

Economic Impact Analysis (EIA) Public Comments and Response to Comments on NR 216  
Board Order Revisions (Natural Resources Board Order WT-09-19)

February 5, 2021

The department received comments from various stakeholders on the Draft Economic Impact Analysis (EIA) for the proposed changes to Ch. NR 216, Wis. Adm. Code, permanent rule WT-09-19. The proposed draft rule will have a public hearing and public comment period during Spring 2021. Below are comments on the EIA taken from letters received, and beneath each comment is the department response.

**Comments by the League of Wisconsin Municipalities**

1. The department is proposing to create a new section, NR 216.07(7) to require, within a permit, mapping related to TMDL implementation. It is not immediately clear what “mapping pertinent to TMDL implementation” means in this context. The EIA does not explicitly include an analysis of potential costs associated with this additional subsection. The League believes this could be an omission of significant costs and requests that DNR address this topic in the EIA.

***Response:*** *Total Maximum Daily Loads (TMDLs) are required to be included in WPDES permits by s. 283.31(3)(d)3, Stats. and s. NR 205.067(3)(a), Wis. Adm. Code. The proposed modifications to Ch. NR 216 in the board order would clarify how TMDLs are addressed in storm water permits.*

*The cited provision relates to identifying which municipal drainage areas apply to which TMDL watershed. There is an existing requirement for municipal permittees to develop a storm sewer map within the first 5 years of their initial permit (and update as applicable per permit requirements). This provision requires overlaying TMDL watershed information to existing mapping. Total Maximum Daily Load watershed mapping is typically provided by the department using a geographic information system format that is compatible with the software most municipalities use to develop and maintain their maps. This added provision clarifies the existing requirements in state statute, code, and municipal permits; therefore, the costs were already incurred.*

*For improved clarity, the department changed the board order rule language from “mapping pertinent to TMDL implementation” to “boundaries of applicable watersheds associated with a TMDL wasteload allocation.”*

2. The department is also proposing to create NR 216.43(5), which provides that permittees are required to reapply for permit coverage when the duration of land disturbing construction activity extends longer than three years. The League is concerned that this could result in significant cost increase for large development projects. This topic also

does not appear to be explicitly included in the EIA. The League requests that costs related to reapplication for permits be addressed in the EIA.

***Response:*** *Reapplication fees impact construction sites of all sizes, across the proposed fee framework. Reapplication fees are estimated to be \$60,900, with \$12,800 estimated to impact small businesses and \$12,800 to impact local governments (local governments are less likely to file for reapplication) based on proposed fees (EIA Section 14.(D)).*

*For projects without amendments, the reapplication process currently requires submitting the Notice of Intent without attachments and paying the current application fee for the original project size. It is not expected that reapplication would incur additional engineering expenses that would contribute a significant cost increase.*

### **Comments by Neumann Developments, Inc**

3. As the topic of housing affordability has been brought to the forefront, real estate construction markets throughout Wisconsin have faced challenges in delivering a product that meets a price point serving the growing middle class. Developers and home builders face fees at all levels of government that are ultimately passed on to the home buyers of the state. Higher fees, additional engineering review time, etc. negatively impact our goal of expanding homeownership to a broader range of demographics and continuing to fill the critical need for housing in our state. It becomes progressively burdensome as multiple agencies seek to do the same and impose additional charges and requirements. Furthermore, an emphasis on affordability will assist in retaining and attracting residents to boost our economy and tax base for years to come. For the reasons stated, it would be in the best interest of the state to reconsider the increase in costs associated with revisions to the storm water discharge code that would be applied to small businesses.

***Response:*** *Construction site storm water permits are required when one or more acres of land will be disturbed, and for sites of less than one acre if they are part of a larger common plan of development or sale. An application for subdivision development is typically associated with a single fee for the entire project rather than construction of individual homes. Therefore, any design costs and fees are divided among the number of residential lots within the subdivision.*

*According to the department WPDES permit database, a recent subdivision included 45 residential lots across 24 acres. The construction site storm water permit application fee paid was \$235, or \$5.22 per residential lot. Another example included 58 lots across 49 acres. The storm water permit application fee paid was \$350, or \$6.03 per residential lot. The proposed fee for a similar development is estimated at \$17.33, and \$23.67 respectively, per residential lot. Therefore, it is not anticipated that the proposed construction site permit application fee increases would have a significant effect on the affordability of housing.*

### **Comments by the Wisconsin Paper Council**

4. *Definition of “Benchmark” (NR 216.002(1m))* Proposed NR 216.002 defines “benchmark” to mean “a minimum numeric or narrative level of pollution control....” The reference to “numeric” suggests that the “benchmark” can be a “numeric standard” that must be met. The Department of Natural Resources (DNR) should include in its EIA estimated costs of complying with anticipated control requirements.

