailored, using a mix of locally appropriate strategies to educate the general public and target specific audiences likely to have significant storm water impacts.

(2) PUBLIC INVOLVEMENT AND PARTICIPATION. A program to notify the public of activities required by the municipal storm water discharge permit required under this subchapter and to encourage input and participation from the public regarding these activities. The implementation of this program shall comply with all applicable state and local public notice requirements.

(3) ILLICIT DISCHARGE DETECTION AND ELIMINATION. A program to detect and remove illicit discharges and improper disposal of wastes into the municipal separate storm sewer system, or require the discharger to obtain a separate WPDES permit. The program shall include all of the following:

(a) To the extent authorized by law, measures to effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions.

(b) A strategy to address all types of illicit discharges. In addition, non-storm water discharges or flows such as landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, fire fighting and discharges authorized under a WPDES permit shall be in-

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cluded in the strategy if identified by the municipality as significant sources of pollutants to waters of the state.

(c) Procedures to conduct on-going field screening activities during the term of the permit, including locations of storm sewers that will be evaluated.

(d) Procedures to be followed to investigate portions of the municipal separate storm sewer system that, based on the results of field screening or other information, indicate a reasonable potential for containing illicit discharges or other sources of non-storm water. Procedures may include sampling for the parameters listed within par. (i), testing with fluorometric dyes or conducting inspections inside storm sewers where safety and other considerations allow. The department shall be given advanced notice of the time and location of dye testing within an MS4.

Note: The dye may be reported to the department by concerned citizens as an illicit discharge. Prior notification will prevent false alarms.

(e) Procedures to immediately investigate reports of illicit discharges to its MS4, including cooperation with the department, in order to locate and eliminate illicit discharges.

(f) Procedures for immediate notification of the department in accordance with ch. NR 706, of a spill or release of a hazardous substance, into or from an MS4.

Note: The department shall be notified via the 24-hour toll-free spill hotline at 1-800-943-0003.

(g) Procedures to prevent, contain and respond to spills that may enter the municipal separate storm sewer system.

(h) Appropriate measures to eliminate any leakage or discharge from sanitary conveyance systems into municipal separate storm sewer systems.

(i) A field screening analysis for illicit connections and illicit discharges at all major outfalls, plus any additional selected field-screening points designated by the municipality or the department. At a minimum, a screening analysis shall include a narrative description of visual observations made during dry weather periods. If any flow is observed, field analysis shall be conducted to determine the presence of illicit discharges. All field analysis shall include a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum, and a description of the flow rate as well as any other relevant observations regarding the potential presence of non-storm water discharges. In addition, the field analysis shall include sampling for pH, total chlorine, total copper, total phenol and detergents unless the permittee obtains concurrence from the department to perform alternative sampling that is more effective to detect illicit discharges such as with ammonia, potassium or bacteria. The field screening points shall be established using the following:

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

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

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

(4) CONSTRUCTION SITE POLLUTANT CONTROL. Except for construction sites that are exempted under s. NR 216.42 (2) to (11), a program to implement and maintain erosion and sediment control best management practices to reduce pollutants in storm water runoff from construction sites with one acre or more of land disturbance, and sites of less than one acre if they are part of a larger common plan of development or sale. This program shall encompass any adjacent developing areas that are planned to have a minimum density of 500 people per square mile, the urbanized

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area and developing areas whose runoff will connect to the MS4. The program shall include all of the following:

(a) The implementation and enforcement of a legal authority to comply with ss. NR 151.11 and 151.23, as well as sanctions to ensure compliance, to the extent authorized by law.

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

(b) Procedures for site planning which incorporate consideration of potential water quality impacts.

(c) Requirements for erosion and sediment control best management practices.

(d) Procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, the characteristics of soil and receiving water quality.

(e) Requirements for construction site operators to manage waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site so as to minimize adverse impacts to water quality.

(f) Procedures for receipt and consideration of information submitted by the public.

(5) POST-CONSTRUCTION SITE STORM WATER MANAGEMENT. A program to develop, implement and enforce controls on discharges from new development and redevelopment projects that disturb one acre or more of land, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4. This program shall encompass any adjacent developing areas that are planned to have a minimum density of 500 people per square mile, the urbanized area and developing areas whose runoff will connect to the MS4. The program shall include all of the following:

(a) The implementation and enforcement of a legal authority to comply with ss. NR 151.12 to 151.128 and 151.24 to 151.249.

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

(b) Procedures for site planning which incorporate consideration of potential water quality impacts.

(c) Requirements for source area control and regional best management practices.

(d) Procedures for inspecting and enforcing maintenance of best management practices.

(6) POLLUTION PREVENTION. (a) A storm water management program and an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff and meeting the requirements of sub. (10). The program shall include all of the following activities:

1. Installation and maintenance of source area controls and regional best management practices.

2. Roadway maintenance including street sweeping and de-icer management. Permits may include requirements for de-icer usage tracking, equipment calibration, training, and de-icer reduction strategies.

3. If appropriate, collection and management of leaf and grass clippings.

4. Management of municipal garages, storage areas, and other municipal sources of pollution. Site-specific storm water pollution prevention plans shall be developed for sites with bulk storage piles, outdoor vehicle maintenance, fueling, outdoor material storage, uncovered dumpsters, composting, and other areas with discharges deemed by the department to be significant contributors of pollutants to waters of the state. Permits shall contain requirements for storm water pollution prevention plans that include the elements in s. NR 216.27 that are relevant to municipal sources of pollution.

5. Management of the application of lawn and garden fertilizers on municipally controlled properties in accordance with s. NR 151.13 (1) (b) 3.

6. Inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions.

7. Adequate legal authority to require compliance with conditions in ordinances, permits, contracts or orders.

(b) An assessment of the actions taken under this subsection shall be conducted. The assessment shall include a pollutant-loading analysis using a model such as SLAMM, P8 or equivalent methodology that is approved by the department. At a minimum, a pollutant-loading analysis shall be conducted for total suspended solids and phosphorus. The department may require other parameters on a case-by-case basis.

Note: The department believes that computer modeling is the most efficient and cost effective method for calculating pollutant loads. Pollutant loading models such as SLAMM, P8 or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids. Information on how to access SLAMM and P8 is available at <https://dnr.wisconsin.gov/topic/Stormwater/standards/slam.html> or contact the storm water program in the bureau of watershed management at (608) 267-7694.

Note: The pollutant-loading analysis may be limited to pollutants generated within the municipality.

(7) STORM SEWER SYSTEM MAP. A sufficiently sized and detailed map with a scale suited for the level of detail depicting the following information:

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

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

(c) A list and location of all municipal storm sewer system outfalls discharging to waters of the state. Indicate the pipe size and identify those outfalls which are considered major outfalls.

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

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

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

(g) The location of publicly owned public works facilities.

(h) Other potential sources of pollutants.

(i) If the permittee is subject to a US EPA-approved TMDL, boundaries of applicable watersheds associated with a TMDL wasteload allocation.

(8) ANNUAL REPORT. For the permittee's first permit term of 5 years, submission of an annual report to the department. After the term of the first permit, the department may reduce annual reporting frequency but annual reports shall be filed in the 2nd and 4th years of the subsequent permit terms. Annual reports shall be submitted to the department using forms available from the department as specified under s. NR 216.006. The municipal governing body, interest groups and the general public shall be encouraged to review and comment on the annual report in accordance with sub. (2). The annual report shall include the following information:

(a) The status of implementing the permit requirements and compliance with permit schedules.

(b) A summary of activities to comply with subs. (6) and (10).

(c) A fiscal analysis which includes the annual expenditures and budget for the reporting year, and the budget for the next year.

(d) A summary of the number and nature of enforcement actions, and inspections conducted to comply with the required legal authorities.

(e) Identification of water quality improvements or degradation.

(f) If applicable, notice that the permittee is relying on another entity to satisfy some of the permit requirements as described in s. NR 216.075.

(g) An evaluation of the effectiveness of the components of the permittee's storm water management program.

(h) A summary of the progress toward implementing identified actions and activities to comply with requirements of sub. (10) (d) and if applicable, any changes to the TMDL implementation plan.

(i) A summary of any proposed changes to the permittee's storm water management programs created to comply with the requirements of subs. (1) to (6) and (10).

(j) For the annual report submitted in the 4th year of the permit term, the permittee shall also submit a fiscal evaluation summarizing program expenditures for the current permit term, projected program allocations for the subsequent permit term, and a list of planned modifications to storm water best management practices and programs necessary to comply with permit requirements or to achieve measurable goals.

(9) SCHEDULE OF COMPLIANCE. A compliance schedule for the permittee to fully develop, implement and enforce the requirements of this subchapter within 5 years after initial permit coverage is granted.

(10) OTHER REQUIREMENTS. (a) *Urbanized area performance standards.* Installation and maintenance of source area controls and regional best management practices to comply with the developed urban area performance standards of s. NR 151.13 (2) and the post-construction performance standards of ss. NR 151.12 to 151.128 and 151.24 to 151.249. The total suspended solids control requirements of s. NR 151.13 (2) (b) 1. b. may be achieved on a regional basis across an urbanized area or within the urban storm water planning area for a municipality.

(b) *Impaired waters.* For a permittee that discharges to an impaired waterbody but for which there is no US EPA-approved TMDL for the pollutant of concern, the permittee shall include a written section in its storm water management program that discusses the management practices and control measures it will implement as part of its program to reduce, with the goal of eliminating, the discharge of pollutants of concern that contribute to the impairment of the waterbody.

Note: Every 2 years, the department updates and publishes a list of waters considered impaired under the Clean Water Act. The list is updated in even-numbered years. A list of Wisconsin impaired waterbodies may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/ConditionLists.html>.

