STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
Tony Evers, Governor
Kathy Blumenfeld, Secretary
Dawn Vick, Division Administrator

PUBLIC NOTICE

Wisconsin Coastal Management Program:
Submission of Program Change to National Oceanic and Atmospheric Administration
January XXXX 2026

The Wisconsin Coastal Management Program (WCMP) was approved by the National Oceanic and Atmospheric Administration (NOAA) in 1978, under the Federal Coastal Zone Management Act (CZMA). The approved WCMP includes enforceable policies, based on state rules and regulations, that are used for Federal Consistency. The CZMA requires approved programs to update the enforceable policies to reflect changes to state laws and regulations (15 CFR Part 923, Subpart H).

WCMP is providing public notice that it is submitting a program change request to the NOAA's Office for Coastal Management (OCM), for approval of changes to the State's policies, including:

- Policy 1.3.1: Deletion of an enforceable policy regarding substances with the potential to cause contamination, where the regulatory standards are not incorporated into the policy.
- Policy 1.9: Deletion of an enforceable policy regarding thermal discharges where an underlying regulation, Wisconsin Administrative Code NR 102.07, was removed and replaced.
- Policy 1.28: Revision of an enforceable policy for population and storm sewer system requirements, to correct a typo.
- Policy 2.13: Revision of an enforceable policy to reflect changes to Wis. Stats. §59.692, regarding shoreland zoning ordinance requirements.
- Policy 2.22: Revision of an enforceable policy to reflect changes in statutory language of Wis. Stats. § 281.36 regarding wetland permits.
- Policy 4.2: Revision of an enforceable policy to incorporate public access requirements for subdivisions under Wis. Stats. Ch 236 and Wis. Admin. Code NR 1.93(3).
- Policy 5.10.3: Deletion of an enforceable policy regarding certification of nuclear power plants, where the underlying state statute, Wis. Stats. § 196.493, was repealed.
- Deletion of policies that do not satisfy the criteria for enforceable policies.
- Renumbering enforceable policies.
- Renaming the document with the enforceable policies from "Attachment C: Specific State Coastal Policies" to "Attachment C: Enforceable Policies".
- Adding introductory language to the beginning of the document.

WCMP's change request is available on NOAA's Program Change site: https://coast.noaa.gov/czmprogramchange

Comments on the incorporation of the program change into the state's coastal management program shall be submitted to OCM within 21 days following the date of publication of this notice. All comments should be submitted directly to NOAA OCM on NOAA's Program Change website at https://coast.noaa.gov/czmprogramchange.

For additional information, contact Kathleen Angel, Program Manager, WCMP, at 608-267-7988 or Kathleen.Angel@wisconsin.gov.

STATE CZM CHANGE REQUEST TABLE

- **Provide a section by section listing of proposed changes to the program.**
- **Changes should be entered in order of citation unless the changes do not pertain to particular statutes or regulations.**
- **To add additional rows, right click inside any cell and use the "Insert" command to insert addition rows.**
- **Once completed, please use the "Save as PDF" command under the File tab and return to the CZM change portal to upload. The file name should be in this format *State-YYYY-Change # (SC-2018-14)***

Legal citation *1000 Character Limit*	**Title of policy, section, or other descriptor**	**Is the change new, revised, or deleted** *Enter one*	**Date effective in state** *MM/DD/YYYY*	**Enforceable policy** *Y or N*	**Enforceable mechanism citation** *1000 Character Limit*
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.3.1	Substances with the potential to cause groundwater contamination shall be regulated to ensure compliance with groundwater quality protection standards.	Deleted	10/01/1985	Y	Wis. Stats. Ch. 160 and Wis. Admin Code NR 140

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.9	Thermal discharges shall not raise the receiving water temperatures more than 3 degrees F above the existing natural temperature at the boundary of mixing zones.	Deleted	10/01/2010	Y	Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.07
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.28	Nonpoint permits: Owners or operators of municipal separate storm sewer systems	Revised	05/01/1996	Y	Wis. Stats § 283.33, ch. 281 and Wis. Admin. Code ch. NR 216
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.13	County shoreland ordinances	Revised	07/14/2015	Y	Wis. Stats. §§ 59.692 and 281.31 and Wis. Admin. Code NR 115

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.22	Discharge of dredged material or fill material into wetland: permitting	Revised	03/15/2012	Y	Wis. Stats. § 281.36(3b)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.2	All subdivisions creating five or more lots of one and one-half acres shall meet public access standards	Revised	5/07/1998	Y	Wis. Stats. Ch 236 and Wis. Admin. Code NR 1.93(3)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.10.3	Certification of nuclear power plants	Deleted	4/03/2016	Y	Wis. Stats. § 196.493 (repealed)
Policies removed that are non-enforceable for CZMA federal consistency purposes					
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.5.1	State assistance to abate point and non-point source water pollution.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.5.2	State shall halt and reverse pollution of tis waters by soil erosion	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.14	Safe drinking water program	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.17	Ambient air quality standard promulgation	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.20	Dam permits may be granted to persons, corporations, or municipalities.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.21	The Wisconsin department of natural resources shall establish water quality objectives for each water basin and each priority watershed.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.27	Municipalities… shall develop and implement water management programs.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.30	The purpose of the nonpoint source pollution abatement financial assistance program.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.31	Administration of urban nonpoint source water abatement and storm water management program.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.2	State parks are established for public recreation and education.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.4	Taxation of agricultural land and undeveloped land need not be uniform.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.6	The Wisconsin department of natural resources may acquire and manage lands or waters for publish shooting, trapping, or fishing.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.8	Classification of trout streams to ensure protection and proper management.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.9	Sport fishing management.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.9.1	The Wisconsin department of natural resources will manage fish resources of the Great Lakes in accordance with sound biological principles.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.10	The Wisconsin department of resources may acquire easements in the furtherance of public rights.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.11	Sport fishing shall be managed in such a way so that all have an qual opportunity to enjoy the aquatic resources.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.11.1	The Wisconsin department of natural resources may operate state fish hatcheries.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.11.2	The Wisconsin department of natural resources may designate localities to secure perpetuation of fish.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.12	The Wisconsin department of natural resources shall establish and maintain open and closed seasons for fish and game.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.16.1	The Wisconsin department of natural resources may investigate and determine reasonable methods for construction and operation of dams to protect public rights in navigable waters.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.17	The Wisconsin department of natural resources may operate and maintain dams and dikes constructed across drainage ditches.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.21	The Wisconsin department of natural resources may rely on wetland boundary determinations made by other agencies and consultants.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 3.0.1	The Wisconsin department of natural resources shall prepare a model zoning ordinance for the construction of site erosion control.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.4	It is the public policy and in the public interest of the state to engage in a comprehensive program of historic preservation.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.5	The state long-range public building program shall recognize the importance of historic properties.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.6	The State Historical Society shall review and comment upon the actions of any state agency or political subdivision that may affect historic properties.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.7	State aesthetic resources shall be protected an enhanced through regulation of billboards, screening of junkyards, purchase of scenic easements, development of parkways, and establishment and operation of Rustic Roads.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.9	The state shall establish a state park system.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.10	Local communities shall be encouraged to provide local recreational and educational opportunities through provision of state aids.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.10.1	The state shall provide technical and financial assistance to municipalities for the development of recreational boating facilities.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.22	Public utility construction and operation upon and under the bed of Lake Michigan or Lake Superior for cribs, intakes, basins, pipes, and tunnels for an adequate water supply.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.1	The Wisconsin department of commerce shall foster economic development programs.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.2	The Wisconsin department of commerce shall locate and maintain information on prime industrial sites.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.3	The Wisconsin department of transportation may direct aid for planning, promotion, and protection activities.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.4	The Wisconsin department of tourism shall promote travel.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.5	The orderly and ecologically sound development of commercial tourist facilities shall be coordinated by the Wisconsin department of tourism.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.6	The Wisconsin department of natural resources shall prepare a plan for each state forest that describes how the state forest will be managed.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.6.1	It is the intent of the State of Wisconsin to encourage a policy of protecting premature cutting of forest growth.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.8	The Wisconsin department of transportation shall administer the harbor assistance program.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.10	The Wisconsin public service commission shall prepare a biannual strategic energy assessment.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.12	The Wisconsin department of administration shall prepare and maintain contingency plans for responding to critical energy shortages.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 6.1	Creation of Wisconsin Coastal Management Council.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 6.2	The Wisconsin department of administration shall evaluate the plans of all state agencies.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 6.3	Structural reorganization of state government shall be a continuing process.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 6.4	All state agencies shall prepare detailed statements on the environmental and economic impacts of all major actions significantly affecting the quality of the human environment.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 6.5	All state agencies shall study, develop, and describe appropriate alternatives to their recommended courses of action in any proposals that involve unresolved conflicts considering alternative uses of available resources.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 6.7	State agencies and localities shall mutually cooperate to enhance the quality, management, and protection of the state's air.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 7.1	The public shall be entitled to the fullest and most complete information regarding the affairs of government.	Deleted	N/A	N	N/A
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 7.2	Except as otherwise provided by law, any requester has a right to inspect any public record.	Deleted	N/A	N	N/A

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 7.4	The Wisconsin department of natural resources shall, upon request of six or more citizens, hold a public hearing related to environmental pollution.	Deleted	N/A	N	N/A
Renumbered policies					
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.10	The discharge of toxic pollutants in toxic amounts shall be prohibited.	Revised	NA	Y	Wis. Stats. §§ 283.01(17) and 283.001(1)(c)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.11	Discharge of mercury compounds and metallic mercury.	Revised	NA	Y	Wis. Stats. § 281.17(7), and Wis. Admin. Code NR 100.02

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.12	Pesticide license requirements.	Revised	NA	Y	Wis. Stats. §§ 94.67-.70 and 29.601(4)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.13	Minimum lot sizes in shoreland areas.	Revised	NA	Y	Wis. Stats. §§ 281.31 and 59.692 and ch. 236, and Wis. Admin. Code ch. NR 115
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.15	Withdrawals of water that could result in significant losses of water, through interbasin diversion or consumptive us	Revised	NA	Y	Wis. Stats. § 281.35(3)-(5) and Wis. Admin. Code NR 142
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.15.1	No person may conduct an activity for which the Wisconsin department of natural resources denies a required water quality certification.	Revised	NA	Y	Wis. Stats. § 281.17(10)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.16	No new air contaminant stationary source shall be permitted to be constructed, installed or established which directly or indirectly emits air contaminants that make the air injurious to health…	Revised	NA	Y	Wis. Stats. §§ 285.60, 281.31, and Wis. Admin. Code ch. NR 405 and 406.03
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.18	The Wisconsin department of natural resources may regulate and control the level and flow of water in all navigable waters/construction of dams.	Revised	NA	Y	Wis. Stats. §. 31.02 and Wis. Admin. Code ch. NR 333
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.19	Height of water raised by milldam may be regulated by Wisconsin department of natural resources.	Revised	NA	Y	Wis. Stats. §§ 31.33(4) and 31.32

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.22	New or substantially altered manure storage facilities.	Revised	NA	Y	Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.23	Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas…	Revised	NA	Y	Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.24	Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan.	Revised	NA	Y	Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.25	All livestock producers shall have no overflow of manure storage facilities; shall have no unconfined manure pile in a water quality management area…	Revised	NA	Y	Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code ch. NR 151, Sub. II, and ATCP 50
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.26	For a construction site that has 5 or more acres of land disturbing construction activity, a written plan shall be developed and implemented, incorporating best management practices, to control 80% of the sediment load.	Revised	NA	Y	Wis. Stats. § 281.65 and Wis. Admin. Code ch. NR 151, Sub. III

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.28	Owners or operators of municipal separate storm sewer systems shall obtain coverage from a Wisconsin pollutant discharge elimination system municipal storm water permit…	Revised	NA	Y	Wis. Stats § 283.33, ch. 281 and Wis. Admin. Code ch. NR 216
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 1.29	All concentrated animal feeding operations are required to be covered by a Wisconsin pollutant discharge elimination system permit.	Revised	NA	Y	Wis. Stats. chs. 281 and 283 and Wis. Admin. Code ch. NR 243

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.3	The Wisconsin department of natural resources shall manage state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment.	Revised	NA	Y	Wis. Stats. § 28.04(2)(a)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.5	No person may hunt or trap on land located in state parks or state fish hatcheries unless the department of natural resources has authorized by rule…	Revised	NA	Y	Wis. Stats. § 29.089 and Wis. Admin. Code NR 10.275

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.7	The taking, possessing, sale, processing and distribution of fish, wildlife and plant life designated by the state and/or the U.S. as endangered, native and foreign species is prohibited.	Revised	NA	Y	Wis. Stats. § 29.604 and Wis. Admin. Code NR 27
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.13	All counties shall adopt shoreland ordinances for all unincorporated lands within the following distances from the ordinary high-water mark of navigable waters…	Revised	NA	Y	Wis. Stats. §§ 59.692 and 281.31 and Wis. Admin. Code NR 115

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.14	All cities and villages shall adopt and administer shoreland-wetland zoning ordinances for wetlands or portions of wetlands 5 acres or greater in size…	Revised	NA	Y	Wis. Stats. §§ 61.351 and 62.231, and Wis. Admin. Code NR 117
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.15	The Wisconsin department of natural resources shall preserve, protect, restore and manage the state's wetland communities.	Revised	NA	Y	Wis. Stats. §§ 281.12(1) and 281.11, and Wis. Admin. Code NR 1.95, NR 299, NR 103 and NR 353

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.16	The Wisconsin department of natural resources may order and require any dam constructed to be equipped and operated with slides and chutes, a lock, boat hoist, fishways, spillways, booms, piers, other safeguards.	Revised	NA	Y	Wis. Stats. § 31.02(4)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.18	Restriction on building or maintain of any dam across Brule river or tributarites.	Revised	NA	Y	Wis. Stats. § 31.30

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.19	Unless the Wisconsin department of natural resources has issued a permit or the legislature has granted authorization, no person may change the course of or straighten a navigable stream	Revised	NA	Y	Wis. Stats. § 30.195
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.20	In order to afford the people of this state an opportunity to enjoy natural streams it is in the interest of this state to preserve some rivers in a free-flowing condition and to protect them from development.	Revised	NA	Y	Wis. Stats. § 30.26

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 2.22	Discharge of dredged material or fill material into wetland: permitting	Revised	NA	Y	Wis. Stats. § 281.36(3b)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 3.4	New subdivision plats, structures, other facilities reviewed by state agencies in potential flood hazard areas.	Revised	NA	Y	1973 Executive Order No. 67
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 3.5	Individual permits for a structure or deposit that is not exempt and not subject to a general permit.	Revised	NA	Y	Wis. Stats. § 30.12(3m)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 3.5.1	The Wisconsin department of natural resources may decide to require that a person engaged in an activity that is otherwise exempt from requiring a structures permit apply for an individual permit or seek authorization under a general permit	Revised	NA	Y	Wis. Stats. § 30.12(2m)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.8	All subdivisions abutting navigable lakes or streams shall provide public access of at least 60 feet in width at not more than one-half mile intervals…	Revised	NA	Y	Wis. Stats. §§ 281.31 and 281.12 and Wis. Admin. Code NR 1.90, 1.91 and 1.92

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.8.1	Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway.	Revised	NA	Y	Wis. Stats. §§ 281.31 and 281.12 and Wis. Admin. Code NR 1.90, 1.91 and 1.92
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.11	Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line.	Revised	NA	Y	Wis. Stats. §§ 30.12 and 30.11

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.11.1	For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for the individual permit that is required.	Revised	NA	Y	Wis. Stats. § 30.12(3m)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.11.2	Unless a contract has been entered into with the Wisconsin department of natural resources or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters	Revised	NA	Y	Wis. Stats. § 30.20(1)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.11.3	The board of commissioners of public lands may lease to riparian owners rights to the beds of lakes and rights to fill in beds of lakes or navigable streams…	Revised	NA	Y	Wis. Stats. § 24.39
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.11.4	A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized by permit or unless other authorization for the wharf or pier is expressly provided.	Revised	NA	Y	Wis. Stats. § 30.13(4)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.11.5	No owner of riparian land that abuts a navigable water may convey, by easement or similar conveyance, any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water.	Revised	NA	Y	Wis. Stats. § 30.133
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.12	Restrictions on constructing, dredging, and enlarging artificial water body that connects with a navigable waterway and removal of topsoil from bank.	Revised	NA	Y	Wis. Stats. §§ 30.19(1g)(4)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.13	Any person, firm, corporation or municipality desiring a permit to construct, operate and maintain a dam shall file an application for a permit with the Wisconsin department of natural resources	Revised	NA	Y	Wis. Stats. §§ 31.06(1)-(3), 31.05(3), 31.14(2)-(3), and 299.01(4)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.14	Any person, firm, corporation or municipality desiring a permit to operate and maintain a dam shall file with the Wisconsin department of natural resources a written application	Revised	NA	Y	Wis. Stats. §§ 31.07, 31.08, 31.06, and 31.14

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.15	No transfer or assignment of any permit granted to construct or to operate and maintain a dam shall be of any effect whatsoever unless it is in writing and a certified…	Revised	NA	Y	Wis. Stats. §§ 31.21 (1), 31.06, 31.08, 31.14(2)-(3), and 196.665
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.16(a-c)	Preserving public rights in navigable waters.	Revised	NA	Y	Wis. Stats. §§ 31.14(1)-(5), 31.06, 31.08, and 31.13
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.17(a-d)	Dam maintenance and operation requirements for permit grantees and owners.	Revised	NA	Y	Wis. Stat. § 31.18(1)-(5)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.18	No owner of any dam may abandon or remove or alter the dam without first obtaining a permit from the Wisconsin department of natural resources	Revised	NA	Y	Wis. Stats. §§ 31.185(1) and (5)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.19	No private bridge shall be maintained unless its construction shall first be approved by the Wisconsin department of natural resources	Revised	NA	Y	Wis. Stats. § 31.23(3)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.20	Nuisance dams and obstructions.	Revised	NA	Y	Wis. Stats. § 31.25

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.21	Each person, firm or corporation maintaining a dam on any navigable stream shall pass at all times at least 25% of the natural low flow of water of such stream, except as otherwise prescribed by law.	Revised	NA	Y	Wis. Stats. § 31.34
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 4.21.1	Individual or general permit required or other authorization to construct a bridge or maintain a culvert in, on, or over navigable waters.	Revised	NA	Y	Wis. Stats. § 30.123(2) – (5)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.9	Permit requirements for diversions from navigable stream or lake.	Revised	NA	Y	Wis. Stats. §. 30.18

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.10.1	Unless specified otherwise by the Wisconsin Statutes, no person may commence the construction of a facility unless the person has applied for and received a certificate of public convenience and necessity.	Revised	NA	Y	Wis. Stats. §§ 196.491(3)(a)1 – 196.491(3b) and Wis. Admin. Code PSC 112
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.10.2	The Wisconsin public service commission shall approve an application for a certificate of public convenience and necessity only if the commission determines…	Revised	NA	Y	Wis. Stats. §§ 196.491(3) and 30.025, and Wis. Admin Code ch. PSC 111-112

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.11	If installation of utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed.	Revised	NA	Y	Wis. Stat § 196.491(3)(i)-(j)

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Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.13	Except where the stream to be improved forms a boundary line between this and another state, no water power permit shall be granted or transferred until the applicant has filed with both the Wisconsin department of natural resources and the public service commission…	Revised	NA	Y	Wis. Stats. § 31.095 (1)
Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes *Attachment C: Specific State Coastal Policies* Policy 5.14	Railroad corporations' restoration and maintenance requirements for watercourse, street road, or canal	Revised	NA	Y	Wis. Stats. § 190.08

Attachment C: ~~Specific State Coastal~~ Enforceable Policies

The following are the Wisconsin Coastal Management Program's (WCMP) Enforceable Policies, which are used to review federal actions. The enforceable policies reference the state regulations (statutes and State of Wisconsin Administrative Code) on which they are based. Some of the policies also reference other sections of WCMP's program document, including managed uses and Specific Coastal Areas (SCAs). References to managed uses and SCAs are intended to provide context for why the enforceable policies are relevant to coastal management efforts in Wisconsin.

