

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

NOTICE OF FINAL DETERMINATION TO REISSUE A WISCONSIN POLLUTANT DISCHARGE
ELIMINATION SYSTEM (WPDES) GENERAL PERMIT NO. WI-0046515-07-0

General Permit Name: Mineral (Nonmetallic) Mining and/or Processing

Receiving Water and Location: Point source discharges to waters of the state of Wisconsin.

Brief Description of Facilities Covered under General Permit: This general permit is applicable to the point source discharge of pollutants to a water of the state associated with storm water and/or wastewater from nonmetallic mineral mining operations, nonmetallic mineral processing operations, or other similar activities.

Permit Drafter's Name, Address, Phone and Email: Trevor J. Moen, DNR, 625 E County Rd Y STE 700, Oshkosh WI 54904-9731, phone: (920) 410-5192 and email: Trevor.Moen@Wisconsin.gov.

Date Permit Signed/Issued: June 7, 2022

Date of Effectiveness: January 1, 2023

Date of Expiration: December 31, 2027

Following the public informational hearing, the department has made a final determination to reissue the WPDES General Permit No. WI-0046515-07-0. The information from the WPDES permit file, comments received on the proposed permit and applicable Wis. Adm. Codes were used as a basis for this final determination.

The department has the authority to issue, modify, suspend, revoke and reissue or terminate WPDES permits and to establish effluent limitations and permit conditions under ch. 283, Wis. Stats.

The following is a summary of significant comments and any significant changes which have been made in the terms and conditions set forth in the draft permit. Any minor corrections to typographical errors; updating page numbers and headers/footers; adding and updating the table of contents and titles; and correcting formatting, renumbering headings, and web links are not included in this summary document.

Comments Received from the Applicants, Individuals or Groups

Municipally Owned Mine Sites: The department received the following public comment:

Does this general permit apply to municipally owned and operated nonmetallic mine sites?

Department Response: In accordance with ss. NR 216.21(1) and NR 216.21(2)(b)3.a. Wis. Adm. Code, this general permit applies to point source discharges which discharge storm water associated with industrial activity to the waters of the state, either directly or via a separate storm sewer system. Owners or operators of a facility type listed in s. NR 216.21 (2) Wis. Adm. Code, shall apply for a storm water discharge permit as outlined NR 216.22(1), Wis. Adm. Code.

No Mineral Washing Processes: The department received the following public comment:

Does this general permit still apply if the mine site does not employ any mineral washing activities?

Department Response: In accordance with ss. NR 216.21(1) and NR 216.21(2)(b)3.a., Wis. Adm. Code, this general permit applies to point source discharges which discharge storm water associated with industrial activity to the waters of the state, either directly or via a separate storm sewer system. Owners or operators of a facility type listed in s. NR 216.21 (2) Wis. Adm. Code, shall apply for a storm water discharge permit as outlined NR 216.22(1) Wis. Adm. Code. The permit has been developed under the industry specific general permit provisions of ss. NR 216.24(1) and NR 216.24(2) Wis. Adm. Code. Under these provisions, the discharge of storm water requires owners or operators to obtain a permit for these discharges, but also allows discharges of wastewater as defined in the permit provided the meet specific limits outlined.

Opposition to Combining Non-Industrial Sand and other Aggregates and Industrial Sand into One Permit: The department received public comments presenting opposition to combining the Non-Industrial Sand and Other Aggregates and Industrial Sand WPDES permits into one WPDES permits. The commenters argue that these industries perform different operations that produce substantially different wastes streams.

Department Response: The department agrees that non-industrial sand and industrial sand facilities may perform different operations. However, the regulations for both are substantially similar in chs. NR 140, NR 205, NR 216,

NR 269, Wis. Adm. Code, and 40 CFR Part 436. Therefore, the department retains combining non-industrial sand facilities and industrial sand facilities under one permit.

Postpone or Delay the Effective Date of General Permit: The department received public comments stating that the department consider delaying or postponing the effective date of the proposed general permit to allow the industry time to assess and adjust to the new permit requirements.

Department Response: The department has delayed the effective date of the general permit to January 1, 2023 to allow the industry time to adjust to the reissued general permit and time to submit any necessary discharge information to the department based on the permit conditions.

Washing of Material Infrequently: The department received the following public comment:

For wash plant settling pond monitoring if we are only washing material on that site infrequently (e.g., once every 5 years) can the system only be sampled during operation? Requiring monthly sampling over years when a system is not operating is a regulatory burden with little to no value to environmental protection.

Department Response: The department added a requirement under Section 4.5 in the draft permit that the permittee notify the department when a mine site becomes temporarily inactive and when the site becomes active again. This requirement will keep the department aware of the status of the facility and reduce the burden of submitting blank electronic discharge monitoring reports (eDMR) when the site is not active. The permittee is not required to sample the process generated wastewater treatment facilities while the site is temporarily inactive and sits idle per Section 4.5, except in the first year of the permit term. The permittee must collect the annual sample required under section 4.2.3.1 for a given year if the mine is active at any point during that calendar year. This notification is consistent with reporting requirements and planned change requirements in ss. NR 208.07(1)(q) and NR 205.07(3)(c), Wis. Adm. Code.

Sampling Points not Clearly Defined: The department received public comments that the sampling points throughout the draft permit are not clearly defined and are all very ambiguous as to exactly where samples are to be collected.

Department Response: The department has revised the sampling points descriptions in the permit to be clearer on what wastewaters, discharge locations, and facilities apply to each sampling point. Please know that the sampling points in the permit are generic to allow the regulated industry the flexibility to choose the appropriate sampling point location that is representative for their facility and discharge configuration. The department included language in the permit that the specific sampling point location may be stated in the coverage letter to the facility.

Storm Water Contacting Aggregate Stockpiles or Pumping of Storm Water: The department received public comments requesting that the draft permit clearly state if storm water contacting aggregate stockpiles or pumping of storm water from one storm water pond to another storm water pond is considered process generated wastewater or regulated as storm water under the specific Storm Water Pollution Prevention Plan (SWPPP) if the site was externally drained.

Department Response: Any water pumped from the mine site is mine dewatering and is subject to the permit requirements based on the discharge location of that water. The permittee will be required, during the period of discharge, to meet the permit requirements associated with the wastewater discharge. Storm water that contacts source areas such as aggregate stockpiles that drain to a treatment device where waters are comingled with process wastewater is considered process wastewater. Storm water that contacts aggregate stockpiles draining to a storm water treatment device is storm water. Storm water devices shall be adequately designed to treat storm water discharges associated with mineral mining activities in accordance with Section 3.1.2.

Major Storm Events and Inclusion in Storm Water Pollution Prevention Plan (SWPPP): The department received the following public comment:

The permit should be amended to require that facilities' SWPPP identify potential contamination in floodway areas and require measures to reduce that contamination, including moving sources of contamination out of the 100-year floodplain.

Department Response: The department's storm water program does not have direct regulatory authority over placement of materials within the floodplain. In accordance with s. NR 216.27(2), Wis. Adm. Code, when plans are developed or activities conducted in accordance with other federal, state, or regulatory programs that meet the requirements of this section, the plans may be incorporated in the SWPPP by reference.

Ch. NR 116, Wis. Adm. Code, applies to all municipalities and their respective jurisdictions to regulate all floodplains where serious flood damage may occur. Municipalities are required to develop maps of the areas to be regulated under this chapter and develop floodplain zoning ordinances to define proper uses in those regulated areas. Under s. NR 116.12 (1)(c) and (g), Wis. Adm. Code, respectively, storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life are prohibited in floodways areas. S. NR 116.13(6), Wis. Adm. Code, provides that storage of any materials which are buoyant, flammable or explosive, or which in times of flooding could be injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be either floodproofed to or placed at or above the flood protection elevation. Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

Subsequently, the SWPPP may be modified to reflect changes to minimum source area controls, best management practices, and good housekeeping measures where activities and materials may be present in the floodplain or incorporated by reference into the SWPPP where these conditions are present.

The department has made no changes to the general permits in response to this comment.

Indian Country: The department received the following public comment:

DNR should amend § 1.3(28) to indicate any discharges within Indian Country are not eligible under the permit.

Department Response: See the department response to USEPA Comment #1 below.

SWPPP Notification and Public Access: The department received the following public comment:

DNR should amend the permit to require that permittees who will have continuing coverage under the new general permits confirm with DNR via email that they have made their SWPPP available on their own public-facing website and upload the link or the SWPPP itself to DNR's database. Sections 2.1.4 and 3.3.6 must be amended to require submission of the full SWPPP and not a SWPPP summary. All facilities covered under the permits should post a publicly accessible sign indicating permit coverage and directing the public to its SWPPP.

Department Response: The department's Industrial Permit Data webpage allows interested parties to query permitted facility data at the following link: <https://dnr.wi.gov/topic/stormwater/data/industrial/index.asp>. The department provides a public facing webpage for industrial facilities that have applied for coverage after October 1, 2020 where the Notice of Intent and SWPPPs are available online:

<https://permits.dnr.wi.gov/water/SitePages/Permit%20Search.aspx>. The department will continue to request the SWPPP where appropriate and make these publicly available for these records. For all other industrial facilities, interested parties may contact the department to request a facility's records. Department staff contact information can be accessed at the following link: <https://dnr.wisconsin.gov/topic/Stormwater/contacts.html>.