(c) *US EPA-approved TMDL.* If the permittee is subject to a US EPA-approved TMDL, the permittee shall evaluate its compliance with the applicable wasteload allocation consistent with the assumptions and requirements outlined in the TMDL. If the permittee cannot demonstrate compliance with the wasteload allocation within the first permit term, then the department may allow a permittee to develop a TMDL implementation plan that extends beyond one permit term for attaining the wasteload allocation. The implementation plan shall include estimated cost, schedules, assumptions, and levels of anticipated pollution control for each action. The TMDL implementation plan shall demonstrate continued progress leading to the attainment of the wasteload allocation as soon as possible. The department may establish numeric and narrative benchmarks within each permit

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term to ensure continued reduction of the pollutant of concern. In determining the length of time allowed under the TMDL implementation plan, the department shall consider all of the following factors:

1. Whether there is a need for the installation of both structural best management practices and the implementation of operation and maintenance programs to attain the wasteload allocation, and if so, how long it will take to implement taking into account factors including the need to acquire property, the need to remove or replace existing infrastructure, and the ability to obtain the necessary financing.

2. The length of time the permittee has had to attain the wasteload allocation under prior permits.

3. The extent to which the permittee has made good faith efforts to attain the wasteload allocation and other requirements in prior permits, if applicable.

4. The extent to which existing best management practices have proven to be effective in addressing the pollutant of concern covered by the wasteload allocation.

5. Whether the TMDL implementation plan is appropriate and necessary because the permittee cannot attain the wasteload load allocations within the existing permit term.

Note: The reports for department and US EPA approved TMDLs are available from the department website at: <https://dnr.wi.gov/topic/TMDLs/tmdlreports.html>.

(d) *Assessment.* A permittee shall conduct an assessment of the actions required to be taken under this subsection. The assessment shall include a pollutant-loading analysis using an urban water quality model that uses small storm hydrology or equivalent methodology that is approved by the department, or monitoring, trend analysis, or other appropriate qualitative or quantitative evaluation methods approved by the department. At a minimum, a pollutant-loading analysis shall be conducted for total suspended solids, phosphorus, any applicable pollutants of concern covered under an applicable US EPA-approved TMDL, and pollutants of concern discharged by the permittee to a listed impaired waterbody, ERW, or ORW.

Note: The department believes that computer modeling provides an efficient and cost-effective method for calculating pollutant loads. Pollutant loading models such as WinSLAMM, P8, or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids. Information on how to access WinSLAMM and P8 is available at <https://dnr.wi.gov/topic/stormwater/standards/slam.html>.

(11) RECORDS. The permittee shall keep records relating to compliance with s. 283.33, Stats., this subchapter, or a permit issued under the subchapter for at least 3 years from the date of creation and make the records available to the public in accordance with subch. II of ch. 19, Stats.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; correction in (6) (a) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register January 2020 No. 769; CR 21-027: am. (intro.), (1) (a) (intro.), (5) (a), (6) (a) (intro.), 2., 4., cr. (7) (i), am. (8) (intro.), (b), cr. (8) (f) to (j), (10), (11) Register March 2022 No. 795, eff. 4-1-22; correction in (5) (a), (6) (a) (intro.), (10) (a) made under s. 35.17, Stats., Register March 2022 No. 795.

NR 216.075 Reliance on another entity. (1) In this section, "another entity" or "other entity" means another permittee, unit of government, or organization that is separate and distinct from the permittee that is relying on another entity.

(2) A permittee may rely on another entity to implement a minimum control measure or another requirement of a permit issued under this subchapter provided all the following conditions are met:

(a) The other entity implements the minimum control measure or permit requirement.

(b) The minimum control measure or requirement, or component thereof, is at least as stringent as the corresponding permit requirement.

(c) The other entity agrees to implement a minimum control

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measure or requirement on the permittee's behalf, demonstrated by executing a formal written agreement signed by both parties' authorized representatives. The agreement shall be explicit as to which specific minimum control measure or requirement is being implemented by the other entity. A copy of an executed agreement created under this section shall be submitted to the department upon the department's request.

(d) The permittee remains responsible for the compliance with all permit obligations if the other entity fails to implement any minimum control measure or requirement provided for in an agreement under par. (c).

(3) If the department finds that an agreement executed under sub. (2) (c) is deficient, does not meet the requirements of sub. (2), or does not meet a requirement of a permit issued under this subchapter, the permittee may not rely on the other entity to implement the minimum control measure or requirement.

(4) If the department finds that the other entity does not effectively implement a minimum control measure or requirement pursuant to an agreement executed under this section, the permittee shall not rely on the other entity to implement the minimum control measure or requirement.

(5) A permittee or other entity that terminates an agreement under this section shall notify the department within 5 business days of the termination. Upon termination, the permittee shall become responsible for implementing a minimum control measure or other requirement of a permit issued under this subchapter that was subject to an agreement under sub. (2) (c).

History: CR 21-027: cr. Register March 2022 No. 795, eff. 4-1-22.

NR 216.08 Permit fees. A storm water discharge permit fee shall be paid annually by each permittee under this subchapter, and by each permittee whose WPDES permit incorporates storm water management requirements under this subchapter. Permit fees are due by June 30th each year. The fees shall be assessed according to the following schedule:

(1) For city or village owned or operated municipal separate storm sewer systems, an annual permit fee shall be based on the total municipal population as reported by the latest U.S. bureau of the census decennial census. The population residing within an area served by a combined sewer outfall may not be included in determining the total municipal population for purposes of establishing the annual permit fee. For town owned or operated municipal separate storm sewer systems, an annual permit fee shall be based on the population within the urbanized area as defined by the U.S. census bureau. The annual permit fees are listed in Table 1.

Table 1

Population	Annual Fee
400,000 or greater	\$25,000
200,000 to 399,999	\$20,000
100,000 to 199,999	\$12,000
75,000 to 99,999	\$10,000
50,000 to 74,999	\$8,000
40,000 to 49,999	\$7,500
35,000 to 39,999	\$6,500
30,000 to 34,999	\$5,000
25,000 to 29,999	\$4,000
15,000 to 24,999	\$3,000
12,500 to 14,999	\$2,000
10,000 to 12,499	\$1,500
6,000 to 9,999	\$1,000
2,000 to 5,999	\$500
1,000 to 1,999	\$250
100 to 999	\$50
Less than 100	Zero

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(2) For any other owner or operator of a municipal separate storm sewer system including county, state and federal systems, the fee shall be \$500.

Note: The annual permit fee is the same regardless of whether the municipal separate storm sewer system is covered under a general permit or an individual permit alone or with co-permittees. Municipal permit fees were established in order to administer the municipal permit program pursuant to s. 283.33 (9) (b), Stats.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.09 Individual permit reapplication. In order to remain covered after the expiration date of an individual permit issued under this subchapter, a permittee shall reapply to the department at least 180 days prior to the expiration date of the permit for continued coverage under a reissued permit. Permittees shall include the elements listed in ss. NR 216.032 and 216.07 (8) (j) in the reapplication. If the permit is not reissued by the time the existing permit expires, the existing permit remains in effect.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. Register March 2022 No. 795, eff. 4-1-22.

NR 216.10 Authorized local program. (1) **PURPOSE.** The purpose of this section is to promote efficient and integrated implementation and oversight of the state and municipal construction site erosion control and storm water management requirements. A municipality covered under a permit issued under this subchapter with an authorized local program approved by the department shall review erosion and sediment control plans and post-construction storm water management plans to assure compliance with both local and state construction site erosion control and storm water management requirements. Authorized local programs shall streamline the review process for landowners and operators regulated by a municipal permittee under this subchapter and by the department under subch. III. Notwithstanding an approval of an authorized local program, the department retains its authority to conduct site inspections and take enforcement against individual landowners and operators for violations of subch. III.

(2) **VOLUNTARY PARTICIPATION.** Any municipality subject to a permit issued under this subchapter may apply to the department for approval of an authorized local program applicable to sites within the area covered by the municipality's erosion and sediment control and post-construction storm water ordinances.

(3) **AUTHORIZED LOCAL PROGRAM APPLICATION AND APPROVAL PROCESS.** (a) A municipality seeking approval from the department for an authorized local program shall submit an application on forms available from the department. Applications shall be submitted by October 1 of the year prior to anticipated operation of an authorized local program.

(b) The department shall review the application and any other relevant information and determine whether to authorize the local program. The department shall base its decision on the applicant's ability to meet the requirements in subs. (5) and (6). The department shall notify the applicant in writing of its decision. If the application is denied, the department shall identify the reasons for denial.

(c) Department authorization of a local program shall remain effective until termination or discontinuation under sub. (10).

(4) **COVERAGE UNDER STATE PERMIT.** A permittee or landowner of a construction site that is regulated by an authorized local program under this section and is required to be covered under a department construction site storm water discharge permit issued under subch. III shall comply with the requirements of the department's permit. If the site does not meet the applicability criteria of the state construction site storm water discharge general permit, the provisions of s. NR 216.51 (5) shall apply. If coverage under the state general permit is revoked by the

department, the provisions of s. NR 216.51 (4) and (5) shall apply. The department may enforce against the landowner of a construction site for violation of the permit.

(5) AUTHORIZED LOCAL PROGRAM REQUIREMENTS. (a) The municipality shall have the legal authority and resources to implement and enforce the requirements of subch. III.

(b) The municipality shall adopt, implement and enforce an ordinance with erosion control and storm water management requirements that comply with the requirements of subchs. III and IV of ch. NR 151.

(c) The municipality shall implement a program to inform the public that it has an authorized local program under which landowners are to submit a notice of intent to discharge and erosion control and storm water management plans via the municipality.

(d) The program requirements in this subsection and subs. (6) to (8) may be provided through municipal staff, intergovernmental agreements or use of professional service contracts.

(e) An authorized local program under this subsection shall include procedures to satisfy local and department NOI requirements under sub. (6). These procedures shall include transmittal of permit NOI materials to the department and acknowledgement of receipt by the department prior to notifying the landowner that permit coverage has been conveyed to the landowner by both entities.

(f) The municipality shall review all erosion and sediment control plans and post-construction storm water management plans to assure compliance with both local and state construction site erosion control and storm water management requirements.