**Response:** *The term ‘benchmark’ is used in proposed s. NR 216.07 (10) which provides additional flexibility to municipal separate storm sewer system permittees implementing TMDLs. As TMDL compliance is already required by other sections of statute and code (s. 283.31(3)(d)3, Stats. and s. NR 205.067(3)(a), Wis. Adm. Code), no estimates have been included in the EIA.*

5. *Definition of “Pollutant of Concern” (NR 216.002(23m))* This definition should be modified to clarify that the “water quality impairment” must be of an “impaired water.” NR 216.002(12) defines an “impaired water” as those listed as impaired pursuant to federal law. This modification would help to clarify what water bodies are included in this definition.

**Response:** *The definition has been clarified in the board order.*

6. *Water Quality Standards and Wasteload Allocations for Impaired Waters (NR 216.007)*  
This provision requires municipal stormwater permits and construction site storm water discharge permits to contain terms and conditions for discharges for the purpose of achieving water quality standards, and to include an “expression of the applicable wasteload allocation consistent with” an applicable Total Maximum Daily Load (TMDL). TMDL allocations are also referenced in NR 216.04(2) and (3); NR 216.07(i); NR 216.07(10); and NR 216.49(3) and (4) of the draft rule.

Page 2 of the analysis prepared by DNR indicates that NR 216.007 was proposed to “improve consistency” in protecting outstanding resource waters, exceptional resource waters and impaired waters. In addition, DNR notes that the existing statutes and rules are tailored toward point sources. The EIA contains no discussion of costs associated with complying with these requirements, or the other TMDL provisions referenced above. The EIA should set forth any costs expected to be incurred from the implementation, or change in implementation, associated with these provisions.

**Response:** *The referenced language was added to Ch. NR 216, Wis. Adm. Code, to provide clarity to existing requirements in other Wis. Adm. Code (chapters NR 102 to 105, 140, and 207) as they apply to storm water and to be consistent with the provisions of the federal Clean Water Act for delegated states.*

*For industrial and construction storm water permits, the TMDLs developed to date include a wasteload allocation for both groups of general permittees. The wasteload allocation assumes that these permittees are complying with their permits and no further reductions are required beyond compliance with existing permit conditions*

*Provisions for outstanding resource waters and exceptional resource waters are also already included in those permits per existing water quality code. Therefore, the department does not expect changes in cost of mitigating impacts. The EIA incorporates some additional costs for discussing impacts to outstanding resource waters and exceptional resource waters in storm water pollution prevention plans, erosion control plans, and storm water management plans if it was not previously required to be described in the documents.*

*Specific TMDL wasteload allocations have been established for permitted MS4s and must be included in their permits per s. 283.31(3)(d)3, Stats. and s. NR 205.067(3)(a), Wis. Adm. Code. However, existing regulation expects municipal permittees subject to TMDL allocations to address them within a single 5-year permit term. The department understands that this is not feasible nor practicable for many municipal permittees. Under federal rules, TMDLs must provide reasonable assurance that wasteload allocations will be met as quickly as possible. The department is proposing code language to support implementation of TMDLs over a longer time period with continual progress. Because the current requirement to implement the TMDL within 5 years is not practical, there is no basis from which the department can quantify the expected benefits provided by the proposed approach.*

7. *Reliance on Another Entity (NR 216.075)* This provision contemplates a municipal storm water permittee contracting with another entity to implement control measures on behalf of the permittee. The EIA does not contain any cost estimates associated with these provisions. Presumably, a permittee would use this provision when doing so would cost less than the cost of the permittee implementing the controls. The EIA should reflect any anticipated fiscal impact associated with this provision.

***Response:*** *Several examples exist in which municipal stormwater permittees join into contracts or consortiums to gain efficiencies and cost savings. This practice has been common since the early implementation of the Phase 2 storm water regulations. The new section of NR 216 is intended to require reporting per 40 CFR 122.34(g)(3)(v) and address issue 56 in the EPA's Legal Authority Review (LAR) letter from 2011. The provision allows for collaboration rather than require it. An estimate would be difficult to quantify; however, qualitative benefits were added to the EIA to reflect these cost-saving partnerships among permitted municipalities.*

8. *Inclusion of Access Roads and Rails Lines (NR 216.21(2)(b)1.)* This change would include access roads and rail lines as part of Tier 2 facilities. Inclusion of access roads

and rail facilities could impact the applicability of some “No Exposure Certifications” for sites with rail/access lines. While the EIA includes some costs associated with updating Stormwater Pollution Prevention Plans (SWPPPs) to incorporate rail/ access lines, it does not appear that DNR evaluated whether permittees may lose their No Exposure Certifications, and incur additional costs as a result.