The department has made no changes to the general permit in response to this comment.

Annual Facility Site Compliance Inspection Report (AFSCI): The department received the following public comment:

DNR should amend the permits to require that the permittee submit photographs with its required visual observations or visual monitoring inspections and indicate that DNR will audit the inspection reports to ensure that they are meaningfully completed. The AFSCI should ask about compliance with the 4.2.2.1.2. DNR should also amend the permit to require an amended SWPPP if regular inspections reveal that the provisions of the SWPPP are ineffective in controlling stormwater pollutants.

Department Response: Deficiencies in the Storm Water Pollution Prevention Plan noted during annual facility site compliance inspections (AFSCI) and quarterly visual inspection forms require department notification for operational or source area changes at the facility. The quarterly visual inspection form includes photos. While the department does not require submittal of all such reports, it has the authority to request records required under the industrial subsection for all facilities covered under subch. II of NR 216, Wis. Adm. Code.

In accordance with Section 3.5 of the permit, facilities are required to amend and submit the SWPPP or SWPPP Summary to the department if the annual facility site compliance inspection, quarterly visual inspections, or other information reveal the provisions of the SWPPP are ineffective in controlling storm water pollutants discharged to the state.

The AFSCI report already contains a question related to non-storm water discharges which would include Section 4.2.2.1.2. The department has made no changes to the general permit in response to this comment.

Sampling Frequency based Flow: The department received the following public comment:

Flow monitoring should be used to guide sampling frequency. This may result in reduced monitoring at particular facilities and more robust monitoring elsewhere but should result in samples that are representative of the discharges of the facility.

Department Response: The department has included conditions in the proposed general permit that establishes the sampling and reporting frequency based on demonstrated performance with the effluent limitations regardless of the flow. The department has made no changes to the general permit in response to this comment.

Dissolved Oxygen Monitoring: The department received the following public comment:

DNR should consider monitoring for dissolved oxygen wherever it requires sampling for metals. Since DO affects the fate and transport of dissolved metals, DNR should also require monitoring for dissolved oxygen.

Department Response: The department agrees that dissolved oxygen may have an impact on the chemical speciation of metals in the environment. The department has added chemical oxygen demand (COD) to the required monitoring for process generated wastewater treatment facilities under Section 4.2.3 of the general permit. Oxygen depleting potential needs to be evaluated in wastewater discharges that infiltrate to groundwater. This testing evaluates the potential by testing wastewater for COD. The presence of high COD indicates a chemically reducing environment. Under these conditions, native metals, for instance iron and manganese, are reduced and in their reduce states are soluble in water and are mobilized in dissolved phase. They can then migrate to degrade an aquifer or impact a water supply well. Because the potential is caused by the loading of wastewater, the department has authority under ch. NR 140 Wis. Adm. Code to require dischargers to evaluate this potential by taking COD samples from wastewater discharges.

List of Chemicals Used in Water Treatment: The department received the following public comment:

DNR should amend permit §4.2.3.1.3 to require that the permittee submit a certification with the chemicals that it uses in its waste treatment process, including other flocculants.

Department Response: The department requires that new facilities submit a list of water treatment additives used in the notice of intent. Also, facilities are required by the planned change requirements under Section 8.3.1 to report to the department when they will have any process modifications, including the use of new chemicals in their water treatment processes, that result in a new discharge of pollutants to a water of the state. The department has made no changes to the general permit in response to this comment.

Other Wetland Regulations: The department received the following public comment:

The draft permit §5.3 should include a caution that any work performed in wetland areas, in floodplains, or near shorelands may require permits or approvals through applicable state law, state regulations, or county or local ordinances, including under chs. 30, 31 and 87, Wis. Stats. and s. 281.36, Wis. Stats. (or Wisconsin Administrative Code promulgated under these laws) and may require federal permits.

Department Response: The department has amended the permit to include a note under Section 5.3 that activities performed in or near wetlands, floodplains, or shorelands may require approvals or permits under other applicable Wisconsin administrative codes or statutes or by other federal, state, or local agencies.

Wetland Report and Monitoring Frequency: The department received the following public comment:

DNR should require permittees to submit a written statement addressing all the factors listed in Wis. Admin. Code § NR 103.08(3), including the adverse environmental consequences of practicable alternatives that will reduce or eliminate impacts to wetlands. Finally, for mines near wetlands, DNR should require more frequent monitoring to ensure that wetland water quality criteria are met.

Department Response: Under s. NR 103.08 (4)(a)3., Wis. Adm. Code, the department shall utilize the factors in s. NR 103.08 (3)(b) to (g), Wis. Adm. Code, and considering potential wetland functional values provided by any mitigation project that is part of the subject application, that the activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences after the project proponent has shown no practicable alternative exists which would avoid adverse impacts to wetlands and practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken. No changes to the permit were made in response to this comment.

Anti-degradation Language: The department received the following public comment:

DNR should amend the permit § 5.1 to mirror the anti-degradation language in DNR's regulations to clarify that water quality remains adequate to protect existing or presently possible uses fully.

Department Response: Section 5.1 of the general permit has been revised to be consistent with the antidegradation standards in s. NR 102.05(1)(a), Wis. Adm. Code and antidegradation evaluation procedures in ch. NR 207, Wis. Adm. Code. The department has included applicability criteria under Section 1.3 to exclude those discharges that may be inconsistent with the antidegradation standard in s. NR 102.05(1)(a), Wis. Adm. Code and requires further antidegradation evaluation by the department under ch. NR 207, Wis. Adm. Code and an individual permit. If an individual permit is necessary, the department will prescribe site-specific effluent limitations in the individual permit to be protective of water quality and designated uses of a surface water and to prevent a significant lower of water quality. Also, the permit contains conditions under Section 5.1.1 for any proposed new or increased discharge of storm water to an ORW or ERW to demonstrate compliance with the antidegradation evaluation procedures in ss. NR 207.03(3) and (4), Wis. Adm. Code. General permits may contain applicability criteria pursuant to s. NR 205.08(2), Wis. Adm. Code. When the department confirms that a discharge is authorized for coverage under this general permit by letter, the department is determining that the discharge meets the applicability criteria.

Accurate Facility Location: The department received the following public comment:

DNR should request that the facilities, when they report to the DNR, verify that the latitude and longitude associated with the mining or processing facility is accurate and, if not, electronically provide updated information to the DNR.

Department Response: The department currently collects the latitude and longitude information for each facility on the notice of intent. If the department believes that the latitude and longitude of a facility site is not accurate, the department will contact the facility or review available geographic coordinate systems to obtain accurate latitude and longitude coordinates.

Data Resubmission: The department received public comments that it is unnecessary for facilities to have to resubmit discharge monitoring reports (DMRs) from the previous permit term under Section 4.5.2 of the draft permit. The department files will already contain this data from the previous permit term.

Department Response: The change in the permit's effective date to January 1, 2023, will allow for facilities to submit their monitoring data for the entirety of 2022 using the traditional paper forms and begin fresh with eDMR reporting in 2023 at the commencement of the permit term. Therefore, there is no longer need for this section, and it has been removed.

Dredging Activities: The department received public comments about whether dredging activities will continue to be regulated under Section 1.2 as 'other similar wastewaters' which did not require department approval under the permit or will 'case-by- case' basis determinations be made for dredging activities.

Department Response: The department included under Section 1.3, that discharge of carriage water and/or interstitial water associated with mechanical or hydraulic dredging of sediment from the beds of navigable waterways returned directly back to the waterway are not covered under the general permit. These activities are more appropriately covered under the Carriage and/or Interstitial Water from Dredging Operations WPDES Permit No. WI-0046558-06-0. However, this general permit does allow any dredging activities associated with hydraulic or mechanic removal of non-metallic minerals from a permitted mine. Also, any dredged uncontaminated sediment taken to and processed at a mine site and any wastewater generated from the storage and processing of this material would be covered under this general permit.

Clarification on Department Approved Storage Pond or Lagoon: The department received public comments to clarify what is meant by a department approved storage pond or lagoon and what is meant by no discharge to a water of the state.

Department Response: The department has removed the permit exclusion under Section 1.4 for wastewater to a department approved storage pond or lagoon with no discharge to a water of state. This permit exclusion may be misinterpreted as facilities may still require coverage under this general permit for storm water activities and any mine dewatering discharges to surface water. Also, some department approved treatment structures and storage structures could have some amount of exfiltration to groundwater. Nevertheless, the department has added conditions in the permit under Section 4.2.3 that if the permittee receives department plan approval and modifies or upgrades their process generated wastewater treatment facility in accordance ch. NR 213, Wis. Adm. Code to prevent exfiltration to groundwater, the department may approve a request for waiver from the sampling and reporting requirements in Section 4.2.3.1.