(g) The authorized local program shall have procedures for notifying the department of non-compliance with provisions in subch. III which are not corrected by the permittee within 14 days.

(6) NOTICE OF INTENT. For construction sites regulated under this section, all of the following apply:

(a) The landowners of a construction site that is regulated by an authorized local program shall submit to the authorized local program a notice of intent using either the department's forms or an equivalent department and municipal joint application form to request municipal erosion control and storm water management approval. An equivalent department and municipal joint application form shall comply with the signature requirements under s. NR 216.43 (3).

(b) 1. The 14-working day timeline for permit coverage authorization granted under s. NR 216.44 does not apply to construction sites regulated by an authorized local program under this section.

2. The landowners who submit the notice of intent or equivalent department and municipal joint application under par. (a) shall submit the notice of intent to the municipality operating the authorized local program at least 30 calendar days prior to the anticipated commencement of any land disturbing construction activities. The municipality shall provide the application to the department 14 business days before the end of the 30-day period or before granting coverage, whichever occurs earlier. Unless notified to the contrary by the municipality or the department, a landowner who has submitted a notice of intent or equivalent application in accordance with this section is authorized to discharge storm water from a construction site under the terms and conditions of the department's general construction site storm water discharge permit 30 calendar days after the date that the municipality operating the authorized local program receives the notice of intent or equivalent application. The municipality may grant coverage to a landowner in a period of less than 30 days.

Published under s. 35.93, Stats. Updated on the first day of each month. Entire code is always current. The Register date on each page is the date the chapter was last published.

(7) SITE REVIEW. A municipality operating an authorized local program shall perform all of the following for notice of intent approval under this section:

(a) Using information made available by the department, screen applications to identify projects that may be affected by any of the following:

1. Wetland water quality standards provisions in ch. NR 103.
2. Endangered and threatened resource protection requirements of s. 29.604, Stats., and ch. NR 27.
3. Rules pertaining to any historic property that is a listed property, on the inventory or on the list of locally designated historic places under s. 44.45, Stats.

Note: Historic properties include archaeological sites, burial sites and historic structures. The municipality screens projects to help landowners identify conflicts with the requirements listed under par. (a), but it is the landowner's responsibility to meet the requirements listed under par. (a) regardless of whether or not the authorized local program identifies concerns.

(b) Where the municipality identifies that a proposed construction site may be affected by requirements listed under par. (a), direct the landowner to the appropriate state agency to resolve concerns or obtain proper authorization as appropriate.

Note: The construction site storm water discharge permit issued pursuant to subch. III expressly requires that the construction project be conducted in accordance with the requirements listed under par. (a).

(c) Review proposed projects for compliance with the municipality's erosion control and storm water management ordinance.

Note: Projects that require a permit under ch. 30, Stats., water quality certification, a wetland fill permit, or other permits and approvals for work within waterways or wetlands are not included in an authorized local program approved by the department and landowners must apply and obtain those permits and approvals from the appropriate department regulatory programs.

(8) RECORDS, ANNUAL REPORT AND FEES. (a) The municipality shall maintain records of notices of intent, inspections, and other relevant information necessary to administer an authorized local program.

(b) The municipality shall submit a written annual report to the department by March 31 of each year, based on the activities undertaken during the previous calendar year of authorized local program operation. The annual report shall include the following:

1. Name, address and phone number of person responsible for administering the municipality's authorized local program.
2. Construction project names and legal address of projects that have been approved under this section in the previous calendar year.
3. The number of construction site inspections performed and a summary of enforcement actions taken.

(c) The application fee payable by the landowner to the department under s. NR 216.43 (2) is waived for each landowner who applies to an authorized local program, and in lieu of these individual payments, the municipality shall submit an annual fee to the department. This fee shall be paid by March 31 based on the previous calendar year of operation as an authorized local program. The annual fee is \$75.00 for each construction site that the municipality approves under this section during the previous calendar year but in no case less than \$500 nor more than \$3,500 in total.

(9) DEPARTMENT AUDIT. (a) The municipality shall provide the department with relevant information requested by the department to evaluate the municipality's effectiveness in administering its authorized local program.

(b) The municipality shall cooperate with the department in performing site inspections.

(10) PROGRAM TERMINATION. (a) To voluntarily discontinue operation of an authorized local program, a municipality shall do all of the following:

1. Notify the department by letter of program termination at least 30 days prior to discontinuation of an authorized local program and include reasons for termination.

2. Inform landowners of construction sites and the public at least 30 days prior to discontinuation of an authorized local program. The notice shall include the effective date of program termination and the requirement to submit a notice of intent directly to the department for all projects requiring coverage under subch. III following that date.

3. Send the department a copy of all pending construction site notices of intent and other relevant information.

4. Provide the department with the annual report as required under sub. (8) (b).

5. Provide the department with its shared notice of intent revenue for projects that the municipality granted coverage to over the past calendar year in accordance with sub. (8) (c).

(b) The department shall notify a municipality of any deficiencies in complying with the authorized local program requirements of this section. The municipality shall be given a reasonable opportunity to correct deficiencies in complying with this section. If the municipality is unable to correct deficiencies or the department determines that the municipality has had continued occurrences of noncompliance with the requirements of this section, the department may terminate the authorization of a municipality's local program. The department shall notify the municipality by letter at least 30 days prior to termination.

History: CR 21-027: NR 216.10 (1) to (5) renum. from NR 216.415 (1) to (5) and as renumbered, am. (1), (2), (3) (title), (b), (4), (5) (title), (a), (c), cr. (5) (e) to (g), NR 216.10 (6) (title), (intro.), (a), (b), (7) to (10) renum. from NR 216.415 (6) (title), (intro.), (b), (c), (7) to (10) and, as renumbered, am. (6) (title), (a), (b) 2., (7) (intro.), (8) (a), (b) (intro.), 2., 3., (10) (a) (intro.), 2., 3., 5. Register March 2022 No. 795, eff. 4-1-22; correction in (4), (8) (b) 2., (10) (a) 5. made under s. 35.17, Stats., Register March 2022 No. 795.

Subchapter II — Industrial Storm Water Discharge Permits

NR 216.20 Purpose. This subchapter establishes criteria for identifying industrial discharges that require a WPDES storm water permit, application requirements, permit requirements and permit fees, as required by s. 283.33, Stats.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

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

(2) CATEGORIES. This subchapter applies to discharges originating from the industrial facilities belonging to categories identified in pars. (a) and (b).

(a) Tier 1 categories include all of the following:

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

**Table 1
Tier 1 Heavy Manufacturers**

SIC	Description
2400-2499	Lumber & Wood Products
2600-2699	Paper & Allied Products
2800-2899	Chemicals & Allied Products
2900-2999	Petroleum Refining & Related Industries
3110-3119	Leather Tanning & Finishing
3200-3299	Stone, Clay, Glass & Concrete Products
3300-3399	Primary Metal Industries

3441	Fabricated Structural Metal
3730-3739	Ship & Boat Bldg. & Repair

Note: Facilities in SIC Codes 2434, 2650-2659, 2670-2679, 2830-2839, 2850-2859, 2951, 3230-3239, 3271-3273 are included in s. NR 216.21(2)(b).

2. Facilities involved in the recycling of materials such as metal scrap yards, battery reclaimers, salvage yards and automobile junk yards, including those classified in SIC Codes 5015 and 5093.

3. Facilities with bulk storage piles for coal, metallic and non-metallic minerals and ores, and scrap not otherwise covered under this subchapter, such as those associated with freight transportation, SIC Code 4400-4499, and wholesale trade, SIC Code 5052.

(b) Tier 2 categories include all of the following:

1. Manufacturing facilities defined by Table 2:

**Table 2
Tier 2 Light Manufacturers**

SIC	Description
2000-2099	Food & Kindred Products
2100-2199	Tobacco Products
2200-2299	Textile Mill Products
2300-2399	Apparel & Other Textile Products
2434	Wood Kitchen Cabinets
2500-2599	Furniture & Fixtures
2650-2659	Paperboard Containers & Boxes
2670-2679	Misc. Converted Paper Products
2700-2799	Printing, Publishing, & Allied Industries
2830-2839	Drugs
2850-2859	Paints & Allied Products
3000-3099	Rubber & Misc. Plastics Products
3100-3199	Leather & Leather Products
3230-3239	Products of Purchased Glass
3400-3499	Fabricated Metal Products
3500-3599	Industrial & Commercial Machinery & Computer Equipment
3600-3699	Electronic & Other Electrical Equipment & Components
3700-3799	Transportation Equipment
3800-3899	Instruments & Related Products
3900-3999	Misc. Manufacturing Industries
4221	Farm Product Warehousing & Storage
4222	Refrigerated Warehousing & Storage
4225	General Warehousing & Storage

Note: Facilities in SIC Codes 3110-3119, 3441 and 3730-3739 are included in s. NR 216.21 (2) (a) 1.

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

**Table 3
Tier 2 Transportation Facilities**

SIC	Description
4000-4099	Railroad Transportation
4100-4199	Local & Interurban Passenger Transit
4200-4299	Trucking & Warehousing
4300-4399	U.S. Postal Service
4400-4499	Water Transportation
4500-4599	Transportation By Air
5171	Petroleum Bulk Stations & Terminals

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Note: Facilities in SIC Codes 4221, 4222 and 4225 are included in s. NR 216.21 (2) (b) 1.

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

Table 4
Tier 2 Mining, Oil and Gas Operations

SIC	Description
1000-1099	Metal Mining
1200-1299	Coal Mining
1300-1399	Oil & Gas Extraction
1400-1499	Non-metallic Minerals, except fuels

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

4. Facilities subject to storm water effluent limitation guidelines, new or existing source performance standards or toxic pollutant effluent standards under 33 USC 1251, 1311, 1314(b) and (c), 1316(b) and (c), 1317(b) and (c), 1326(c), except those facilities classified as a Tier 1 pursuant to sub. (2) (a).

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

6. Hazardous waste treatment, storage and disposal facilities, including those operating under a license under s. 291.25, Stats.