1. Coastal water quality and quantity and coastal air quality.

1.1) The elimination of the discharge of pollutants to water is the long range goal of the state. (See Federal Clean Water Act, 33 U.S.C. 1251and Wis. Stats. § 283.001(1)(a))

1.2) An interim goal is the protection and propagation of fish and wildlife and the maintenance of water quality to allow recreation in and on the water to be achieved. (See Wis. Stats. § 283.001(1)(b))

1.3) Discharge of effluents, including industrial, municipal and agricultural wastes, into any waters of the state shall not be allowed if they exceed federal and state water quality standards. (See Wis. Stats. §§ 283.11-.31, and Wis. Admin. Code ch. NR 221 to 297. See also managed use #8)

~~1.3.1) Substances with the potential to cause groundwater contamination shall be regulated to ensure compliance with groundwater quality protection standards. (See Wis. Stats. ch. 160, and Wis. Admin. Code NR 140. See also managed use #33)~~

1.4) Disposal in the waters of the state of the following defined pollutants shall be restricted: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water. (See Wis. Stats. §§ 283.01(13), 283.31(1) and 29.601. See also managed uses #8 and #9)

1.5) Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for rivers emptying into these waters shall be as high as is practicable. (See Wis. Stats. § 281.11. See also managed use #8)

~~1.5.1) The state shall provide financial and technical assistance to abate point and non-point sources of water pollution. (See Wis. Stats. §§ 281.57 and 281.65, and Wis. Admin. Code chs. NR 120 and NR 128)~~

~~1.5.2) The state shall halt and reverse pollution of its waters by soil erosion by administering goals and standards for conservation of soil and water resources, providing for cost sharing, technical assistance and educational programs to improve land management practices, and enabling the regulation of harmful land use and land management practices. The state shall address construction site erosion control and storm water management through municipal ordinances and state plans for the protection of the state's groundwater, surface water, soil, and related resources. (See Wis. Stats. ch 92,§§ 281.33 and 283.33, and Wis. Admin. Code ch. NR 216)~~

1.6) Discharges from publicly owned treatment works shall comply with secondary treatment and best practicable waste treatment technology requirements. (See 33 U.S.C. § 1251 (Clean Water Act), and Wis. Stats. § 283.13(4). See also managed use # 17)

1.7) Any wastewater discharger may be required to remove excess amounts of phosphorus. Effluent limitations for total phosphorus based on surface water quality may be established where such limitations will result in an improvement in water quality, or preserve the quality of surface waters where long-term discharges may

result in impairment of water quality. (See Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.06. See also managed use # 8)

1.8) Waste treatment and disposal activities may be disapproved if they are not in conformance with approved areawide water quality management plans. Sewer extensions shall be allowed only where they are consistent with and enhance the policy of the state to restore and maintain the chemical, physical and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values and enhance the domestic, municipal, recreational, industrial, agricultural and other uses of water. (See Wis. Stats. §§ 281.17, 281.41 and 283.83, and Wis. Admin. Code ch. NR 121 and NR 110.05. See also managed use #17)

~~1.9) Thermal discharges shall not raise the receiving water temperatures more than 3 degrees F above the existing natural temperature at the boundary of mixing zones. (See Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.07. See also managed use #8)~~

1.~~10~~9) The discharge of toxic pollutants in toxic amounts shall be prohibited. (See Wis. Stats. §§ 283.01(17) and 283.001(1)(c). See also managed use #8)

1.~~11~~10) Discharge of mercury compounds and metallic mercury to the waters of the state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more than one-half pound in any one day. (See Wis. Stats. § 281.17(7), and Wis. Admin. Code NR 100.02. See also managed use #8)

1.~~12~~11) No person may sell, distribute, use or dispose of any pesticide without obtaining any required licenses and following requirements of the Wisconsin Statutes, the Wisconsin Administrative Code, and local regulations. (See Wis. Stats. §§ 94.67-.70 and 29.601(4). See also managed use # 30)

1.~~13~~12) Minimum lot sizes in shoreland areas shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water. Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet. Lots not served by public sewer shall have a minimum average width of 100 ft. and a minimum area of 20,000 sq. ft.(See Wis. Stats. §§ 281.31 and 59.692 and ch. 236, and Wis. Admin. Code ch. NR 115. See also managed uses # 18 and 25)

~~1.14) The Wisconsin department of natural resources may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. (See Wis. Stats. § 281.17(8). See also managed uses #10 and 29)~~

1.~~15~~13) Withdrawals of water that could result in significant losses of water, through interbasin diversion or consumptive use, from the Great Lakes basin shall be regulated so as to protect public rights in navigable waters, public health, safety, and welfare, coastal ecosystems, coastal water quality, and in-basin water needs. All withdrawals of waters of the state averaging over 100,000 gallons per day shall be registered with the state so that the state may monitor water demand and availability in the interest of better water supply management. (See Wis. Stats. § 281.35(3)-(5) and Wis. Admin. Code NR 142. See also managed use #13)

1.~~15.1~~14)No person may conduct an activity for which the Wisconsin department of natural resources denies a required water quality certification. No person may violate a condition imposed by the department in a water quality certification. (See Wis. Stats. § 281.17(10))

1.~~16~~15) No new air contaminant stationary source shall be permitted to be constructed, installed or established which directly or indirectly emits air contaminants that make the air injurious to health, harmful for commercial or recreational use or deleterious to fish, bird, animal or plant life without complying with federal and state air quality standards. (See Wis. Stats. §§ 285.60, 281.31, and Wis. Admin. Code ch. NR 405 and 406.03)

~~1.17) If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the Wisconsin department of natural resources may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare. (See Wis. Stats. § 285.21(1) and Wis. Admin. Code ch. NR 404. See also managed use #28)~~

1.~~18~~16) The Wisconsin department of natural resources, in the interest of public rights in navigable waters or to promote safety and protect life, health, and property may regulate and control the level and flow of water in all navigable waters and may erect or may order and require bench marks to be erected, upon which shall be designated the maximum level of water that may be impounded and the lowest level of water that may be maintained by any dam heretofore or hereafter constructed and maintained and which will affect the level and flow of navigable waters; and may by order fix a level for any body of navigable water below which the same shall not be lowered except as provided in the Wisconsin Statutes. The construction, operation, maintenance and equipment, or any or all thereof, of dams in navigable waters shall be subject to the supervision of the department and to the orders and regulations of the department. (See Wis. Stats. §. 31.02 and Wis. Admin. Code ch. NR 333)

1.~~19~~17) The height to which water may be raised by any milldam and the length or period of time for which it may be kept up each year, may be restricted and regulated by the orders of the Wisconsin department of natural resources. No such dam shall be erected to the injury of any mill lawfully existing. (See Wis. Stats. §§ 31.33(4) and 31.32)

~~1.20) Permits to construct, operate and maintain dams may be granted to persons, corporations or municipalities. If the owner of any existing dam wishes to raise or enlarge the same, the owner may apply to the Wisconsin department of natural resources for permission to do so. (See Wis. Stats. §§ 31.04 and 31.13 (1))~~

~~1.21) The Wisconsin department of natural resources shall establish water quality objectives for each water basin and for each priority watershed and priority lake and identify the best management practices to achieve the water quality objectives. In cooperation with the Wisconsin department of agriculture, trade and consumer protection and the appropriate governmental unit, the Wisconsin department of natural resources shall prepare watershed plans for all priority watersheds. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation strategy. (See Wis. Stats. §§ 281.65 and 281.20, and Wis. Admin. Code ch. NR 120)~~

1.~~22~~18) New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility, minimize leakage of the facility in order to comply with groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage to the equivalent volume of a 25-year, 24-hour storm, whichever is greater. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface water. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and DATCP 50)

1.~~23~~19) Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50)

1.~~24~~20) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50)

1.~~25~~21) All livestock producers shall have no overflow of manure storage facilities; shall have no unconfined manure pile in a water quality management area; shall have no direct runoff from a feedlot or stored manure into the waters of the state. A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code ch. NR 151, Sub. II, and ATCP 50)

1.~~26~~22) For a construction site that has 5 or more acres of land disturbing construction activity, a written plan shall be developed and implemented, incorporating best management practices, to control 80% of the sediment load. A written storm water management plan shall be developed and implemented for each post-construction site. (See Wis. Stats. § 281.65 and Wis. Admin. Code ch. NR 151, Sub. III)

~~1.27) Municipalities with an average density of 1000 people per square mile or greater shall develop and implement storm water management programs, including the adoption and administration of any necessary ordinance. (See Wis. Stats. § 281.65 and Wis. Admin. Code ch. NR 151, Sub. III)~~

1.~~28~~23) Owners or operators of municipal separate storm sewer systems shall obtain coverage from a Wisconsin pollutant discharge elimination system municipal storm water permit where the owner or operator serves an incorporated area with a population of 100~~0~~,000 or more, where the owner or operator has been notified in writing by the Wisconsin department of natural resources prior to August 1, 2004, or where the owner or operator of a municipal storm sewer system is within an urbanized area. (See Wis. Stats § 283.33, ch. 281 and Wis. Admin. Code ch. NR 216)

1.~~29~~24) All concentrated animal feeding operations are required to be covered by a Wisconsin pollutant discharge elimination system permit. (See Wis. Stats. chs. 281 and 283 and Wis. Admin. Code ch. NR 243)

~~1.30) The purposes of the nonpoint source pollution abatement financial assistance program are to: provide the necessary administrative framework and financial assistance for the implementation of measures to meet nonpoint source water pollution abatement needs identified in areawide water quality management plans; provide coordination with all elements of the state's water quality program; provide technical and financial assistance for the application of necessary nonpoint source water pollution abatement measures; focus limited technical and financial resources in critical geographic locations where nonpoint source related water quality problems and threats are the most severe and control is the most feasible; and provide for program evaluation, subsequent modifications, and recommendations. (See Wis. Stats. § 281.65(1) and Wis. Admin. Code NR 153 and 154)~~

~~1.31) The Wisconsin department of natural resources shall administer an urban nonpoint source water abatement and storm water management program in a manner that promotes: management of urban storm water and runoff from existing and developing urban areas to achieve water quality standards, to minimize flooding and to protect groundwater; coordination of urban nonpoint source management activities and the municipal storm water discharge permit program; and implementation of nonpoint source performance standards. The department may provide a cost-sharing grant for projects. (See Wis. Stats. § 281.66 and Wis. Admin. Code NR 155)~~

2. Coastal natural areas, wildlife habitat and fisheries.

2.1) State natural areas are designated for the purposes of scientific research, the teaching of conservation and natural history, and preservation of native plant and animal communities or individual members of these communities and archeological sites. The Wisconsin department of natural resources shall not permit any use of a designated state natural area which is inconsistent with or injurious to its natural values. (Wis. Stats. § 23.26-.28. See also SCA #1 and 5)

~~2.2) State parks are to be established for public recreation and education. An area may qualify by reason of the area's scenery, its plants and wildlife or its historical, archeological or geological interest. The Wisconsin department of natural resources may classify park areas as to their most logical employment and greatest usefulness. (See Wis. Stats. § 27.01(1) and (2). See also SCA #1.)~~

2.~~3~~2) The Wisconsin department of natural resources shall manage state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment. The department shall assure the practice of sustainable forestry and use it to assure that state forests can provide a full range of benefits for present and future generations. The department shall also assure that the management of state forests is consistent with the

ecological capability of the state forest land and with the long-term maintenance of sustainable forest communities and ecosystems. (See Wis. Stats. § 28.04(2)(a). See also SCA #1 and 5)

~~2.4) Taxation of agricultural land and undeveloped land need not be uniform. An owner may apply for a farmland preservation agreement if the county in which the land is located has a certified agricultural preservation plan in effect or the land is in an area zoned for exclusive agricultural use under a certified ordinance. (See Article VIII, Sec. 1 of the Wis. Constitution, Wis. Stats. §§ 71.57-71.67and ch. 91)~~

2.~~5~~3) No person may hunt or trap on land located in state parks or state fish hatcheries unless the department of natural resources has authorized by rule the hunting of that type of game in the state park or portion of the state park, and the person holds the approval required for hunting that type of game. (See Wis. Stats. § 29.089 and Wis. Admin. Code NR 10.275. See also SCA #1)

~~2.6) The Wisconsin department of natural resources may acquire and manage lands or waters for public shooting, trapping, or fishing grounds or waters for the purpose of providing areas in which any citizen may hunt, trap or fish. Fishery, forestry, wild resources and nonconsumptive recreational objectives will be accommodated when they do not detract significantly from the primary objectives of wildlife habitat and public hunting. (See Wis. Stats. §§ 23.09(2)(d)(3) and 23.11(1), and Wis. Admin. Code NR 1.51. See also SCA #1 and 5)~~

2.~~7~~4) The taking, possessing, sale, processing and distribution of fish, wildlife and plant life designated by the state and/or the U.S. as endangered, native and foreign species is prohibited. (See Wis. Stats. § 29.604 and Wis. Admin. Code NR 27. See also managed use #8)

~~2.8) The Wisconsin department of natural resources shall identify and classify trout streams to ensure adequate protection and proper management of this unique resource. (See Wis. Stats. §§ 23.09(1)-(2) and Wis. Admin. Code NR 102 and NR 1.02. See also SCA #1 and 5)~~

~~2.9) Sport fishing shall be managed in such a way that all have an equal opportunity to safely enjoy the aquatic resources, regulated to the extent that fish and other aquatic resources are protected and enhanced; fishing does not exceed the capabilities of the resource to sustain desirable, quality fish populations; the social, biological and economic values associated with all recreational fishing are recognized; user conflicts are minimized; and aesthetic and cultural values associated with fishing are held in trust for future generations. (See Wis. Stats. §§ 23.09(1) (2) and Wis. Admin. Code NR 1.01(9). See also SCA #1 and 5)~~

~~2.9.1) The Wisconsin department of natural resources will manage fishery resources of the Great Lakes in accordance with sound biological principles to attain optimum sustainable utilization. Management measures may include but are not limited to seasons, bag and quota limits, limitations on the type and amount of fishing gear, limitation as to participation in the fisheries and allocation of allowable harvest among the various users and the establishment of restricted areas. (See Wis. Stats. § 23.09(1)(2) and Wis. Admin. Code NR 1.04(4))~~

~~2.10) The Wisconsin department of natural resources may acquire easements in the furtherance of public rights, including the right of access and use of lands and waters for hunting and fishing and the enjoyment of scenic beauty. (See Wis. Stats. § 23.09(10). See also SCA #1 and 5)~~

~~2.11) Sport fishing shall be managed in such a way so that all have an equal opportunity to safely enjoy the aquatic resources, regulated to the extent that aquatic resources are protected and enhanced; fishing effort does not exceed capabilities of the resource to sustain desirable, quality fish populations; the social, biological and economic values associated with all recreational fishing, competitive and non-competitive are recognized; a sense of responsibility for the resource is inherent to all who participate and enjoy fishing; user conflicts are minimized, and aesthetic and cultural values associated with fishing are held in trust for future generations. (See Wis. Stats. § 23.09 and Wis. Admin. Code NR 1.01)~~

~~2.11.1) The Wisconsin department of natural resources may operate state fish hatcheries. The department may breed and propagate fish, distribute information regarding the propagation and conservation of fish, and~~

~~receive and dispose of fish and fish eggs. The department may manage the state fish hatcheries and all other property held by the state for the propagation of fish. (See Wis. Stats. §§ 29.709-29.713)~~

~~2.11.2) The Wisconsin department of natural resources may designate such localities as it finds reasonably necessary to secure the perpetuation of any species of fish and maintenance of an adequate supply of the fish. The purpose of the fish refuges is to provide safe retreats in which fish may breed and replenish adjacent fishing waters. (See Wis. Stats. § 23.09(2)(c) and Wis. Admin. Code ch. NR 26)~~

~~2.12) The Wisconsin department of natural resources shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure continued opportunities for good fishing, hunting, and trapping. The department may regulate hunting and fishing on and in all interstate boundary waters and outlying waters. (See Wis. Stats. §§ 29.014(1) and 29.041. See also Wis. Stats. §§ 29.219 – 29.237 and 29.514 – 29.539 , SCA #1 and 5, and managed use #11)~~

2.~~13~~5) All counties shall adopt shoreland ordinances for all unincorporated lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet of a lake, pond or flowage and 300 feet of a river or stream or to the landward side of the floodplain, whichever distance is greater. Each County shall, within 6 months after receipt of final Wisconsin wetland inventory maps of the county from the Wisconsin department of natural resources, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district. Any use not permitted by rule is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance. ~~At a minimum, shoreland ordinances shall include the following provisions:~~

(a) Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

(b) Building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. Unless an existing development pattern exists, a setback of 75 feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boathouses.

(c) The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area. In the strip of land 35 feet wide in land from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.

(d) Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with state regulations where applicable, and only if done in a manner to designed to~~n~~ minimize erosion, sedimentation and impairment of fish and wildlife habitat. (See Wis. Stats. §§ 59.692 and 281.31 and Wis. Admin. Code NR 115. See also managed uses #26 and 27)

2.~~14~~6) All cities and villages shall adopt and administer shoreland-wetland zoning ordinances for wetlands or portions of wetlands 5 acres or greater in size located a) within 1,000 feet of a lake, pond or flowage and b) 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater. Any use not permitted by rule is prohibited unless the wetland, or portion thereof, is rezoned by amendment of the city or village. (See Wis. Stats. §§ 61.351 and 62.231, and Wis. Admin. Code NR 117. See also managed use #27)

2.~~15~~7) The Wisconsin department of natural resources shall preserve, protect, restore and manage the state's wetland communities to be sustainable, diverse, and interspersed with healthy aquatic and terrestrial communities. Department actions must be consistent with the goal of maintaining, protecting and

improving water quality. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values. (See Wis. Stats. §§ 281.12(1) and 281.11, and Wis. Admin. Code NR 1.95, NR 299, NR 103 and NR 353. See also managed use #1, 2, 3, 4, 5,6, 7, 8, 9, 17, 18, 19, 21, 22)

2.~~16~~8) The Wisconsin department of natural resources may order and require any dam heretofore or hereafter constructed to be equipped and operated, in whole or in part, as follows:

(a) With slides and chutes for the passage of logs and timber products.

(b) With a lock, boat hoist, marine railway or other device of a size and construction sufficient to accommodate navigation.

(c) With good and sufficient fishways or fish ladders, or in lieu thereof, the owner may be permitted to enter into an agreement with the department to pay for or supply to the State of Wisconsin annually such quantities of game fish for stocking purposes as may be agreed upon by the owner and the department.

(d) With spillways or flood gates capable of permitting the passage through or over the same of freshets and floods during all seasons of the year.

(e) With booms, piers or other protection works ample to safeguard gates from trash or other floating material. (See Wis. Stats. § 31.02(4))

~~2.16.1) The Wisconsin department of natural resources may investigate and determine all reasonable methods of construction, operation, maintenance and equipment for any dam so as to conserve and protect all public rights in navigable waters and so as to protect life, health and property; and the construction, operation, maintenance and equipment, or any or all thereof, of dams in navigable waters shall be subject to the supervision of the department and to the orders and regulations of the department. (See Wis. Stats. § 31.02(2))~~

~~2.17) The Wisconsin department of natural resources may operate, repair and maintain the dams and dikes constructed across drainage ditches and streams in drainage districts in the interest of drainage control, water conservation, irrigation, conservation, pisciculture, and to provide areas suitable for the nesting and breeding of aquatic wild bird life and the propagation of fur-bearing animals. (See Wis. Stats. § 31.02(6))~~

2.~~18~~9) It is declared to be the policy of the state to prohibit forever the building or maintaining of any dam across the Brule river or any of its tributaries in Douglas County, except that a dam with an adequate fishway may be constructed across said Brule river at each of 3 sites including the Clevedon site, the Old Mill site, or the upper Rock Dam site. (See Wis. Stats. § 31.30)

2.~~19~~10) Unless the Wisconsin department of natural resources has issued a permit or the legislature has granted authorization, no person may change the course of or straighten a navigable stream (See Wis. Stats. § 30.195)

2.~~20~~11) In order to afford the people of this state an opportunity to enjoy natural streams it is in the interest of this state to preserve some rivers in a free-flowing condition and to protect them from development. (See Wis. Stats. §. 30.26)

~~2.21) The Wisconsin department of natural resources may rely upon wetland boundary determinations made by other agencies and consultants. If there is a dispute concerning a wetland boundary delineation, the review of the delineation shall be consistent with the procedures identified in the "Basic Guide to Wisconsin's Wetlands and Their Boundaries" (Wisconsin Department of Administration PUBL-WZ-029-94) as determined by the department. (See Wis. Stats. §§ 281.11, 281.12, and 281.36(3), and Wis. Admin. Code NR 103.08(1m))~~

~~NOTE: This guide is based upon the "Corps of Engineers Wetlands Delineation Manual, 1987" which has been regionalized for Wisconsin. For the purposes of delineating nonfederal wetlands, the Wisconsin department of natural resources shall use the procedures contained in the wetlands delineation manual published by the U.S. Army Corps of Engineers. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document the U.S. Army Corps of Engineers issues interpreting that manual.~~

2.~~22~~12) No person may discharge dredged material or fill material into a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality certification~~ wetland general permit or individual permit issued by the Wisconsin department of natural resources or the discharge is exempt. No person may violate any condition ~~imposed by the department in a water quality certification~~ contained in a wetland general permit or individual permit issued by the department. The department may not issue a ~~water quality certification~~ wetland general or individual permit ~~for a nonfederal wetland~~ unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards. (See Wis. Stats. § 281.36(~~2)(a~~3b))

3. Coastal erosion and flood hazard areas.

~~3.0.1) The Wisconsin department of natural resources shall prepare a model zoning ordinance for the construction site erosion control at sites where the construction activities do not include the construction of a building in the form of an administrative rule. (See Wis. Stats. § 281.33(5) and Wis. Admin. Code NR 152.)~~

3.1) Counties, cities and villages shall adopt reasonable and effective floodplain zoning ordinances for those parts of their jurisdiction subject to serious flood damage. These ordinances shall provide that construction be strictly regulated in floodways. Construction in floodplains and floodfringe areas will also be regulated. In addition, no development shall be allowed in floodplains along Lake Superior or Lake Michigan which will be adversely affected by wave run-up or which is associated with high flood damage potential. (See Wis. Stats. § 87.30, and Wis. Admin. Code ch. NR 116. See also managed use #15)

3.2) Within unincorporated areas, a setback of 75 ft. from the ordinary high water mark of an adjacent body of water shall be required, unless an existing development pattern exists. A county may enact a more restrictive ordinance. (See Wis. Stats. §§ 59.692 and 281.31, and Wis. Admin. Code NR 115. See also managed use #15, 26, and 27)

3.~~4~~3) All new subdivision plats, buildings, structures, roads, sanitary or other facilities which are reviewed by state agencies and which are in existing and potential flood hazard areas shall be prevented from exposing citizens to unnecessary hazards or cause future public expenditures for flood disaster relief. (See 1973 Executive Order No. 67. See also managed use #15)

3.~~5~~4) For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for a required individual permit in order to place the structure for the owner's use or to deposit the material. The department shall issue an individual permit to a riparian owner for a structure or deposit application if the department finds that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m). See also managed use #7 and 15.)