Total Suspended Solids (TSS) Monthly Average Limit of 25 mg/L: The department received public comments concerning the broad inclusion of a TSS monthly average limit of 25 mg/L for all types of nonmetallic mining and processing facilities. Many commenters recommended that the TSS monthly average limit of 25 mg/L be only applied to industrial sand facilities as indicated under 40 CFR Part 436.32; 40 CFR Part 436 would have specified

categorical effluent limitation for TSS for crushed stone or construction sand and gravel mines similar to requirements for industrial sand facilities. Other commenters requested that the limit be removed because the intermittent nature of discharging at mine sites and lengthy laboratory analytical turnaround time for sample results may make it difficult to achieve compliance.

Department Response: The department has revised Section 4.1. The new TSS monthly average limit of 25 mg/L applies only to industrial sand facilities consistent with 40 CFR Part 436. The intermittent nature of the discharges from crushed stone or construction sand and gravel mines was also a factor in considering the change. The department has provided separate mine dewatering and process generated wastewater sampling points and outfalls for non-industrial sand facilities and industrial sand facilities to make it clear what monitoring requirements and effluent limitations apply to each type of facility. TSS daily maximum limits still apply to all facilities covered under this permit. Additionally, the department has changed the sample type for TSS from grab to grab composite under Sections 4.1.2.2, 4.1.3.1, and 4.1.3.2. This sample type change will ensure that a representative sample for TSS is collected over the duration of the discharge. For mine dewatering discharges from non-industrial sand facilities under Section 4.1.2.1, grab samples as the sample type for TSS remain the same from the previous permit as many of the non-industrial sand facilities with mine dewatering only are isolated or sit vacant for some time, so it may not be logistically practicable for all facilities to obtain 3-hour grab composite samples.

Removal of Mass Monitoring for TSS and Total Phosphorus (TP): The department received public comments requesting the removal mass monitoring for TSS and TP. Commenters noted it is accepted practice that meeting the limits of a general permit meets the requirements of Total Maximum Daily Load (TMDL) allocations and water discharges associated with general permits do not receive specific loading allocations. With the required electronic reporting, the department will have all the necessary effluent monitoring data to calculate mass loadings and compare that to wasteload allocations.

Department Response: The department has removed the mass monitoring for TSS and TP in the proposed permit under Section 4.1. The department will have sufficient data to calculate loadings and the mass calculation may be more complicated based on the flow monitoring frequency.

While in past general permits, the department may have taken a policy that meeting the limits of a general permit meets the requirements of TMDL allocations, this is no longer the case. Many TMDLs now include total general permit wasteload allocations for TSS, TP and other pollutants of concern. The department is required to issue WPDES permits that are consistent with TMDL wasteload allocations protective of impaired waters. Therefore, the department retains additional monitoring for TP under Section 4.1 for discharges when the permittee discharges to an impaired surface water or surface water with an approved TMDL where TP is listed as a pollutant of concern, and if the TMDL assigns a TP waste load allocation., The department has added language under Section 5.2.3 to ensure that the TMDL requirements are met based on current practices or if additional control measures are necessary.

Increased Sampling and Reporting: The department received public comments that the general permit contains excessive and unnecessary increased sampling and reporting for mine/pit dewatering and process generated wastewater discharges to surface waters. The comments assert that changes in proposed sampling frequency will add significant costs to regulated entities and provide no environmental benefit as many sites have years of data showing consistent results well below permit standards. Also, the comments assert that increased sampling and reporting may encourage permit non-compliance from existing facilities that successfully implemented the current permit sampling and reporting. The commenters requested the proposed permit maintain the sampling frequencies from the previous permit and include conditions that allow the facilities to demonstrate off-ramps to request reduced sampling and reporting frequencies.

Department Response: In accordance with s. NR 205.066, Wis. Adm. Code, the department shall determine on a case-by-case basis the monitoring frequency to be required for each effluent limitation in a permit. The department included a monthly frequency to improve the effectiveness of the permit in protecting surface water quality and reduce the time period or chance when a facility and discharge could unknowingly be out of compliance with the permit during less frequent sampling.

The department has included sampling and reporting frequency requirements under Sections 4.1.6 and 4.1.7. Section 4.1.6 establishes the monthly sampling and reporting frequency listed in either Sections 4.1.2.1 to 4.1.2.3 or 4.1.3.1 to 4.1.3.3 for new permittees until the facility can demonstrate substantial compliance with the limits. Section 4.1.6 also establishes a quarterly sampling and reporting frequency for applicable parameters listed in either Sections 4.1.2.1 to 4.1.2.3 or 4.1.3.1 to 4.1.3.3 for existing permittees based on their past performance and established operation of the sites. If the limit exceedance occurs, the department may increase the sampling frequency to monthly as established in Sections 4.1.2.1 to 4.1.2.3 or 4.1.3.1 to 4.1.3.3. This includes flow rate under Section 4.1.6.2.1 which is set at quarterly for existing permittees for facilities listed under either Sections

4.1.2.1 or 4.1.2.2. This section does not apply to facilities that are required to continuously measure the flow rate under Sections 4.1.3.1 and 4.1.3.2. The department may require a permittee to comply with the sampling and reporting frequencies listed in Sections 4.1.2.1 or 4.1.2.2 and provide notice by letter if more frequent flow rate monitoring is necessary to comply with the effluent limitations at the site. The permittee shall maintain a daily log of daily flows at the facility and retain the records pursuant to Section 8.2.5 except for remote and unmanned sites, which shall at least maintain and retain a monthly log of total monthly flows at the facility. The permittee shall furnish the flow log to the department upon request. The Department recognizes that many of the facilities with mine dewatering only are isolated or sit vacant for some time, so it may not be possible to record daily flows as workers may only visit the site once per month. By requiring the facility at least maintain and retain a monthly log of total monthly flows of the mine dewatering discharge will ensure that the facility is properly recording and estimating the flow rate on a quarterly basis.

Section 4.1.7 allows facilities to have their sampling and reporting frequency reduced or increased if limit exceedance occur. This section mirrors statistical practices to reduce sampling frequencies based on performance established in the “Interim Guidance for Performance - Based Reductions of NPDES Permit Monitoring Frequencies” prepared by USEPA dated April 19, 1996. The department believed past sampling frequency reduction requirements are inconsistent with established statistical practices used to reduce sampling and reporting frequencies.

Continued Temperature and TP Sampling for Mine Dewatering Water: The department received public comments requesting that the department assess the levels of phosphorus and temperature in mine dewatering water based on review of the previous five years of data and conclude that the increase of monitoring is inconsistent with results reported. The commenters request that the monitoring for temperature and TP should be reduced or eliminated.

Department Response: For mine dewatering discharges to surface water, the department has eliminated the requirement for the continual monitoring of TP and temperature. However, the department does retain the ability to require TP monitoring for discharges to surface water with an approved TMDL where TP is listed as a pollutant of concern. The department will assess the results to ensure that the discharge is in compliance with the approved TMDL.

For process generated wastewater discharges to surface water, the department has eliminated the requirement for continual monitoring of TP, temperature, ammonia, sulfate, chloride, and metals. However, the department does retain the ability to require TP monitoring for discharges to an impaired surface water or surface water with an approved TMDL where TP is listed as a pollutant of concern. The department will assess the results to ensure that the discharge is in compliance with the approved TMDL. The department has included screening requirements for process generated wastewaters to determine if the discharge has the reasonable potential to exceed surface quality standards in chs. NR 102, NR 104, NR 105, NR 106, NR 207, and NR 217, Wis. Adm. Code, or other applicable surface water quality standards. These screening results must be submitted by new permittees with the notice of intent form or within 90 days of the date on the letter granting coverage under this general permit or commencement of the discharge; and by existing permittees within 90 days of the effective date of the general permit. The department will assess if the general permit is applicable to each discharge based on the results and whether the discharge has reasonable potential to cause or contribute to an exceedance of water quality standards.

Volume Monitoring for Mine Dewatering Water, Vehicle and Equipment Washwater, and Dust Suppression Water: The department received public comments about removing the volume monitoring requirement under Section 4.2 for the separate discharges of mine dewatering water, vehicle and equipment washwater, and dust suppression water to groundwater via infiltration. It may be prohibitive and impractical to require physical measuring flow devices of these discharges and the volume data would not provide any useful data for environmental protection.

Department Response: The department has removed volume monitoring for mine dewatering water, vehicle and equipment washwater, and dust suppression water separately discharged to groundwater via infiltration under Section 4.2. The department still requires that the discharges follow the best management practices listed under 4.2.2 to control or abate the discharge of pollutants.

Submittal of Notice of Intent Timeline: The department received public comments with regard to Sections 2.1.1, 2.1.2, 2.1.6 and the inconsistency with respect to submittal of the eNOI deadline and review time period of the eNOI by the department. The timing of these two activities should be reconciled. The commenters recommended removal of the 14 days in Section 2.1.1 because it conflicts with the department review time period of 30 days in Sections 2.1.2 and 2.1.6.

Department Response: Consistent with s. NR 216.22(2) Wis. Adm. Code, facilities must submit a notice of intent 14 working days prior to initiating industrial operations. Under s. NR 216.22(6) Wis. Adm. Code, the department may

require more information than is provided in the notice of intent in order to determine if coverage under a general permit is appropriate. The permittee shall provide additional information requested by the department within 30 calendar days from receipt of notification by the department that additional information is needed. The department has amended Section 2.1.6 to be consistent with these requirements.

