

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE  
101 EAST WILSON STREET, 10TH FLOOR  
P.O. BOX 7864  
MADISON, WI 53707-7864  
FAX: (608) 267-0372

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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| <p>1. Type of Estimate and Analysis<br/> <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>  | <p>2. Date<br/>November 2020</p>   |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)<br/>Chapter NR 216, Wis. Adm. Code (WT-09-19)</p>   |  |
| <p>4. Subject<br/>Storm Water Discharge Permits</p>  |  |
| <p>5. Fund Sources Affected<br/> <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input type="checkbox"/> PRO   <input checked="" type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>  | <p>6. Chapter 20, Stats. Appropriations Affected<br/>Section 20.370 (9)(bj), Wis. Stats., Storm water management fees.</p> |
| <p>7. Fiscal Effect of Implementing the Rule<br/> <input type="checkbox"/> No Fiscal Effect   <input checked="" type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input checked="" type="checkbox"/> Decrease Costs<br/> <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget</p>  |  |
| <p>8. The Rule Will Impact the Following (Check All That Apply)<br/> <input type="checkbox"/> State's Economy   <input checked="" type="checkbox"/> Specific Businesses/Sectors<br/> <input checked="" type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers<br/> <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>  |  |
| <p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).<br/>\$1,488,400</p>  |  |
| <p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?<br/> <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>  |  |
| <p>11. Policy Problem Addressed by the Rule<br/>Chapter NR 216, Wis. Adm. Code, Storm Water Discharge Permits, establishes the criteria under which municipalities, industrial facilities, and construction site owners must obtain coverage under a Wisconsin Pollutant Discharge Elimination System (WPDES) storm water discharge permit pursuant to s. 283.33, Wis. Stats., and federal regulations established under the federal Clean Water Act. Furthermore, ch. NR 216, Wis. Adm. Code, specifies the permit requirements and implementation of the appropriate performance standards of subchs. II and IV of ch. NR 151, Wis. Adm. Code, Runoff Management.</p> <p>The purpose of the rule amendment is to address the omissions and deviations from federal storm water requirements as identified by the U.S. Environmental Protection Agency (US EPA) Region 5 by letter to the DNR dated July 18, 2011; update the references to the non-agricultural and transportation facility performance standards in ch. NR 151, Wis. Adm. Code; codify other federal storm water requirements that have become effective since the previous promulgation of amendments to ch. NR 216, Wis. Adm. Code; any additional rule changes that are necessary and reasonable relating to federal requirements or state statute. For additional descriptions of proposed revisions, see section 3. of the Scope Statement and/or section 5. of the draft board order.</p> |  |
| <p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.<br/>Engineering and environmental consultants [AECOM, CW Purperro, Inc., McMahon Group, MSA Professional Services, Inc., Pinnacle Engineering, Short Elliott Hendrickson Inc (SEH)]; permitted municipalities [City of Appleton, City of Green Bay, City of Madison, City of Pewaukee, Waukesha County]; organizations representing permitted municipalities [League of Municipalities, Northeast Wisconsin Stormwater Consortium of Fox-Wolf Watershed Alliance (NEWSA), Southeastern Wisconsin Watersheds Trust, Inc. (Sweet Water)]; and associations representing businesses [Wisconsin</p>  |  |

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Manufacturers and Commerce, Wisconsin Transportation Builders Association] were contacted for conceptual feedback prior to drafting the board order.

Engineering and environmental consultants [McMahon Group, MSA Professional Services, Short Elliott Hendrickson Inc (SEH)]; permitted municipalities [City of Green Bay, City of Madison, City of Pewaukee]; developers [JS Realty, Kwik Trip, Neumann Companies, Inc., Veridian Homes, Zilber Property Group]; organizations representing permitted municipalities [League of Municipalities]; and associations representing businesses [Wisconsin Builders Association, Wisconsin Realtors Association, Wisconsin Manufacturers and Commerce] were contacted for feedback regarding construction application permit fees.

Additionally, the department is providing a comment period on the proposed board order during which businesses, business sectors, associations representing businesses, local government units, and individuals will have the opportunity to participate in the development of the proposed board order.