**Response:** *Excluding access roads and rail lines is not authorized by federal law. This revision addresses LAR issue 52. The department does not anticipate the inclusion of access roads or rail lines to cause a facility to lose “No Exposure Certification” status. Facilities seeking no exposure certification must certify every five years they qualify for an exclusion from permitting by evaluating, pursuant to s. NR 216.21 (3)(e)3.h. Wis. Adm. Code, that they have no materials or products stored or handled on roads or railways owned or maintained by the discharger. This section applies to facilities that currently do not have “No Exposure Certification” and use rail lines and access roads as part of their operations. These facilities are already required to assess and include these areas as part of their source area identification as it relates to industrial permitting under s. NR 216.27 (3)(e)5. Wis. Adm. Code.*

9. *Identifying the Name and Location of Receiving Waters (216.27(3)(c)9.)* The new language in this provision requires permittees to include in SWPPP site maps showing downstream waters that are impaired or designated as ERW or ORW. This will require some evaluation and effort, as existing maps will need to be evaluated and potentially updated. This cost is not reflected in the draft EIA.

**Response:** *In response to this comment, the EIA was revised to add time for checking for designations downstream of those immediate receiving waters in Section 14.(C) of the EIA.*

10. *Evaluation of Potential Impacts to Drainage and Grading (NR 216.27(3)(cm))* For industrial activities with “ongoing changes to drainage and grading,” this provision requires the SWPPP to include an evaluation of potential impacts to wetlands and adjacent properties due to dewatering or changes in hydrology.

DNR estimates 970 permittees would be impacted by this provision, for a total cost of \$246,500. While DNR notes that this would impact certain nonmetallic mines and landfills, it is unclear what other industries, if any, are included in this estimate. Moreover, if there are 970 impacted permittees, and estimated cost equates to approximately \$150 per permittee. While it is unclear under this provision what type of evaluation would be needed, the cost estimate appears low. In addition, this cost estimate does not include any costs associated with avoiding or minimizing impacts.

**Response:** *The proposed change to code is to highlight the need to evaluate a commonly overlooked aspect of that code early in site planning when compliance with Ch. NR 103,*

*Wis. Adm. Code is most cost-effectively incorporated. Avoiding or minimizing impacts to wetlands is already required. By requiring documentation in the permit application materials, it is more likely to be addressed before an application is submitted which will avoid delays and additional costs that may occur if wetland hydrology impacts are not considered in initial design.*

11. *Silviculture (NR 216.42(3))* This provision generally exempts silviculture activities from the construction site stormwater requirements. DNR is proposing to add a new requirement that the activities must be “conducted in accordance with standard industry practice.” Moreover, DNR references the “Wisconsin’s Forestry Best Management Practices for Water Quality Field Manual” as an example of industry practice. DNR should identify whether there will be additional costs associated with this requirement.

***Response:*** *Most silviculture activities are already following “standard industry practice” and therefore no additional costs would be incurred. The update is proposed to comply with federal law, and the Note is intended to provide those individuals subject to this provision a resource. If an entity does not follow “standard industry practice”, they may be subject to needing a storm water permit, which could then incur costs.*

12. *Routine Maintenance (NR 216.42(8))* “Routine maintenance” is excluded from the construction storm water requirements. It appears that the definition of “routine maintenance” is being narrowed. This provision currently provides “routine maintenance” includes land disturbance “performed to maintain the original line and grade, hydrologic capacity, or original purpose of the facility...”. In contrast, the proposed language defines “routine maintenance” to include land disturbance “to maintain the original purpose of the facility and either the original line and grade or original hydraulic capacity of the storm water facilities...” Thus, the current language allows for a separate category of routine maintenance for maintaining the original purpose of the facility, while the proposed language includes the additional requirement that the maintenance must be to maintain the original purpose of the facility **and** the original line and grade or hydrologic capacity of the stormwater facilities. Insofar as this is narrowing the scope of the “routine maintenance” exemption, DNR should identify the estimated cost to permittees associated with this change.