Continuous Flow Monitoring: The department received public comments about removing the requirement to continuously monitoring flow and installing a continuous flow recording device for process generated wastewater discharges to groundwater via infiltration. For many facilities that continually recycle process generated wastewater, facilities would be monitoring the production process of how much water is moving through the wash plant. The measured water would not equal the actual discharge to groundwater and would provide erroneously high-water volumes. Many commenters requested that language from previous permit in Section 4.2.1, Table 1(c) be re-incorporated as it is best way for estimating flow to groundwater via infiltration.

Department Response: The department retains the requirement to install a continuous flow recording device for process generated wastewater discharges to surface water consistent with s. NR 218.05(1), Wis. Adm. Code. However, the department has removed the continuous flow recording device requirement for process generated wastewaters to groundwater via infiltration. Due to the different wastewater streams that may be conveyed to wastewater treatment facilities such as a settling pond, it may be difficult to install a continuous flow recording device on all wastewater streams that are conveyed to the wastewater treatment facilities.

Dewatering Flow Measurement: The department received public comments that flow rate measurement of the dewatering discharges under Section 4.1.2.1.1 include a typical water metering device, such as an hour or flow meter on the sump pump, as a reasonable alternative for flow rate measurement devices.

Department Response: The general permit under Section 4.1.2.4 allows the flow rate to be estimated for dewatering discharges which includes readings of a water meter on the discharge or computation from the operating period of one or more calibrated pumps handling the flow. No change is necessary as it is addressed in the general permit.

Surface Water and Wetland Narrative Requirements: The department received public comments concerning the vagueness and lack of definition of surface water and wetland narrative requirements in Sections 4.1.8 and 4.1.9 of the draft permit. Without clear requirements, proposed standards in the permit are cursory at best and would make compliance nearly impossible for the regulated community. The commenters requested that the department eliminate the narrative requirements in Sections 4.1.8 and 4.1.9 of the draft permit.

Department Response: In accordance with s. 283.31(4), Wis. Stats., the department shall prescribe conditions for permits issued under s. 283.31(1), Wis. Adm. Code, to assure compliance with the requirements of s. 283.31(3), Wis. Stats., which includes any more stringent limitations necessary to meet federal or state water quality standards. The incorporation of the surface water and wetland water quality requirements in the general permit will assure compliance the narrative surface water quality standards in s. NR 102.04(1), Wis. Adm. Code and the wetland water quality narrative standards from s. NR 103.03(2), Wis. Adm. Code. The department did not make any changes in response to these comments.

Dewatering of Sediment and Sludges: The department received public comments that the draft permit should also allow any water from dewatering sediment removed during maintenance of storm water best management practices and sludge removed during maintenance of wastewater treatment or storage facilities to be discharged to surface water. All operations are different, and some recycling pond systems do discharge to surface water.

Department Response: The department considers water from dewatering sediment removed during maintenance of storm water best management practices and sludge removed during maintenance of wastewater treatment or storage facilities to be process generated wastewater. Any discharge of process generated wastewater applicable under the general permit must be recycled for use in processing prior discharge to a water of state and must not be discharged directly to surface waters. The department has revised Section 4.3 to make clear that the water must not be directly discharged to surface waters and when it is recycled, the water may be discharged in accordance with surface water discharge requirements in Section 4.1.3 and/or groundwater discharge requirements in Section 4.2.3.

Oil & Grease Sampling: The department received public comments regarding the oil and grease sampling and reporting frequency for mine dewatering and process generated wastewater discharges to surface water or groundwater. The commenters recommended incorporating language from the previous permits. This language has been in place for decades and upon review of historical data from several sites operating in the state, the data shows most values are less than half of the limit and some are non-detect. Commenters concluded that the previous system was working and does not suggest an increase in the sampling frequency.

Department Response: The department has removed oil and grease sampling from mine dewatering and process

generated wastewater discharges to surface water or groundwater. However, the department has included oil and grease sampling under the discharge screening requirements for process generated wastewaters to determine if the discharge of process generated wastewater has the reasonable potential to exceed surface quality standards in chs. NR 102, NR 104, NR 105, NR 106, NR 207, and NR 217, Wis. Adm. Code, or other applicable surface water quality standards. Also, the department has included under Section 4.4 that the permittee implements best management practices to eliminate the release or leak of oil and grease from vehicles and equipment from entering any discharge to a water of the state authorized under this general permit. If visible films or sheens are present in the wastewater authorized under this general permit, the permittee shall not discharge until corrective actions are implemented to prevent the film or sheen from entering the discharge.

Oil and grease are not expected to be present in amounts that violate water quality standards or groundwater standards unless vehicles and equipment at mine sites are not properly operated and maintained. Therefore, best management practices would provide more reasonable control and prevention of oil and grease from entering discharges to a water of the state authorized under this general permit and carry out the purpose and intent of the Clean Water Act pursuant to s. NR 205.10, Wis. Adm. Code.

Process Generated Wastewater to Groundwater Discharge Requirements: The department received public comments concerning the necessity of sampling and expanded sampling parameters for discharges of process generated wastewater to groundwater via infiltration under Section 4.2.3 of the draft permit. Commenters stated that any sampling results of the process generated washwater entering the process wastewater settling ponds would misrepresent what is entering the groundwater beneath the ponds. This section is a misapplication of the intent of regulations in ch. NR 140, Wis. Adm. Code per the point of standards application and fails to exhibit that scientifically valid procedures for determining if a numerical standard have been attained or exceeded. Some commenters stated that the settling ponds and pond fines are excluded from ch. NR 214, Wis. Adm. Code as s. NR 214.02(3)(L), Wis. Adm. Code specifically states that ‘wet and semi-liquid wastes disposed of in a site regulated under ch. NR 500 or 518, except runoff, leachate, decantate or other wastewaters collected for disposal on land outside of the regulated disposal site.’ Because the wash fines are wet and semi-liquid wastes and s. NR 500.08(2)(b), Wis. Adm. Code applies to the ponds fines, the applicability exclusion under s. NR 214.02(3), Wis. Adm. Code should apply and ch. NR 214, Wis. Adm. Code is not applicable. Furthermore, pond fines remain on site and are utilized for reclamation. Also, the definition of ‘land treatment system’ under s. NR 214.03(24) is a ‘system that utilizes physical, chemical and biological abilities of the soil to decompose pollutants in the wastes.’ The aggregate wash pond does not provide treatment for decomposing pollutants related to elemental clay/dirt components. Decompose is defined as ‘to separate into constituent parts or elements or into simpler compounds’ or ‘to break up into constituent parts by or as if by a chemical process’. The gravity settling of dirt/clay compounds containing naturally occurring elements within the pond structure does not result in decomposition. Furthermore, upon reading additional sections of NR 214.12, it becomes evident that the intent of the absorption pond system criteria is not applicable to aggregate wash ponds.

Some commenters recommended that the samples be taken from the ponds themselves as the pond would be more representative due to the different wastewater streams that may be conveyed to the settling ponds. Other comments recommended that pond samples be filtered and tested only for dissolved contaminants and this sampling would be more representative to determine if the general permit is appropriate for the nonmetallic mine site or if further investigation and sampling and groundwater monitoring is necessary for the site. Many commenters also recommended that the department remove the monitoring requirements and conduct a pilot study with the industry. Commenters proposed one upgradient and two downgradient monitoring wells installed at representative mining sites around the state to assess potential widespread groundwater impacts from settling ponds at nonmetallic mining sites.

Department Response: The wastewater treatment facilities, including settling ponds, at nonmetallic mining and processing sites are regulated as industrial wastewater treatment facilities under ch. 283, Wis. Stats. Chapter NR 500, Wis. Adm. Code, does not apply to industrial wastewater treatment facilities that are permitted under ch. 283, Wis. Stats., and therefore the exemption under s. NR 500.08(2)(b), Wis. Adm. Code, does not apply to these facilities. The department has determined, based on information provided by the industry, that the wastewater treatment facilities, including settling ponds, are treatment structures regulated under ch. NR 213, Wis. Adm. Code, and not ch. NR 214, Wis. Adm. Code. The department defines treatment structures under s. NR 213.04(19), Wis. Adm. Code. Treatment structures may also include lagoons as defined under s. NR 213.04(11), Wis. Adm. Code. The department has authority to issue general permits that may contain monitoring and reporting requirements pursuant to s. NR 205.08(2), Wis. Adm. Code. Treatment structures and lagoons have design criteria under ch. NR 213, Wis. Adm. Code which includes being properly sealed to prevent excessive exfiltration (s. NR 213.10(1)(a), Wis. Adm. Code). Also, in cases where critical groundwater, geologic or construction conditions warrant, the department may

require construction specifications or testing requirements more stringent than those described in ch. 213, Wis. Adm. Code if necessary, to preclude detrimental effects to the groundwater pursuant to s. NR 213.08(4), Wis. Adm. Code. Therefore, the department retains the sampling and reporting requirements under Section 4.2.3.1 for the quality of wastewater in the wastewater treatment facilities to determine if the wastewater lost to groundwater via infiltration may have an impact on groundwater quality and to assess if groundwater monitoring may be necessary.