#### 13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The City of Appleton provided input on typical costs for municipal storm water program updates. The department also used project budgets from 2019 urban non-point source planning grant applications from the Town of Grand Chute, Village of Kronenwetter, Marathon County, City of Merrill, City of Schofield, Village of Thiensville, and Village of Weston to estimate the typical cost of updating written minimum control measure plans for those measures with code changes proposed.

The department is providing a comment period on this economic impact analysis during which local governmental units will have the opportunity to participate in the development of the final EIA.

#### 14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Overall, the compliance cost due to the proposed changes to code is estimated to be \$2,606,600 per year; this will be partially offset by cost savings detailed in question 15. The overall compliance cost among external entities and the department are as follows:

- Local Governmental Units cost estimate is \$245,800.
- The manufacturing sector is estimated to be \$156,400. The sectors most affected would be non-metallic mines and landfills.
- Small businesses cost estimate is \$194,600.
- Non-governmental entities with construction projects are estimated to incur \$876,600 of costs. As the residential projects requiring permits are primarily subdivisions; the impact on a typical ¼ acre residential lot is expected to be less than \$20. No impacts to public ratepayers are anticipated as most utility construction projects pay for notice of intent review via contracts with the department rather than the application fees.
- The fiscal impact to the department due to the proposed changes to code is estimated to be \$204,900.

The DNR does not anticipate the proposed changes to the code to have an adverse impact on the state's economy.

#### (A) Economic and fiscal impact affecting all subchapters.

National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule- US EPA estimated that overall, the rule will save money for permitting authorities and most NPDES permittees, as shown in US EPA's fiscal impact: <https://www.epa.gov/sites/production/files/2015-09/documents/npdesea.pdf>. However, there will be

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“initial investment costs associated with necessary changes to information technology and infrastructure.” The “significant savings are anticipated once the final rule is fully implemented”; specifically savings are anticipated by “vastly [reducing] the need for authorized NPDES programs to enter data submitted by regulated entities into information systems” and “[reducing] the need for paper and postage by authorized NPDES programs and regulated entities.” “Other anticipated benefits of the rule include improved quality and accuracy of the data available to regulatory agencies and the public; more timely and expanded use of the data to identify, target, and address problems; quicker availability of the data for use; and increased accessibility and transparency of the data to the public. These benefits should allow states to shift precious resources from data management activities to activities more useful in solving water quality and noncompliance issues. This shift will, in turn, contribute to increased compliance, and a level playing field for the regulated community.” Since Wisconsin has already begun implementing the eReporting rule, DNR used its own estimates for this EIA instead of the US EPA’s estimates. Costs include the operation and maintenance for the updated infrastructure, \$83,800.

The cost of developing the electronic reporting infrastructure cost of \$206,585 has already been incurred by the department, therefore it is not included in the final cost estimate of this EIA.

#### **(B) Subchapter I – Municipal Storm Water Discharge Permits**

The total estimated impact for this subchapter is \$1,168,500—\$1,047,400 is the estimated economic impact to permittees and \$121,100 is the estimated total fiscal impact to the department. The total estimated impact is anticipated to be partially offset by postage reductions described in question 15. There is no impact to small businesses related to this subchapter.

Other environmental programs. The exemption removed in this subchapter affects the Department of Transportation, however, there are no costs related to this revision. With the enactment of 2015 Wisconsin Act 307, chs. 30 and 283, Wis. Stats., were amended in 2015 to remove the exemption from permitting storm water discharges from the site of a transportation activity under the direction and supervision of the DOT. The DNR and DOT fiscal estimates can be found at <https://docs.legis.wisconsin.gov/2015/related/fe/ab755>, wherein both agencies concluded the fiscal impact of the legislation was indeterminant.

MS4 permit requirements. The US EPA’s Economic Analysis estimated costs of the federal MS4 Remand Rule only impact the permitting authorities (such as DNR). US EPA assumed all other costs were being accrued as a result of the existing small MS4 program, therefore it assumed baseline program costs would remain the same. It is estimated that a state would incur a cost of \$121,100 as a result of a federal rule. (The US EPA’s fiscal impact can be found here: <https://www.regulations.gov/document?D=EPA-HQ-OW-2015-0671-0125>.)