3.5.~~1~~) The Wisconsin department of natural resources may decide to require that a person engaged in an activity that is otherwise exempt from requiring a structures permit apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that the conditions specific to the site require restrictions on the activity in order to prevent any of the following: significant adverse impacts to the public rights and interests; environmental pollution; material injury to the riparian rights of any riparian owner. (See Wis. Stats. § 30.12(2m).

3.6) If the Wisconsin department of natural resources finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it shall determine what alterations additions or repairs are necessary and shall order the owner or person having control of the dam or reservoir to cause those alterations, additions or repairs to be made within a time specified in the order. If the department finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it may cause to be drawn off, in whole or in part, the water in the reservoir of impounded by the dam if it determines that this action is necessary to prevent impending danger to persons or property. (See Wis. Stats. § 31.19 (5))

4. Community development.

4.1) All coastal counties shall adopt and enforce ordinances for all unincorporated coastal shorelands. These regulations shall: maintain safe and healthful conditions; prevent and control water pollution; protect fish and aquatic life, particularly spawning grounds; control land uses, placement of structures, and building sites; reserve and protect shore cover; and protect natural beauty. (See Wis. Stats. §§ 59.692 281.31(1), and 281.35, and Wis. Admin. Code ch. NR 115. See also managed use #26.)

4.2) All subdivisions creating five or more lots of one and one-half acres or less within a five-year period that are abutting a lake or navigable stream shall ~~meet state standards on surveying, lot size and street width connections, and~~ provide public access at least 60 feet wide providing access to the water's edge so that there will be public access, which is connected to existing public roads, at not more than one-half intervals as measured along the lake or navigable stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department of administration, and excluding shore areas where public park or open-space streets or roads on either side of the navigable stream are provided (See Wis. Stats. ch. 236, and Wis. Admin. Code NR 1.93(3). See also managed use #~~26~~25)

4.4) ~~It is the public policy and in the public interest of the state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of citizens. The state historical society shall: conduct an ongoing statewide survey to identify and document historic properties; prepare, update and maintain the Wisconsin inventory of historic places; maintain, publish and disseminate the national and state registers of historic places in Wisconsin; prepare the state preservation plan and annually renew it; undertake a program of technical assistance to localities and private parties in furtherance of local and private historic preservation programs; cooperate with federal, state, and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives, and in overall land use planning. (See Wis. Stats. §§ 44.30 and 44.34. See also SCA #1, 5, and 6)~~

~~4.5) The state long-range public building program shall recognize the importance of historic properties and shall include a program of preservation and restoration of those historic properties under state control. (See Wis. Stats. § 13.48(1m)(b). See also SCA #1, 5, and 6, and managed use #19)~~

~~4.6) The State Historical Society shall review and comment upon the actions of any state agency or political subdivision that may have an adverse effect upon historic properties, and ameliorate the adverse effects. (See Wis. Stats. §§1.11 and 44.34(10). See also SCA #1, 5, and 6)~~

~~4.7) State aesthetic resources shall be protected and enhanced through the regulation of billboards, the screening of junkyards, the purchase of scenic easements, the development of parkways, and the establishment and operation of a Rustic Roads program. (See Wis. Stats. §§ 83.42, 84.09, 84.105, 84.30 and 84.31. See also SCA # 6 and managed use #31)~~

4.~~8~~3) All subdivisions abutting navigable lakes or streams shall provide public access of at least 60 feet in width at not more than one-half mile intervals except where greater intervals and wider access are agreed upon by the Wisconsin department of natural resources and the department of administration and excluding areas where public parks or open-space streets or roads on either side of a stream are provided. (See Wis. Stats. §§ 66.1006 and 236.16(3). See also managed use #25)

4.~~8.1~~4) Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway. Waterway uses shall be equally available to all waterway users and include enjoyment of natural scenic beauty and serenity. These public rights and uses may be provided by any combination of publicly and privately owned access facilities which are available to the general public free or for a reasonable fee. The Wisconsin department of natural resources shall exercise its management and regulatory responsibilities to achieve this goal and to assure that levels and types of use of navigable waters are consistent with protection of public health, safety and welfare, including protection of natural resources. (See Wis. Stats. §§ 281.31 and 281.12 and Wis. Admin. Code NR 1.90, 1.91 and 1.92.)

~~4.9) The state shall establish a state park system and shall give principal emphasis to the acquisition of recreational lands in the heavily populated areas of the state and in places readily accessible to such areas.(See Wis. Stats. §§23.09 and 27.01, and Wis. Admin. Code NR 1.40. See also SCA #1 and Issue Area 2 for other discussion of state parks.)~~

~~4.10) Local communities shall be encouraged to provide local recreational and educational opportunities through provision of state aids. (See Wis. Stats. § 23.30(2). See also SCA #1)~~

~~4.10.1) The state shall provide technical and financial assistance to municipalities for the development of recreational boating facilities (See Wis. Stats. § 30.92)~~

4.~~11~~5) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line. Exemptions from permit requirements for the placement of a structure or the deposit of material only apply where the structure or material is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of any other riparian owners. (See Wis. Stats. §§ 30.12 and 30.11. See also SCA #2, and managed use #1, 2, 6, and 7)

4.~~11.1~~6) For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for the individual permit that is required in order to place a structure for the owners' use or to deposit the material. The department shall issue an individual permit if the department finds that the structure or deposit will not materially obstruct navigation, the structure or deposit will not be detrimental to the public interest and the structure or deposit will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m))

4.~~11.2~~7) Unless a contract has been entered into with the Wisconsin department of natural resources or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters. Unless an individual or a general permit has been issued by the department or authorization has been granted by the legislature, no person may remove any materials from the bed of any lake or any navigable stream. (See Wis. Stats. § 30.20(1))

4.~~11.3~~8) The board of commissioners of public lands may lease to riparian owners rights to the beds of lakes and rights to fill in beds of lakes or navigable streams, held by the state in trust for the public, when the purpose of the lease is for the improvement of navigation or for the improvement or construction of harbor facilities The board of commissioners of public lands may lease such rights to municipalities in locations where the municipality is the riparian owner, when the purpose of the lease is for the improvement or provision of recreational facilities related to navigation for public use. No leases may be executed without a prior finding of the Wisconsin department of natural resources that any proposed physical change in the area contemplated as the result of the execution of any term lease is consistent with the public interest in the navigable waters involved. (See Wis. Stats. § 24.39)

4.~~11.4~~9) A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized by permit or unless other authorization for the wharf or pier is expressly provided. A wharf or pier which interferes with rights of other riparian owners constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit or unless other authorization for the pier or wharf is expressly provided. A wharf or pier which

extends into navigable waters beyond an established pierhead line constitutes an unlawful obstruction of navigable waters unless a valid permit, license or authorization for the wharf or pier is granted or unless it is a permissible preexisting wharf or pier. (See Wis. Stats. § 30.13(4))

4.~~11.5~~10) No owner of riparian land that abuts a navigable water may convey, by easement or similar conveyance, any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material in the navigable water. This does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project. (See Wis. Stats. § 30.133)

4.~~12~~11) Unless an individual or a general permit has been issued by the Wisconsin department of natural resources, or authorization has been granted by the legislature, no person may:

(a) construct, dredge, or enlarge any artificial water body that connects with a navigable waterway;

(b) construct, dredge, or enlarge any part of an artificial water body that is located within 500 feet of the ordinary high-water mark of an existing navigable waterway, including a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events, or

(c) grade or remove topsoil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet.

For activities that are not exempt and that are not subject to a general permit, a person may apply to the department for an individual permit. The department shall issue an individual permit if it finds the activity will not be detrimental to the public interest, the activity will not cause environmental pollution, any enlargement connected to a navigable waterway complies will all of the laws relating to platting of land and sanitation, and no material injury will result to the riparian rights of any riparian owners of real property that abuts any water body that is affected by the activity. (See Wis. Stats. §§ 30.19(1g)(4). See also SCA #14 and managed use #3, 4, and 5)

4.~~13~~12) Any person, firm, corporation or municipality desiring a permit to construct, operate and maintain a dam shall file an application for a permit with the Wisconsin department of natural resources. The department may require the amendment of the application. If it appears that the construction, operation or maintenance of the proposed dam is in the public interest, considering ecological, aesthetic, economic and recreational values, the department shall so find and grant a permit to the applicant provided the department finds that the applicant has complied with for proof of ability to maintain and proof of ownership or enforceable right to purchase the flowage area, when applicable. The enjoyment of natural scenic beauty and environmental quality are declared to be public rights to be considered along with other public rights and the economic need of electric power for the full development of agriculture and industrial activity and other useful purposes in the area to be served. The department shall deny the permit if it finds that the river in its natural state offers greater recreational facilities and scenic values for a larger number of people than can by proper control of the flowage level be obtained from the use of the lake and lake shore and that the remaining sections of the river and other rivers in the area in their natural state provide an insufficient amount of recreational facilities and scenic beauty, and if it further appears that the economic need of electric power is less that the value of the recreational and scenic beauty advantages of the river in its natural state . If the department finds that approval of the permit will cause environmental pollution, the permit shall be denied.(See Wis. Stats. §§ 31.06(1)-(3), 31.05(3), 31.14(2)-(3), and 299.01(4))

4.~~14~~13) Any person, firm, corporation or municipality desiring a permit to operate and maintain a dam shall file with the Wisconsin department of natural resources a written application. If the department finds that such operation and maintenance does not materially obstruct existing navigation or violate other public rights and will not endanger life, health, or property, a permit is hereby granted to applicant, provided the

department also finds that the applicant has complied with statutory requirements of proof of ability to maintain the dam(s). (See Wis. Stats. §§ 31.07, 31.08, 31.06, and 31.14)

4.~~15~~14) No transfer or assignment of any permit granted to construct or to operate and maintain a dam shall be of any effect whatsoever unless it is in writing and a certified copy thereof within 10 days after the execution thereof, is filed with the Wisconsin department of natural resources and unless such transfer or assignment is approved in writing by the department; and no such transfer or assignment shall be approved by the department except after an investigation and a finding that the transfer or assignment is not made or intended to be made for a purpose or to create prohibited conditions and that the transferee or assignee has complied with requirements showing proof of the ability to maintain the dam. No permit shall be transferred or assigned to a foreign corporation. (See Wis. Stats. §§ 31.21 (1), 31.06, 31.08, 31.14(2)-(3), and 196.665)

4.~~16~~15 (a) It is the policy of of the state to preserve the public rights in navigable waters, including those created by dams, and to provide a means of maintaining dams and the developments which have been made adjacent to the flowage of such dams. (See Wis. Stats. § 31.14(1))

~~4.16.~~ (b) A permit shall not be granted for constructing, maintaining and operating, or raising or enlarging a dam:

(~~a~~1) Unless the applicant furnishes to the Wisconsin department of natural resources proof of ability to operate and maintain the dam in good condition, either by the creation of a special assessment district or by any other means which in the department's judgment will give reasonable assurance that the dam will be maintained for a reasonable period of time not less than 10 years; or

(~~b~~2) If a majority of the municipalities in which 51% or more of the dam of flowage is or will be located files with the department, prior to the granting of the permit, their objections to the granting of such permit in the form of resolutions duly adopted by the governing bodies of such municipalities.

The above permit requirements do not apply if the applicant complies with each of the following requirements:

(~~a~~1) Furnishes proof satisfactory to the department that the applicant owns or has an enforceable option to purchase all the land which is or will be flowed by the impoundment, together with the shore line and an immediately adjacent strip of land at least 60 feet in width, but the department may in a particular case permit a narrower strip where the 60-foot minimum is impractical and may require ownership of a wider strip.

(~~b~~2) Files with the department a writing in such form as the department requires in which the applicant agrees that following the initial filling of the proposed pond the applicant will not convey the dam to another without first obtaining department approval. The department may require from an applicant who does not have the power of eminent domain a bond or other reasonable assurances that the applicant will adhere to such agreement.

(~~c~~3) Furnishes proof satisfactory to the department that the applicant has dedicated or will dedicate a parcel of land for public access to the impounded waters. (See Wis. Stats. §§ 31.14(1)-(4). 31.06, 31.08, and 31.13)

~~4.16~~ (c) The Wisconsin department of natural resources may by rule require all or special classes of persons operating a dam for profit to create a fund or reserve to be used for major repairs, reconstruction or removal of the dam when necessary. This does not apply to a person who has the power of eminent domain. (See Wis. Stats. § 31.14(5))

4.~~17~~16 (a) The grantee of any permit and the owner of any dam constructed before permits were required by law shall maintain and operate all such dams slides, chutes, piers, booms, guide booms, weirs, tunnels, races, flumes, sluices, pits, fishways, locks, boat hoists, marine railways and all other equipment required by the Wisconsin department of natural resources for the protection of public rights in such waters, and for the preservation of life, health and property, in good repair and condition, and shall not willfully, or otherwise, injure, remove or destroy the same, or any part thereof, unless the department shall have approved such removal or destruction in writing. In the event of emergency the department shall have power, pending investigation and hearing, to order the repair of any dam without notice and hearing. (See Wis. Stat. § 31.18(1))

~~4.17~~ (b) The owner of any permitted dam or any dam constructed before permits were required shall open such slide or chute for the passage of any craft or material lawfully navigating the stream, whenever requested to do so by the person in charge of such navigation, without charge or toll therefor. (See Wis. Stat. § 31.18(2))

~~4.17~~ (c) Except when emergency shall require the same for the protection of life, health or property, no substantial alteration or addition shall be made to any dam without obtaining an order from the Wisconsin department of natural resources, which order may be issued only after an investigation and upon a finding that the proposed alterations or additions will not impair the sufficiency of such dam or any existing public rights in such waters. (See Wis. Stats. § 31.18(3))

~~4.17~~ (d) The Wisconsin department of natural resources shall, in the interest of public rights in navigable waters, or to promote safety and protect life, health and property, require the grantee of any permit, prior to flowing any lands by the construction of a dam thereunder, to remove from such lands all or any portion of the standing and fallen timber and all or any portion of the brush. Provided that in cases where the application for a permit proposes construction of a dam for water reservoir or water storage purposes, and not for operating a hydroelectric generating plant, the nature, extent, and time for such removal shall be determined prior to the granting of a permit, except that subsequent to the granting of a permit, the department may make such modification in the removal requirements as may be in the public interest and which will not materially alter the economics of the project; and in making such original determination or any modification thereof the economic need for the project shall be considered. (See Wis. Stats. §31.18(4))

4.~~18~~17) No owner of any dam may abandon or remove or alter the dam without first obtaining a permit from the Wisconsin department of natural resources. No person may transfer ownership of a dam or the ownership of the specific piece of land on which a dam is physically located without first obtaining a permit from the department. As a prerequisite to the granting of a permit, the department may require the applicant to comply with conditions as it deems reasonably necessary in the particular case to preserve public rights in navigable waters, to promote safety, and to protect life, health and property. (See Wis. Stats. §§ 31.185(1) and (5))

4.~~19~~18) No private bridge shall be maintained unless its construction shall first be approved by the Wisconsin department of natural resources. Every such bridge used by the public shall at all times be maintained in a safe condition by the owners of the land abutting the approaches of the bridge. (See Wis. Stats. § 31.23(3))

4.~~20~~19) Every dam, bridge or other obstruction constructed or maintained in or over any navigable waters of the State of Wisconsin in violation of the Wisconsin Statutes, and every dam not furnished with a slide, chute, or other equipment prescribed by the Wisconsin department of natural resources, is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof . (See Wis. Stats. § 31.25)

4.~~21~~20) Each person, firm or corporation maintaining a dam on any navigable stream shall pass at all times at least 25% of the natural low flow of water of such stream, except as otherwise prescribed by law. This section , however, shall not apply to a plant or dam where the water is discharged directly into a lake, mill pond, storage pond, or cranberry marsh, nor shall it apply to cases where in the opinion of the Wisconsin department of natural resources, such minimum discharge is not necessary for the protection of fish life. (See Wis. Stats. § 31.34)

4.~~21.1~~21) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may construct or maintain a bridge or construct, place, or maintain a culvert in, on, or over navigable waters. Any person who is issued a permit respecting a bridge that may be used by the public shall construct and maintain the bridge in a safe condition at all times. (See Wis. Stats. § 30.123(2) – (5))

~~4.22) Any public utility may, pursuant to permit granted by resolution of the governing body of any city, village or town situated on any waters of Lake Michigan or Lake Superior or in the Great Lakes basin, construct, maintain and operate upon and under the bed thereof all cribs, intakes, basins, pipes and tunnels necessary or convenient for securing an adequate supply of water suitable for the purposes of such utility. (See Wis. Stats. § 30.21(1))~~

5. Economic development.

~~5.1) The Wisconsin department of commerce shall foster, encourage and advocate economic development programs designed as to broaden and strengthen the state's economy. (See Wis. Stats. § 560.03. See also SCA #2)~~

~~5.2) The Wisconsin department of commerce shall locate and maintain information on prime industrial sites. (See Wis. Stats. § 560.03(6). See also SCA #2)~~

~~5.3) The Wisconsin department of transportation may direct, undertake, and expand state and federal aid for planning, promotion and protection activities in the areas of highways, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems, and for any other transportation mode. (See Wis. Stats. §§ 85.02, 194.02, and 85.09. See also managed use #21, 22, 23 and 24)~~

~~5.4) The Wisconsin department of tourism shall promote travel scenic, historic, natural, agricultural, educational and recreational attractions. (See § 41.11(a) (b). See also SCA #1)~~

~~5.5) The orderly and ecologically sound development of commercial tourist facilities shall be coordinated and stimulated by the Wisconsin department of tourism (See Wis. Stats. § 41.11(l)(f). See also SCA #2)~~

~~5.6) The Wisconsin department of natural resources shall prepare a plan for each state forest that describes how the state forest will be managed. The department shall work with the public to identify the property goals and objectives that are consistent with the identified purposes and benefits of state forests. The department shall identify in each plan the objectives of management for distinct areas of the state forests. The department's natural resources board's objectives for the management of state forests and county forests is to grow forest crops by using silvicultural methods that will perpetuate the forest and maintain diversified plant and animal communities, protect soil, wetlands, streams, lakes, shorelines and wetlands, in a true multiple use concept. (See Wis. Stats. § 28.04(3)(a))~~

~~5.6.1) It is the intent of the State of Wisconsin to encourage a policy of protecting from destructive or premature cutting the forest growth in the state, and of reproducing and growing for the future adequate crops through sound forestry practices of forest products on lands not more useful for other purposes, so that such lands will continue to furnish recurring forest crops for commercial use with public hunting and fishing as extra public benefits, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands. (See Wis. Stats. § 77.01)~~

~~5.8) The Wisconsin department of transportation, in consultation with the Wisconsin coastal management council, shall administer the harbor assistance program. The state may provide financial assistance for commercial harbor improvements. (See Wis. Stats. § 85.095(2). See also SCA #2)~~

5.~~9~~1) No person may divert water from a stream in the state of Wisconsin without an individual permit if the diversion is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream or if the diversion is for the purpose of agriculture or irrigation. No person, except a person required to obtain an approval permit of a sewage system or extension plan, may divert

water from any lake or stream in this state without an individual permit if the diversion will result in a water loss averaging 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss. (See Wis. Stats. §. 30.18)

~~5.10) The Wisconsin public service commission shall prepare a biennial strategic energy assessment that evaluates the adequacy and reliability of the state's current and future electrical supply. (See Wis. Stats. § 196.491(2)(a). See also SCA #4 and managed use #16)~~

5.~~10.1~~2) Unless specified otherwise by the Wisconsin Statutes, no person may commence the construction of a facility unless the person has applied for and received a certificate of public convenience and necessity. (See Wis. Stats. §§ 196.491(3)(a)1 – 196.491(3b) and Wis. Admin. Code PSC 112)

5.~~10.2~~3) The Wisconsin public service commission shall approve an application for a certificate of public convenience and necessity only if the commission determines, among other findings, all of the following:

(a) The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy. This does not apply to a wholesale merchant plant.