7. Landfills, land application sites and open dumps that receive or have received any industrial waste from any of the facilities identified in this section, including those subject to regulation under subtitle D of the resource conservation and recovery act, 42 USC 6901 et seq., or ch. 289, Stats. For the purposes of this subdivision, “industrial waste” means a disposed material generated by any of the facilities identified in this section including construction and demolition waste from a construction site regulated under subch. III. The term does not include placement of recycled material used during construction.

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

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

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10. Facilities previously classified as tier 1 dischargers that are subsequently classified as tier 2 under s. NR 216.23 (3).

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

(3) CONDITIONAL NO EXPOSURE EXCLUSION. (a) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to storm water, and the discharger satisfies the conditions in pars. (b) to (e). “No exposure” means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to storm water. Industrial materials or activities include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products or waste products. Material handling activities include the storage, loading and unloading, transportation or conveyance of any raw material, intermediate product, final product or waste product.

(b) *Qualification.* To qualify for this exclusion, the operator of the discharge shall do all of the following:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to storm water.
2. Complete and sign, in accordance with s. NR 216.22 (7), a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in par. (c).
3. Submit an initial “no exposure” certification to the department at least 14 working days prior to the start of industrial operations on a form available from the department as specified under s. NR 216.006.

Note: The department’s no exposure certification form, Form 3400-188, requests necessary information to be consistent with federal requirements and US EPA NPDES Form 3510-11. US EPA has published a guidance document entitled Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On “No Exposure” of Industrial Activities to Storm Water, EPA 833-B-00-001, dated June 2000. This guidance is available from the US EPA website at <https://www.epa.gov/npdes/guidance-manual-conditional-exclusion-stormwater-permitting-based-no-exposure-industrial>. The department no exposure certification form is available from the department website at <https://dnr.wisconsin.gov/topic/Stormwater/industrial/forms.html> or by calling 1-888-936-7463.

4. Submit the signed certification to the department once every 5 years.
5. Allow the department to inspect the facility to determine compliance with the “no exposure” conditions.
6. Allow the department to make any “no exposure” inspection reports available to the public upon request.
7. For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(c) *Industrial materials and activities not requiring storm resistant shelter.* To qualify for this exclusion, storm resistant shelter is not required for any of the following:

1. Drums, barrels, tanks and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. “Sealed” means banded or otherwise secured and without operational taps or valves.
2. Adequately maintained vehicles used in material handling.
3. Final products, other than products that would be mobilized in storm water such as rock salt.

(d) *Limitations.* 1. This conditional exclusion from the requirement to obtain a permit under this subchapter is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be “no exposure” discharges, individual permit requirements may be adjusted by the department accordingly.

2. If circumstances change and industrial materials or activi-

ties become exposed to storm water, the conditions for this exclusion no longer apply. The discharge then becomes subject to enforcement as an unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances shall submit a notice of intent to the department 14 or more working days prior to the change of circumstances and in accordance with s. NR 216.22.

Note: A facility that has claimed a condition of “no exposure” should routinely inspect its facility to verify that it continues to operate in a condition of “no exposure.”

3. Notwithstanding the provisions of this subsection, the department retains the authority to require permit authorization and deny this exclusion upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an exceedence of an applicable water quality standard, including designated uses.

(e) *Certification.* The “no exposure” certification shall include all of the following information, at a minimum, to aid the department in determining if the facility qualifies for the “no exposure” exclusion:

1. The legal name, address and phone number of the discharger.

2. The facility name, address, the county name where the facility is located, and the latitude and longitude where the facility is located.

3. The certification shall indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water.

b. Materials or residuals on the ground or in storm water inlets from spills and leaks.

c. Materials or products from past industrial activity.

d. Material handling equipment, except adequately maintained vehicles.

e. Materials or products during loading and unloading or transporting activities.

f. Materials or products stored outdoors, except final products intended for outside use such as new cars, where exposure to storm water does not result in the discharge of pollutants.

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks and similar containers.

h. Materials or products handled or stored on roads or railroads owned or maintained by the discharger.

i. Waste material, except waste in covered, non-leaking containers.

j. Application or disposal of process wastewater unless otherwise permitted.

k. Particulate matter or visible deposits of residuals from roof stacks or vents not otherwise regulated such as under an air quality control permit, and evident in the storm water outflow.

4. All “no exposure” certifications shall include the following certification statement, and be signed in accordance with the signatory requirements of s. NR 216.22 (7): “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of “no exposure” and obtaining an exclusion from permitting requirements under subch. II of ch. NR 216; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document, except as allowed under s. NR 216.21 (3) (c). I understand that I am obligated to submit a “no exposure” certification form once every

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five years to the department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain permit coverage under subch. II of ch. NR 216, prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

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

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

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

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

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

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

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

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

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

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (2) (b) 1., 7., (3) (b) 3., (e) 2., r. (4) Register March 2022 No. 795, eff. 4-1-22.

NR 216.22 Application requirements. (1) APPLICATION. The owner or operator of a facility type listed in s. NR 216.21 (2) shall apply for a storm water discharge permit unless the owner or operator is eligible for and has submitted a conditional “no exposure” certification in accordance with s. NR 216.21 (3).

(2) DATE OF APPLICATION. Persons proposing to discharge storm water shall submit a notice of intent to the department as follows:

(a) For proposed facilities that will undergo one or more acres of land disturbing construction activities as part of their construction, at least 14 working days prior to initiating land disturbing construction activities at the site.

Note: This submittal timeline is consistent with the requirement to develop erosion control and storm water management plans and submit a notice of intent under subch. III.

(b) For all other facilities, at least 14 working days prior to initiating industrial operations.

Note: Where an existing facility is covered under a storm water discharge permit, permit coverage may be transferred to a new owner in accordance with s. NR 216.31.

(4) FORMS. Notices of intent shall be submitted to the department using forms available from the department as specified in s. NR 216.006.

Note: Notice of intent forms are available from the department website at <http://dnr.wi.gov/topic/stormwater/industrial/forms.html> or by calling 1-888-936-7463.

(5) PERMIT TYPE CRITERIA. (a) The department shall evaluate the information submitted on the notice of intent to determine whether a facility should be covered under a general or individual storm water discharge permit under s. 283.31 or 283.33, Stats.; or whether coverage under a permit should be denied. A letter shall be sent to the applicant when permit coverage is granted. The letter granting coverage shall indicate the date upon which coverage under the permit becomes effective at the facility. If permit coverage is denied, a letter shall be sent to the applicant with the reason for denial.

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

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

(6) ADDITIONAL INFORMATION. The department may require more information than what is provided in the notice of intent in order to determine if coverage under a general permit is appropriate. The applicant shall provide additional information requested by the department within 30 days from receipt of notification by the department.

(7) SIGNATURE. The notice of intent 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 officer's authorized representative having overall responsibility for the operation of the site for which permit coverage is sought.

(b) In the case of a unit of government, by a principal executive officer, a ranking elected official, or other duly authorized representative.

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

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

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

(8) DEFICIENT APPLICATION. The department may require an applicant to submit data necessary to complete any deficient notice of intent or may require the applicant to submit a new notice of intent where the deficiencies are extensive or the appropriate form has not been used.

(9) REAPPLICATION. When a general storm water discharge permit is reissued, the department may require the owner or operator of a previously covered facility to submit a new notice of intent in order to determine continued applicability of the permit.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (4) Register March 2022 No. 795, eff. 4-1-22.

NR 216.23 Permit coverage. (1) TIER 1 GENERAL PERMIT. The department may issue a statewide general permit to cover all tier 1 type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. 35.93, Stats. Updated on the first day of each month.

or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

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

(3) CHANGING TO TIER 2. (a) A permittee covered by a tier 1 general industrial storm water discharge permit issued under this section, or a permit issued under s. NR 216.24, may request that the department consider converting the permittee's coverage to a tier 2 general industrial storm water discharge permit if all of the following occur:

1. The process or operation is managed so that no storm water is contaminated with any of the pollutants identified in s. NR 216.27 (3) (j).

2. The permittee certifies that there is no unauthorized discharge at the outfall.

3. The permittee has completed a minimum of 3 years of industrial activity under a SWPPP, with no confirmed problems identified by public complaint or the annual facility site compliance inspection reports required under s. NR 216.29 (2).

(b) The department may elect to cover any industrial storm water discharge under a tier 2 general permit where the department determines that a tier 2 general permit is appropriate.

(4) CHANGING TO TIER 1. If the department determines that a facility or an industrial activity covered under a tier 2 general permit may be discharging storm water contaminated with pollutants listed in s. NR 216.27 (3) (j), the department may require that the facility or activity be covered by a tier 1 general permit.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.24 Industry-specific general permits. (1) INDUSTRY-SPECIFIC PERMITS. In addition to statewide general permits issued under s. NR 216.23 (1) or (2), the department may issue industry-specific general storm water discharge permits to one or more categories of industries identified in s. NR 216.21 (2).

(2) REQUIREMENTS. Industry-specific general industrial storm water discharge permits shall differ from the statewide storm water general permits by factoring in characteristics common to the industry including the characteristic that requirements of the permit may contain phased source area control compliance schedules.

(3) COOPERATIVE COMPLIANCE PROGRAM. (a) The department may allow a permittee to participate in a program to assist the facility with maintaining compliance with an industry-specific permit. The department may waive certain requirements of this subchapter via permit in exchange for alternative requirements such as mandatory education and a facility inspection program that the department finds to be equivalent or more effective at controlling pollution from storm water runoff.

(b) The department may terminate a cooperative compliance program if it finds that the program is ineffective.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.25 Individual permit. (1) PERMIT REQUIREMENTS. Requirements of an individual WPDES permit issued under s. 283.31 or 283.33, Stats., shall be consistent with similar requirements in general storm water discharge permits, except where the department determines that more stringent requirements are necessary to meet a performance standard of ch. NR 151 or a water quality standard. The department may require that specific source area controls be used as a requirement of an individual permit.