***Response:*** *The department eliminated the proposed code change in the board order. The current Ch. NR 216, Wis. Adm. Code, “routine maintenance” language will remain. Instead, the department is proposing clarification in the Note consistent with US EPA guidance.*

13. *Fees (NR 216.43(2), Table 5, NR 216.43(4) & (5))* DNR is proposing significant increases in storm water application fees and to create a late application fee, which applies when an applicant initiates land disturbance prior to applying for a permit. DNR

is also proposing a “reapplication” fee if the covered discharge is not completed within 3 years of the date when DNR conveys coverage of the site.

Current application fees are \$140 for land disturbances less than 5 acres, \$235 for land disturbances of 5 to 25 acres, and \$350 for land disturbances over 25 acres. DNR is proposing to increase the number of categories of fees, and to increase fee amounts, effective January 1, 2023. Proposed fees would range from \$250 for less than 2 acres of land disturbance, to \$1740 for 50 or more acres of land disturbance. In addition, the late application fee would be double the amount of the applicable application fee.

**Response:** *The department has developed a memo to provide additional information on why fee changes are proposed. The main points of this memo have been summarized in the board order in response to analysis question 8. The fee memo will be available on the department website: <https://dnr.wisconsin.gov/topic/stormwater/nr216revisions>.*

14. In its EIA, DNR sets forth the corresponding fees that other Midwest states charge. DNR indicates that in Iowa fees range from \$175 to \$700; Illinois’ fees range from \$250 to \$750; Indiana’s fee is \$100; and Minnesota’s and Michigan’s fees are \$400. Based on this information, Wisconsin’s proposed fees appear high. DNR should explain why this is the case and provide information regarding why the projected amount of revenue is necessary to operate the program.

Section 227.137(3)(a), Wis. Stats., requires that if the policy approach chosen by the agency to address that policy problem is different from approaches used by the federal government and neighboring states, an economic impact analysis prepared by an agency shall include a statement as to why the agency chose a different approach. As the commenter noted, Wisconsin’s approach to implementing the storm water program differs from its neighboring states because Wisconsin allows more flexibility in the choice of storm water management practices by providing performance standards. This allows landowners and developers to implement a combination of practices that best fit the site and development needs. Providing this flexibility increases the need to provide technical consultation and review of these elements.

**Response:** *The EIA has been updated to explain the variation from other states as follows: Of the permit applications received by the department in FY 2020, 93% disturbed less than 25 acres. Therefore, all but the largest sites are within the \$250-\$780 range which is comparable to Iowa and Illinois. The largest 7% of sites generally receive the most review and inspection, therefore higher fees are proposed. The variation in fees between states reflects the degree to which each state expects permittees to pay for environmental programs versus supporting the program through general tax revenue. Wisconsin by statute has directed the department to place a consistent portion of the cost of compliance with the storm water provisions in the Clean Water Act on permittees for the various subprograms.*

15. *Wetlands (216.47(7))* This provision specifies that for construction activities, which include grading in areas that drain into wetlands, the storm water management plan must identify potential impacts to wetlands and adjacent properties due to changes in hydrology and take measures to avoid or minimize impacts. While the EIA includes estimates of the cost of updating the storm water management plan, it does not include any costs associated with avoiding or minimizing impacts to wetlands or adjacent properties. Such costs should be included in the estimate.

**Response:** *Permits and approvals under Ch. 283, Stats., including storm water permits issued under Chapter NR 216, are subject to the provisions in chapter NR 103, Wis. Adm. Code. The department has found that the provision in NR 103 that is most often overlooked during site development is in s. NR 103.03(2)(e), Wis. Adm. Code which specifically addresses impacts to wetland hydrology. Highlighting this requirement in NR 216, Wis. Adm. Code, encourages permittees to consider wetlands earlier in the design process when solutions can be incorporated more cost-effectively. This is also expected to avoid delays in conveying permit coverage prior to construction. The EIA includes costs for the additional documentation required.*

#### **Comments by Wisconsin Manufacturers and Commerce**

16. Comparison of Proposed Fee Increase to Current Law. WMC is strongly opposed to the proposed increases to construction site permit fees referenced in the EIA. We do not believe that the planned fee increases, which range from 79% to nearly 400% depending on the size of the construction project, are warranted or justified.

Last summer, the Wisconsin Department of Natural Resources (DNR) proactively reached-out to WMC to seek feedback on potential changes to Chapter NR 216. WMC appreciated the opportunity to provide point-by-point feedback to questions posed by the Department. The first question posed by the DNR stated the following: “DNR storm water permit fees have not been increased since 2003. What information do you believe is necessary for the DNR to justify a permit fee increase?”