Because MS4 permittees are already required to update programs with each permit reissuance, only costs associated with Public Education and Outreach and Pollution Prevention were included as these requirements were modified in the proposed code. These costs were estimated based on the budgets for updating those programs in applications for urban non-point source planning grant received in 2018 for funding in 2019. The department has assumed that costs to general permittees will be spread over the 2 years from when the requirement is added to the permit and when it is due. It is assumed that the cost incurred by individual permittees will be spread over 5 years as these permits are reissued every 5 years. The total economic impact to MS4 permittees is \$1,015,000. The total economic and fiscal impact of this section is \$1,136,100.

MS4 annual reports. The additional costs associated with updates to annual reporting requirements is primarily due to s. NR 216.07 (8) (h), Wis. Adm. Code, compliance evaluation. The cost was developed assuming an average of 2 hours of additional time would be required. Section NR 216.07 (8) (j), Wis. Adm. Code, allows for general

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permittees to reapply for permit coverage via the 4th year annual report evaluation; this cost was determined to be minimal, as the DNR will simultaneously eliminate the extra step of requiring a separate letter reapplication process. This revision results in one less item for the permittee to submit and one less item for the DNR to track. The other annual report related code changes are clarifications to items already required in current permits and annual reports and are not assumed to cause an economic impact. Therefore, the total economic impact of this section is estimated to be \$22,200 for permittees.

Public records. The cost of requiring the permittee to make records available to the public is estimated to be \$10,200. The department assumes, on average, 2 additional hours of municipal administrative staff time will be needed to implement this provision.

#### **(C) Subchapter II – Industrial Storm Water Discharge Permits**

The total cost estimate for this subchapter is \$156,400, of which \$75,500 is the estimated cost to small businesses.

SWPPP. This subchapter's costs primarily relate to the Storm Water Pollution Prevention Plan (SWPPP) requirements. It is estimated that 45 permittees will have to update their SWPPPs to include access roads and rail lines, which is estimated to cost no more than \$3,400. It is also estimated that 970 permittees that have ongoing changes in grading and draining will have to evaluate the potential impacts to wetlands and adjacent properties. This number includes nonmetallic mining operations that are not internally drained and landfills. Conducting this evaluation and updating the SWPPP is estimated to require an average of 4 hours per permittee and is estimated to cost \$146,500, collectively. It was assumed that a portion of the non-metallic mines would be small businesses, and this impact is estimated to be \$75,500.

Other environmental programs. The exemption removed in this subchapter affects the permitting of landfills. Landfills were permitted in 2016, with a total of 50 landfills now covered under the Industrial Tier 2 permit. These entities are now required to pay an annual fee for storm water permits, so the economic impact is estimated to cost \$6,500.

#### **(D) Subchapter III – Construction Site Storm Water Discharge Permits**

The total cost estimate for this subchapter is \$1,197,900. The total impact on local units of government is estimated to be \$246,500, while the total impact on non-government entities is estimated to be \$951,200. Small businesses are estimated to have a total impact of \$119,800. These costs will be partially offset by postage reductions noted in section 15. This subchapter's costs primarily relate to the proposed increase in construction permit fees and the revisions to construction erosion control plan and post-construction storm water management plan requirements.

Construction permit fees. The annual increase in construction permit application fees is estimated to be \$868,400. Of the total, \$86,900 is estimated to have small business impacts and \$175,000 is estimated to have local government impacts. Additionally, late application fees are expected to affect approximately 15 applicants per year for an estimated cost of \$6,900.

Erosion control plans and storm water management plans. Costs relating to identifying receiving waters with designations and updating the erosion control plan is estimated to be \$88,300. Of the total, \$8,800 is estimated to have small business impacts and \$18,600 is assumed to have local government impacts. Costs relating to evaluating changes in hydrology and associated impacts to wetlands to include in the storm water management plans are assumed to require 2 hours and are estimated to cost \$141,300 (Of the total, \$14,100 is assumed to have small

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business impacts and \$29,000 is assumed to have local government impacts.). Additionally, adding a section on control of pollutants associated with impaired waters, including those with total maximum daily loads, to the erosion control and storm water management plans is estimated to add an additional hour to plan development and cost \$88,300. Of the total, \$8,800 is estimated to have small business impacts and \$18,600 is assumed to have local government impacts. The department also seeks to clarify what types of plan changes will trigger the need for an amendment or submittal of a new notice of intent; this cost is estimated to be \$4,600 on the assumption that approximately 10 permittees per year would need to submit new notices of intent, rather than amendments. Of the total, \$500 is assumed to have small business impacts.