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

(3) **INDIVIDUAL PERMIT COVERAGE.** If it determines that one or more of the following conditions are met, the department may require that a storm water discharge be covered by an individual WPDES permit under s. 283.31 or 283.33, Stats.:

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

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

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

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

(5) **REVOCATION OF GENERAL PERMIT COVERAGE.** If the department determines that an industrial facility should be covered by an individual WPDES permit, the department shall explain its decision in writing to the permittee prior to revoking general permit coverage and issuing an individual WPDES permit.

History: CR 03-028; cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.27 Storm water pollution prevention plan.

(1) **APPLICABILITY.** Any person who owns or operates an industrial activity with a storm water discharge subject to the applicability requirements of s. NR 216.21 (2) that does not qualify for a no exposure certification under s. NR 216.21 (3) shall prepare and implement an SWPPP under this section.

(2) **INCORPORATION BY REFERENCE.** When plans are developed or activities conducted in accordance with other federal, state or local regulatory programs that meet the requirements of this section, the plans may be incorporated into the SWPPP by reference.

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

(a) The SWPPP shall identify by job title the specific individual who has primary responsibility for all aspects of SWPPP development and implementation and identify any other individuals concerned with SWPPP development or implementation, and their respective roles. The specific individual who has primary responsibility shall develop, evaluate, maintain and revise the SWPPP; and carry out the specific management actions identified in the SWPPP, including: maintenance practices, monitoring activities, preparing and submitting reports and serving as facility contact for the department.

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

(c) The SWPPP shall include a drainage base map depicting all of the following:

1. How storm water drains on, through and from the facility to groundwater, surface water or wetlands.
2. The facility property.
3. A depiction of the storm drainage collection and disposal system including all surface and subsurface conveyances.
4. Any secondary containment structures.
5. The location of all outfalls that discharge channelized flow to surface water, ground water or wetlands, including outfalls recognized as permitted outfalls under another WPDES permit, numbered for reference.

6. The drainage area boundary for each outfall.

7. The surface area in acres draining to each outfall, including the percentage that is impervious such as paved, roofed or highly compacted soil, and the percentage that is pervious such as grassy areas and woods.

8. Existing structural storm water controls.

9. The name and location of receiving waters. Also identify receiving waters, including downstream waters, that are designated as ERW, ORW, or impaired waters.

Note: A list of outstanding resource waters and exceptional resource waters may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/orwerw.html>. A list of Wisconsin impaired waterbodies is updated every two years and may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/ConditionLists.html>.

10. The location of activities and materials that have the potential to contaminate storm water.

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

(e) The SWPPP shall identify all potential source areas of storm water contamination including:

1. Outdoor manufacturing areas.
2. Rooftops contaminated by industrial activity.
3. Industrial plant yards.
4. Storage and maintenance areas for material handling equipment.
5. Immediate access roads and rail lines.
6. Material handling sites including storage, loading, unloading, transportation, or conveyance of any raw material, finished product, intermediate product and by-product or waste areas.
7. Storage areas for raw materials, finished and intermediate products including tank farms.
8. Disposal or application of wastewater.
9. Areas containing residual pollutants from past industrial activity.
10. Areas of significant soil erosion.
11. Refuse sites.
12. Vehicle maintenance and cleaning areas.
13. Washing areas for equipment, vehicles, containers or other material.
14. Shipping and receiving areas.
15. Manufacturing buildings.
16. Residual treatment, storage and disposal sites.
17. Any other areas capable of contaminating storm water runoff.

(f) Specific pollutants likely to be present in storm water as a result of contact with source areas identified in par. (e) shall also be listed.

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

(h) The SWPPP shall rely to the maximum extent practicable, and to the extent it is cost effective, on the use of source area con-

control best management practices that are designed to prevent storm water from becoming contaminated at the site. Source area control best management practices that are either proposed or in place at the facility shall be indicated on the facility drainage base map. The SWPPP shall provide for the use of the following applicable source area control best management practices:

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

(i) The SWPPP shall maintain best management practices necessary to maintain compliance with the performance standards in s. NR 151.12 for those areas that are described in s. NR 151.12 (2).

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

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

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

1. Storm water significantly contaminated with petroleum products shall be treated for oil and grease removal by an adequately sized, designed and functioning wastewater treatment de-

vice. Coverage under an individual or general WPDES permit is required for discharges of storm water from oil/water treatment devices.

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

(L) The SWPPP shall include provisions for complying with the monitoring requirements specified in s. NR 216.28. The SWPPP shall include a checklist of inspections to be made during the annual facility site inspection described in s. NR 216.28 (2). The SWPPP shall also identify for each outfall the type of monitoring that will be conducted, such as non-storm water discharge monitoring; storm water discharge quality inspections; or chemical pollutant monitoring for facilities covered under a tier 1 permit. The following are requirements for facilities covered under a tier 1 permit:

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

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

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

(n) The SWPPP shall be signed in accordance with s. NR 216.22 (7) prior to submittal to the department.

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

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

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

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

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (1), (3) (c) 9., cr. (3) (j) 6. Register March 2022 No. 795, eff. 4-1-22; correction in (1) made under s. 35.17, Stats., Register March 2022 No. 795.

NR 216.28 Monitoring requirements. (1) NON-STORM WATER DISCHARGES. The permittee shall evaluate all outfalls for non-storm water discharges into the storm drainage system beginning in the first year of permit coverage. Evaluations shall take place during dry periods. The following are additional requirements for evaluating non-storm water discharges:

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

(b) One of the following monitoring procedures shall be followed:

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

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

(c) All permitted facilities shall maintain the results of their non-storm water evaluations on site. Facilities shall report the results of the initial non-storm water evaluations to the department within the SWPPP summary form required pursuant to s. NR 216.29 (1) (e). Information reported shall include date of testing, test method, outfall location, testing results and potential significant sources of non-storm water discovered through testing.

Note: The department storm water pollution prevention summary Form 3400-167 contains a table for recording the results of the non-storm water discharge evaluations.

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

(e) If a permittee identifies an unauthorized discharge of pollutants, the permittee shall immediately cease the discharge and contact the department to determine if a permit is required under s. 283.31 or 283.35, Stats.

(2) ANNUAL SITE INSPECTIONS. Permittees under this subchapter shall perform and document the results of an annual facility site compliance inspection. The inspection shall be adequate to verify that the site drainage conditions and potential pollution sources identified in the SWPPP remain accurate, and that the best management practices prescribed in the SWPPP are being implemented, properly operated and adequately maintained. Information reported shall include the inspection date, inspection personnel, scope of the inspection, major observations and revisions needed in the SWPPP.

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

(4) STORM WATER SAMPLING AND ANALYSIS. Unless an alternative monitoring plan is required as part of the SWPPP, owners or operators of facilities covered under a tier 1 general permit issued under this subchapter or an individual WPDES permit issued under s. 283.31, Stats., containing tier 1 general permit requirements, or individual storm water discharge permits issued under s. 283.33 (1) (a) and (d), Stats., shall perform annual chemical storm water sampling at each outfall for those residual pollutants listed in the permittee's SWPPP as required by s. NR 216.27 (3) (j). The following are specific requirements for chemical storm water monitoring:

(a) The list of pollutants to be tested in the discharge at the

outfall shall be identified in the facility monitoring plan portion of the SWPPP.

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

(c) After review of the facility monitoring plan portion of the SWPPP, the department shall add additional pollutants to the monitoring list if it has cause to do so based on a reasonable probability that the pollutants will be present in storm water discharges from the facility. The department shall remove pollutants from the monitoring list if it determines that continued monitoring for the pollutant serves no further purpose. Chemical monitoring may be discontinued after submitting the second round of chemical monitoring results to the department with the annual facility site compliance inspection report unless the department directs the permittee otherwise. The department shall require additional chemical sampling within a tier 1 general permit for industrial facilities where chemical monitoring has shown a reasonable potential that the storm water discharge from an individual facility or a type of industry will exceed a water quality standard.

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

(e) Storm water samples shall be representative of the "first flush" of storm water runoff at the outfall using one of the following sampling methods:

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

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

3. An alternative sampling collection time specified by the department if the department determines it is necessary to obtain a representation sample of storm water runoff from the site.

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

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

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

2. The individual who performed the sampling or measurements.

3. The date the analysis was performed.

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

5. The analytical techniques or methods used.
6. The results of the analysis.
7. The estimated duration of the rainfall event, in hours, and the estimated total amount of precipitation falling during the rainfall event, in inches.

(5) MONITORING EXCEPTIONS. The department may waive specific monitoring requirements if one of the following applies:

(a) An employee could not reasonably be present at the facility at the time of the snowmelt or runoff event, or those attempts to meet the monitoring requirement would endanger employee safety or well being.

(b) There were no snow melt or runoff events large enough to conduct a quarterly visual inspection at an outfall.

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

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

History: CR 03-028; cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.29 Compliance and reporting requirements. **(1) REQUIREMENTS.** Facilities covered by permits issued under s. NR 216.23 (1) or (2) are subject to the following requirements:

(a) Owners or operators of proposed facilities that will have one acre or more of land disturbing construction activities as part of their construction, shall develop a SWPPP and submit either the SWPPP or a SWPPP summary to the department at least 14 working days prior to initiating land disturbing construction activities at the site or submit a no exposure certification to the department under s. NR 216.21 (3).

Note: This timeline is consistent with the requirement to develop erosion control and storm water management plans and submit a notice of intent under subch. III.

(b) Owners or operators of other facilities shall develop a SWPPP and submit either the SWPPP or a SWPPP summary to the department prior to initiating industrial operations.

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

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

(e) The SWPPP summary shall be submitted on a standardized department form as specified under s. NR 216.006.

(f) The department shall notify the permittee if it determines that the SWPPP summary is inadequate and may require the permittee to submit the SWPPP for review.