In its reply, WMC provided the following response:

“In order to justify a fee increase, WMC would like to see documentation about the costs related to storm water permitting that the DNR has incurred since 2003. Has there been, or does the DNR anticipate, an increase in inspections or post-permit issuance work? Under the revised regulations, will there be additional information that the DNR must review? If the fees are ultimately raised, DNR should at least be able to provide additional services to help regulated entities meet permit requirements and improve compliance.”

The EIA fails to include this requested information, nor does it outline additional services that regulated entities can expect to receive due to these substantially higher fees.



*Response: Please see the response to comment 13 above. Much of the requested information will be provided in a separate memo. The main points of this memo have been summarized in the board order in response to analysis question 8. The fee memo will be available on the department website: <https://dnr.wisconsin.gov/topic/stormwater/nr216revisions>.*

17. Comparison with Nearby States & Shortcomings within EIA. According to figures provided by the Department in the EIA, the proposed fee hikes would make Wisconsin a major outlier among nearby states: [table] Moreover, WMC is deeply troubled that these fee increases were not made clear in the Department's EIA. Nowhere in the nine-page analysis prepared by the DNR does the agency actually provide the new fee schedule – it is only buried in the text of the proposed rule itself.

Under s. 227.137(3)(a), Wis. Stats, the EIA must include the following: An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem. If the approach chosen by the agency to address that policy problem is different from those approaches, an economic impact analysis prepared by an agency shall include a statement as to why the agency chose a different approach.

The EIA prepared by the DNR provides the current fee structure for neighboring states. This fee structure plainly shows that Wisconsin's maximum fee is more than double any neighboring state, and demonstrates that the DNR "chose a different approach" than other states by proposing massive fee hikes for storm water permits. Despite this clear statutory directive, the draft EIA prepared by the Department both failed to acknowledge that the state's approach was different, and also failed to include a statement explaining why the agency chose to ignore the fee amounts utilized by neighboring states.

*Response: Please see response to comment 14.*

### **Comments by the Wisconsin Transportation Business Association**

18. As noted in the EIA, non-metallic mining is a sector that would be most affected by the proposed rule revisions. WTBA believes that the compliance costs associated with the non-metallic mining sector are underestimated in the EIA. While WTBA acknowledges that it is difficult to estimate the economic impacts given the uncertainty with implementation of the proposed rules, it believes that compliance costs will be significantly higher than those presented in the EIA.

*Response: The department reached out to WTBA for more information on their concerns. One concern relates to potential changes to TMDL requirements for industrial*

*permittees which is addressed in response to comment 6 above. The second concern was whether the change from submitting a storm water pollution prevention plan (SWPPP) summary form to submitting the SWPPP itself would result in longer review times for new non-metallic mines. The department expects that review times will decrease due to the implementation of electronic permit submittal.*

January 20, 2021

VIA EMAIL

[DNRNR216Revisions@wisconsin.gov](mailto:DNRNR216Revisions@wisconsin.gov)

RE: Comments on the Economic Impact Analysis for Proposed Revisions to NR 216, Board Order WT-09-19

On behalf of the League of Wisconsin Municipalities (the League), I am submitting the following comments on the Economic Impact Analysis (EIA) for Board Order WT-09-19, relating to revisions to NR 216.

The department is proposing to create a new section, NR 216.07(7) to require, within a permit, mapping related to TMDL implementation. It is not immediately clear what “mapping pertinent to TMDL implementation” means in this context. The EIA does not explicitly include an analysis of potential costs associated with this additional subsection. The League believes this could be an omission of significant costs and requests that DNR address this topic in the EIA.

The department is also proposing to create NR 216.43(5), which provides that permittees are required to reapply for permit coverage when the duration of land disturbing construction activity extends longer than three years. The League is concerned that this could result in significant cost increase for large development projects. This topic also does not appear to be explicitly included in the EIA. The League requests that costs related to reapplication for permits be addressed in the EIA.

The League greatly appreciates the opportunity to submit comments on the EIA and would welcome further discussion with DNR on these comments.