The department has included conditions under Section 4.2.3.1.2 that allow the department to waive monitoring for certain parameters if the permittee has collected representative samples of the wastewater in the process generated wastewater treatment facility in two consecutive years and the concentrations of the parameter are equal to or less than the preventive action limit for that parameter in ch. NR 140, Wis. Adm. Code. This sampling will ensure an initial sample and a confirmation sample is collected to demonstrate a certain parameter does not present a risk to groundwater quality. The exemption will help alleviate burdensome monitoring for permittees for low-risk discharges. Also, the department included conditions under Section 4.2.3.1.3 that allow the department to exempt the permittee from the monitoring and reporting requirements under Section 4.2.3.1 if the permittee can demonstrate that the exfiltration rate, upgrades, or site-specific conditions of the wastewater treatment facility comply with the general permit and chs. NR 140 and NR 213, Wis. Adm. Code.

The department also changed the sampling point from the process generated wastewater inlet pipe to the wastewater treatment facility to collecting a grab composite sample of the wastewater in the wastewater treatment facility under Section 4.2.3.1.1. Sampling of wastewater in the wastewater treatment facility would allow for more representative samples that would characterize all the different wastewater streams that may be conveyed to the wastewater treatment facility. Also, the department has removed sampling for total recoverable metals and retained sampling for dissolved forms of metals under Section 4.2.3.1. Sampling for dissolved metals would be more representative of the concentrations of metals that may be discharged to groundwater via infiltration as this analysis will imitate the process where metals in particulate (insoluble) will settle out in the wastewater treatment facility by filtering the water sample through an 0.45 µm filter prior to analysis leaving only the dissolved (soluble) metals. However, the department did remove monitoring for dissolved cobalt as cobalt in its pure form is insoluble in water.

The department also included information under Section 1.2 to exclude any facilities whose discharge to groundwater has potential to reach surface water and cause an exceedance of surface water quality standards are also not eligible for coverage under this general permit. Ineligible facilities with such discharges may apply for coverage under an individual WPDES permit. Through the individual permit drafting process, the applicant can demonstrate whether their discharge is a functional equivalent to a surface water discharge, and it can be regulated accordingly through the individual permit.

Reasonable Potential to Exceed Groundwater Quality Standards in ch. NR 140, Wis. Adm. Code: The department received public comments that the department remove or clarify the term ‘reasonable potential’ under Section 4.2.3.1.4. Commenters want to know how ‘reasonable potential’ will be applied if the reported sampling results for any parameter under Section 4.2.3 exceed groundwater quality standards in ch. NR 140, Wis. Adm. Code. Some comments also stated the requirement does not allow for any flexibility if the “reasonable potential” threshold is met and is an unlawful violation of s. 227.10(2m), Wis. Stats. Requirements for general permits found in ch. NR 216, Wis. Adm. Code do not allow the department to condition an entity’s eligibility for a general permit on whether a test result has the “reasonable potential” to exceed NR 140 groundwater quality standards. Some comments recommended that results that exceed NR 140 groundwater quality standards be evaluated against background groundwater concentrations, wash plant and pond configuration, geology of the area (depth to groundwater and bedrock), soil type, and other hydrogeologic conditions or pertinent information. Also, commenters asked the department to clarify whether or not the detection of any of the parameters in Section 4.2.3 at concentrations greater than groundwater quality standards in ch. NR 140, Wis. Adm. Code trigger an immediate reporting obligation under s. 292.11, Wis. Stats.

Department Response: The department has modified Section 4.2.3.1.4 to provide greater clarity about permit requirements. Instead of using a “reasonable potential” standard, the threshold for requiring further actions under this section is the exceedance of an enforcement standard in two consecutive reporting periods for any parameter under ch. NR 140, Wis. Adm. Code. The further actions required under this section are authorized under chs. NR 205 and NR 213, Wis. Adm. Code. Under s. NR 205.08(5)(a), Wis. Adm. Code, the department is authorized to require any point source covered by a general permit to obtain an individual permit when that point source is a significant contributor of pollution or the point source is more appropriately regulated by an individual permit. The discharge of pollutants that consistently exceed ch. NR 140 enforcement standards is more appropriately regulated by an individual permit, which may specify groundwater monitoring requirements. In addition, wastewater treatment facilities have design criteria under ch. NR 213, Wis. Adm. Code. This chapter requires all lagoons to be sealed to prevent excessive exfiltration (s. NR213.10(1)(a), Wis. Adm. Code), and the exfiltration rate from a lined lagoon

may not exceed 500 gallons per acre per day (s. NR 213.10(2)(a), Wis. Adm. Code). A treatment lagoon that is unlined or has an excessive design loss does not meet ch. NR 213, Wis. Adm. Code, and further steps would be required to bring the treatment lagoon into compliance.

The detection of any of the parameter listed in general permit that attains or exceeds the enforcement standards in ch. NR 140, Wis. Adm. Code would not trigger an immediate reporting obligation under s. NR 706.05(1), Wis. Stats. and s. 292.11(2)(a), Wis. Stats. unless there is a discharge or spill of a hazardous substance. A hazardous substance is any substance or combination of substances that poses a substantial present or potential threat to human health or the environment. For a complete definition of “hazardous substance,” please refer to s. 292.01(5), Wis. Stats.

Sludge Monitoring and Reporting Requirements: The department received public comments to remove the sludge monitoring requirements under Section 4.4 and reporting requirement under Section 4.5.3 from the proposed permit. The following two sections of Wisconsin administrative code discuss exemption of waste products from nonmetallic mining.

Section NR 214.02(3)(L), Wis. Adm. Code specifically states that ‘wet and semi-liquid wastes disposed of in a site regulated under chs. NR 500 or NR 518, except runoff, leachate, decantate or other wastewaters collected for disposal on land outside of the regulated disposal site.’ Because the wash fines are wet and semi- liquid wastes and s. NR 500.08(2)(b), Wis. Adm. Code applies to the pond fines, the applicability exclusion under s. NR 214.02(3), Wis. Adm. Code does apply and ch. NR 214, Wis. Adm. Code is not applicable. Furthermore, pond fines do remain on site and are utilized for reclamation.

The department is requesting solids sampling of the pond fines for compositional metals. The pond fines consist of naturally occurring dirt/clay washed from the rock. The department states that the management of the pond fines are exempt from solid waste regulation per s. NR 500.08(2)(b), Wis. Adm. Code. Section NR 500.08(2)(b) exempts disposal of pond fines at nonmetallic mining sites from all requirements of chs. NR 500 to 538, Wis. Adm. Code, including solid sampling and characterization. In short, facilities managing exempt products need only to adhere to certain locational criteria and performance standards under s. NR 504.04(3)(c) and (4)(a) to (f) and shall be operated and maintained in a nuisance-free and aesthetic manner. Specifically, one of the performance standards required, under NR 504.04(4)(d), states:

“A detrimental effect on groundwater quality or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard at a point of standards application as defined in ch. NR 140. For the purposes of design, the point of standards application is defined by s. NR 140.22(1).”

Some commenters expressed concern with this draft permit, as written, has the potential to inappropriately add a large number of nonmetallic mining sites to the department’s Wisconsin Remediation and Redevelopment Database and may trigger environmental response actions under ch. NR 700, Wis. Adm. Code by comparing the analytical data from mud and mine tailings to the state's drinking water standards in ch. NR 140, Wis. Adm. Code. The commenters recommended that the department recognize the misapplication of this approach and reconsider comparisons of mud to drinking water.

Department Response: The wastewater treatment facilities, including settling ponds, at nonmetallic mining and processing sites are regulated as industrial wastewater treatment facilities under ch. 283, Wis. Stats. and are not regulated under ch. NR 500, Wis. Adm. Code, pursuant to s. NR 500.02(2), Wis. Adm. Code. Any sludges, solids, spoils, tailings, or pond fines removed from wastewater treatment facilities, including settling ponds, at nonmetallic mining and processing sites and the exclusive disposal of the removed sludges, solids, spoils, tailings, or pond fines at the mine site under a reclamation plan are subject to regulations in chs. NR 135 and NR 500 to 538, Wis. Adm. Code. The removed sludges, solids, spoils, tailings, or pond fines may be eligible for the conditional exemption under s. NR 500.08(2)(b), Wis. Adm. Code, but a case-by-case analysis is necessary to determine how these materials are regulated under the NR 500 administrative code chapters. Therefore, the department has removed the sludge monitoring and reporting requirements under Section 4.4 of the general permit; disposal of the removed sludges, solids, spoils, tailings, or pond fines from wastewater treatment facilities at nonmetallic mining and processing sites are regulated under chs. NR 135 and NR 500 to 538, Wis. Adm. Code. The department updated Section 1.4 to make it clear this activity is excluded from the need of a WPDES permit. Any questions concerning mine waste disposal should be directed to the department’s Waste & Materials Management Program (<https://dnr.wisconsin.gov/topic/Waste/Solid.html>).