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

(2) ANNUAL SITE INSPECTION. The first annual facility site compliance inspection shall be conducted by the permittee within 12 months of the effective date of coverage under the general permit. Facilities covered under a tier 1 permit shall submit their first inspection report to the department within 18 months of the effective date of coverage under the permit and the second in-

spection report within 30 months of the effective date of permit coverage. The report shall be written on department forms, and shall contain information from the inspection, the quarterly visual inspection and the annual chemical monitoring. Facilities covered under the tier 2 permit shall keep the results of their annual facility site compliance inspection and quarterly visual inspections on site for department inspection. Facilities covered under a tier 1 permit are not required to submit inspection reports after submittal of the second inspection report, unless so directed by the department. However, these inspections and quarterly visual inspections shall still be conducted; and results shall be kept on site for department inspection.

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

(4) CHEMICAL SAMPLING DATES. Owners and operators of facilities covered under a tier 1 permit shall submit annual chemical monitoring results with the compliance inspection report required under s. NR 216.28 (2) for the first 2 years following SWPPP implementation. The monitoring results shall include all of the information specified in s. NR 216.28 (4) (g).

(5) BMP IMPLEMENTATION. Unless an alternate implementation schedule is identified in the permit, the BMPs identified in the SWPPP shall be implemented beginning at the start of industrial operations.

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

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

(8) SIGNATURE. Reports required under this subchapter shall be signed in accordance with s. NR 216.22 (7).

History: CR 03-028; cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027; am. (1) (a), (b), (e), (g) Register March 2022 No. 795, eff. 4-1-22.

NR 216.30 Permit fees. **(1)** A storm water discharge permit fee shall be paid annually by each industrial facility covered by or holding a permit under this subchapter or a wastewater discharge permit that incorporates storm water management requirements under this chapter. Permit fees are due June 30 of each year. The fee shall be either:

(a) \$260 for coverage under a tier 1 general industrial storm water discharge permit under s. NR 216.21 (2) (a), an industry-specific general industrial storm water discharge permit under s. NR 216.24 with tier 1 requirements, or an individual WPDES permit under s. 283.31, Stats., with tier 1 requirements,

(b) \$130 for coverage under a tier 2 general industrial storm water discharge permit under s. NR 216.21 (2) (b), an industry-specific general industrial storm water discharge permit under s. NR 216.24 or an individual WPDES permit under s. 283.31, Stats., with tier 2 requirements, or

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

(2) Notwithstanding sub. (1), no fee may be charged under this section for facilities that are regulated under a WPDES permit developed specifically to address discharges from non-metallic mining operations and that the department concurs are internally drained and no pollutants are exposed that could contaminate groundwater. A non-metallic mining operation is internally drained if all storm water that contacts disturbed areas or exca-

vated material is directed to onsite seepage areas that are entirely confined and retained within the property boundaries of the site.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.31 Permit coverage transfers. A permittee who will no longer control the permitted industrial facility may request that permit coverage be transferred to the person who will control the industrial facility. The transfer request shall be completed on forms provided by the department as specified under s. NR 216.006 and signed by both the permittee and the new owner or operator. If the permittee's signature cannot be obtained, the new owner or operator shall apply for coverage as specified under s. NR 216.22. The department may require additional information including a notice of intent to be filed prior to transferring permit coverage. Coverage is not transferred until the department sends notification of transfer approval to the new owner or operator.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. Register March 2022 No. 795, eff. 4-1-22.

NR 216.32 Permit termination. (1) If the owner or operator of a facility no longer claims coverage under any general or individual permit for the discharge of storm water from industrial activity under this subchapter, the permittee shall submit a signed notice of termination to the department.

(2) A notice of termination shall be submitted on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage under this subchapter.

(3) The notice of termination form shall be signed in accordance with the signature requirements in s. NR 216.22 (7).

(4) Termination of coverage under this subchapter shall be effective upon receipt of written confirmation from the department by the permittee.

Note: The notice of termination form is available from the department website at <http://dnr.wi.gov/topic/stormwater/industrial/forms.html> or by calling 1-888-936-7463.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (2), r. (5) Register March 2022 No. 795, eff. 4-1-22.

Subchapter III — Construction Site Storm Water Discharge Permits

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

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; correction made under s. 13.92 (4) (b) 7., Stats., Register April 2013 No. 688.

NR 216.42 Applicability. (1) CONSTRUCTION SITES OF ONE ACRE OR MORE OF LAND DISTURBANCE. Except as provided in subs. (2) to (11), a notice of intent shall be filed with the department under s. NR 216.43 or to the department via an authorized local program under s. NR 216.10 by any landowner who intends to create a point source discharge of storm water from a construction site to waters of the state. The landowner of the construction site regulated by this subchapter shall comply with all

applicable provisions of this subchapter and the appropriate WPDES permit issued pursuant to this subchapter.

Note: Disturbances less than one acre may require a permit if the disturbances are part of a common plan of development with one acre or more of total land disturbance as described in s. NR 216.002 (2).

(2) AGRICULTURE. (a) Storm water discharges associated with planting, growing, cultivating, or harvesting crops for use or consumption by humans, livestock as defined in s. 95.80 (1) (b), Stats., or poultry, including sod farms and tree nurseries are not regulated by this subchapter.

(b) Storm water discharges associated with pasturing or yarding livestock, as defined in s. 95.80 (1) (b), Stats., or poultry are not regulated by this subchapter.

(c) The exemptions under pars. (a) and (b) do not apply to the construction of barns, manure storage facilities, barnyard runoff control systems, or other similar structures.

(3) SILVICULTURE. Storm water discharges from silviculture activities conducted in accordance with standard industry practices, including nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance are not regulated by this subchapter. Land disturbing construction activity that includes clearing and grubbing of an area of a construction site is not a silviculture activity.

Note: Wisconsin's Forestry Best Management Practices for Water Quality Field Manual provides examples of silvicultural industry practices. These practices are intended to prevent or reduce pollution to waters of the state from silvicultural activities. Certain lumber, wood and paper product manufacturers may require coverage under a general industrial WPDES permit for storm water discharges pursuant to subch. II. A silviculture activity may require approval pursuant to ch. 30 or 31, Stats., or an U.S. army corps of engineers section 404 permit under 33 USC 1344.

(7) MILL AND CRUSH OPERATION. If construction activity does not result in land disturbing construction activity including a mill and crush operation that does not have soil disturbance, filling or road shoulder grading, the activity is not regulated under this subchapter.

(8) ROUTINE MAINTENANCE. Routine maintenance for project sites that involve under 5 acres of land disturbance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility is not regulated under this subchapter.

Note: Grading an existing dirt road or adding gravel to an existing parking lot are examples of routine maintenance. Full depth pavement reconstruction or underground utility replacement involving exposure of bare soils is not routine maintenance.

(8m) DRAINAGE DISTRICTS. Storm water discharges from land containing dredged material removed from a drainage district ditch are not regulated by this subchapter if all of the following are met:

(a) The work is authorized by a drainage district subject to ch. 88, Stats.

(b) The land is adjacent to the ditch from which the dredged material was removed.

(c) The area of land disturbing activity that does not meet the exemption in sub. (2) is less than 5 acres for activities that qualify as routine maintenance and less than one acre for all other activities.

Note: Drainage district ditch dredging is also subject to provisions in ch. 30, Stats., and erosion and sediment control performance standards under s. NR 151.105 or 151.11, to implement s. 88.74 (3) (b), Stats.

(11) QUARTER MILE SEPARATION. Where discrete construction projects within a larger common plan of development or sale are located at least 1/4 mile apart and the area between the projects is not being disturbed, each individual project may be treated as a separate plan of development or sale provided any in-

terconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; correction in (4), (9) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672; CR 19-053: r. (4), (5), (9) Register January 2020 No. 769, eff. 2-1-20; CR 21-027: am. (1), renum. (2) to (2) (a) and am., cr. (2) (b), (c), am. (3), r. (6), cr. (8m), r. (10) Register March 2022 No. 795, eff. 4-1-22; correction in (2) (a) made under s. 35.17, Stats., Register March 2022.

NR 216.43 Notice of intent requirements. (1) FORMS. The landowner shall submit a notice of intent to the department on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of intent forms shall be used as a basis for conferring coverage under a WPDES storm water permit.

Note: The notice of intent form is available from the department website at <http://dnr.wi.gov/topic/Stormwater/construction/forms.html> or by calling 1-888-936-7463.

(2) APPLICATION FEE. A storm water construction site application fee defined by Table 5 shall be submitted to the department with the notice of intent.

Table 5

Acres of Land Disturbance	Application Fee before January 1, 2023	Application Fee after January 1, 2023
Less than 2	\$140	\$250
2 or more and less than 5	\$140	\$350
5 or more and less than 25	\$235	\$550
25 or greater	\$350	\$800

(3) SIGNATURE REQUIREMENTS. The notice of intent form shall be signed by the landowner 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 officer's authorized representative having overall responsibility for the operation of the site for which a permit is sought.

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

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

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

(e) For a unit of government, by a principal executive officer, ranking elected official or other duly authorized representative.

(4) LATE APPLICATION FEE. If an applicant applies for a permit after land disturbance has commenced, the application fees under sub. (2) shall be doubled.

(5) REAPPLICATION. Coverage under a general permit shall be valid for up to 3 years from the date the department conveys coverage for the site. If the covered discharge is not completed within 3 years, the permittee shall reapply for coverage at least 14 working days before coverage will expire. The reapplication fee shall be equal to the application fee at the time of reapplication for the original disturbed area and coverage will remain effective for up to 3 more years.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (1), (2) Table 5, cr. (4), (5) Register March 2022 No. 795, eff. 4-1-22.

NR 216.44 Notice of intent deadline. (1) Except as provided under sub. (3), a landowner required to obtain WPDES permit coverage for storm water discharges from a construction site shall submit a completed notice of intent, in accordance with the requirements of this subchapter and as specified under s. NR 216.006. The notice of intent shall be submitted so that it is received by the department at least 14 working days prior to the commencement of any land disturbing construction activities. Unless notified by the department to the contrary, a landowner who has submitted a notice of intent in accordance with the pro-

visions of this subchapter is authorized to discharge storm water from a construction site under the terms and conditions of the general construction site storm water discharge permit 14 working days after the date that the department receives the notice of intent or upon receipt of notification from the department that the construction site is covered under the general construction site discharge permit. The landowner becomes the permittee once the construction site is authorized permit coverage.