(b) The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors, except that the commission may not consider alternative sources of supply or engineering or economic factors if the application is for a wholesale merchant plant. In its consideration of the environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet statutory requirements for air pollution.

(c) For a high-voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high voltage transmission line provides usage, service, or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high-voltage transmission line are reasonable in relation to the cost of the high-voltage transmission line.

(d) The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.

(e) If it is a public utility, the commission may refuse to certify a project if it appears that the completion of the project will substantially impair the efficiency of the service of the public utility, provide facilities unreasonably in excess of the probable future requirements, or when placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission , in the fixation of rates, of such consequent increase of cost of service.

(f) The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved

(g) The proposed facility will not have a material adverse impact on competition in the relevant wholesale electric service market.

(h) For a large electric generating facility, brownfields are used to the extent practicable.

(i) The department of natural resources shall issue, or authorize proceedings under, necessary permits if it finds that the applicant has shown that the proposal does not unduly affect:

(1) public rights and interests in navigable waterways;
(2) the effective flood flow capacity of a stream;

(3) the rights of riparian owners; or
(4) water quality. (See Wis. Stats. §§ 196.491(3) and 30.025, and Wis.Admin. Code ch. PSC 111-112)

~~5.10.3) The Wisconsin public service commission may not certify any nuclear power plant unless the commission finds that a federally licensed facility, or a facility outside of the United States which the commission determines will satisfy the public welfare requirements of the people of the state, with adequate capacity to dispose of high-level nuclear waste from all nuclear power plants operating in the state will be available, as necessary, for the disposal of the waste and the proposed nuclear power plant, in comparison with feasible alternatives, is economically advantageous to ratepayers. (See Wis. Stats. § 196.493)~~

5.~~11~~4) If installation of utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed. (See Wis. Stat § 196.491(3)(i)-(j). See also SCA #4 and managed use #16)

~~5.12) The Wisconsin department of administration shall prepare and maintain contingency plans for responding to critical energy shortages so that when the shortages occur, they can be dealt with quickly and effectively. (See Wis. Stats. § 16.95(12))~~

5.~~13~~5) Except where the stream to be improved forms a boundary line between this and another state, no water power permit shall be granted or transferred until the applicant has filed with both the Wisconsin department of natural resources and the public service commission, in addition to all other things required by law to be filed, an agreement setting forth that, in the event any electric energy generated under said permit shall be transmitted or conveyed beyond the confines of this state to be there sold, the applicant will furnish to any resident of this of any corporation domiciled therein electric energy at reasonable rates to be determined by the commission, provided that the commission after public hearing shall find that public convenience and necessity require such service. (See Wis. Stats. § 31.095 (1))

5.~~14~~6) Every corporation constructing, owning or operating a railroad shall restore every watercourse, street, highway, road or canal across, along or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter maintain the same in such condition against an effects in any manner produced by such railroad. (See Wis. Stats. § 190.08)

~~*6. Governmental Interrelationships.*~~

~~6.1) A Wisconsin Coastal Management Council will be created with representation from state agencies, local governments, tribal governments, the University System and the public to oversee program operations and activities. (See 1984 Executive Order #62. See also, Chapter II, Organization for Program Implementation.)~~

~~6.2) The Wisconsin department of administration shall evaluate the plans of all state agencies, identify both duplication and program gaps in the plans, and measure the agency plans with the state goals enacted by the Governor and the Legislature. (See Wis. Stats. § 16.95(7))~~

~~6.3) Structural reorganization of state government shall be a continuing process, with the goals of assuring responsiveness to popular control, improved public understanding of government , and efficient and effective administration of state policies. (See Wis. Stats. § 15.001)~~

~~6.4) All state agencies shall prepare detailed statements on the environmental and economic impacts of all major actions significantly affecting the quality of the human environment. Prior to making such statements, the agency shall consult with any other agency that has jurisdiction or special expertise with respect to any environmental impact involved. (See Wis. Stats. §§ 1.11(2)(c) (d))~~

~~6.5) All state agencies shall study, develop and describe appropriate alternatives to their recommended courses of action in any proposal that involve unresolved conflicts concerning alternative uses of available resources. (See Wis. Stats. § 1.11(2)(e))~~

6.7) State agencies and localities shall mutually cooperate to enhance the quality, management and protection of the state's air. (See Wis. Stats. § 285.11)

7. Public Involvement.

7.1) The public shall be entitled to the fullest and most complete information regarding the affairs of government, compatible with the conduct of government business. To this end, all meetings of all state and local governments shall be preceded by public notice, shall be open to the public, and shall be held in places reasonably accessible to members of the public. (See Wis. Stats. §§ 19.81(1) (2) and 19.83)

7.2) Except as otherwise provided by law, any requester has a right to inspect any public record. (See Wis. Stats. § 19.35)

7.4) The Wisconsin department of natural resources shall, upon the verified compliant of six or more citizens, hold a public hearing relating to any alleged or potential environmental pollution. The alleged or potential polluter shall be served with notice of the hearing and the department shall, within 90 days after the hearing, issue findings of fact, conclusions of law and an order. (See Wis. Stats. § 299.91)

Attachment C: Enforceable Policies

The following are the Wisconsin Coastal Management Program's (WCMP) Enforceable Policies, which are used to review federal actions. The enforceable policies reference the state regulations (statutes and State of Wisconsin Administrative Code) on which they are based. Some of the policies also reference other sections of WCMP's program document, including managed uses and Specific Coastal Areas (SCAs). References to managed uses and SCAs are intended to provide context for why the enforceable policies are relevant to coastal management efforts in Wisconsin.

1. Coastal water quality and quantity and coastal air quality.

1.1) The elimination of the discharge of pollutants to water is the long range goal of the state. (See Federal Clean Water Act, 33 U.S.C. 1251and Wis. Stats. § 283.001(1)(a))

1.2) An interim goal is the protection and propagation of fish and wildlife and the maintenance of water quality to allow recreation in and on the water to be achieved. (See Wis. Stats. § 283.001(1)(b))

1.3) Discharge of effluents, including industrial, municipal and agricultural wastes, into any waters of the state shall not be allowed if they exceed federal and state water quality standards. (See Wis. Stats. §§ 283.11-.31, and Wis. Admin. Code ch. NR 221 to 297. See also managed use #8)

1.4) Disposal in the waters of the state of the following defined pollutants shall be restricted: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water. (See Wis. Stats. §§ 283.01(13), 283.31(1) and 29.601. See also managed uses #8 and #9)

1.5) Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for rivers emptying into these waters shall be as high as is practicable. (See Wis. Stats. § 281.11. See also managed use #8)

1.6) Discharges from publicly owned treatment works shall comply with secondary treatment and best practicable waste treatment technology requirements. (See 33 U.S.C. § 1251 (Clean Water Act), and Wis. Stats. § 283.13(4). See also managed use # 17)

1.7) Any wastewater discharger may be required to remove excess amounts of phosphorus. Effluent limitations for total phosphorus based on surface water quality may be established where such limitations will result in an improvement in water quality, or preserve the quality of surface waters where long-term discharges may result in impairment of water quality. (See Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.06. See also managed use # 8)

1.8) Waste treatment and disposal activities may be disapproved if they are not in conformance with approved areawide water quality management plans. Sewer extensions shall be allowed only where they are consistent with and enhance the policy of the state to restore and maintain the chemical, physical and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values and enhance the domestic, municipal, recreational, industrial, agricultural and other uses of water. (See Wis. Stats. §§ 281.17, 281.41 and 283.83, and Wis. Admin. Code ch. NR 121 and NR 110.05. See also managed use #17)

1.9) The discharge of toxic pollutants in toxic amounts shall be prohibited. (See Wis. Stats. §§ 283.01(17) and 283.001(1)(c). See also managed use #8)

1.10) Discharge of mercury compounds and metallic mercury to the waters of the state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more

than one-half pound in any one day. (See Wis. Stats. § 281.17(7), and Wis. Admin. Code NR 100.02. See also managed use #8)

1.11) No person may sell, distribute, use or dispose of any pesticide without obtaining any required licenses and following requirements of the Wisconsin Statutes, the Wisconsin Administrative Code, and local regulations. (See Wis. Stats. §§ 94.67-.70 and 29.601(4). See also managed use # 30)

1.12) Minimum lot sizes in shoreland areas shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water. Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet. Lots not served by public sewer shall have a minimum average width of 100 ft. and a minimum area of 20,000 sq. ft.(See Wis. Stats. §§ 281.31 and 59.692 and ch. 236, and Wis. Admin. Code ch. NR 115. See also managed uses # 18 and 25)

1.13) Withdrawals of water that could result in significant losses of water, through interbasin diversion or consumptive use, from the Great Lakes basin shall be regulated so as to protect public rights in navigable waters, public health, safety, and welfare, coastal ecosystems, coastal water quality, and in-basin water needs. All withdrawals of waters of the state averaging over 100,000 gallons per day shall be registered with the state so that the state may monitor water demand and availability in the interest of better water supply management. (See Wis. Stats. § 281.35(3)-(5) and Wis. Admin. Code NR 142. See also managed use #13)

1.14) No person may conduct an activity for which the Wisconsin department of natural resources denies a required water quality certification. No person may violate a condition imposed by the department in a water quality certification. (See Wis. Stats. § 281.17(10))

1.15) No new air contaminant stationary source shall be permitted to be constructed, installed or established which directly or indirectly emits air contaminants that make the air injurious to health, harmful for commercial or recreational use or deleterious to fish, bird, animal or plant life without complying with federal and state air quality standards. (See Wis. Stats. §§ 285.60, 281.31, and Wis. Admin. Code ch. NR 405 and 406.03)

1.16) The Wisconsin department of natural resources, in the interest of public rights in navigable waters or to promote safety and protect life, health, and property may regulate and control the level and flow of water in all navigable waters and may erect or may order and require bench marks to be erected, upon which shall be designated the maximum level of water that may be impounded and the lowest level of water that may be maintained by any dam heretofore or hereafter constructed and maintained and which will affect the level and flow of navigable waters; and may by order fix a level for any body of navigable water below which the same shall not be lowered except as provided in the Wisconsin Statutes. The construction, operation, maintenance and equipment, or any or all thereof, of dams in navigable waters shall be subject to the supervision of the department and to the orders and regulations of the department. (See Wis. Stats. §. 31.02 and Wis. Admin. Code ch. NR 333)

1.17) The height to which water may be raised by any milldam and the length or period of time for which it may be kept up each year, may be restricted and regulated by the orders of the Wisconsin department of natural resources. No such dam shall be erected to the injury of any mill lawfully existing. (See Wis. Stats. §§ 31.33(4) and 31.32)

1.18) New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility, minimize leakage of the facility in order to comply with groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage to the equivalent volume of a 25-year, 24-hour storm, whichever is greater. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface water. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and DATCP 50)

1.19) Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50)

1. 20) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code chs. NR 151, Sub. II, and ATCP 50)

1.21) All livestock producers shall have no overflow of manure storage facilities; shall have no unconfined manure pile in a water quality management area; shall have no direct runoff from a feedlot or stored manure into the waters of the state. A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover. (See Wis. Stats. §§ 281.16 and 281.65, and Wis. Admin. Code ch. NR 151, Sub. II, and ATCP 50)

1.22) For a construction site that has 5 or more acres of land disturbing construction activity, a written plan shall be developed and implemented, incorporating best management practices, to control 80% of the sediment load. A written storm water management plan shall be developed and implemented for each post-construction site. (See Wis. Stats. § 281.65 and Wis. Admin. Code ch. NR 151, Sub. III)

1.23) Owners or operators of municipal separate storm sewer systems shall obtain coverage from a Wisconsin pollutant discharge elimination system municipal storm water permit where the owner or operator serves an incorporated area with a population of 100,000 or more, where the owner or operator has been notified in writing by the Wisconsin department of natural resources prior to August 1, 2004, or where the owner or operator of a municipal storm sewer system is within an urbanized area. (See Wis. Stats § 283.33, ch. 281 and Wis. Admin. Code ch. NR 216)

1.24) All concentrated animal feeding operations are required to be covered by a Wisconsin pollutant discharge elimination system permit. (See Wis. Stats. chs. 281 and 283 and Wis. Admin. Code ch. NR 243)

2. Coastal natural areas, wildlife habitat and fisheries.

2.1) State natural areas are designated for the purposes of scientific research, the teaching of conservation and natural history, and preservation of native plant and animal communities or individual members of these communities and archeological sites. The Wisconsin department of natural resources shall not permit any use of a designated state natural area which is inconsistent with or injurious to its natural values. (Wis. Stats. § 23.26-.28. See also SCA #1 and 5)

2.2) The Wisconsin department of natural resources shall manage state forests to benefit the present and future generations of residents of this state, recognizing that the state forests contribute to local and statewide economies and to a healthy natural environment. The department shall assure the practice of sustainable forestry and use it to assure that state forests can provide a full range of benefits for present and future generations. The department shall also assure that the management of state forests is consistent with the ecological capability of the state forest land and with the long-term maintenance of sustainable forest communities and ecosystems. (See Wis. Stats. § 28.04(2)(a). See also SCA #1 and 5)

2.3) No person may hunt or trap on land located in state parks or state fish hatcheries unless the department of natural resources has authorized by rule the hunting of that type of game in the state park or portion of the state park, and the person holds the approval required for hunting that type of game. (See Wis. Stats. § 29.089 and Wis. Admin. Code NR 10.275. See also SCA #1)

2.4) The taking, possessing, sale, processing and distribution of fish, wildlife and plant life designated by the state and/or the U.S. as endangered, native and foreign species is prohibited. (See Wis. Stats. § 29.604 and Wis. Admin. Code NR 27. See also managed use #8)

2.5) All counties shall adopt shoreland ordinances for all unincorporated lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet of a lake, pond or flowage and 300 feet of a river or stream or to the landward side of the floodplain, whichever distance is greater. Each County shall, within 6 months after receipt of final Wisconsin wetland inventory maps of the county from the Wisconsin department of natural resources, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district. Any use not permitted by rule is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance.

(a) Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

(b) Building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. Unless an existing development pattern exists, a setback of 75 feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boathouses.

(c) The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area. In the strip of land 35 feet wide in land from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.

(d) Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with state regulations where applicable, and only if done in a manner to designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat. (See Wis. Stats. §§ 59.692 and 281.31 and Wis. Admin. Code NR 115. See also managed uses #26 and 27)

2.6) All cities and villages shall adopt and administer shoreland-wetland zoning ordinances for wetlands or portions of wetlands 5 acres or greater in size located a) within 1,000 feet of a lake, pond or flowage and b) 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater. Any use not permitted by rule is prohibited unless the wetland, or portion thereof, is rezoned by amendment of the city or village. (See Wis. Stats. §§ 61.351 and 62.231, and Wis. Admin. Code NR 117. See also managed use #27)

2.7) The Wisconsin department of natural resources shall preserve, protect, restore and manage the state's wetland communities to be sustainable, diverse, and interspersed with healthy aquatic and terrestrial communities. Department actions must be consistent with the goal of maintaining, protecting and improving water quality. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values. (See Wis. Stats. §§ 281.12(1) and 281.11, and Wis. Admin. Code NR 1.95, NR 299, NR 103 and NR 353. See also managed use #1, 2, 3, 4, 5,6, 7, 8, 9, 17, 18, 19, 21, 22)

2.8) The Wisconsin department of natural resources may order and require any dam heretofore or hereafter constructed to be equipped and operated, in whole or in part, as follows:

(a) With slides and chutes for the passage of logs and timber products.

(b) With a lock, boat hoist, marine railway or other device of a size and construction sufficient to accommodate navigation.

(c) With good and sufficient fishways or fish ladders, or in lieu thereof, the owner may be permitted to enter into an agreement with the department to pay for or supply to the State of Wisconsin annually such quantities of game fish for stocking purposes as may be agreed upon by the owner and the department.

(d) With spillways or flood gates capable of permitting the passage through or over the same of freshets and floods during all seasons of the year.

(e) With booms, piers or other protection works ample to safeguard gates from trash or other floating material. (See Wis. Stats. § 31.02(4))

2.9) It is declared to be the policy of the state to prohibit forever the building or maintaining of any dam across the Brule river or any of its tributaries in Douglas County, except that a dam with an adequate fishway may be constructed across said Brule river at each of 3 sites including the Clevedon site, the Old Mill site, or the upper Rock Dam site. (See Wis. Stats. § 31.30)

2.10) Unless the Wisconsin department of natural resources has issued a permit or the legislature has granted authorization, no person may change the course of or straighten a navigable stream (See Wis. Stats. § 30.195)

2.11) In order to afford the people of this state an opportunity to enjoy natural streams it is in the interest of this state to preserve some rivers in a free-flowing condition and to protect them from development. (See Wis. Stats. §. 30.26)

2.12) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the Wisconsin department of natural resources or the discharge is exempt. No person may violate any condition contained in a wetland general permit or individual permit issued by the department. The department may not issue a wetland general or individual permit unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards. (See Wis. Stats. § 281.36(3b))

3. Coastal erosion and flood hazard areas.

3.1) Counties, cities and villages shall adopt reasonable and effective floodplain zoning ordinances for those parts of their jurisdiction subject to serious flood damage. These ordinances shall provide that construction be strictly regulated in floodways. Construction in floodplains and floodfringe areas will also be regulated. In addition, no development shall be allowed in floodplains along Lake Superior or Lake Michigan which will be adversely affected by wave run-up or which is associated with high flood damage potential. (See Wis. Stats. § 87.30, and Wis. Admin. Code ch. NR 116. See also managed use #15)

3.2) Within unincorporated areas, a setback of 75 ft. from the ordinary high water mark of an adjacent body of water shall be required, unless an existing development pattern exists. A county may enact a more restrictive ordinance. (See Wis. Stats. §§ 59.692 and 281.31, and Wis. Admin. Code NR 115. See also managed use #15, 26, and 27)

3.3) All new subdivision plats, buildings, structures, roads, sanitary or other facilities which are reviewed by state agencies and which are in existing and potential flood hazard areas shall be prevented from exposing citizens to unnecessary hazards or cause future public expenditures for flood disaster relief. (See 1973 Executive Order No. 67. See also managed use #15)

3.4) For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for a required individual permit in order to place the structure for the owner's use or to deposit the material. The department shall issue an individual permit to a riparian owner for a structure or deposit application if the department finds that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m). See also managed use #7 and 15.)

3.5) The Wisconsin department of natural resources may decide to require that a person engaged in an activity that is otherwise exempt from requiring a structures permit apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that the conditions specific to the site require restrictions on the activity in order to prevent any of the following: significant adverse impacts to the public rights and interests; environmental pollution; material injury to the riparian rights of any riparian owner. (See Wis. Stats. § 30.12(2m).

3.6) If the Wisconsin department of natural resources finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it shall determine what alterations additions or repairs are necessary and shall order the owner or person having control of the dam or reservoir to cause those alterations, additions or repairs to be made within a time specified in the order. If the department finds pursuant to an investigation that a dam or reservoir is not sufficiently strong or is unsafe and that the dam or reservoir is dangerous to life or property, it may cause to be drawn off, in whole or in part, the water in the reservoir of impounded by the dam if it determines that this action is necessary to prevent impending danger to persons or property. (See Wis. Stats. § 31.19 (5))

4. Community development.

4.1) All coastal counties shall adopt and enforce ordinances for all unincorporated coastal shorelands. These regulations shall: maintain safe and healthful conditions; prevent and control water pollution; protect fish and aquatic life, particularly spawning grounds; control land uses, placement of structures, and building sites; reserve and protect shore cover; and protect natural beauty. (See Wis. Stats. §§ 59.692 281.31(1), and 281.35, and Wis. Admin. Code ch. NR 115. See also managed use #26.)