Landspreading of Sludge to Agricultural fields in the state of Wisconsin: The department received public comments concerning the “Note” under Section 4.4.2 with regard to land spreading of sludge to agricultural fields in the state of Wisconsin. The statement creates confusion by implying that the use of tailings from wash ponds in

mine reclamation is not allowed. The use of mine tailings in mine reclamation to agricultural is practical. Tailings are a beneficial topsoil amendment in reclamation and agriculture use in general and is especially beneficial in sand soil. The commenters recommend that the that the department explain and rewrite the "Note" to clarify why sediment removed from processing ponds cannot be landspread to agricultural fields and also explain why this permit is not consistent with NR 500.08(2)(b), Wis. Adm. Code. Also, the "Note" indicates that disposal of mine spoils must be handled in accordance with NR 500.08(2)(b), Wis. Adm. Code; however, this section indicates that spoils from nonmetallic mining sites (sand, gravel, etc.) are exempt from NR 500-538, Wis. Adm. Code. This provides no clear guidance and only obfuscates how nonmetallic tailings should be handled. The commenters recommend that the department explain why the permit ignores s. NR 500.08(2)(b), Wis. Adm. Code and rewrite the note to be consistent with s. NR 500.08(2)(b), Wis. Adm. Code as it appears to be contradicting.

Department Response: The department has removed the note. The department has removed the sludge monitoring and reporting requirements. As previously noted, the disposal of the removed sludges and solids from wastewater treatment facilities at nonmetallic mining and processing sites are regulated under chs. NR 135 and NR 500 to 538, Wis. Adm. Code. See the department response to "Sludge Monitoring and Reporting Requirements" comment above.

It should be noted that the exemption under s. NR 500.08(2)(b), Wis. Adm. Code, does not automatically apply to sludges, solids, spoils, tailings, or pond fines that are removed from wastewater treatment facilities at nonmetallic mining and processing sites and/or disposed to land outside of the mine site (e.g. agricultural sites). A case-by-case analysis is necessary to determine how the sludges, solids, spoils, tailings, or pond fines at a specific nonmetallic mining and processing site are regulated under the NR 500 administrative code chapters, specifically ch. NR 518, Wis. Adm. Code (Landspreading of Solid Waste). Any questions concerning mine waste disposal should be directed to the department's Waste & Materials Management Program (<https://dnr.wisconsin.gov/topic/Waste/Solid.html>).

Sampling during Active Sludge Removal: The department received public comments concerning sampling of the sludge during active removal from the lagoon or pond under Section 4.4.2.1.3. Some ponds are not necessarily cleaned out each year and are cleaned as needed depending on the volume of material washed and the amount of P200 on the aggregate. Therefore, it can be several years before pond cleaning is required, even if actively washing each year. Some ponds are never cleaned out with sediment remaining within the pond structure as part of the reclamation process. Some ponds can be quite deep, the discharge inaccessible, and the waste streams highly dilute. In many cases, collecting something that would be considered a representative sample may simply not be possible, and attempts to sample may present significant safety issues. Due to the frequency of pond cleaning and how ponds are cleaned, sample results would not be available until at least 3 weeks after the pond fines are placed in the final reclamation location. It is not economically feasible to re-mobilize a stripping crew back to the site after test results are received for final soil placement. Thus, the pond fines are moved directly from the pond to the final reclamation location. Therefore, commenters noted, the results of sampling provide no value to the department. Commenters argued that the material is exempt from solid waste per NR 500.08. Also, there is not a standard to compare the values against for compliance. The commenters requested removal of the sludge monitoring requirements under Section 4.4 and reporting requirement under Section 4.5.3 from the proposed permit.

Commenters maintain, if sampling is required, the sampling frequency is inconsistent under Section 4.4 and recommend that the department correct the draft permit appropriately and confirm sediment only needs to be sampled and reported when removed from the ponds.

Department Response: The department has removed the sludge monitoring and reporting requirements. The disposal of the removed sludges and solids from wastewater treatment facilities at nonmetallic mining and processing sites are regulated under chs. NR 135 and NR 500 to 538, Wis. Adm. Code. See the department response to "Sludge Monitoring and Reporting Requirements" comment above.

Transfer of Coverage: The department received public comments about adjusting or removing the submittal deadline for a transfer of coverage under Section 8.1.2. The permit requires submittal of the transfer of coverage within 30 days prior to the proposed transfer date. The new owner will not be legally able to sign for the new property until date of closure because the new owner or lessee will not have title or legal rights to the property until close of property. The transfer request should be after purchase or lease documents are recorded.

Department Response: The department has removed the 30-day reference in Section 8.1.2 for transfers of coverage to be consistent with the provisions of ss. NR 205.07(1)(i) and NR 216.31, Wis. Adm. Code.

Submittal of Discharge Information for Existing Permittees: The department received public comments regarding the submittal of discharge information to the department for the existing permittees under Sections 5.3.1.2 and 7.1. Commenters requested these requirements be removed as existing permittees have already supplied this information

to the department. Instead, the commenters requested the permit require the submittal of this information only if not previously submitted. Also, the due date of the report may need to be changed if permittees have a large volume of sites.

Department Response: Section NR 205.07(1)(L), Wis. Adm. Code, requires the permittee to furnish to the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, terminating, suspending, revoking or reissuing the permit or to determine compliance with the permit. The submittal of discharge information under Section 7.1 will help the department determine whether cause exists for a facility to retain eligibility for coverage under the general permit. Information furnished with further help the department to set-up required electronic discharge monitoring reports with accurate discharge type and location information to ensure the correct monitoring requirements of the proposed permit are applied.

Spill Reporting: The department received public comments regarding the clarity and meaning of the spill reporting requirements under Section 8.3.2 of the draft permit. This section is unclear what substances are required to be reported under as written. It is also unclear whether any material discharged that is “unregulated in the permit” is subject to the spills law under s. 292.11(2)(a), Wis. Stats. Some commenters stated that reporting to the department under this section is no different than reporting to the department in accordance with chapter NR 706, Wis. Adm. Stats. No matter how the data is reported to the department, the owner or operator is subject to s. 292.11(2)(a), Wis. Stats., as indicated in NR 706 and in the Note under Section 8.3.2 and has an obligation to report “immediately”.

Department Response: Section NR 205.07(3), Wis. Adm. Code states that the department may include conditions under ss. NR 205.07(3)(a) to (e), Wis. Adm. Code in a WPDES permit to the owner or operator of a non–publicly owned treatment works, including a spill reporting condition. The department has removed the spill reporting condition and added a note under Section 8.2.16 because spill reporting is properly regulated elsewhere under ch. 292, Wis. Stats. and ch. NR 706, Wis. Adm. Code. Permittees should note that spill reporting obligations continue to apply to facilities. Any person who causes the discharge to the environment of a hazardous substance or who possess or control a hazardous substance which is discharged to the environment shall immediately notify the department of the discharge pursuant to s. NR 706.05(1), Wis. Stats. and s. 292.11(2)(a), Wis. Stats. The department has included this as a note under Section 1.2 to remind the permittee of their reporting obligation.

Removed Substances: The department received public comments regarding the applicability of Section 8.3.1. This section appears to be applicable to water treatment plants regulated by NR 204, NR 214, or NR 660 or NR 670, none of which necessarily apply to the subject of the general permit and should be revised or deleted. Addressing solids, sludges, filter backwash or other pollutants removed from or resulting from treatment or control of wastewaters or intake waters in a permit for an industry that is not typically associated with such treatment or control is out of place. The nonmetallic mining facilities intended for coverage by this permit may create fines, tailings, mud from the washing of minerals or spoils from sand, gravel or stone and crushed stone quarry operations and similar nonmetallic earth materials – but are exempt from licensing and requirements of chs. NR 500 to 538. This section as written is inconsistent with that exemption.

Department Response: Any sludges, solids, spoils, tailings, or pond fines removed from wastewater treatment facilities, including settling ponds, at nonmetallic mining and processing sites and the exclusive disposed of the removed sludges, solids, spoils, tailings, or pond fines at the mine site under a reclamation plan are subject to regulations in chs. NR 135 and NR 500 to 538, Wis. Adm. Code. The removed sludges, solids, spoils, tailings, or pond fines may be eligible for the conditional exemption under s. NR 500.08(2)(b), Wis. Adm. Code, but a case-by-case analysis is necessary to determine how these materials are regulated under the NR 500 administrative code chapters. Also, s. NR 205.07(3), Wis. Adm. Code states that the department may include conditions under ss. NR 205.07(3)(a) to (e), Wis. Adm. Code in a WPDES permit to the owner or operator of a non–publicly owned treatment works, including a condition for removed substances. Therefore, the department has retained the language in the general permit but removed any references to chs. NR 204 or NR 214, Wis. Adm. Code.