Best regards,

STAFFORD ROSENBAUM LLP

/s/ Vanessa D. Wishart

Vanessa D. Wishart  
VDW:mai

Cc: Toni Herkert, League of Wisconsin Municipalities, via email

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January 19, 2021

State of Wisconsin  
Department of Natural Resources  
101 S. Webster Street  
Box 7921  
Madison, WI 53707-7921

Dear Wisconsin Dept. of Natural Resources,

As the topic of housing affordability has been brought to the forefront, real estate construction markets throughout Wisconsin have faced challenges in delivering a product that meets a price point serving the growing middle class. Developers and home builders face fees at all levels of government that are ultimately passed on to the home buyers of the state. Higher fees, additional engineering review time, etc. negatively impact our goal of expanding homeownership to a broader range of demographics and continuing to fill the critical need for housing in our state. It becomes progressively burdensome as multiple agencies seek to do the same and impose additional charges and requirements. Furthermore, an emphasis on affordability will assist in retaining and attracting residents to boost our economy and tax base for years to come.

For the reasons stated, it would be in the best interest of the state to reconsider the increase in costs associated with revisions to the storm water discharge code that would be applied to small businesses.

Over the past ten years, Neumann Developments, Inc. has become the largest single-family developer in Southeast Wisconsin. We develop approximately 400 homesites per year and have had communities selected to host the Metropolitan Builder Association Parade of Homes in eight of the past ten years. Since the year 2000, Neumann Developments has delivered over 4000 home sites, built over 40 miles of roads, and preserved over 2000 acres of land. Our firm is considered as small business, as defined under s. 227.114(1), Wis. Stats.

Respectfully submitted,

*Ryan Fritsch*

Ryan Fritsch  
Neumann Developments, Inc.



To: Amy Minser  
Wisconsin Department of Natural Resources  
*Sent via Email*  
[DNRNR216Revisions@wisconsin.gov](mailto:DNRNR216Revisions@wisconsin.gov)

From: Wisconsin Paper Council

Date: January 19, 2021

RE: Comments on Draft Economic Impact Analysis for Proposed NR 216 Revisions

Thank you for the opportunity to comment on the proposed draft Economic Impact Analysis (EIA) for the proposed NR 216 revisions. These comments are submitted on behalf of the Wisconsin Paper Council (WPC). WPC is the premier trade association that advocates for the papermaking industry before regulatory bodies, and state and federal legislatures to achieve positive policy outcomes. WPC also works to educate the public about the social, environmental, and economic importance of paper, pulp, and forestry production in Wisconsin and throughout the Midwest.

The pulp and paper sector employs over 30,000 people in Wisconsin and has an annual payroll of \$2.5 billion. Wisconsin is the number one paper-producing state in the United States, with the output of paper manufactured products estimated to be over \$18 billion. Our members are dedicated to maintaining both a healthy environment and a healthy economy in Wisconsin and believe both are attainable together through appropriate regulation and responsible manufacturing practices.

Our members are subject to the industrial storm water discharge permit requirements set forth in NR 216. In addition, they are also subject to the construction storm water discharge permit provisions when they engage in construction projects covered under the rules. Our comments regarding the draft EIA are set forth below.

*1. Definition of "Benchmark" (NR 216.002(1m))*

Proposed NR 216.002 defines "benchmark" to mean "a minimum numeric or narrative level of pollution control..." The reference to "numeric" suggests that the "benchmark" can be a "numeric standard" that must be met. The Department of Natural Resources (DNR) should include in its EIA estimated costs of complying with anticipated control requirements.

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This change would include access roads and rail lines as part of Tier 2 facilities. Inclusion of access roads and rail facilities could impact the applicability of some “No Exposure Certifications” for sites with rail/access lines. While the EIA includes some costs associated with updating Stormwater Pollution Prevention Plans (SWPPPs) to incorporate rail/ access lines, it does not appear that DNR evaluated whether permittees may lose their No Exposure Certifications, and incur additional costs as a result.

*6. Identifying the Name and Location of Receiving Waters (216.27(3)(c)9.)*

The new language in this provision requires permittees to include in SWPPP site maps showing downstream waters that are impaired or designated as ERW or ORW. This will require some evaluation and effort, as existing maps will need to be evaluated and potentially updated. This cost is not reflected in the draft EIA.

*7. Evaluation of Potential Impacts to Drainage and Grading (NR 216.27(3)(cm))*

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*8. Silviculture (NR 216.42(3))*

This provision generally exempts silviculture activities from the construction site stormwater requirements. DNR is proposing to add a new requirement that the activities must be “conducted in accordance with standard industry practice.” Moreover, DNR references the “Wisconsin’s Forestry Best Management Practices for Water Quality Field Manual” as an example of industry practice. DNR should identify whether there will be additional costs associated with this requirement.