#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This section attempts to quantify and qualitatively describe the benefits accrued to entities impacted by the revision of this rule. Primary quantified benefits relate to eliminating duplicative requirements in existing ch. NR 216, Wis. Adm. Code, or cost savings associated with the reduction in postage costs. The agency estimates the total benefits of the rule revision to be \$1,118,400. Detailed assessment of these benefits is further described below.

##### (A) Changes that affect all subchapters

National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. Municipal, industrial, and construction permittees are estimated to save \$20,400 on postage for Notices of Intent, Notices of Termination, and Annual Reports. The savings for local units of governments is estimated to be \$4,100. The savings for industrial permittees is estimated to be \$2,300. The savings for construction permittees is estimated to be \$16,000. The data entry savings for the state is estimated to be \$229,500. The elimination of time needed to create paper files and ship files between offices allowed state staff to reduce the average time between submittal of construction applications and permit issuance nearly in half, which has an unquantified benefit to applicants. Electronic reporting has also improved state staff collaboration. State staff can now conduct data analyses on MS4 Annual Reports to find trends in permit compliance and better educate the permittee on permit requirements.

##### (B) Subchapter I – Municipal Storm Water Discharge Permits

The federal MS4 Remand Rule promotes greater public engagement through clear requirements on the opportunities for public participation in the permitting process. The updated “clear, specific, and measurable” rule language (and thus permit conditions) more clearly state what is expected for compliance, for better understanding among the public and permittees and increased consistency and expectations among state staff.

##### (C) Subchapter II – Industrial Storm Water Discharge Permits

Most of the changes to the industrial permitting subchapter are clarifications which will improve regulatory certainty for the regulated community. Another benefit is elimination of the Storm Water Pollution Prevention Plan (SWPPP) summary form, as the department has updated the process to simply submit and store the full SWPPP document, which the form summarized.

##### (D) Subchapter III – Construction Site Storm Water Discharge Permits

The proposed increase in construction permit application fees is estimated to increase revenue to the state \$868,400 annually. Permittees that begin construction prior to applying for construction permit coverage often require additional staff time for inspections, documentation, and correspondence that is beyond that required for other permittees. The after-the-fact permit application fee places the cost for this additional work on the permittee, whose actions necessitate the additional work, rather than on taxpayers or other permittees.

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#### Alternative(s) to Implementing this Rule:

An alternative is to not promulgate this rule. However, if the rule is not promulgated, then the department's regulations will not be consistent with all federal rules and the department will jeopardize its status as a state-authorized program. Entities will also not benefit from the regulatory certainty provided by the updated rule language.

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#### 16. Long Range Implications of Implementing the Rule

The long-range impact is generally the same as the short-range impact. Much of the proposed rule will be implemented as soon as the rule becomes effective. However, the department expects delayed implementation of the revised construction site application fees, which is being proposed to take in effect January 2023. This will allow landowners, developers, and municipalities time to incorporate changes in budgets and contracts.

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#### 17. Compare With Approaches Being Used by Federal Government

Under 40 CFR 123.25(a), each state-authorized program shall possess the legal authority to implement and administer its program in conformance with federal law, including, among other NPDES permit programs, storm water discharge permits under 40 CFR 122.26; general permits under 40 CFR 122.28; and conditions applicable to specified categories of permits under 40 CFR 122.42.