4.2) All subdivisions creating five or more lots of one and one-half acres or less within a five-year period that are abutting a lake or navigable stream shall provide public access at least 60 feet wide providing access to the water's edge so that there will be public access, which is connected to existing public roads, at not more than one-half intervals as measured along the lake or navigable stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department of administration, and excluding shore areas where public park or open-space streets or roads on either side of the navigable stream are provided (See Wis. Stats. ch. 236, and Wis. Admin. Code NR 1.93(3). See also managed use #25)

4.3) All subdivisions abutting navigable lakes or streams shall provide public access of at least 60 feet in width at not more than one-half mile intervals except where greater intervals and wider access are agreed upon by the Wisconsin department of natural resources and the department of administration and excluding areas where public parks or open-space streets or roads on either side of a stream are provided. (See Wis. Stats. §§ 66.1006 and 236.16(3). See also managed use #25)

4.4) Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway. Waterway uses shall be equally available to all waterway users and include enjoyment of natural scenic beauty and serenity. These public rights and uses may be provided by any combination of publicly and privately owned access facilities which are available to the general public free or for a reasonable fee. The Wisconsin department of natural resources shall exercise its management and regulatory responsibilities to achieve this goal and to assure that levels and types of use of navigable waters are consistent with protection of public health, safety and welfare, including protection of natural resources. (See Wis. Stats. §§ 281.31 and 281.12 and Wis. Admin. Code NR 1.90, 1.91 and 1.92.)

4.5) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line. Exemptions from permit requirements for the placement of a structure or the deposit of material only apply where the structure or material is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of any other riparian owners. (See Wis. Stats. §§ 30.12 and 30.11. See also SCA #2, and managed use #1, 2, 6, and 7)

4.6) For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for the individual permit that is required in order to place a structure for the owners' use or to deposit the material. The department shall issue an individual permit if the department finds that the structure or deposit will not materially obstruct navigation, the structure or deposit will not be detrimental to the public interest and the structure or deposit will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m))

4.7) Unless a contract has been entered into with the Wisconsin department of natural resources or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters. Unless an individual or a general permit has been issued by the department or authorization has been granted by the legislature, no person may remove any materials from the bed of any lake or any navigable stream. (See Wis. Stats. § 30.20(1))

4.8) The board of commissioners of public lands may lease to riparian owners rights to the beds of lakes and rights to fill in beds of lakes or navigable streams, held by the state in trust for the public, when the purpose of the lease is for the improvement of navigation or for the improvement or construction of harbor facilities The board of commissioners of public lands may lease such rights to municipalities in locations where the municipality is the riparian owner, when the purpose of the lease is for the improvement or provision of recreational facilities related to navigation for public use. No leases may be executed without a prior finding of the Wisconsin department of natural resources that any proposed physical change in the area contemplated as the result of the execution of any term lease is consistent with the public interest in the navigable waters involved. (See Wis. Stats. § 24.39)

4.9) A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized by permit or unless other authorization for the wharf or pier is expressly provided. A wharf or pier which interferes with rights of other riparian owners constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit or unless other authorization for the pier or wharf is expressly provided. A wharf or pier which extends into navigable waters beyond an established pierhead line constitutes an unlawful obstruction of navigable waters unless a valid permit, license or authorization for the wharf or pier is granted or unless it is a permissible preexisting wharf or pier. (See Wis. Stats. § 30.13(4))

4.10) No owner of riparian land that abuts a navigable water may convey, by easement or similar conveyance, any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material in the navigable water. This does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project. (See Wis. Stats. § 30.133)

4.11) Unless an individual or a general permit has been issued by the Wisconsin department of natural resources, or authorization has been granted by the legislature, no person may:

(a) construct, dredge, or enlarge any artificial water body that connects with a navigable waterway;

(b) construct, dredge, or enlarge any part of an artificial water body that is located within 500 feet of the ordinary high-water mark of an existing navigable waterway, including a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events, or

(c) grade or remove topsoil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet.

For activities that are not exempt and that are not subject to a general permit, a person may apply to the department for an individual permit. The department shall issue an individual permit if it finds the activity will not be detrimental to the public interest, the activity will not cause environmental pollution, any enlargement connected to a navigable waterway complies will all of the laws relating to platting of land and sanitation, and no material injury will result to the riparian rights of any riparian owners of real property that abuts any water body that is affected by the activity. (See Wis. Stats. §§ 30.19(1g)(4). See also SCA #14 and managed use #3, 4, and 5)

4.12) Any person, firm, corporation or municipality desiring a permit to construct, operate and maintain a dam shall file an application for a permit with the Wisconsin department of natural resources. The department may require the amendment of the application. If it appears that the construction, operation or maintenance of the proposed dam is in the public interest, considering ecological, aesthetic, economic and recreational values, the department shall so find and grant a permit to the applicant provided the department finds that the applicant has complied with for proof of ability to maintain and proof of ownership or enforceable right to purchase the flowage area, when applicable. The enjoyment of natural scenic beauty and environmental quality are declared to be public rights to be considered along with other public rights and the economic need of electric power for the full development of agriculture and industrial activity and other useful purposes in the area to be served. The department shall deny the permit if it finds that the river in its natural state offers greater recreational facilities and scenic values for a larger number of people than can by proper control of the flowage level be obtained from the use of the lake and lake shore and that the remaining sections of the river and other rivers in the area in their natural state provide an insufficient amount of recreational facilities and scenic beauty, and if it further appears that the economic need of electric power is less that the value of the recreational and scenic beauty advantages of the river in its natural state . If the department finds that approval of the permit will cause environmental pollution, the permit shall be denied.(See Wis. Stats. §§ 31.06(1)-(3), 31.05(3), 31.14(2)-(3), and 299.01(4))

4.13) Any person, firm, corporation or municipality desiring a permit to operate and maintain a dam shall file with the Wisconsin department of natural resources a written application. If the department finds that such operation and maintenance does not materially obstruct existing navigation or violate other public rights and will not endanger life, health, or property, a permit is hereby granted to applicant, provided the department also finds that the applicant has complied with statutory requirements of proof of ability to maintain the dam(s). (See Wis. Stats. §§ 31.07, 31.08, 31.06, and 31.14)

4.14) No transfer or assignment of any permit granted to construct or to operate and maintain a dam shall be of any effect whatsoever unless it is in writing and a certified copy thereof within 10 days after the execution thereof, is filed with the Wisconsin department of natural resources and unless such transfer or assignment is approved in writing by the department; and no such transfer or assignment shall be approved by the department except after an investigation and a finding that the transfer or assignment is not made or intended to be made for a purpose or to create prohibited conditions and that the transferee or assignee has complied with requirements showing proof of the ability to maintain the dam. No permit shall be transferred or assigned to a foreign corporation. (See Wis. Stats. §§ 31.21 (1), 31.06, 31.08, 31.14(2)-(3), and 196.665)

4.15) (a) It is the policy of of the state to preserve the public rights in navigable waters, including those created by dams, and to provide a means of maintaining dams and the developments which have been made adjacent to the flowage of such dams. (See Wis. Stats. § 31.14(1))

(b) A permit shall not be granted for constructing, maintaining and operating, or raising or enlarging a dam:

(1) Unless the applicant furnishes to the Wisconsin department of natural resources proof of ability to operate and maintain the dam in good condition, either by the creation of a special assessment district or by any other means which in the department's judgment will give reasonable assurance that the dam will be maintained for a reasonable period of time not less than 10 years; or

(2) If a majority of the municipalities in which 51% or more of the dam of flowage is or will be located files with the department, prior to the granting of the permit, their objections to the granting of such permit in the form of resolutions duly adopted by the governing bodies of such municipalities.

The above permit requirements do not apply if the applicant complies with each of the following requirements:

(1) Furnishes proof satisfactory to the department that the applicant owns or has an enforceable option to purchase all the land which is or will be flowed by the impoundment, together with the shore line and an immediately adjacent strip of land at least 60 feet in width, but the department may in a particular case permit a narrower strip where the 60-foot minimum is impractical and may require ownership of a wider strip.

(2) Files with the department a writing in such form as the department requires in which the applicant agrees that following the initial filling of the proposed pond the applicant will not convey the dam to another without first obtaining department approval. The department may require from an applicant who does not have the power of eminent domain a bond or other reasonable assurances that the applicant will adhere to such agreement.

(3) Furnishes proof satisfactory to the department that the applicant has dedicated or will dedicate a parcel of land for public access to the impounded waters. (See Wis. Stats. §§ 31.14(1)-(4). 31.06, 31.08, and 31.13)

(c) The Wisconsin department of natural resources may by rule require all or special classes of persons operating a dam for profit to create a fund or reserve to be used for major repairs, reconstruction or removal of the dam when necessary. This does not apply to a person who has the power of eminent domain. (See Wis. Stats. § 31.14(5))

4.16) (a) The grantee of any permit and the owner of any dam constructed before permits were required by law shall maintain and operate all such dams slides, chutes, piers, booms, guide booms, weirs, tunnels, races, flumes, sluices, pits, fishways, locks, boat hoists, marine railways and all other equipment required by the Wisconsin department of natural resources for the protection of public rights in such waters, and for the preservation of life, health and property, in good repair and condition, and shall not willfully, or otherwise, injure, remove or destroy the same, or any part thereof, unless the department shall have approved such removal or destruction in writing. In the event of emergency the department shall have power, pending investigation and hearing, to order the repair of any dam without notice and hearing. (See Wis. Stat. § 31.18(1))

(b) The owner of any permitted dam or any dam constructed before permits were required shall open such slide or chute for the passage of any craft or material lawfully navigating the stream, whenever requested to do so by the person in charge of such navigation, without charge or toll therefor. (See Wis. Stat. § 31.18(2))

(c) Except when emergency shall require the same for the protection of life, health or property, no substantial alteration or addition shall be made to any dam without obtaining an order from the Wisconsin department of natural resources, which order may be issued only after an investigation and upon a finding that the proposed alterations or additions will not impair the sufficiency of such dam or any existing public rights in such waters. (See Wis. Stats. § 31.18(3))

(d) The Wisconsin department of natural resources shall, in the interest of public rights in navigable waters, or to promote safety and protect life, health and property, require the grantee of any permit, prior to flowing any lands by the construction of a dam thereunder, to remove from such lands all or any portion of the standing and fallen timber and all or any portion of the brush. Provided that in cases where the application for a permit proposes construction of a dam for water reservoir or water storage purposes, and not for operating a hydroelectric generating plant, the nature, extent, and time for such removal shall be determined prior to the granting of a permit, except that subsequent to the granting of a permit, the department may make such modification in the removal requirements as may be in the public interest and which will not materially alter the economics of the project; and in making such original determination or any modification thereof the economic need for the project shall be considered. (See Wis. Stats. §31.18(4))

4.17) No owner of any dam may abandon or remove or alter the dam without first obtaining a permit from the Wisconsin department of natural resources. No person may transfer ownership of a dam or the ownership of the specific piece of land on which a dam is physically located without first obtaining a permit from the department. As a prerequisite to the granting of a permit, the department may require the applicant to comply with conditions as it deems reasonably necessary in the particular case to preserve public rights in navigable waters, to promote safety, and to protect life, health and property. (See Wis. Stats. §§ 31.185(1) and (5))

4.18) No private bridge shall be maintained unless its construction shall first be approved by the Wisconsin department of natural resources. Every such bridge used by the public shall at all times be maintained in a safe condition by the owners of the land abutting the approaches of the bridge. (See Wis. Stats. § 31.23(3))

4.19) Every dam, bridge or other obstruction constructed or maintained in or over any navigable waters of the State of Wisconsin in violation of the Wisconsin Statutes, and every dam not furnished with a slide, chute, or other equipment prescribed by the Wisconsin department of natural resources, is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof . (See Wis. Stats. § 31.25)

4.20) Each person, firm or corporation maintaining a dam on any navigable stream shall pass at all times at least 25% of the natural low flow of water of such stream, except as otherwise prescribed by law. This section , however, shall not apply to a plant or dam where the water is discharged directly into a lake, mill pond, storage pond, or cranberry marsh, nor shall it apply to cases where in the opinion of the Wisconsin department of natural resources, such minimum discharge is not necessary for the protection of fish life. (See Wis. Stats. § 31.34)

4.21) Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may construct or maintain a bridge or construct, place, or maintain a culvert in, on, or over navigable waters. Any person who is issued a permit respecting a bridge that may be used by the public shall construct and maintain the bridge in a safe condition at all times. (See Wis. Stats. § 30.123(2) – (5))

5. Economic development.

5.1) No person may divert water from a stream in the state of Wisconsin without an individual permit if the diversion is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream or if the diversion is for the purpose of agriculture or irrigation. No person, except a person required to obtain an approval permit of a sewage system or extension plan, may divert water from any lake or stream in this state without an individual permit if the diversion will result in a water loss averaging 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss. (See Wis. Stats. §. 30.18)

5.2) Unless specified otherwise by the Wisconsin Statutes, no person may commence the construction of a facility unless the person has applied for and received a certificate of public convenience and necessity. (See Wis. Stats. §§ 196.491(3)(a)1 – 196.491(3b) and Wis. Admin. Code PSC 112)

5.3) The Wisconsin public service commission shall approve an application for a certificate of public convenience and necessity only if the commission determines, among other findings, all of the following:

(a) The proposed facility satisfies the reasonable needs of the public for an adequate supply of electric energy. This does not apply to a wholesale merchant plant.

(b) The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors, except that the commission may not consider alternative sources of supply or engineering or economic factors if the application is for a wholesale merchant plant. In its consideration of the environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact of air pollution if the proposed facility will meet statutory requirements for air pollution.

(c) For a high-voltage transmission line that is designed for operation at a nominal voltage of 345 kilovolts or more, the high voltage transmission line provides usage, service, or increased regional reliability benefits to the wholesale and retail customers or members in this state and the benefits of the high-voltage transmission line are reasonable in relation to the cost of the high-voltage transmission line.

(d) The proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.

(e) If it is a public utility, the commission may refuse to certify a project if it appears that the completion of the project will substantially impair the efficiency of the service of the public utility, provide facilities unreasonably in excess of the probable future requirements, or when placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission , in the fixation of rates, of such consequent increase of cost of service.

(f) The proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved

(g) The proposed facility will not have a material adverse impact on competition in the relevant wholesale electric service market.

(h) For a large electric generating facility, brownfields are used to the extent practicable.

(i) The department of natural resources shall issue, or authorize proceedings under, necessary permits if it finds that the applicant has shown that the proposal does not unduly affect:

(1) public rights and interests in navigable waterways;
(2) the effective flood flow capacity of a stream;
(3) the rights of riparian owners; or
(4) water quality. (See Wis. Stats. §§ 196.491(3) and 30.025, and Wis.Admin. Code ch. PSC 111-112)

5.4) If installation of utilization of a facility for which a certificate of convenience and necessity has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed. (See Wis. Stat § 196.491(3)(i)-(j). See also SCA #4 and managed use #16)

5.5) Except where the stream to be improved forms a boundary line between this and another state, no water power permit shall be granted or transferred until the applicant has filed with both the Wisconsin department of natural resources and the public service commission, in addition to all other things required

by law to be filed, an agreement setting forth that, in the event any electric energy generated under said permit shall be transmitted or conveyed beyond the confines of this state to be there sold, the applicant will furnish to any resident of this of any corporation domiciled therein electric energy at reasonable rates to be determined by the commission, provided that the commission after public hearing shall find that public convenience and necessity require such service. (See Wis. Stats. § 31.095 (1))

5.6) Every corporation constructing, owning or operating a railroad shall restore every watercourse, street, highway, road or canal across, along or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter maintain the same in such condition against an effects in any manner produced by such railroad. (See Wis. Stats. § 190.08)

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~~1.3.1) Substances with the potential to cause groundwater contamination shall be regulated to ensure compliance with groundwater quality protection standards. (See Wis. Stats. ch. 160, and Wis. Admin. Code NR 140. See also managed use #33)~~

CHAPTER 160

GROUNDWATER PROTECTION STANDARDS

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160.001 Legislative intent. The legislature recognizes that prior to May 11, 1984, most groundwater regulatory programs were not based on numerical standards. The legislature intends, by the creation of this chapter, to minimize the concentration of polluting substances in groundwater through the use of numerical standards in all groundwater regulatory programs. The numerical standards, upon adoption, will become criteria for the protection of public health and welfare, to be achieved in groundwater regulatory programs concerning the substances for which standards are adopted. To this end, the legislature intends that:

(1) This chapter will establish an administrative process which will produce numerical standards, comprised of enforcement standards and preventive action limits, for substances in groundwater. As more specifically provided in this chapter, administrative procedures also provide for minimizing the concentration of substances in groundwater.

(2) The enforcement standards and preventive action limits will be adopted under the authority of this chapter, independent of any regulatory programs concerning the substances for which enforcement standards and preventive action limits are adopted.

(3) This chapter supplements the regulatory authority elsewhere in the statutes, whether the regulatory programs exist under current statutes on May 11, 1984, or are created after that date. Regulatory agencies will continue to exercise the powers and duties in those regulatory programs, consistent with the enforcement standards and preventive action limits for substances in groundwater under this chapter. This chapter provides guidelines and procedures for the exercise of regulatory authority which is established elsewhere in the statutes, and does not create independent regulatory authority.

(4) In order to comply with this chapter, a regulatory agency is not required to adopt a particular type of regulation; regulatory agencies are free to establish any type of regulation which assures that regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application. A regulatory agency may adopt regulations which establish specific design and management criteria for regulated facilities and activities, if the regulations will ensure that the regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application.

(5) The enforcement standards and preventive action limits adopted under this chapter provide adequate safeguards for public health and welfare. However, this chapter does not prevent regulatory agencies from adopting regulations under regulatory authority elsewhere in the statutes based on the best currently available technology for regulated activities and practices which ensure a greater degree of groundwater protection.

(6) Where necessary to comply with federal statutes or regulations, the department of natural resources may adopt rules in regulatory programs administered by it which are more stringent than the enforcement standards and preventive action limits adopted under this chapter.

(7) A regulatory agency may take any actions within the context of regulatory programs established in statutes outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or nonconsumptive uses, whether or not an enforcement standard and preventive action limit for a substance has been adopted under this chapter. Nothing in this chapter requires the department of health services or the department of natural resources to establish an enforcement standard for a substance if a federal number or state drinking water standard has not been adopted for the substance and if there is not sufficient scientific information to establish the standard.

(8) Preventive action limits shall serve as a means to inform regulatory agencies of potential groundwater contamination problems, to establish the level of groundwater contamination at which regulatory agencies are required to commence efforts to control the contamination and to provide a basis for design and management practice criteria in administrative rules. A preventive action limit is not intended to be an absolute standard at which remedial action is always required.

History: 1983 a. 410; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

Cross-reference: See also ch. NR 140, Wis. adm. code.

The promulgation of rules that prescribe the use of risk-based methodologies to respond to petroleum contamination in soil and groundwater would violate ch. 160. OAG 3-99.

160.01 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Department," when used without qualification, means the department of natural resources.

(2) "Enforcement standard" means a numerical value expressing the concentration of a substance in groundwater which is adopted under ss. 160.07 and 160.09.

(3) "Federal number" means a numerical expression of the concentration of a substance in water, established as:

(a) A drinking water standard or maximum contaminant level, by the federal environmental protection agency;

(b) A suggested no-adverse-response level, by the federal environmental protection agency; or

(c) For oncogenic substances, a concentration based on a risk level determination by the federal environmental protection agency or a concentration based on a probability of risk model determined by the national academy of sciences.

(4) "Groundwater" means any of the waters of the state, as defined in s. 281.01 (18), occurring in a saturated subsurface geological formation of rock or soil.

(5) "Point of standards application" means the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded.

(6) "Preventive action limit" means a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15.

(6m) "Property boundary" means the boundary of the total contiguous parcel of land owned by a common owner, regardless of whether public or private roads run through the parcel.

(7) "Regulatory agency" means the department of agriculture, trade and consumer protection, the department of safety and professional services, the department of transportation, the department of natural resources and other state agencies which regulate activities, facilities or practices which are related to substances which have been detected in or have a reasonable probability of entering the groundwater resources of the state.

(8) "Substance" means any solid, liquid, semisolid, dissolved solid or gaseous material, naturally occurring or man-made chemical, parameter for measurement of water quality or biological organism which, in its original form, or as a metabolite or a degradation or waste product, may decrease the quality of groundwater.