(2) A site-specific erosion control and storm water management plan pursuant to ss. NR 216.46 and 216.47 shall be completed by the landowner prior to submitting the notice of intent to the department under sub. (1) and shall be updated as appropriate pursuant to s. NR 216.50. The erosion control and storm water management plans shall be submitted to the department upon request so that it may evaluate whether the plans comply with ss. NR 216.46 and 216.47. The department may withhold permit coverage as necessary until it verifies that the plans comply with ss. NR 216.46 and 216.47.

Note: The department encourages landowners and their representatives to consult with the department's regional storm water staff prior to local plan approval on the conceptual plans for erosion control and storm water management. Contact information for department regional storm water staff is available from the department website at <http://dnr.wi.gov/topic/stormwater/contacts.html> or by contacting the storm water program in the bureau of watershed management at (608) 267-7694.

(3) If the construction site is located in an area regulated by an authorized local program under s. NR 216.10, the landowner shall apply for storm water discharge approval jointly to the department and the authorized local program.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (1), (3) Register March 2022 No. 795, eff. 4-1-22; correction in (1) made under s. 35.17, Stats., Register March 2022 No. 795.

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

(2) The department shall refund to the applicant the stormwater construction site storm water discharge permit application fee paid under s. NR 216.43 (2) if the department does not make a determination on the permit application within 45 business days of receipt of the information required under sub. (1). In this subsection, "business day" means any day except Saturday, Sunday and state holidays as designated in s. 230.35 (4) (a), Stats. This subsection does not apply to permit applications related to mining, as defined in s. 293.01 (9), Stats., prospecting, as defined in s. 293.01 (18), Stats., or nonmetallic mining, as defined in s. 295.11 (3), Stats.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.455 Proof of permit coverage. (1) A copy of the permit issued under this subchapter and the letter of permit coverage documenting that storm water discharges from the site are covered under a construction site storm water discharge permit shall be kept with building plans on the construction site and with the landowner.

(2) The permittee shall post a copy of the permit certificate near each main entrance to the construction site in a location where it is legible from a public right-of-way. The permittee shall provide sufficient weather protection to avoid the certificate from becoming unreadable. The department, or an authorized local program under s. NR 216.10, shall include the permit certificate with the letter of permit coverage.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. Register March 2022 No. 795, eff. 4-1-22.

NR 216.456 Responsible parties. (1) The permittee or landowner required to submit a notice of intent under this subchapter is responsible for complying with this subchapter.

(2) An operator shall comply with this subchapter where the operator has a contract or other agreement with the landowner to meet the requirement.

Note: General contractors, landscape architects, project designers and inspectors are responsible for the particular services that they provide to a landowner to comply with the requirements of this subchapter.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.46 Erosion control plan requirements. (1) **SITE-SPECIFIC PLAN.** The permittee or landowner required to submit a notice of intent under this subchapter shall develop a site-specific erosion control plan for each construction site regulated by this subchapter. The permittee or landowner required to submit a notice of intent under this subchapter, or their representative, shall implement and maintain as appropriate all best management practices specified in the erosion control plan from the start of land disturbing construction activities until final stabilization of the construction site.

(2) **PERFORMANCE STANDARDS.** The construction site erosion control plan shall meet the applicable performance standards in either s. NR 151.11 for construction sites that are not transportation facilities or s. NR 151.23 for transportation facility construction sites.

Note: Pursuant to s. NR 151.32 (2), the department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list. Transportation facilities regulated under ch. Trans 401 generally have a 2-step plan development process of an erosion control plan (ECP) that contains design requirements and then development of an erosion control implementation plan (ECIP) that includes implementation details. This subchapter requires an erosion control plan that is equivalent to the ch. Trans 401 ECP and ECIP plans put together.

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

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

(a) Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a USGS 7.5-minute series topographical map or as specified by the department.

(b) Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, such as grubbing, excavation or grading.

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

(d) Available data describing the surface soil as well as subsoils.

(e) Wherever permanent infiltration devices will be employed or were evaluated, the depth to the nearest seasonal high ground-water elevation or top of bedrock shall be identified as outlined in s. NR 216.47 (3).

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

(g) Identify receiving waters, including downstream waters, that are designated as ERW, ORW, or impaired waters.

Note: A list of outstanding resource waters and exceptional resource waters may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/orwerw.html>. A list of Wisconsin impaired waterbodies is updated every two years and may be found on the department website at: <https://dnr.wisconsin.gov/topic/SurfaceWater/ConditionLists.html>.

(5) SITE MAP REQUIREMENTS. Each construction site map shall include all of the following:

- (a) Existing topography and drainage patterns, roads and surface waters.
- (b) Boundaries of the construction site.
- (c) Drainage patterns and approximate slopes anticipated after major grading activities.
- (d) Areas of soil disturbance.
- (e) Location of major structural and non-structural controls identified in the erosion control plan.
- (f) Location of areas where stabilization practices will be employed.
- (g) Areas that will be vegetated following land disturbing construction activities.
- (h) Area and location of wetland acreage on the construction site and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
- (i) Areas used for infiltration of post-construction storm water runoff.
- (j) An alphanumeric or equivalent grid overlying the entire construction site.

(6) EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES. The erosion control plan shall include a description of appropriate erosion and sediment control best management practices that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion control plan shall clearly describe the appropriate erosion and sediment control best management practices for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control best management practices will be implemented. The description of erosion and sediment control best management practices shall include the following requirements:

- (a) Description of any interim and permanent stabilization practices, including a schedule for implementing the practices. The erosion control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the construction site are stabilized.
- (b) Description of any structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the construction site. Unless otherwise specifically approved in writing, structural measures shall be installed on upland soils.
- (c) Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
- (d) Trapping of sediment in channelized flow.
- (e) Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
- (f) Protection of downslope drainage inlets where they occur.
- (g) Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
- (h) Clean up of off-site sediment deposits.
- (i) Proper disposal of building and waste material.
- (j) Stabilization of drainage ways.
- (k) Installation of permanent stabilization practices as soon as possible after final grading.
- (L) Minimization of dust to the maximum extent practicable.

(7) MATERIAL. No solid materials, including building materials, may be discharged in violation of ch. 30 or 31, Stats., or 33 USC 1344 or an U.S. army corps of engineers section 404 permit issued under 33 USC 1344.

(8) NON-EROSIVE FLOW. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a watercourse so that the natural physical and biological characteristics and functions are maintained and protected.

(9) INSPECTIONS. The landowner, or the landowner's representative, shall inspect erosion and sediment control practices weekly, and within 24 hours following a rainfall of 0.5 inches or greater. Written documentation of each inspection shall be maintained at the construction site and shall include the time, date and location of inspection, the phase of land disturbance at the construction site, person conducting the inspection, assessment of control practices, and a description of any erosion or sediment control measure installation or maintenance performed in response to the inspection.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (4) (a), cr. (4) (g) Register March 2022 No. 795, eff. 4-1-22.

NR 216.47 Storm water management plan requirements. Pollution caused by storm water discharges from the construction site after construction is completed, including rooftops, parking lots, roadways and the maintenance of grassed areas, shall be addressed by a storm water management plan. A storm water management plan shall be developed prior to submitting a notice of intent to the department and shall comply with all of the following:

(1) PERFORMANCE STANDARDS. The storm water management plan shall meet the applicable performance standards in either subch. III of ch. NR 151 for construction sites that are not transportation facilities or subch. IV of ch. NR 151 for transportation facility construction sites.

(2) PRACTICES DURING CONSTRUCTION. The plan shall include a description of the management practices that will be installed during the construction process to control total suspended solids and peak flow, enhance infiltration, maintain or restore protective areas and to reduce petroleum in runoff that will occur after construction operations have been completed. Storm water management practices shall be in accordance with applicable state and local regulations.

(3) GROUNDWATER LIMITATIONS. When permanent infiltration systems are used, appropriate on-site testing shall be conducted to determine if seasonal high groundwater elevation or top of bedrock is within 5 feet of the bottom of the proposed infiltration system.

(4) SEPARATION DISTANCES. Storm water management practices shall be adequately separated from wells to prevent contamination of drinking water, and the following minimum separation distances shall be met:

(a) Storm water infiltration systems and ponds shall be located at least 400 feet from a well serving a community water system unless the department concurs that a lesser separation distance would provide adequate protection of a well from contamination.

(b) Storm water management practices shall be located with a minimum separation distance from any well serving a non-community or private water system as listed within s. NR 812.08.

Note: Chapter NR 815, when promulgated, will regulate injection wells including storm water injection wells.

(5) LONG-TERM MAINTENANCE. For any permanent structures, provisions shall be made for long-term maintenance with the municipality or other responsible party. A copy of the long-term maintenance agreement shall be submitted to the department with the notice of intent unless the department agrees that it may be submitted by an alternative date prior to termination of permit coverage. The department may withhold permit coverage

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until the long-term maintenance agreement is submitted to the department.

Note: There may be valid reasons that a maintenance agreement could not be secured prior to submittal of a notice of intent. However, the long-term maintenance agreement is an important requirement and the department wants to ensure that appropriate steps are being taken to secure the agreement. For regional treatment structures, the department encourages the landowner to obtain a municipal agreement for long-term maintenance of regional treatment structures. Long-term storm water management practices shall be maintained after permit termination in accordance with s. NR 216.005.

(6) MANAGEMENT PRACTICES. Best management practices to control impacts from storm water runoff include infiltration systems, wet detention ponds, constructed wetlands, grassed swales, vegetative protective areas, reduced imperviousness, beneficial reuse such as irrigation or toilet flushing, combinations of these practices, or other methods which do not cause significant adverse impact on the receiving surface water or groundwater. The plan shall include an explanation of the technical basis used to select the best management practices.