The primary purpose of the proposed rule changes is to address technical inconsistencies with federal requirements and to address recently promulgated federal requirements that state-authorized programs must accommodate. The federal storm water requirements are primarily found in 40 CFR Parts 122, 123, and 127. With the revisions contained in this rule package, the department rules will be consistent with the following federal regulations:

- Storm Water Discharges applicable to state NPDES programs in 40 CFR 122.26;
- National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule, amending 40 CFR 122;
- Permit requirements for regulated small MS4 permits in 40 CFR 122.34;
- Additional conditions for municipal separate storm sewer systems in 40 CFR 122.42 (c)(2);
- State program requirements in 40 CFR 123.1(g)(1) and 123.25 (a)(4); and
- The NPDES Electronic Reporting Rule in 40 CFR 127.

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

For this rule package, comparisons were made to other states in US EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, and Ohio) and Iowa. All those states are subject to the Clean Water Act and US EPA regulations.

Illinois, Iowa, Michigan, and Minnesota appear to incorporate the Clean Water Act by reference in their administrative codes pertaining to storm water permitting (35 Ill. IL Adm. Code Subtitle C. Ch. 1, and Section 455B.103A, Iowa Code, and Section R 323.2161, R 323.2190 Michigan Adm. Code, 790.100 to 790.300 Minnesota Adm. Code).

Indiana in 327 IAC 15-13, IAC 15-6, and IAC 15-5 provides regulations like those in the current ch. NR 216, Wis. Adm. Code.

Ohio in Chapter 3745-39 provides regulations like those in the proposed ch. NR 216, Wis. Adm. Code. Their storm water rules were updated in 2019 and appear to address the Remand Rule and Electronic Reporting.

All six states establish permit fees via administrative code. Construction site permit fees range from \$100-\$750. Iowa's fees are based on the years of coverage (1, 3, 4, or 5), with fees ranging from \$175 to \$700. Illinois' fees are based on

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acres disturbed, with \$250 for less than 5 acres and \$750 for more than 5 acres. Indiana, Michigan, and Minnesota have flat fees of \$100 for Indiana and \$400 for Michigan and Minnesota.

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| 19. Contact Name<br>Amy Minser | 20. Contact Phone Number<br>608-266-4359 |
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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule could have an economic cost to some individual small businesses. Small businesses affected by this rule will likely fall into the category of industrial facility operators or landowners that disturb one to five acres of land for construction. The DNR anticipates that the total cost to small businesses as a result of this rule will be approximately \$194,600. Specific cost estimates are indicated below.

Most small businesses requiring an industrial activity storm water permit (Subch. II) are primarily "light" industry and warehouses where they either operate completely inside of a building or under cover. These businesses can certify that they have "no exposure" of storm water to industrial materials or activities. If the small business does not self certify for "no exposure", then a compliance cost of \$75,500 is estimated to be incurred, primarily by non-metallic mines.

For small businesses requiring a construction site storm water permit (Subch. III), increased permit application fees cost estimate of \$86,900 and a compliance cost estimate of \$32,900 is estimated to be incurred. This estimate was based on a review of fiscal year 2020 permittees with projects disturbing less than five acre and that were not known to be large businesses. The proportion of the compliance cost to small businesses was assumed to be consistent with the proportion of construction fee impacts the affect small businesses (about 10% of construction permittees).

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department utilized its permit records database to query data on the number of permittees. Data from Fiscal Year 2020 was utilized to estimate the number of small businesses affected by construction permit fees.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

A small business industrial facility (Subch. II) that meets the "no exposure" option does mean that a facility can be nearly exempted from the rule. A non-metallic mine that is internally drained or does not drain to a regulated wetland is also unlikely to be impacted by the proposed rule.

A small business construction site (Subch. III) (e.g., building and parking lot) can have a greater impact than a large business if the size and pollutant load from the impervious area is greater or the small business is in close proximity to a sensitive water resource. If our requirements are to achieve water quality standards, then all contributing businesses (large or small) must meet the performance standards.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

For the construction subprogram, it was assumed that small businesses were most likely to be associated with the smallest sites. For the construction permit application fee updates, a separate category was created for sites with under 2 acres of land disturbance. The application fee for this category was increased at a lower rate compared to sites over 2 acres to limit impacts to small businesses.



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5. Describe the Rule's Enforcement Provisions

Enforcement provisions are not included in the subsections of the rule affected by the proposed order. These provisions are in other portions of administrative rule not proposed for revision in this rule order.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes  No

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