History: 1983 a. 410; 1995 a. 27 ss. 4441, 9116 (5); 1995 a. 227; 2011 a. 32; 2015 a. 196.

160.03 Duties of department. The department shall exercise both the responsibilities assigned specifically to it under this chapter as well as those assigned generally to the department as a regulatory agency.

History: 1983 a. 410.

Cross-reference: See also ch. NR 140, Wis. adm. code.

160.05 Identification of groundwater contamination; categories. (1) IDENTIFICATION. Each regulatory agency shall submit to the department a list of those substances which are related to facilities, activities and practices within its authority to regulate and which are detected in or have a reasonable probability of entering the groundwater resources of the state.

(2) PETITION. (a) Any person may petition a regulatory agency to add a substance to or delete a substance from the list submitted to the department under sub. (1). The petition shall clearly and concisely state all of the following:

1. The name of the substance which is proposed to be added or removed from the list.

2. The regulatory authority of the regulatory agency over the facility, activity or practice which is the source of the substance.

3. The reasons for believing the substance exists in or has a reasonable probability of entering the groundwater or the reasons for believing the substance should be removed from the list.

(b) Within a reasonable period of time after the receipt of a petition a regulatory agency shall either deny the petition in writing or submit the name of the substance to the department under sub. (1). If the regulatory agency denies the petition, it shall give notice of the denial promptly to the person who filed the petition, including a statement of its reasons for the denial.

(3) ESTABLISH CATEGORIES. Within 60 days following receipt of a name of a substance under sub. (1), the department shall place the substance into one of the following categories:

(a) Category 1, if the substance is detected in groundwater in concentrations in excess of a federal number for that substance.

(b) Category 2, if the substance is detected in groundwater and is of public health or welfare concern but:

1. Is not detected in concentrations in excess of a federal number; or

2. For which there is no federal number.

(c) Category 3, if the substance has a reasonable probability of being detected in groundwater and is of public health or welfare concern.

(4) RANKING WITHIN CATEGORIES. The department shall rank each substance within its category. The department shall give highest rankings to those substances which pose the greatest risks to the health or welfare of persons in the state, taking into consideration, among other things, the following characteristics:

(a) Carcinogenicity.

(b) Teratogenicity.

(c) Mutagenicity.

(d) Interactive effects.

(5) REVISION OF SUBSTANCE LISTS. The department shall revise, as necessary, the ranking of substances within categories to include additional substances as they are reported, to reflect a change in the status of a substance which requires that it be placed in a different category or to remove from the list substances which are not shown to involve public health or welfare concerns or which do not have a reasonable probability of entering the groundwater.

(6) PUBLIC HEALTH CONCERNS. (a) The department shall designate which of the substances in each category are of public health concern and which are of public welfare concern.

(b) In determining whether a substance is of public health concern, the department shall take into account the degree to which the substance may:

1. Cause or contribute to an increase in mortality;

2. Cause or contribute to an increase in illness or incapacity, whether chronic or acute;

3. Pose a substantial present or potential hazard to human health because of its physical, chemical or infectious characteristics; or

4. Cause or contribute to other adverse human health effects or changes of a chronic or subchronic nature even if not associated with illness or incapacity.

(c) In determining whether a substance is of public health concern, the department may consider other effects not specified under par. (b) if those effects are reasonably related to public health.

(d) In determining whether a substance is of public welfare concern, the department shall take into account whether the substance may:

1. Influence the aesthetic suitability of water for human use;

2. Influence the suitability of water for uses other than human drinking water; or

3. Have a substantial adverse effect on plant life or animal life.

(e) In determining whether a substance is of public welfare concern, the department may consider additional characteristics

not specified under par. (d) if those characteristics are reasonably related to public welfare.

History: 1983 a. 410.

160.07 Establishment of enforcement standards; substances of public health concern. (1) The department of health services and the department shall enter into a memorandum of understanding setting forth the procedures and responsibilities of each agency in establishing enforcement standards under this section. The memorandum shall include those standards to be used by the department in making the designation required under s. 160.05 (6).

(2) Within 10 days after placing the name of a new substance within a category or changing the category of a substance under s. 160.05, the department shall submit the current list of categories and rankings of substances to the department of health services.

(3) The department of health services shall recommend to the department an enforcement standard for each substance submitted to it under sub. (2) which is designated as of public health concern, in the order of rankings within each category under s. 160.05 (4).

(4) The department of health services shall develop recommendations for enforcement standards for substances of public health concern as follows:

(a) If a single federal number exists for a substance, the federal number shall be the enforcement standard.

(b) If more than one federal number exists for a substance, the most recently established federal number representing the most current data shall be the enforcement standard.

(c) If no federal number exists for a substance, but there is a state drinking water standard, the state drinking water standard shall be the enforcement standard.

(d) If neither a federal number nor a state drinking water standard exists for a substance, the department of health services shall develop a recommended enforcement standard using the methodology under s. 160.13.

(e) Notwithstanding pars. (a) and (b), the department of health services may recommend an enforcement standard different than the federal number if there is significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which the department of health services concludes, utilizing the methodology under s. 160.13 and with a reasonable scientific certainty, that such a standard is justified. The department of health services may recommend a change in an enforcement standard previously adopted by utilization of a federal number. In evaluating the evidence for establishing an enforcement standard different than a federal number, the department of health services shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(5) Within 9 months after transmitting the name of a substance to the department of health services under sub. (2), the department of natural resources shall propose rules establishing the recommendation of the department of health services as the enforcement standard for that substance and publish the notice required under s. 227.16 (2) (e), 227.17 or 227.24 (3).

(6) If a federal number is established or changed for a substance after an enforcement standard is recommended by the department of health services and if any person or regulatory agency submits a request, the department of natural resources shall determine whether the enforcement standard needs revision based on recommendations under sub. (4).

History: 1983 a. 410; 1985 a. 182 s. 57; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

160.09 Establishment of enforcement standards; substances of public welfare concern. (1) Notwithstanding the authority of the department under ss. 280.11, 281.15 and 281.17 (8) to establish standards for pure drinking water, the department shall establish enforcement standards for substances of public welfare concern as follows:

(a) If a single federal number exists for a substance, the federal number shall be the enforcement standard.

(b) If more than one federal number exists for a substance, the most recently established federal number representing the most current data shall be the enforcement standard.

(c) If no federal number exists for a substance, but there is a state drinking water standard, the state drinking water standard shall be the enforcement standard.

(d) If neither a federal number nor a state drinking water standard exists for a substance, the department shall establish an enforcement standard using all relevant and scientifically valid information available in technical literature concerning the substance and, if necessary, by comparison to similar compounds or classes of compounds.

(e) Notwithstanding pars. (a) and (b), the department may establish an enforcement standard different than the federal number if there is significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which the department concludes, with a reasonable scientific certainty, that such a standard is justified. The department may change an enforcement standard previously adopted by utilization of a federal number. In evaluating the evidence for establishing an enforcement standard different than a federal number, the department shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(2) The department shall establish an enforcement standard for each substance of public welfare concern in the order of rankings within each category under s. 160.05 (4).

(3) The department shall establish enforcement standards by rule. The department shall prepare proposed rules establishing enforcement standards and shall provide the notice under s. 227.16 (2) (e), 227.17 or 227.24 (3) within 9 months after the name of a substance is received under s. 160.05.

(4) If a federal number is changed or newly established for a given substance after an enforcement standard is established by the department and if a request is submitted to the department by any person or regulatory agency, the department shall determine whether the enforcement standard needs to be revised based on sub. (1).

History: 1983 a. 410; 1985 a. 135; 1985 a. 182 s. 57; 1995 a. 227.

160.11 Public information. In promulgating any enforcement standards as rules under ss. 160.07 and 160.09, the department, with the assistance of the department of health services, shall prepare a document describing the information and methodology used and the conclusions reached in establishing each proposed enforcement standard. The department shall make the document available when the notice is provided under s. 227.16 (2) (e), 227.17 or 227.24 (3). Any person may submit written questions on the document to the department at any time after the notice is provided under s. 227.16 (2) (e), 227.17 or 227.24 (3)

and before any public hearing on the proposed rule is held. The department, with the assistance of the department of health services, shall respond at the public hearing to all questions previously submitted in writing.

History: 1983 a. 410; 1985 a. 182 s. 57; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

160.13 Methodology to establish enforcement standard. (1) DEFINITIONS. In this section:

(a) "Acceptable daily intake" means the dose of a substance which, if ingested daily over an entire human lifetime, appears to be without appreciable risk on the basis of all known facts at the time it is established. Acceptable daily intake is expressed in units of milligrams of the substance per kilogram of body weight.

(b) "Department" means the department of health services.

(c) "No-observable-effect level" means that level of intake of a substance which, when administered to a group of humans or experimental animals, does not produce any of the effects observed or measured at any higher level of intake and produces no significant difference between the test group and an unexposed control group of humans or animals maintained under identical conditions.

(2) METHODOLOGY. (a) The department shall establish a recommended enforcement standard for a substance by first determining the acceptable daily intake for the substance under par. (b) and then basing the recommended enforcement standard on that acceptable daily intake under par. (c). In complying with pars. (b) and (c), the department shall utilize, where available, relevant and scientifically valid information from the office of pesticide programs and the office of drinking water in the federal environmental protection agency.

(b) The department shall determine the acceptable daily intake for the substance as follows:

1. If an acceptable daily intake for the substance is established by the office of pesticide programs or office of drinking water in the federal environmental protection agency, that federal value shall be the acceptable daily intake.

2. Notwithstanding subd. 1., the department may determine an acceptable daily intake value different than the federal value established by the office of pesticide programs or office of drinking water in the federal environmental protection agency, if there is significant technical information which is scientifically valid and which was not considered when the federal value was established, upon which the department concludes, with a reasonable scientific certainty, that such a value is justified. In evaluating the evidence for establishing an acceptable daily intake value different than a federal value, the department shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

3. If no acceptable daily intake for the substance is established by the office of pesticide programs or office of drinking water in the federal environmental protection agency, the department shall determine the acceptable daily intake for the substance by dividing the substance's no-observable-effect level by a suitable uncertainty factor. In establishing a suitable uncertainty factor, the department shall consider all of the following, utilizing, where available, information from the office of pesticide programs and the office of drinking water in the federal environmental protection agency:

a. The quality and quantity of data relevant to establishing an acceptable daily intake.

b. The relative importance to full health of the most sensitive target organs or body systems affected by the substance.

c. The amount of interspecies and intraspecies variations in the effects of the substance.

d. The dose-response curve and the time-concentration relationships for the substance.

e. The nature and degree of severity of injury incurred at the intake level at which the effect of exposure to the substance ceases to be reversible.

f. The potential interactions of the substance within the body with other environmental chemicals or therapeutic drugs.

g. The known potential cumulative effects of repeated exposure to the substance.

h. The known chronic or subchronic effects of exposure to similar or related compounds.

i. The identification of physiologic or pathologic states and functional abnormalities among the potentially exposed population which would constitute a health hazard in the event of exposure to the substance.

j. The possibility of chronic health effects from repeated, acute short-term exposure to the substance.

4. If no acceptable daily intake or equivalent value for an oncogen is established by the federal environmental protection agency or if an acceptable daily intake is established but oncogenic potential at the established acceptable daily intake presents an unacceptable probability of risk, the department shall provide the department of natural resources with an evaluation of the oncogenic potential of the substance. This evaluation of oncogenic potential shall indicate an acceptable daily intake for the substance which, if ingested daily over an entire human lifetime, appears to present an acceptable probability of risk which is presumed to be a risk level equal to a ratio of one to 1,000,000. A risk level equal to a ratio of one to 1,000,000 is the expectation that no more than one excess death will occur in a population of 1,000,000 over a 70-year period. The department shall base the evaluation of oncogenic potential on a review of the most recent and scientifically valid information available.

(c) The department shall base the recommended enforcement standard for the substance on the intake of one liter of water per day by a person weighing 10 kilograms, where that water is the only source of the substance for the person. The department shall establish the recommended enforcement standard so that the acceptable daily intake of the substance is not exceeded for this type of person under these conditions.

History: 1983 a. 410; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

160.15 Establishment of preventive action limits. (1) The department shall establish by rule a preventive action limit for each substance for which an enforcement standard is established, as follows:

(a) For any substance of public welfare concern, the preventive action limit shall be 50 percent of the concentration established as the enforcement standard.

(b) For any substance of public health concern, the preventive action limit shall be 20 percent of the concentration established as the enforcement standard.

(c) Notwithstanding par. (b), for any substance that has carcinogenic, mutagenic or teratogenic properties or interactive effects, the preventive action limit shall be 10 percent of the concentration established as the enforcement standard.

(2) The department may establish a preventive action limit for a substance which is lower than the level specified under sub. (1) if the department concludes, to a reasonable degree of scientific certainty, based on significant technical information which is scientifically valid, that a more stringent level is necessary to protect public health or welfare from the interactive effects of the substance. In evaluating whether the evidence provides a sufficient

basis for a more stringent level, the department shall consider the extent to which the evidence was developed in accordance with generally accepted analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(3) Notwithstanding sub. (1), the department may establish by rule preventive action limits for indicator parameters used in monitoring waste storage, treatment or disposal facilities regulated by the department such as biochemical or chemical oxygen demand, alkalinity, hardness, conductivity and pH, if enforcement standards are not established under s. 160.07 or 160.09 for the indicator parameters. In establishing preventive action limits for indicator parameters, the department shall consider the background water quality and the potential for the indicator parameters to show that preventive action limits under sub. (1) may be exceeded.

History: 1983 a. 410.

160.17 Collection of information. Concurrently with the identification of substances under s. 160.05 (1), the regulatory agency shall conduct a literature search and shall request, where appropriate, the manufacturer of each substance and other knowledgeable sources to provide relevant data, information on the environmental fate of the substance and recommendations on measures which may be implemented to minimize the concentration of the substance in the groundwater.

History: 1983 a. 410.

160.19 Regulatory agency; review of existing regulations; design and management criteria. (1) When an enforcement standard or a preventive action limit is established by rule for a substance, each regulatory agency shall review its rules and commence promulgation of any rules or amendments of its rules necessary to ensure that the activities, practices and facilities regulated by the regulatory agency will comply with this chapter.

(2) (a) Each regulatory agency shall promulgate rules which define design and management practice criteria for facilities, activities and practices affecting groundwater which are designed, to the extent technically and economically feasible, to minimize the level of substances in groundwater and to maintain compliance by these facilities, activities and practices with preventive action limits, unless compliance with the preventive action limits is not technically and economically feasible.

(b) If a regulatory agency proposes a rule under par. (a) which is not designed to maintain compliance with preventive action limits, the proposed rule and the notice required under s. 227.16 (2) (e), 227.17 or 227.24 (3) shall include a statement to that effect, and a summary of the rationale for the proposed rule. If a regulatory agency determines not to amend the substance of an existing rule which contains design or management practice criteria that do not maintain compliance with preventive action limits, it shall nonetheless amend the rule to include a notice that the rule does not maintain preventive action limits. A summary of the rationale for not amending the substance of the rule shall be included in the notice required under s. 227.16 (2) (e), 227.17 or 227.24 (3).

(3) A regulatory agency may not promulgate rules defining design and management practice criteria which permit an enforcement standard to be attained or exceeded at the point of standards application.

(4) Notwithstanding previous regulatory agency action to review and amend existing rules or to promulgate new rules:

(a) If a rule is designed to maintain compliance with a preventive action limit under sub. (2) (a) and if a preventive action limit is attained or exceeded at a point of standards application, the regulatory agency shall review its rules and, if necessary, revise the rules to maintain or achieve the objectives of subs. (2) and (3).

(b) If an enforcement standard is attained or exceeded at a point of standards application, the regulatory agency shall review its rules and, if necessary, revise the rules to ensure that the enforcement standard is not attained or exceeded at a point of standards application at other locations in the future.

(5) In conducting any review under sub. (4), the regulatory agency's analysis shall include an examination of the performance of other comparable activities in the state to determine if the noncompliance at a single site suggests an isolated problem or a problem which is likely to recur.

(6) The department shall promulgate by rule a scientifically valid procedure for determining if a preventive action limit or enforcement standard is, in fact, attained or exceeded or if a change in concentration of a substance has, in fact, occurred. This procedure shall be used for all regulatory and enforcement purposes under this chapter.

(7) Notwithstanding subs. (2) and (4) (a), modifications to rules and changes in the manner of their administration are not required under this section solely because the background concentration of nitrate or a substance of public welfare concern at individual locations is equal to or greater than the preventive action limit.

(8) Notwithstanding subs. (2) to (4), the department may allow a facility which is regulated under chs. 283 or 289 to 292 to be constructed, after May 11, 1984, in an area where the background concentration of nitrate or a substance of public welfare concern attains or exceeds the preventive action limit or the enforcement standard if the facility is designed to achieve the lowest possible concentration for that substance which is technically and economically feasible and the anticipated increase in the concentration of the substance does not present a threat to public health or welfare.

(9) Notwithstanding subs. (2) to (4), the department may allow a facility which is regulated under chs. 283 or 289 to 292 to be constructed, after May 11, 1984, in an area where the background concentration of a substance of public health concern, other than nitrate, attains or exceeds a preventive action limit for that substance:

(a) If the facility will not cause the further release of that substance into the environment;

(b) If the background concentration of the substance does not exceed the enforcement standard for that substance, the facility will not cause the concentration of the substance to exceed the enforcement standard for that substance and the facility is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible; or

(c) If the background concentration of the substance equals or exceeds the enforcement standard for that substance, the facility is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible, the anticipated increase in the concentration of the substance will not cause an increased threat to public health or welfare and the anticipated incremental increase in the concentration of the substance, by itself, will not exceed the preventive action limit. The department shall take action under s. 160.25 if it determines that the increase in the substance causes an increased threat to public health or welfare or it determines that the incremental increase in the concentration of the substance, by itself, exceeds the preventive action limit.

(10) If the department allows a facility to be constructed under sub. (9) (b) or (c), the department shall specify in the initial approval of or the initial or modified permit for the facility the

terms and conditions under which the department may seek remedial action for the specific site under ss. 160.23 and 160.25, relating to the substance.

(11) Regulatory agencies shall enforce rules promulgated under this section with respect to specific sites in accordance with ss. 160.23 and 160.25.

(12) The requirements in this section shall not apply to rules governing an activity regulated under ch. 293 or subch. III of ch. 295, or to a solid waste facility regulated under subch. III of ch. 289 which is part of an activity regulated under ch. 293 or subch. III of ch. 295, except that the department may promulgate new rules or amend rules governing this type of activity, practice or facility if the department determines that the amendment or promulgation of rules is necessary to protect public health, safety or welfare.

History: 1983 a. 410; 1985 a. 182 s. 57; 1995 a. 227; 2013 a. 1.

160.21 Adoption of rules for regulatory responses for groundwater contamination. (1) For each substance for which an enforcement standard or a preventive action limit is adopted by the department, each regulatory agency shall promulgate rules which set forth the range of responses which the regulatory agency may take or which it may require the person controlling a facility, activity or practice which is a source of the substance to take if:

(a) The preventive action limit is attained or exceeded at the point of standards application; or

(b) The enforcement standard is attained or exceeded at the point of standards application.

(2) Each regulatory agency shall determine by rule the point of standards application for each facility, activity or practice which is the source of a substance for which an enforcement standard or a preventive action limit is established, as follows:

(a) If monitoring is required under existing rules for a facility, activity or practice:

1. The regulatory agency shall establish a point of standards application at any location where groundwater is monitored for the purpose of determining whether the preventive action limit for a substance has been attained or exceeded.

2. The regulatory agency shall establish a point of standards application at the following locations for the purpose of determining compliance with enforcement standards, or determining whether design and management practice criteria established under s. 160.19 (2) (a) successfully maintain compliance with preventive action limits:

a. Any point of present groundwater use;

b. Any point beyond the property boundaries of the premises where the facility, activity or practice is located or undertaken; and

c. Any point beyond the design management zone but within the property boundaries of the premises where the facility, activity or practice is located or undertaken.

(b) If monitoring is not required under existing rules for a facility, activity or practice:

1. The regulatory agency shall establish a point of standards application at the following locations for the purposes of determining whether the preventive action limit or the enforcement standard is attained or exceeded:

a. Any point of present groundwater use, except the regulatory agency may exempt points of nonpotable groundwater uses if the regulatory agency determines that the substance will not affect the nonpotable groundwater use; and

b. Any point beyond the property boundary of the property where the facility, activity or practice is located or undertaken.

2. The regulatory agency may establish by rule additional points of standards application which the regulatory agency determines are necessary to protect future groundwater uses and the public interest in the waters of the state.