*9. Routine Maintenance (NR 216.42(8))*

“Routine maintenance” is excluded from the construction storm water requirements. It appears that the definition of “routine maintenance” is being narrowed. This provision currently provides “routine maintenance” includes land disturbance “performed to maintain the original line and grade, hydrologic capacity, or original purpose of the facility....” In contrast, the proposed language defines “routine maintenance” to include land disturbance “to maintain the original purpose of the facility and either the original line and grade or original hydraulic capacity of the storm water facilities....” Thus, the current language allows for a separate category of routine maintenance for maintaining the original purpose of the facility, while the proposed language includes the additional requirement that the maintenance must be to maintain the original purpose of the facility and the original line and grade or hydrologic capacity of the stormwater facilities.

Insofar as this is narrowing the scope of the “routine maintenance” exemption, DNR should identify the estimated cost to permittees associated with this change.



January 20, 2020

Wisconsin Department of Natural Resources

Attn: Amy Minser

P.O. Box 7921

Madison, WI 53707

Sent via e-mail to [DNRNR216Revisions@wisconsin.gov](mailto:DNRNR216Revisions@wisconsin.gov)

RE: Comments on draft economic impact analysis (EIA) for proposed rule WT-09-19 relating to storm water discharge permits

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to comment on the preliminary draft of the economic impact analysis (EIA) for proposed rule WT-09-19. As explained below, WMC is strongly opposed to the proposed increases to construction site permit fees referenced in the EIA. We do not believe that the planned fee increases, which range from 79% to nearly 400% depending on the size of the construction project, are warranted or justified.

## Background

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. This mission includes ensuring that fees to do business in the state are reasonable and do not put Wisconsin businesses at a competitive disadvantage with other states.

Last summer, the Wisconsin Department of Natural Resources (DNR) proactively reached-out to WMC to seek feedback on potential changes to Chapter NR 216. WMC appreciated the opportunity to provide point-by-point feedback to questions posed by the Department. The first question posed by the DNR stated the following: *DNR storm water permit fees have not been increased since 2003. What information do you believe is necessary for the DNR to justify a permit fee increase?*

In its reply, WMC provided the following response:

*In order to justify a fee increase, WMC would like to see documentation about the costs related to storm water permitting that the DNR has incurred since 2003. Has there been, or does the DNR anticipate, an increase in inspections or post-permit issuance work? Under the revised regulations, will there be additional information that the DNR must review? If the fees are ultimately raised, DNR should at least be able to provide additional services to help regulated entities meet permit requirements and improve compliance.*

The EIA fails to include this requested information, nor does it outline additional services that regulated entities can expect to receive due to these substantially higher fees.



### Comparison of Proposed Fee Increase to Current Law

As illustrated below, the Department proposes a new, 5-tier fee structure for storm water permits to replace the current 3-tier system under the current rule. The DNR also proposes large across-the-board fee increases that far exceed inflationary increases relative to 2003, including a nearly five-fold increase for construction projects over 50 acres:

Acres	Current	Inflation	Proposed	% Increase
Less than 2	\$140	\$198	\$250	79%
2 to 5	\$140	\$198	\$460	229%
5 to 25	\$235	\$332	\$780	232%
25 to 50	\$350	\$495	\$1160	231%
50 or more	\$350	\$495	\$1740	397%

There is no clearly explained rationale for these substantial fee increases included in the EIA. Given the prior line of questioning the Department submitted to WMC, the DNR's justification for the increases *may* be that storm water permit fees have not been raised since 2003. However, WMC rejects the premise that it is appropriate to raise a fee simply because it has not been increased recently. Furthermore, even if the Department believes an inflationary adjustment is appropriate, all of the proposed fee increases far outpace the rate of inflation (as calculated by the Consumer Price Index). For all but the smallest projects, the proposed increase is a three-fold or nearly five-fold increase from current fees.

### Comparison with Nearby States & Shortcomings within EIA

According to figures provided by the Department in the EIA, the proposed fee hikes would make Wisconsin a major outlier among nearby states:

State	Minimum Fee	Maximum Fee
Iowa	\$175	\$700
Illinois	\$250	\$750
Indiana	\$100	\$100
Michigan	\$400	\$400
Minnesota	\$400	\$400
Wisconsin	\$250*	\$1740*

*\*Proposed under WT-09-19*

Moreover, WMC is deeply troubled that these fee increases were not made clear in the Department's EIA. Nowhere in the nine-page analysis prepared by the DNR does the agency actually provide the new fee schedule – it is only buried in the text of the proposed rule itself.