Discharge Requirements to ORW, ERW, and Impaired Waters: The department received the following public comment:

Discharge Requirements to ORW, ERW and Impaired Waters are Unlawful. Multiple other sections of the draft general permit also appear designed to force the regulated community to unnecessarily utilize individual permits instead of the general permit. The following troubling sections in relation to discharges to certain types of waters: Sections 1.3.20 and 1.3.21 notes that a discharge of wastewater directly to an outstanding resource water (ORW) or an exceptional resource water (ERW) is not covered by the general permit, and indicates the Department has the authority to revoke coverage under the general permit and require an individual permit. Under Section 1.3.24, a discharge of storm water or wastewater that contains “pollutants of concern that contributes to the impairment of a 303(d) listed impaired water” also grants the Department the

authority to revoke a general permit. Section 5 of the draft permit provides requirements for antidegradation, as well as burdensome new requirements for discharges to ERW, ORW, and impaired waters. In particular, Section 5.2.2 notes that “if the department determines that the new or increased discharge does not meet the antidegradation requirements provided in Section 5.1 or the discharge does contribute to the receiving water impairment or the discharge is consistent with the State and Federal approved TMDL, the permittee must [emphasis added] apply for coverage under for [sic] an individual permit or find an alternative discharge location...” It should be pointed out that the Department is currently undertaking rulemaking to update Wisconsin’s water quality antidegradation administrative code, including NR 207 (which is referenced multiple times in the permit). However, any attempt by the Department to prematurely enforce the proposed antidegradation standards under WY- 13-20 within this general permit would be unlawful. WY-13-20 has not yet completed the legislative process, nor has the rule text even been released. As noted in the previous section, this is another instance of the DNR attempting to impose a permit condition without going through the rulemaking process. There is nothing contained within NR 214.003 nor NR 216.24 that grants the Department the explicit authority to force regulated entities to utilize an individual permit in the event of a discharge to an ORW, ERW, or impaired water. Thus, these sections of the general permit are in violation of s. 227.10(2m). Again, if the Department wishes to condition a permit in this manner, it must first promulgate a rule explicitly allowing this approach.

Department Response: General permits may contain applicability criteria pursuant to s. NR 205.08(2), Wis. Adm. Code. Also, the department may require any point source covered by a general permit to apply for and obtain an individual permit in situations where the point source is a significant contributor of pollution or the point source is more appropriately regulated by an individual permit pursuant to s. NR 205.08(5)(a), Wis. Adm. Code. The department is authorized to implement current antidegradation requirements found in ch. NR 207, Wis. Adm. Code. New or increased discharges of wastewater to ORWs and ERWs in the state of Wisconsin require further evaluation, water-quality based effluent limitations, and monitoring to ensure protection of these waters pursuant to ss. NR 207.03(3) and (4), Wis. Adm. Code, and are more appropriately evaluated and regulated by an individual permit. Also, in accordance with ss. 283.31(3) and (4), 283.15(5), Wis. Stats., the department shall prescribe conditions for permits issued under ch. 283, Wis. Adm. Code to assure compliance with any more stringent limitations necessary to meet state water quality standards and avoid exceeding TMDLs established pursuant to a continuing planning process developed under s. 283.83, Wis. Stats. Any discharge that contains pollutants of concern that contributes to the impairment of a 303(d) listed impaired water that does not have a federally approved TMDL for the pollutant of concern or is inconsistent with the wasteload allocation for general permits in a federally approved TMDL would be considered a significant contributor of pollution and potentially inconsistent with state water quality standards. These discharges would be more appropriately regulated under an individual permit.

The department has revised Section 5 to ensure that the conditions in this section are consistent with state statutes and regulations concerning antidegradation procedures and TMDLs.

Definition of Mine Dewatering: The department received public comments requesting the change of the definition of mine dewatering in the proposed permit. Section NR 269.02, Wis. Adm. Code, specifies the definition of ‘Mine Dewatering Discharge’ as ‘any water that is pumped, drained or otherwise removed from a mine through direct action of the mining operator and, for subcategories (3) and (4) only, any wet pit overflow caused solely by direct rainfall and groundwater seepage. Categories (3) and (4) are construction sand and gravel and industrial sand only.’ The commenters recommended that the definition be changed to the s. NR 269.02, Wis. Adm. Code, definition by removing ‘other removal of water that is impounded or collected in the mine or other areas’ and clarifying that ‘wet pit overflows’ only applies to construction sand and gravel and industrial sand.

Department Response: The department has revised the definitions of mine dewatering and process generated wastewaters under the Section 1.2 and definitions section of the fact sheet, to be consistent with the definitions in ch. NR 269, Wis. Adm. Code and 40 CFR Part 436. Also, the department included Section 4.1.4, from s. NR 269.06(6) and 40 CFR Parts 436.22(b), 436.32(b), and 436.42(b) to make it clear when the surface water limitations apply to applicable overflows from facilities covered by this general permit.

Construction Site Storm Water Runoff Permit Requirements: The department received several comments indicating the requirement for a construction site stormwater discharge permit is duplicative and is unnecessary if seeking coverage under the draft mineral mining and processing WPDES Permit No. WI-0046515- 07-0 and should be eliminated. The requirement for a construction site stormwater discharge permit coincident with an eNOI for the WPDES permit should be eliminated. Additional comments were received seeking clarity or inclusion for internally drained status in Section 3.1, specifically, the inclusion of riprap as a stabilization measure on haul roads and the material exclusion exemption for internal drainage designation.

Department Response: Subchapter II of ch. NR 216, Wis. Adm. Code, regulates industrial facilities such as mineral mining and processing activities while Subchapter III of ch. NR 216, Wis. Adm. Code, regulates construction activities associated with land disturbing construction activities. Land disturbing construction activity is defined in s. NR 216.002 (14), Wis. Adm. Code, and 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.

Many of activities at mineral mining facilities are land disturbing construction activities where dual permitting under both subchapters could apply, however, the department recognizes that many of the soil stabilization practices utilized at mineral mining facilities implement measures in accordance with s. NR 151.11(6m), Wis. Adm. Code, to prevent and control soil erosion through the minimum source area pollution prevention activities required under s. NR 216.46, Wis. Adm. Code, during initial mine development and the creation of a Storm Water Pollution Prevention Plan (SWPPP).

However, land disturbing construction activity involving conversion from pervious surfaces to impervious surfaces may occur after the site has been deemed to be internally drained, as a result of lateral expansion, or as a result of land use conversion. When this occurs, facilities may not be meeting the requirements of s. NR 216.47, Wis. Adm. Code, although these provisions are still applicable. To address this, the department has clarified in the permit, circumstances commonly encountered where these provisions are still applicable, and where it is appropriate to also require a construction site electronic notice of intent (eNOI) to address the performance measures and other requirements of s. NR 216.47, Wis. Adm. Code, in addition to the timeline provisions of s. NR 216.44, Wis. Adm. Code. Language in Section 1.3, 2. indicates that a discharge of storm water from construction activities, where one or more acres of land will be disturbed and impervious surfaces constructed necessitating implementation of post-construction performance measures to comply with s. NR 216.47, Wis. Adm. Code, and ss. NR 151.121 through NR 151.128, Wis. Adm. Code, must obtain coverage under the Construction Site Storm Water Runoff WPDES Permit No. WI-S067831. The department has amended this section to include a note with respect to reclamation, the operator (or landowner if different from the operator) is responsible for ensuring that plans to construct impervious surfaces are in compliance with s. NR 135.19, Wis. Adm. Code, and the approved reclamation plan.

The department has amended Section 1.3, 2. of the permit to include the definition of land disturbing construction activity. The department clarified that construction activities of one or more acres that will result in impervious surfaces require permitting under a construction site stormwater discharge permit prior to the commencement of land disturbing construction activities. An eNOI for coverage under the construction site storm water discharge permit WPDES Permit No. WI-S067831 shall be submitted at least 14 working days prior commencement of these activities.

The department received comments on the notes in Section 3 related to the inclusion of stabilization measures such as riprap for haul roads. The permit currently states, in part, that haul roads are considered part of the nonmetallic mine facility. If haul roads are stable and associated ditches and conveyances are well vegetated and in a stable condition, the department may exclude them from consideration of the internally drained determination. In certain circumstances, riprap may be an appropriate stabilization measure for steep slopes or as ditch checks in swales associated with haul roads. This note is intended to clarify the minimum source area control requirements related to sediments on access roads both tracked from the mine site, those originating from erosion, and the discharge of sediments from impervious surfaces. No changes were made to the permit in response to this comment.

The material exclusion exemption in Section 3 states that materials meeting the exemptions in s. NR 500.08, Wis. Adm. Code, where only clean soil, brick, building stone, concrete or reinforced concrete not painted with lead-based paint, broken pavement, and wood not treated or painted with preservatives or lead-based paint are stored may be considered internally drained on a site-by-site basis. The department recognizes that these materials may be stored at an internally drained mineral mining and processing site but are not otherwise classified as earthen materials typically associated with sources of storm water exposure in the SIC Codes 1400 to 1499. As noted in the permit, a site may be considered internally drained if all storm water up to the 25 year, 24-hour frequency storm that falls directly on disturbed areas or comes into contact with excavated material and containing only sediment is entirely captured and contained or infiltrated within the nonmetallic mining operation. The inclusion of this note allows the department on a case-by-case basis, to not preclude these sites from internal drainage status provided they meet the criteria of s. NR 500.08(2)(a), Wis. Adm. Code. No changes have been made to the permit.