(c) If facilities are subject to regulation under chs. 283 or 289 to 292, the department shall develop by rule and utilize points of standards application for purposes of facility design, the review of facility performance and enforcement as follows:

1. Rules promulgated by the department under s. 289.05 (1) relating to facility design shall establish design criteria which ensure compliance with s. 160.19 (2) at any point of present groundwater use, at property boundaries and at any point beyond a 3-dimensional design management zone within property boundaries established under general criteria specified by rule and applied to individual facilities.

2. The department shall consider any point at which groundwater is monitored and at which a preventive action limit is exceeded a point of standards application for purposes of facility performance review, including investigations and evaluation of specific sites. If the point is within the design management zone, the department shall evaluate the location of the point, specific characteristics of the site, the nature of the substance involved and the likelihood of substance migration in assessing the need for response activities.

3. The department shall establish the point of standards application for enforcement standards at any point of present groundwater use, at property boundaries and at any point beyond a 3-dimensional design management zone within property boundaries established under general criteria specified by rule and applied to individual facilities.

(d) The department shall establish criteria for design management zones by rule for the facilities specified under par. (c). The rule shall take into account different types of facility designs. The design management zone which is applied to a facility utilizing the criteria in the rule may be adjusted based on the following factors:

1. Soil type, depth and permeability;

2. Type, depth and permeability of bedrock;

3. Volume and characteristics of the waste involved;

4. Mobility of contaminants;

5. Distance to property boundaries and surface waters;

6. Present and anticipated future uses of land and groundwater;

7. Expected useful life of the facility;

8. Depth, direction and velocity of groundwater and other hydrogeologic factors; or

9. Likely methods for abatement if an enforcement standard is exceeded.

(e) The department and each regulatory agency shall enter into a memorandum of understanding setting forth the criteria for acceptable monitoring wells and sample handling for the point of standards application.

(3) Responses may include remedial actions, revisions of rules or criteria on facility design, location and management practices, prohibition of an activity or practice or closure of a facility. Remedial actions for a specific site may include, but are not limited to, investigations, relocation, prohibition of activities or practices which use or produce the substance, closure of a facility, revisions of operational procedures, monitoring or, if only a preventive action limit is attained or exceeded, no remedial action. Responses may vary depending on the type and age of the facility, the hydrogeological conditions of the site and the cost effectiveness of alternative responses that will achieve the same objectives under the conditions of the site. Responses shall take into

account the background water quality at the site, the uses of the aquifer, the degree of risk, the validity of the data and the probability of whether, if a preventive action limit is exceeded, the enforcement standard will be exceeded at the point of standards application. In requiring a remedial action for a specific site, the regulatory agency shall use the authority and existing protections, including, but not limited to, due process provisions in other applicable statutes.

(4) In setting forth the range of responses and providing for implementation of appropriate responses under the rules promulgated under subs. (1) and (3), the regulatory agency shall consider, where applicable, the following:

(a) Risk-benefit considerations including, but not limited to:

1. Uses and substances alternative to the present use of the particular substance.

2. Risks and benefits of the alternative uses or substances.

3. Reliability and comprehensiveness of the information available for assessing such risks and benefits.

(b) Hydrogeological considerations including, but not limited to:

1. The depth to groundwater.

2. The soil characteristics.

3. Groundwater gradients and flow direction.

(c) Management and practice considerations including, but not limited to:

1. Reliability of sampling data.

2. The geographic extent of the substance if detected in groundwater and the size of the population affected.

3. The efficacy of label restrictions and other practical measures to minimize the concentration of the substance in the groundwater.

4. The existing effects and potential risks of the substance on potable water supplies.

5. The risks considered when the standard at issue was established or adopted.

6. The known depth of the substance in the groundwater.

7. Data and information provided by the manufacturer on the environmental fate of the substance.

History: 1983 a. 410; 1995 a. 227.

Cross-reference: See also ch. NR 140, Wis. adm. code.

160.23 Implementation of responses for specific sites; preventive action limits. (1) If the concentration of a substance in groundwater attains or exceeds a preventive action limit at a point of standards application, the regulatory agency shall assess the cause of the increased concentration, taking into account background concentrations, if known, and other known or suspected contributors in the area and shall evaluate the significance of the concentration of the substance and shall implement responses for a specific site designed to:

(a) Minimize the concentration of the substance in the groundwater at the point of standards application where technically and economically feasible;

(b) Regain and maintain compliance with the preventive action limit, unless, in the determination of the regulatory agency, the preventive action limit is either not technically or economically feasible, in which case, it shall achieve compliance with the lowest possible concentration which is technically and economically feasible; and

(c) Ensure that the enforcement standard is not attained or exceeded at the point of standards application.

(2) A regulatory agency shall take responses with respect to a specific site in accordance with rules promulgated under s. 160.21.

(4) The regulatory agency may not impose a prohibition on the substance or the activity or practice which uses or produces the substance unless the regulatory agency:

(a) Bases its decision upon reliable test data;

(b) Determines, to a reasonable certainty, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard at the point of standards application;

(c) Establishes the basis for the boundary and duration of the prohibition; and

(d) Ensures that any prohibition imposed shall be reasonably related in time and scope to maintaining compliance with the enforcement standard at the point of standards application.

(6) (a) A regulatory agency shall consider the existence of the background concentration of a naturally occurring substance in evaluating response options to the noncompliance with a preventive action limit for that substance. Before a regulatory agency may order a remedial action under sub. (2) or issue a prohibition for a specific site where the background concentration of a substance is determined to be equal to or greater than the preventive action limit, the regulatory agency shall determine that the proposed remedial action will result in the protection of or substantial improvement in groundwater quality notwithstanding the background concentrations of naturally occurring substances.

(b) Paragraph (a) does not apply to a substance which may be carcinogenic, teratogenic or mutagenic in humans.

(7) If the concentration of a substance in groundwater attains or exceeds a preventive action limit at a point of standards application and if a waste facility subject to the waste management fund incurs costs for repairing environmental damage which arises from these occurrences which are not anticipated in the plan of operation and which poses a substantial hazard to public health or welfare, those costs may be paid as provided under s. 289.68.

(8) An action under this section with respect to a specific site does not constitute a major state action under s. 1.11 (2).

History: 1983 a. 410; 1989 a. 56; 1995 a. 227.

160.25 Implementation of responses for specific sites; enforcement standards. (1) (a) If an activity or practice is not subject to regulation under chs. 283 or 289 to 292 and if the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application, the regulatory agency shall take the following responses unless it can be shown to the regulatory agency that, to a reasonable certainty, by the greater weight of the credible evidence, an alternative response will achieve compliance with the enforcement standard at the point of standards application:

1. Prohibit the activity or practice which uses or produces the substance; and

2. Implement remedial actions with respect to the specific site in accordance with rules promulgated under s. 160.21.

(b) A regulatory agency shall impose a remedial action for a specific site which is reasonably related in time and scope to the substance, activity or practice which caused the enforcement standard to be attained or exceeded at the point of standards application.

(2) If a facility is subject to regulation under chs. 283 or 289 to 292 and if the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application, the department shall require remedial actions for a specific site in accordance with rules promulgated under s. 160.21 as are necessary to achieve compliance with the enforcement standard at the point of standards application.

(3) If nitrates or any substance of aesthetic concern only at-

tains or exceeds an enforcement standard, the regulatory agency is not required to impose a prohibition or close a facility if it determines that:

(a) The enforcement standard was attained or exceeded, in whole or in part, because of high background concentrations of the substance; and

(b) The additional concentration does not represent a public welfare concern.

(4) If compliance with the enforcement standard is achieved at the point of standards application, s. 160.23 applies.

(5) (a) A regulatory agency shall consider the existence of background concentrations of naturally occurring substances in evaluating response options to the noncompliance with an enforcement standard for that substance. A regulatory agency may not order remedial action under sub. (1) or (2) at a site where the background concentration of a substance is determined to be equal to or greater than the preventive action limit, unless the regulatory agency determines that the proposed remedial action will result in the protection of or substantial improvement in groundwater quality notwithstanding the background concentrations of naturally occurring substances.

(b) Paragraph (a) does not apply to a substance which is carcinogenic, teratogenic or mutagenic in humans.

(6) If the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application and if a waste facility subject to the waste management fund incurs costs for repairing environmental damage which arises from those occurrences which are not anticipated in the plan of operation and which poses a substantial hazard to public health or welfare, those costs may be paid as provided under s. 289.68.

(7) An action under this section with respect to a specific site does not constitute a major state action under s. 1.11 (2).

History: 1983 a. 410; 1995 a. 227.

160.255 Exceptions for private on-site wastewater treatment systems. (1) In this section, "private on-site wastewater treatment system" has the meaning given in s. 145.01 (12).

(2) Notwithstanding s. 160.19 (1), (2) and (4) (b), a regulatory agency is not required to promulgate or amend rules that define design or management criteria for private on-site wastewater treatment systems to minimize the amount of nitrate in groundwater or to maintain compliance with the preventive action limit for nitrate.

(3) Notwithstanding s. 160.19 (3), a regulatory agency may promulgate rules that define design or management criteria for private on-site wastewater treatment systems that permit the enforcement standard for nitrate to be attained or exceeded at the point of standards application.

(4) Notwithstanding s. 160.21, a regulatory agency is not required to promulgate rules that set forth responses that the agency may take, or require to be taken, when the preventive action limit or enforcement standard for nitrate is attained or exceeded at the point of standards application if the source of the nitrate is a private on-site wastewater treatment system.

(5) Notwithstanding ss. 160.23 and 160.25, a regulatory agency is not required to take any responses for a specific site at which the preventive action limit or enforcement standard for nitrate is attained or exceeded at the point of standards application if the source of the nitrate is a private on-site wastewater treatment system.

History: 1995 a. 27; 2011 a. 146.

160.257 Exceptions for aquifer storage and recovery systems. (1) In this section:

(a) "Aquifer storage and recovery system" means all of the aquifer storage and recovery wells and related appurtenances that are part of a municipal water system.

(b) "Aquifer storage and recovery well" means a well through which treated drinking water is placed underground for the purpose of storing and later recovering the water through the same well for use as drinking water.

(c) "Municipal water system" means a community water system, as defined in s. 281.62 (1) (a), that is owned by a city, village, town, county, town sanitary district, utility district, public inland lake protection and rehabilitation district, or municipal water district, or by a privately owned water utility serving any of the foregoing.

(d) "Specified substance" means one of the following:

1. Chloroform.
2. Bromodichloromethane.
3. Dibromochloromethane.
4. Bromoform.

(e) "Treated drinking water" means potable water that has been treated so that it complies with the primary drinking water standards promulgated under ss. 280.11 and 281.17 (8).

(2) Notwithstanding s. 160.19 (1) and (2), the department is not required to promulgate or amend rules that define design or management criteria for aquifer storage and recovery systems to minimize the amount of a specified substance in groundwater or to maintain compliance with the preventive action limit for a specified substance, however, the department shall promulgate rules that define design or management criteria for aquifer storage and recovery systems to maintain compliance with drinking water standards promulgated under ss. 280.11 and 281.17 (8).

(3) Notwithstanding s. 160.21 (2), the point of standards application for an aquifer storage and recovery well with respect to a specified substance is 1,200 feet from the aquifer storage and recovery well and at any other well that is within 1,200 feet from the aquifer storage and recovery well.

History: 2001 a. 109.

160.26 Enforcement. Regulatory agencies shall enforce the provisions of this chapter in accordance with enforcement procedures and subject to the penalties established by statute for activities and practices regulated by the regulatory agency.

History: 1983 a. 410.

160.27 Substances in groundwater; monitoring. (1) The department, with the advice and cooperation of other agencies and the groundwater coordinating council, shall develop and operate a system for monitoring and sampling groundwater to determine whether substances identified under s. 160.05 (1) are in the groundwater or whether preventive action limits or enforcement standards are attained or exceeded at points of standards application.

(2) At a minimum, the monitoring system shall include the following components:

(a) Problem assessment monitoring to detect substances in the groundwater, including substances identified under s. 160.05 (1), and to assess the significance of the concentrations of the detected substances;

(b) Regulatory monitoring to determine if preventive action limits or enforcement standards are attained or exceeded and to obtain information necessary for the implementation of responses with respect to specific sites under ss. 160.21, 160.23 and 160.25;

(c) At-risk monitoring to define and sample at-risk potable

wells in areas where substances identified under s. 160.05 (1) are detected in the groundwater or where preventive action limits or enforcement standards are attained or exceeded;

(d) Management practice monitoring for establishing the management practices necessary to meet the requirements of ss. 160.19 and 160.21. The regulatory agency responsible for a particular management practice has primary responsibility for monitoring that practice and the department shall ensure that the monitoring specifications meet the needs of the regulatory agency; and

(e) A monitoring plan for collecting, managing and coordinating the monitoring components specified under pars. (a) to (d) with the monitoring information from other regulatory agencies.

(3) The department shall notify the regulatory agency and the department of health services when monitoring data indicate that:

(a) A substance is detected in groundwater;

(b) The concentration of a substance, by a reasonable degree of scientific certainty, is determined to be changing; or

(c) The concentration of a substance attains or exceeds a preventive action limit or an enforcement standard at a point of standards application.

(4) The department shall coordinate the collection of groundwater monitoring data and the exchange of these data among agencies for the purpose of this chapter and shall ensure, with the advice and cooperation of other agencies, the technical accuracy of the monitoring data used in the administration of this chapter.

(5) Notwithstanding subs. (1) to (3), a regulatory agency may develop and operate a system for monitoring and sampling groundwater to determine compliance with this chapter. This section does not affect the authority of the department to require groundwater monitoring by owners or operators of solid or hazardous waste facilities, water systems or wastewater systems under chs. 280 to 285 or 289 to 299.

(6) The department shall notify the owner of any potable well and the occupant of any residence served by that well of the results of any monitoring data it obtains from samples of water from that well.

History: 1983 a. 410; 1995 a. 27 s. 9126 (19); 1995 a. 227, 378; 1997 a. 35; 2005 a. 347; 2007 a. 20 s. 9121 (6) (a).

Cross-reference: See also ch. NR 141, Wis. adm. code.

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

160.29 Petitioning for rule making. (1) Where the department finds that a preventive action limit or an enforcement standard for a substance is, or will be, attained or exceeded at points of standards application at numerous locations, and that adoption or revision of rules under s. 160.19 or 160.21 by the regulatory agency is an appropriate response, the department may submit a petition for rule making to the regulatory agency. The petition shall include all of the following:

(a) The reason for the request for rule making by the department.

(b) The research or monitoring data supporting the finding by the department that the preventive action limit or the enforcement standard for a substance is, or will be, attained or exceeded at the points of standards application.

(c) A recitation of the authority of the regulatory agency to regulate the substance.

(2) Within 120 days after receipt of a petition under this section, the regulatory agency either shall deny the petition in writing or shall submit to the department a proposed timetable for the revision or promulgation of the requested rules and proceed with rule making under subch. II of ch. 227. Failure of the agency to respond to the petition within 120 days constitutes denial of the petition.

(3) Section 227.12 does not apply to petitions under this section.

History: 1983 a. 410; 1985 a. 182 s. 57.

160.31 Legislative review. Nothing in this chapter affects the legislative review of any proposed rule relating to animal waste treatment, under s. 13.565.

History: 1983 a. 410.

160.32 Common law and liability. (1) COMMON LAW UNAFFECTED. Nothing in this chapter restricts or abrogates any remedy which any person or class of persons may have under other statutory or common law.

(2) NO ADMISSION OF LIABILITY. A response at a specific site taken by any person under s. 160.23 or 160.25 is not evidence of liability or an admission of liability for any potential or actual environmental pollution, as defined under s. 299.01 (4).

History: 1983 a. 410; 1995 a. 227.

160.33 Public participation. Each regulatory agency shall promulgate rules which provide for public participation in the issuance and administrative enforcement by the regulatory agency of any special order adopted pursuant to the requirements of this chapter.

History: 1983 a. 410.

160.34 No mandatory well repair as a condition for testing. No regulatory agency may require as a condition for the testing of a private water system at the request of the owner that the owner agree to institute changes necessary to bring the construction or design of the water system into compliance with administrative rules in effect at the time of testing but not in effect prior to 1954.

History: 1983 a. 410; 1995 a. 378.

160.36 Cooperation with American Indian tribes and bands. (1) REQUIREMENT TO COOPERATE. The department shall cooperate with American Indian tribes and bands with the approval of the tribal governing body, for the purposes specified in this section.

(2) AGREEMENTS REGARDING MONITORING. The department may negotiate and enter into cooperative agreements with American Indian tribes and bands for the purposes of:

(a) Providing advice and assistance to American Indians who wish to establish a groundwater monitoring program on the lands of any American Indian tribe or band.

(b) Obtaining for state use any information on groundwater quality which results from a monitoring program conducted by American Indians.

(c) Using state resources to conduct groundwater monitoring on the lands of any American Indian tribe or band.

(d) Sharing with an American Indian tribe or band the results of groundwater monitoring conducted by the department, by a regulatory agency or by the geological and natural history survey which relate to the potential contamination of groundwater under the lands of an American Indian tribe or band.

(3) AGREEMENTS REGARDING ENFORCEMENT. The department may negotiate and enter into cooperative agreements with American Indian tribes and bands for the following purposes:

(a) Providing advice and assistance to American Indians who wish to establish groundwater regulatory programs on the lands of any American Indian tribe or band.

(b) Using state resources to conduct regulatory activities on the lands of an American Indian tribe or band.

History: 1983 a. 410.

160.50 Groundwater coordinating council. (1) GENERAL FUNCTIONS. The groundwater coordinating council shall serve as a means of increasing the efficiency and facilitating the effective functioning of state agencies in activities related to groundwater management. The groundwater coordinating council shall advise and assist state agencies in the coordination of nonregulatory programs and the exchange of information related to groundwater, including, but not limited to, agency budgets for groundwater programs, groundwater monitoring, data management, public information and education, laboratory analysis and facilities, research activities and the appropriation and allocation of state funds for research.

(1m) FUNDING FOR GROUNDWATER RESEARCH. The groundwater coordinating council shall advise the secretary of administration on the allocation of funds appropriated to the board of regents of the University of Wisconsin System under s. 20.285 (1) (a) for groundwater research.

(2) SUBCOMMITTEES. The groundwater coordinating council may create subcommittees to assist in its work. The subcommittee members may include members of the council, employees of the agencies with members on the council, employees of other state agencies, representatives of counties and municipalities and public members. The council shall consider the need for subcommittees on the subjects within the scope of its general duties under sub. (1) and other subjects deemed appropriate by the council.

(3) REPORT. The groundwater coordinating council shall review the provisions of 1983 Wisconsin Act 410 and report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), concerning the implementation of the act by January 1, 1989.

History: 1983 a. 410; 1987 a. 186; 1989 a. 31.

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Chapter NR 140

GROUNDWATER QUALITY

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Subchapter I — General

NR 140.01 Purpose. The purpose of this chapter is to establish groundwater quality standards for substances detected in or having a reasonable probability of entering the groundwater resources of the state; to specify scientifically valid procedures for determining if a numerical standard has been attained or exceeded; to specify procedures for establishing points of standards application, and for evaluating groundwater monitoring data; to establish ranges of responses the department may require if a groundwater standard is attained or exceeded; and to provide for exemptions for facilities, practices and activities regulated by the department.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85.

NR 140.02 Regulatory framework. (1) This chapter supplements the regulatory authority elsewhere in the statutes and administrative rules. The department will continue to exercise the powers and duties in those regulatory programs, consistent with the enforcement standards and preventive action limits for substances in groundwater under this chapter. This chapter provides guidelines and procedures for the exercise of regulatory authority which is established elsewhere in the statutes and administrative rules, and does not create independent regulatory authority.

(2) The department may adopt regulations which establish specific design and management criteria for regulated facilities or activities, if the regulations will ensure that the regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application. The department may adopt more stringent regulations under authority elsewhere in the statutes based on the best currently available technology for regulated activities and practices which ensure a greater degree of groundwater protection or when necessary to comply with state or federal laws.

(3) Preventive action limits serve to inform the department of potential groundwater contamination problems, establish the level of groundwater contamination at which the department is required to commence efforts to control the contamination and provide a basis for design and management practice criteria in administrative rules. Preventive action limits are applicable both to controlling new releases of contamination as well as to restoring groundwater quality contaminated by past releases of contaminants. Although a preventive action limit is not intended to always require remedial action, activities affecting groundwater must be regulated to minimize the level of substances to the extent technically and economically feasible, and to maintain compliance with the preventive action limits unless compliance with the preventive action limits is not technically and economically feasible.