Under s. 227.137(3)(a), Wis. Stats, the EIA must include the following:

*An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem. **If the approach chosen by the agency to address that policy problem is different from those approaches, an economic impact analysis prepared by an agency shall include a statement as to why the agency chose a different approach.***

The EIA prepared by the DNR provides the current fee structure for neighboring states. This fee structure plainly shows that Wisconsin's maximum fee is more than double any neighboring state, and demonstrates that the DNR "chose a different approach" than other states by proposing massive fee hikes for storm water permits. Despite this clear statutory directive, the draft EIA prepared by the Department both failed to acknowledge that the state's approach was different, and also failed to include a statement explaining why the agency chose to ignore the fee amounts utilized by neighboring states.

### **Conclusion**

The preliminary EIA prepared by the DNR shows a dramatic increase in storm water permitting fees in the state. The Department fails to demonstrate why such an increase is justified, and why the agency is pursuing fee increases that would make Wisconsin an outlier among nearby states. As the rulemaking process continues, WMC urges DNR to reevaluate its proposed fee increase schedule. If the Department still believes storm water permit fee increases are necessary, WMC urges DNR to clearly demonstrate the rationale for these increases.

Thank you for the opportunity to provide comment on this draft EIA for proposed rule WT-09-19.

Sincerely,

Craig Summerfield  
Director of Environmental & Energy Policy

*10. Fees (NR 216.43(2), Table 5, NR 216.43(4) & (5))*

DNR is proposing significant increases in storm water application fees and to create a late application fee, which applies when an applicant initiates land disturbance prior to applying for a permit. DNR is also proposing a “reapplication” fee if the covered discharge is not completed within 3 years of the date when DNR conveys coverage of the site.

Current application fees are \$140 for land disturbances less than 5 acres, \$235 for land disturbances of 5 to 25 acres, and \$350 for land disturbances over 25 acres. DNR is proposing to increase the number of categories of fees, and to increase fee amounts, effective January 1, 2023. Proposed fees would range from \$250 for less than 2 acres of land disturbance, to \$1740 for 50 or more acres of land disturbance. In addition, the late application fee would be double the amount of the applicable application fee.

In its EIA, DNR sets forth the corresponding fees that other Midwest states charge. DNR indicates that in Iowa fees range from \$175 to \$700; Illinois’ fees range from \$250 to \$750; Indiana’s fee is \$100; and Minnesota’s and Michigan’s fees are \$400. Based on this information, Wisconsin’s proposed fees appear high. DNR should explain why this is the case and provide information regarding why the projected amount of revenue is necessary to operate the program.

*11. Wetlands (216.47(7))*

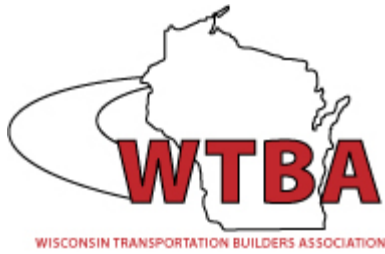
This provision specifies that for construction activities, which include grading in areas that drain into wetlands, the storm water management plan must identify potential impacts to wetlands and adjacent properties due to changes in hydrology and take measures to avoid or minimize impacts. While the EIA includes estimates of the cost of updating the storm water management plan, it does not include any costs associated with avoiding or minimizing impacts to wetlands or adjacent properties. Such costs should be included in the estimate.

Thank you for consideration of these comments.

Sincerely,

*/s/ Patrick Stevens*

Patrick Stevens  
Vice President  
Environment & Regulatory Relations



January 19, 2021

TO: DNRNR216Revisions@wisconsin.gov

RE: NR 216 Economic Impact Analysis (“EIA”) – (WT-09-19)

The Wisconsin Transportation Builders Association (“WTBA”) is a statewide association of approximately 250 companies that plan, design, construct, and maintain all types of transportation facilities. Many WTBA members own and/or operate non-metallic mining facilities. These facilities provide the raw materials necessary for construction of transportation facilities. As noted in the EIA, non-metallic mining is a sector that would be most affected by the proposed rule revisions. WTBA believes that the compliance costs associated with the non-metallic mining sector are underestimated in the EIA.

While WTBA acknowledges that it is difficult to estimate the economic impacts given the uncertainty with implementation of the proposed rules, it believes that compliance costs will be significantly higher than those presented in the EIA.

Thank you for your consideration of these comments.