Requirements on Quarterly Visual Inspections of Storm Water Outfalls: The department received comments seeking clarity on permit requirements in Section 3.7, 2. requiring inspections at storm water outfalls be conducted within the first 30 minutes, or as soon thereafter as practical, but not to exceed 60 minutes, after runoff begins discharging

at an outfall. Commenters indicated the water coming from the outfall immediately after a storm is not the water that initially fell during the storm and flushed the site. Commenters also indicated that any mine sites with sedimentation ponds should be exempt from quarterly visual inspections within the specified timeframe of a storm and that discharge inspections should be done at any time the discharge is occurring during that quarter.

Department Response: The permit states that once per quarter, the SWPPP contact or SWPPP contact designee 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 an outfall. This language takes into consideration timing aspects associated with storm water discharging from an outfall after treatment in a device, by allowing the inspection to occur up to 60 minutes after a discharge has begun from an outfall. Further, the permit does not specify when during a quarter an inspection must be conducted, other than the inspection should be associated with a rainfall event that occurred during that timeframe. The department has made no changes to the permit in response to this comment.

SWPPP Amendment: The permit as written requires that an updated SWPPP must be submitted to the DNR. The sentence should be revised to read an updated SWPPP Summary should be submitted.

Department Response: The department has amended the permit in Sections 3.5 and 3.6 to allow for a SWPPP or a SWPPP Summary to be submitted. However, if the department requests a full SWPPP, it shall be provided in accordance with s. NR 216.29(1)(f), Wis. Adm. Code.

Storm Water Treatment Practices Temporarily Used for Wastewater Discharges: Occasionally storm water treatment BMPs are used for holding dewatering (intense precipitation events) or process water flows (while removing sediment from wastewater treatment devices). During these situations, monitoring would occur in accordance with the wastewater conditions in the permit. Clarification is sought on whether a stormwater treatment device can return to a storm water only treatment device the month proceeding usage as a wastewater treatment device.

Department Response: In accordance with the planned change requirements in Section 8.3.1, the permittee shall notify the department when a change in operations occurs as described in this scenario. The permittee will be required during the period of discharge to meet the permit requirements associated with the wastewater discharge. If a permittee ceases wastewater discharge, the storm water treatment device may resume normal treatment functions provided it has been made operational to its original function.

Concrete Products Operations: Concrete ready-mix operations will lose coverage upon reissuance of the permit. Clarity is sought on how the department intends to notify facilities of the loss of coverage and convey coverage to these facilities under applicable permits. Clarity is also sought on non-metallic mining sites that do not engage with concrete product activity, but do accept concrete wash-out, and whether these facilities should also be applying for concrete products operations permit to cover the discharge.

Department Response: Facilities in this category are subject to two types of permits, an industrial storm water discharge general permit (either mineral mining and processing general permit or an industrial Tier 2 general permit) and the concrete products operations wastewater general permit (<https://dnr.wisconsin.gov/topic/Wastewater/Permits.html>). The department has clarified in Section 1.3 condition 1. that a discharge of wastewater associated with industrial activity to a water of the state, either directly or via a separate storm sewer system, originating from any concrete products operations defined by SIC Codes 3271, 3272 and 3273 that are contiguous to or located within the mineral mining and processing site are not eligible to discharge under the general permit. The permittee must apply for the Concrete Product Operations WPDES Permit No. WI-0046558 for wastewater discharges. Further, the department has included a note that storm water discharges associated with industrial activity defined by SIC Codes 3271, 3272 and 3273 that are not located within the mineral mining and processing site or where discharges are not covered under the mineral mining and processing general permit must apply for coverage under the Tier 2 Industrial Facilities WPDES Permit No. WI-S067857. Facilities that no longer retain coverage for concrete wastewater discharges will be notified of the need to apply.

Facilities with storm water coverage under the mineral mining and processing permit are required to develop and prepare a Storm Water Pollution Prevention Plan (SWPPP) for source areas and activities that have storm water exposure because pollutants other than sediment may be mobilized in storm water discharges.

Comments Received from USEPA or Other Government Agencies

The department received the following significant comments from the United States Environmental Protection Agency (USEPA) on the draft permit.

USEPA Comment #1 – Indian Country: Draft permit Section 1.3 “Discharges Not Covered” condition 28 links eligibility for permit coverage for facilities located in Indian country to previous coverages under Wisconsin general

NPDES permits. This is in error since facilities located in Indian country are not eligible for NPDES coverage. For clarity, replace Condition 28 with the sentence below and revise the “Note” as shown (see text strikeout) to remove qualifying language regarding facilities in Indian country being eligible for permit coverage and remove language pertaining to USEPA’s permitting process:

Condition 28 replacement: *“Facilities located within the exterior boundaries of an Indian reservation must apply to the U.S. EPA for coverage under the multi-sector general permit or for an individual permit.”*

Note: “Indian County is defined under 18 USC §1151 and includes all lands within the exterior boundaries of federally recognized Indian reservations and on lands held in federal trust status. Facilities that ~~currently do not have storm water discharge permit coverage and~~ are located within Indian Country shall contact the United States Environmental Protection Agency (EPA) to apply for permit coverage. ~~For existing discharges covered under a NPDES permit from EPA, discharges will continue to be covered by a NPDES permit.~~ Dischargers that previously held permit coverage under previous versions of this permit after September 30, 2001, are no longer eligible for coverage under this permit and must contact EPA to apply for permit coverage.”

The draft fact sheet contains language corresponding to eligibility of facilities in Indian country for coverage under the general permit as shown below. USEPA’s delegation of NPDES permitting authority to the State of Wisconsin for facilities in Wisconsin is not relevant to the jurisdictional issue for facilities in Indian country. For better accuracy, please revise the fact sheet as shown below.

~~“Discharges within Indian country: The department lacks the authority to issue NPDES permits within Indian Country due to the state delegation agreement with the United States Environmental Protection Agency (EPA). In such instances, the EPA regulates the discharge and would issue a discharge permit.”~~ USEPA is the permitting authority for the NPDES program in Indian country. If your facility is located in Indian country, then USEPA has the jurisdiction to regulate the discharge from your facility and you must apply to the USEPA for coverage under the multi-sector general permit or for an individual permit. See <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities> for more information.”

Department Response: The department has revised Section 1.3 condition 32 to read: “Discharge of storm water and wastewater within Indian Country;

Note: Indian County is defined under 18 USC §1151 and includes all lands within the exterior boundaries of federally recognized Indian reservations and on lands held in federal trust status. Facilities that are located within Indian Country shall contact the United States Environmental Protection Agency (USEPA) to apply for permit coverage. Dischargers that previously held permit coverage under previous versions of this permit after September 30, 2001, are no longer eligible for coverage under this permit and must contact USEPA to apply for permit coverage.

The following USEPA website contains information on USEPA’s Multi-Sector General Permit (MSGP): <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp>. Facilities shall verify eligibility for coverage under the MSGP or determine if an individual permit is needed. Information on how to apply for the MSGP can be accessed here: <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-reporting>.”

The department has revised the fact sheet language for Discharges within Indian County as recommended by USEPA above.

USEPA Comment # 2 – PAH Monitoring for Storm Water Discharges: The draft general permit does not require monitoring for Polycyclic Aromatic Hydrocarbons (PAHs). The permit should include monitoring requirements for PAHs for facilities where stormwater discharges from paved surfaces will be initially sealed or re-sealed with coal-tar sealcoat where industrial activities may occur. Industries that use coal-tar sealcoat could potentially release PAHs into the environment through stormwater discharges when these surfaces are exposed to precipitation. One PAHs are listed as a toxic pollutant at 40 CFR §401.15 and 16 PAHs are on the list of 126 Priority Pollutants at 40 CFR Part 423.2 USEPA recommends that the permit include appropriate monitoring for PAHs (in the cases when paved surfaces will be initially sealed or re-sealed with coal-tar sealcoat where industrial activities are present) to determine an adequate surrogate or if additional PAH monitoring is warranted.

Department Response: Since these toxic pollutants are not regulated under this general permit, the department has added Section 1.3 condition 16 of the permit to exclude stormwater discharges from paved surfaces that will be initially sealed or re-sealed with coal-tar sealcoat.

Public Adjudicatory Hearing and Permit File Information

As provided by s. 283.63, Wis. Stats., and ch. 203, Wis. Adm. Code, persons desiring further adjudicative review of this final determination may request a public adjudicatory hearing. A request shall be made by filing a verified petition for review with the Secretary of the Department of Natural Resources within 60 days of the date the permit was signed (see permit signature date above). Further information regarding the conduct and nature of public adjudicatory hearings may be found by reviewing ch. NR 203, Wis. Adm. Code, s. 283.63, Wis. Stats., and other applicable law, including s. 227.42, Wis. Stats.

Information on file for this permit action, including the draft permit and fact sheet may be reviewed on the internet at the above web link or may be inspected and copied at the permit drafter's office during office hours. Information on this permit may also be obtained by calling the permit drafter or by writing to the department. Reasonable costs (usually 20 cents per page) will be charged for copies of information in the file other than the public notice, permit and fact sheet. Pursuant to the Americans with Disabilities Act, reasonable accommodation, including the provision of informational material in an alternative format, will be made to qualified individuals upon request.