Note: Pursuant to s. NR 151.32 (2), the department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control storm water runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list.

History: CR 03-028; cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027; am. (1) Register March 2022 No. 795, eff. 4-1-22; correction in (1) made under s. 35.17, Stats., Register March 2022 No. 795.

NR 216.48 Reporting and monitoring requirements. (1) RECORDS. The permittee or landowner required to submit a notice of intent under this subchapter shall retain records of all construction site inspections, copies of all reports and plans required by the permit, and records of all data used to obtain coverage under the permit. Minimum periods of retention are as follows:

(a) The erosion control and storm water management plans and amendments to the erosion control and storm water management plans shall be retained at the construction site until permit coverage is terminated in accordance with s. NR 216.55.

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

Note: The storm water management plan and long-term maintenance agreement should be kept as long as necessary to document proper maintenance of long-term storm water best management practices in accordance with subchs. III and IV of ch. NR 151.

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

(3) ADDITIONAL INFORMATION. Upon request by the department, the permittee or landowner required to submit a notice of intent under this subchapter shall provide a copy of the erosion control and storm water management plans, construction site inspections and any additional data requested, within 5 working days to the department, to the operator of the municipal storm sewer system that receives the storm water discharge, and any municipal agency approving sediment and erosion plans, grading plans or storm water management plans. Additional information may be requested by the department for resource waters that require additional protection such as outstanding or exceptional resource waters, or other sensitive water resources.

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(4) INSPECTIONS AND MAINTENANCE. The permittee or landowner required to submit a notice of intent under this subchapter shall:

(a) Conduct the following construction site inspections:

1. Weekly inspections of implemented erosion and sediment control best management practices.

2. Inspections of erosion and sediment controls within 24 hours after a precipitation event of 0.5 inches or greater. A precipitation event may be considered to be the total amount of precipitation recorded in any continuous 24-hour period.

(b) Repair or replace erosion and sediment control best management practices as necessary within 24 hours of an inspection or department notification that repair or replacement is needed.

(c) Maintain, at the construction site or available via an Internet website, weekly written reports of all inspections conducted by or for the permittee or landowner required to submit a notice of intent under this subchapter. The landowner shall notify the department of all appropriate Internet addresses to access the weekly inspection records. Weekly inspection reports shall include all of the following:

1. The date, time and location of the construction site inspection.

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

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

4. A description of any erosion and sediment control best management practice implementation and maintenance performed.

5. A description of the present phase of land disturbing construction activity at the construction site.

History: CR 03-028; cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.49 Conformance with other applicable regulations. (1) LOCAL COMPLIANCE. The erosion control and storm water management plans shall document other applicable municipal regulatory provisions, compliance with which will also meet the requirements of the permit. If these municipal provisions are more stringent than those provisions appearing in a permit issued pursuant to this subchapter, the erosion control and storm water management plans shall include a description of how compliance with the municipal provisions will be achieved.

(2) PLUMBING REGULATIONS. The erosion control and storm water plans shall be in compliance with applicable state plumbing regulations.

Note: Plumbing regulations are contained within chs. SPS 381 to 387.

(3) IMPAIRED WATERS. For any of the receiving waters designated as an impaired water, the erosion control plan required under s. NR 216.46 and the storm water management plan required under s. NR 216.47 shall contain a written assessment of the potential for storm water from the facility to discharge a pollutant of concern and identify the control measures and maintenance practices that will collectively be used to reduce, with the goal of eliminating, storm water discharge containing pollutants of concern.

(4) TMDL. If the permittee is subject to an US EPA-approved TMDL, the erosion control plan required under s. NR 216.46 and the storm water management plan required under s. NR 216.47 shall specify the pollution prevention and treatment systems that will be employed to achieve the TMDL permit requirements.

History: CR 03-028; cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027; cr. (3), (4) Register March 2022 No. 795, eff. 4-1-22.

NR 216.50 Amendments. (1) LANDOWNER INITIATED. The permittee or landowner required to submit a notice of intent

under this subchapter shall amend the erosion control and storm water management plans if either of the following occurs:

(a) There is a change in design, construction, operation or maintenance at the construction site which has the reasonable potential for the discharge of pollutants and which has not otherwise been addressed in the erosion control and storm water management plans. Changes that may trigger an amendment include addition of access points, additional land disturbing construction activity not included in the original plan, a change or elimination of a best management practice, an increase in proposed impervious area, and changes to post-construction site treatment practices. The department may require a permittee to file a new notice of intent if the amended site requires resource screening of additional area or the amended site no longer meets an exemption from post-construction performance standards under ss. NR 151.121 to 151.125.

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

(2) SUBMITTAL REQUIREMENTS. For construction sites for which there has been earlier department review of the erosion control and storm water management plans, if the permittee or landowner required to submit a notice of intent under this subchapter identifies changes needed in either plan, the permittee or the landowner required to submit a notice of intent under this subchapter shall notify the department 5 working days prior to making the changes in the plan.

(3) PERMIT MODIFICATION. The department may, upon request of a permittee or upon finding of just cause, modify the compliance and reporting schedules or any requirement of a storm water discharge permit.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (1) (a) Register March 2022 No. 795, eff. 4-1-22.

NR 216.51 Department actions. (1) INADEQUATE PLANS. The department may notify the permittee or landowner required to submit a notice of intent under this subchapter at any time that the erosion control or storm water management plans do not meet one or more of the requirements of this subchapter, or a permit issued pursuant to this subchapter, for reducing and preventing the discharge of pollutants. The notification shall identify those provisions that are not being met by the erosion control or storm water management plan, and identify which provisions of the plan require modifications in order to meet the requirements.

(2) REQUIRED PLAN REVISIONS. Within the time frame identified by the department in its notification, the permittee or landowner required to submit a notice of intent under this subchapter shall make the required changes to the erosion control and storm water management plans, perform all actions required by the revised plans, and submit to the department a written certification that the requested changes have been made and implemented, and submit other information the department requires. The department may revoke construction site storm water discharge permit coverage for failure to comply with this section or take action under s. 283.89, Stats. The landowner of a construction site where the department has revoked coverage under the general WPDES permit may not discharge storm water to waters of the state from the construction site unless an individual WPDES permit for storm water discharge is issued to the landowner.

(3) OTHER STORM WATER DISCHARGES. The department may require the landowner of any storm water discharge associated with land disturbing construction activity to apply for and obtain a storm water discharge permit if the storm water discharge is either:

(a) Contributing to the violation of a water quality standard, or

(b) Contributing significant pollution to waters of the state.

Note: This subsection allows the department to require permit coverage of construction sites with less than one acre of land disturbance.

(4) DENIAL OR REVOCATION OF GENERAL PERMIT. The department may deny or revoke coverage under a general WPDES permit and require submittal of an application for an individual WPDES storm water permit based on a review of the completed notice of intent or other relevant information. The landowner of a construction site denied or revoked coverage under the general WPDES permit may not discharge storm water to waters of the state from the construction site until an individual WPDES permit for storm water discharge is issued to the landowner.

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

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

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

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

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

(6) PETITION. Any person may submit a written request to the department that it take action under sub. (5).

Note: The department will evaluate a request submitted pursuant to this subsection to determine if an individual permit is warranted.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.52 Use of information. All information contained in the notice of intent other than that specified as confidential shall be available to the public for inspection and copying. All confidential information, so identified, shall be in separate documents. Effluent data is not confidential information. Confidential treatment will be considered only for that information identified as confidential in documents separate from non-confidential information and which meets the requirements of s. 283.55 (2) (c), Stats., and for which written application for confidentiality has been made pursuant to s. NR 2.19.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04.

NR 216.54 Transfers. A landowner who has submitted a completed notice of intent and does not intend to control the permitted activities on the construction site may transfer authorization of construction site storm water discharge permit coverage to the person who will control the permitted activities. The transfer request shall be completed on forms provided by the department as specified under s. NR 216.006 and signed by both the current permittee and the proposed permittee. Coverage is not transferred until the department sends notification of transfer approval to the new permittee. The department may require additional information to be filed prior to granting coverage under the general WPDES permit. The department may, if appropriate, require an application for an individual WPDES storm water permit.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. Register March 2022 No. 795, eff. 4-1-22.

NR 216.55 Notice of termination. (1) WHEN TO FILE. When a construction site has undergone final stabilization, termination of the permit shall occur on the date the permittee notifies the department in writing that the site is stabilized. *Entire code is always current. The Register date on each page is the date the chapter was last published.*

porary erosion control best management practices have been removed and all storm water discharges associated with the construction site activities that were required to have WPDES permit coverage under this subchapter have ceased, the permittee shall submit a signed notice of termination to the department.

(2) FORMS. A notice of termination shall be submitted to the department on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage of a storm water discharge permit.

Note: The notice of termination form is available from the department website at <http://dnr.wi.gov/topic/Stormwater/construction/forms.html> or by calling 1-888-936-7463.

(3) SIGNATURE REQUIREMENTS. The notice of termination form shall be signed as required under s. NR 216.43 (3).

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

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

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

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

(d) The following signed certification:

“I certify under penalty of law that disturbed soils at the identified site have undergone final stabilization and temporary erosion and sediment control measures have been removed or that all storm water discharges associated with construction activity that are authorized by a general WPDES permit have otherwise been eliminated. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with construction activity by the general WPDES permit, and that discharging pollutants in storm water associated with construction activity to waters of Wisconsin is unlawful where the discharge is not authorized by a general WPDES permit.”

(5) EFFECTIVE DATE. Termination of coverage under the permit shall be effective upon written confirmation of permit termination by the department to the permittee.

(6) ADMINISTRATIVE TERMINATION. If an applicant fails to reapply under s. NR 216.43 (5) or submit a notice of termination under this section, the department may administratively terminate permit coverage 3 years after the date the department conveyed coverage.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (2), cr. (6) Register March 2022 No. 795, eff. 4-1-22.