(4) The department may take any actions within the context of regulatory programs established in statutes or rules outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or nonconsumptive uses, whether or not an enforcement standard and preventive action limit for a substance have been adopted under this chapter. Nothing in this chapter authorizes an impact on groundwater quality which would cause surface water quality standards contained in chs. NR 102 to 105 to be attained or exceeded.

History: Cr. Register, January, 1992, No. 433, eff. 2-1-92; reprinted to restore dropped copy, Register, March, 1992, No. 435.

NR 140.03 Applicability. This subchapter and subch. II apply to all facilities, practices, and activities which may affect groundwater quality and which are regulated under chs. 85, 93, 94, 101, 145, 281, 283, 287, 289, 291, and 292, Stats., by the department of agriculture, trade and consumer protection, the department of safety and professional services, the department of transportation, or the department of natural resources, as well as to facilities, practices, and activities which may affect groundwater quality which are regulated by other regulatory agencies. Health-related enforcement standards adopted in s. NR 140.10 also apply to bottled drinking water manufactured, bottled, sold, or distributed in this state as required by s. 97.34 (2) (b), Stats., and to determining eligibility for the well compensation program under s. 281.75, Stats. Subchapter III applies to all facilities, practices, and activities which may affect groundwater quality and which are regulated by the department under ch. 281, 283, 287, 289, 291, 292, 295, or 299, Stats. This chapter applies to ferrous metallic mining operations and mining sites, including mining waste sites, as defined in s. 295.41 (31), Stats., but only to the extent that it does not conflict with subch. III of ch. 295, Stats. Groundwater quality standards, consisting of enforcement standards and preventive action limits contained in ss. NR 140.10 and 140.12, and preventive action limits for indicator parameters identified under s. NR 140.20 (2), apply to ferrous metallic mining operations and mining sites, as defined in s. 295.41 (31), Stats., including mining waste sites, regulated under subch. III of ch. 295, Stats. This chapter does not apply to any facilities, practices, or activities on a nonferrous metallic mining prospecting site or mining site regulated under ch. 293, Stats., because those facilities, practices, and activities are subject to the groundwater

quality requirements of chs. NR 131, 132, and 182. The department may promulgate new rules or amend rules governing facilities, practices or activities regulated under ch. 293, Stats., if the department determines that the amendment or promulgation of rules is necessary to protect public health, safety, or welfare. The requirements of this chapter are in addition to the requirements of any other statutes and rules, except as provided in s. 295.645 (9), Stats.

Note: The groundwater standards in this chapter do not replace the maximum contaminant levels applicable to public water systems contained in ch. NR 809. Drinking water maximum contaminant levels and health advisory levels may take into account such factors as treatment costs and feasibility for public water systems.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. Register, December, 1998, No. 516, eff. 1-1-99; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2000, No. 531; correction made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; CR 13-057: am. Register July 2015 No. 715, eff. 8-1-15.

NR 140.05 Definitions. **(1)** "Accuracy" means the closeness of a measured value to its generally accepted value or its value based upon an accepted reference standard.

(1m) "Alternative concentration limit" means the concentration of a substance in groundwater established by the department for a site to replace a preventive action limit or enforcement standard or both, from Table 1 or 2, when an exemption is granted in accordance with s. NR 140.28.

(1s) "Approval" means written acceptance by the department of a plan, report or other document that has been submitted to the department for review.

(1u) "Aquifer storage recovery" or "ASR" means placement of treated drinking water underground through a well for the purpose of storing and later recovering the water through the same well for potable use.

Note: Underground placement of water for the purpose of restoring an aquifer is not included in the definition of "aquifer storage recovery" or "ASR".

(1w) "ASR displacement zone" means the 3-dimensional subsurface region surrounding an aquifer storage recovery well into which treated drinking water is placed for storage and later recovery.

(1y) "ASR system" means all of the ASR wells, ASR monitoring wells and related appurtenances within a municipal well system and any interconnected public water system served by the municipal water system.

(2) "Attain or exceed" means that the concentration of a substance is determined to be equal to or greater than the preventive action limit or enforcement standard for that substance.

(3) "Background water quality" or "background concentration" means groundwater quality at or near a facility, practice or activity which has not been affected by that facility, practice or activity.

(4) "Certified laboratory" means a laboratory which performs tests for hire in connection with a covered program and which receives certification under s. 299.11 (7), Stats., or receives reciprocal recognition under s. 299.11 (5), Stats.

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

(6) "Design management zone" means a 3-dimensional boundary surrounding each regulated facility, practice or activity established under s. NR 140.22 (3).

(7) "Enforcement standard" means a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12.

(8) "Facility, practice or activity" means any source or potential source of a substance which is detected in or has a reasonable probability of entering the groundwater resources of the state.

(9) "Groundwater" means any of the waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil.

(10) "Indicator parameter" means a substance for which a preventive action limit has been established under s. NR 140.20, which is used to indicate the potential for a preventive action limit established under s. NR 140.10 or 140.12 to be attained or exceeded and for which an enforcement standard has not been established under s. NR 140.10 or 140.12.

(10e) "Infiltration" means the underground emplacement of substances or remedial material, or both, into an excavation that is wider than deep so as to percolate or move through unsaturated material to groundwater.

(10s) "Injection" means the underground emplacement of substances or remedial material, or both, into a borehole or other excavation that is deeper than wide so as to percolate or move through unsaturated material to groundwater or to enter groundwater directly.

(11) "Land disposal system" means a facility for disposing of liquid wastes consisting of:

(a) An absorption or seepage pond system,

(b) A ridge and furrow system;

(c) A spray irrigation system,

(d) An overland flow system,

(e) A subsurface field absorption system,

(f) A land spreading system, or

(g) Any other land area receiving liquid waste discharges.

(12) "Limit of detection" means the lowest concentration level that can be determined to be statistically different from a blank.

(13) "Limit of quantitation" means the level above which quantitative results may be obtained with a specified degree of confidence.

Note: The limit of quantitation is established as defined under s. NR 149.48 (3).

(14) "Monitoring" means all procedures used to collect data on groundwater, surface water or soils.

(14m) "Natural attenuation" means the reduction in the concentration and mass of a substance and its breakdown products in groundwater, due to naturally occurring physical, chemical, and biological processes without human intervention or enhancement. These processes include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(15) "Point of standards application" means the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded.

(16) "Precision" means the closeness of repeated measurements of the same parameter within a sample.

(17) "Preventive action limit" means a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15, Stats., and s. NR 140.10, 140.12 or 140.20.

(18) "Property boundary" means the boundary of the total contiguous parcel of land owned or leased by a common owner or lessor, regardless of whether public or private roads run through the parcel.

(19) "Registered laboratory" means a laboratory which is registered under s. 299.11 (8), Stats., or receives reciprocal recognition under s. 299.11 (5), Stats.

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(20) "Regulatory agency" means the department of agriculture, trade and consumer protection, the department of safety and professional services, the department of transportation, the department of natural resources and other state agencies which regulate activities, facilities or practices which are related to substances which have been detected in or have reasonable probability of entering the groundwater resources of the state.

(20h) "Remedial action" means a response which is taken to achieve compliance with groundwater quality standards established under this chapter. This term includes, but is not limited to, actions designed to prevent or minimize the further discharge or release of substances to groundwater and actions designed to renovate or restore groundwater quality.

(20k) "Remedial material" means any solid, liquid, semisolid or gaseous material, either naturally occurring or manmade, in its original form or as a metabolite or degradation product, or naturally occurring non-pathogenic biological organisms which have not undergone human induced genetic alteration, which enhances the restoration of soil or groundwater quality, or both.

(20m) "Response" means any action taken to respond to an attainment or exceedance of a preventive action limit or enforcement standard as required by s. NR 140.24 or 140.26.

Note: A response may include a remedial action.

(20s) "Specified substance" means one of the following: chloroform, bromodichloromethane, dibromochloromethane or bromoform.

(21) "Substance" means any solid, liquid, semisolid, dissolved solid or gaseous material, naturally occurring or manmade chemical, parameter for measurement of water quality or biological organism which, in its original form, or as a metabolite or a degradation or waste product, may decrease the quality of groundwater.

(22) "Wastewater and sludge storage or treatment lagoon" means a natural or man-made containment structure, constructed primarily of earthen materials for the treatment or storage of wastewater or sludge, which is not a land disposal system.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; cr. (1m), am. (7), (17) and (18), Register, October, 1988, No. 394, eff. 11-1-88; am. (6), cr. (20h) and (20m), Register, March, 1994, No. 459, eff. 4-1-94; cr. (1s), (10e), (10s), (20k), r. and recr. (12), (13), Register, August, 1995, No. 476, eff. 9-1-95; cr. (14m), Register, October, 1996, No. 490, eff. 11-1-96; am. (20), Register, December, 1998, No. 516, eff. 1-1-99; correction in (9) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544; CR 02-134: cr. (1u), (1w), (1y) and (20s) Register June 2003 No. 570, eff. 7-1-03; correction in (20) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673.

Subchapter II — Groundwater Quality Standards

NR 140.10 Public health related groundwater standards. The groundwater quality standards for substances of public health concern are listed in Table 1.

Note: For all substances that have carcinogenic, mutagenic or teratogenic properties or interactive effects, the preventive action limit is 10% of the enforcement standard. The preventive action limit is 20% of the enforcement standard for all other substances that are of public health concern. Enforcement standards and preventive action limits for additional substances will be added to Table I as recommendations are developed pursuant to ss. 160.07, 160.13 and 160.15, Stats.

Table 1
Public Health Groundwater Quality Standards

Substance[1]	Enforcement Standard (micrograms per liter - except as noted)	Preventive Action Limit (micrograms per liter - except as noted)
Acetochlor	7	0.7
Acetochlor ethane sulfonic acid + oxanilic acid (Acetochlor - ESA + OXA)	230	46
Acetone	9 milligrams/liter (mg/l)	1.8 mg/l
Alachlor	2	0.2
Alachlor ethane sulfonic acid (Alachlor - ESA)	20	4
Aldicarb	10	2
Aluminum	200	40
Ammonia (as N)	9.7 mg/l	0.97 mg/l
Anthracene	3000	600
Antimony	6	1.2
Arsenic	10	1
Asbestos	7 million fibers per liter (MFL)	0.7 MFL
Atrazine, total chlorinated residues	3[2]	0.3[2]
Bacteria, *E. coli*	0	0
Barium	2 mg/l	0.4 mg/l
Bentazon	300	60
Benzene	5	0.5
Benzo(b)fluoranthene	0.2	0.02
Benzo(a)pyrene	0.2	0.02
Beryllium	4	0.4
Boron	1000	200
Bromodichloromethane	0.6	0.06
Bromoform	4.4	0.44
Bromomethane	10	1

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Substance[1]	Enforcement Standard (micrograms per liter - except as noted)	Preventive Action Limit (micrograms per liter - except as noted)
Butylate	400	80
Cadmium	5	0.5
Carbaryl	40	4
Carbofuran	40	8
Carbon disulfide	1000	200
Carbon tetrachloride	5	0.5
Chloramben	150	30
Chlordane	2	0.2
Chlorodifluoromethane	7 mg/l	0.7 mg/l
Chloroethane	400	80
Chloroform	6	0.6
Chlorpyrifos	2	0.4
Chloromethane	30	3
Chromium (total)	100	10
Chrysene	0.2	0.02
Cobalt	40	8
Copper	1300	130
Cyanazine	1	0.1
Cyanide, free[3]	200	40
Dacthal	70	14
1,2-Dibromoethane (EDB)	0.05	0.005
Dibromochloromethane	60	6
1,2-Dibromo-3-chloropropane (DBCP)	0.2	0.02
Dibutyl phthalate	1000	100
Dicamba	300	60
1,2-Dichlorobenzene	600	60
1,3-Dichlorobenzene	600	120
1,4-Dichlorobenzene	75	15
Dichlorodifluoromethane	1000	200
1,1-Dichloroethane	850	85
1,2-Dichloroethane	5	0.5
1,1-Dichloroethylene	7	0.7
1,2-Dichloroethylene (cis)	70	7
1,2-Dichloroethylene (trans)	100	20
2,4-Dichlorophenoxyacetic Acid (2,4-D)	70	7
1,2-Dichloropropane	5	0.5
1,3-Dichloropropene (cis/trans)	0.4	0.04
Di (2-ethylhexyl) phthalate	6	0.6
Dimethenamid/Dimethenamid-P	50	5
Dimethoate	2	0.4
2,4-Dinitrotoluene	0.05	0.005
2,6-Dinitrotoluene	0.05	0.005
Dinitrotoluene, Total Residues[4]	0.05	0.005
Dinoseb	7	1.4
1,4-Dioxane	3	0.3
Dioxin (2, 3, 7, 8-TCDD)	0.00003	0.000003
Endrin	2	0.4
EPTC	250	50
Ethylbenzene	700	140
Ethyl ether	1000	100
Ethylene glycol	14 mg/l	2.8 mg/l
Fluoranthene	400	80
Fluorene	400	80
Fluoride	4 mg/l	0.8 mg/l
Fluorotrichloromethane	3490	698

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

Substance[1]	Enforcement Standard (micrograms per liter - except as noted)	Preventive Action Limit (micrograms per liter - except as noted)
Formaldehyde	1000	100
Heptachlor	0.4	0.04
Heptachlor epoxide	0.2	0.02
Hexachlorobenzene	1	0.1
N-Hexane	600	120
Hydrogen sulfide	30	6
Lead	15	1.5
Lindane	0.2	0.02
Manganese	300	60
Mercury	2	0.2
Methanol	5000	1000
Methoxychlor	40	4
Methylene chloride	5	0.5
Methyl ethyl ketone (MEK)	4 mg/l	0.8 mg/l
Methyl isobutyl ketone (MIBK)	500	50
Methyl tert-butyl ether (MTBE)	60	12
Metolachlor/s-Metolachlor	100	10
Metolachlor ethane sulfonic acid + oxanilic acid (Metolachlor - ESA + OXA)	1.3 mg/l	0.26 mg/l
Metribuzin	70	14
Molybdenum	40	8
Monochlorobenzene	100	20
Naphthalene	100	10
Nickel	100	20
Nitrate (as N)	10 mg/l	2 mg/l
Nitrate + Nitrite (as N)	10 mg/l	2 mg/l
Nitrite (as N)	1 mg/1	0.2 mg/l
N-Nitrosodiphenylamine	7	0.7
Pentachlorophenol (PCP)	1	0.1
Perchlorate	1	0.l
Phenol	2 mg/l	0.4 mg/l
Picloram	500	100
Polychlorinated biphenyls (PCBs)	0.03	0.003
Prometon	100	20
Propazine	10	2
Pyrene	250	50
Pyridine	10	2
Selenium	50	10
Silver	50	10
Simazine	4	0.4
Styrene	100	10
Tertiary Butyl Alcohol (TBA)	12	1.2
1,1,1,2-Tetrachloroethane	70	7
1,1,2,2-Tetrachloroethane	0.2	0.02
Tetrachloroethylene	5	0.5
Tetrahydrofuran	50	10
Thallium	2	0.4
Toluene	800	160
Toxaphene	3	0.3
1,2,4-Trichlorobenzene	70	14
1,1,1-Trichloroethane	200	40
1,1,2-Trichloroethane	5	0.5
Trichloroethylene (TCE)	5	0.5
2,4,5-Trichlorophenoxy-propionic acid (2,4,5-TP)	50	5

Substance[1]	Enforcement Standard (micrograms per liter - except as noted)	Preventive Action Limit (micrograms per liter - except as noted)
1,2,3-Trichloropropane	60	12
Trifluralin	7.5	0.75
Trimethylbenzenes (1,2,4- and 1,3,5- combined)	480	96
Vanadium	30	6
Vinyl chloride	0.2	0.02
Xylene[5]	2 mg/l	0.4 mg/l

[1] Appendix I contains Chemical Abstract Service (CAS) registry numbers, common synonyms and trade names for most substances listed in Table 1.

[2] Total chlorinated atrazine residues includes parent compound and the following metabolites of health concern: 2-chloro-4-amino-6-isopropylamino-s-triazine (formerly deethylatrazine), 2-chloro-4-amino-6-ethylamino-s-triazine (formerly deisopropylatrazine) and 2-chloro-4,6-diamino-s-triazine (formerly diaminoatrazine).

[3] "Cyanide, free" refers to the simple cyanides (HCN, CN^-) and /or readily dissociable metal-cyanide complexes. Free cyanide is regulatorily equivalent to cyanide quantified by approved analytical methods for "amenable cyanide" or "available cyanide".

[4] Dinitrotoluene, Total Residues includes the dinitrotoluene (DNT) isomers: 2,3-DNT, 2,4-DNT, 2,5-DNT, 2,6-DNT, 3,4-DNT and 3,5-DNT.

[5] Xylene includes meta-, ortho-, and para-xylene combined.

Note: Consistent with the Department of Health Services' recommendation for the NR 140 ammonia standard, the department will use total ammonia, which is the sum of ionized ammonia and un-ionized ammonia in groundwater, in applying groundwater ammonia standards.

Note: Acronyms in common use for oxanilic acid (for the pesticide metabolites acetochlor oxanilic acid and metolachlor oxanilic acid in Table 1 above) include both "OA" and "OXA."

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. table 1, Register, October, 1988, No. 394, eff. 11-1-88; am. table 1, Register, September, 1990, No. 417, eff. 10-1-90; am. Register, January, 1992, No. 433, eff. 2-1-92; am. Table 1, Register, March, 1994, No. 459, eff. 4-1-94; am. Table 1, Register, August, 1995, No. 476, eff. 9-1-95; am. Table 1, Register, December, 1998, No. 516, eff. 1-1-99; am. Table 1, boron, Register, December, 1998, No. 516, eff. 12-31-99; am. Table 1, Register, March, 2000, No. 531, eff. 4-1-00; CR 03-063: am Table 1, Register February 2004 No. 578, eff. 3-1-04; CR 02-095: am. Table 1, Register November 2006 No. 611, eff. 12-1-06; reprinted to correct errors in Table 1, Register January 2007 No. 613; CR 07-034: am. Table 1 Register January 2008 No. 625, eff. 2-1-08; CR 09-102: am. Table 1 Register December 2010 No. 660, eff. 1-1-11; CR 22-061: am. Table 1 Register July 2023 No. 811, eff. 8-1-23.

NR 140.12 Public welfare related groundwater standards. The groundwater quality standards for substances of public welfare concern are listed in Table 2.

Note: For each substance of public welfare concern, the preventive action limit is 50% of the established enforcement standard.

Table 2
Public Welfare Groundwater Quality Standards

Substance	Enforcement Standard (milligrams per liter - except as noted)	Preventive Action Limit (milligrams per liter - except as noted)
Chloride	250	125
Color	15 color units	7.5 color units
Foaming agents MBAS (Methylene-Blue Active Substances)	0.5	0.25
Iron	0.3	0.15
Manganese	0.05	0.025
Odor	3 (Threshold Odor No.)	1.5 (Threshold Odor No.)
Sulfate	250	125
Zinc	5	2.5

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. table 2, Register, October, 1990, No. 418, eff. 11-1-90; am. Table 2, Register, March, 1994, No. 459, eff. 4-1-94.

NR 140.14 Statistical procedures. (1) If a preventive action limit or an enforcement standard for a substance listed in Table 1 or 2, an alternative concentration limit issued in accordance with s. NR 140.28 or a preventive action limit for an indicator parameter established according to s. NR 140.20 (2) is attained or exceeded at a point of standards application:

(a) The owner or operator of the facility, practice or activity at which a standard is attained or exceeded shall notify the appropriate regulatory agency that a standard has been attained or exceeded; and

(b) The regulatory agency shall require a response in accordance with the rules promulgated under s. 160.21, Stats. No response shall be required if it is demonstrated to the satisfaction of the appropriate regulatory agency that a scientifically valid determination cannot be made that the preventive action limit or enforcement standard for a substance in Table 1 or 2 has been attained or exceeded based on consideration of sampling procedures or laboratory precision and accuracy, at a significance level of 0.05.

(2) The regulatory agency shall use one or more valid statistical procedures to determine if a change in the concentration of a substance has occurred. A significance level of 0.05 shall be used for all tests.

(3) In addition to sub. (2), the following applies when a preventive action limit or enforcement standard is equal to or less than the limit of quantitation:

(a) If a substance is not detected in a sample, the regulatory agency may not consider the preventive action limit or enforcement standard to have been attained or exceeded.

(b) If the preventive action limit or enforcement standard is less than the limit of detection, and the concentration of a substance is reported between the limit of detection and the limit of quantitation, the regulatory agency shall consider the preventive action limit or enforcement standard to be attained or exceeded only if:

1. The substance has been analytically confirmed to be present in the same sample using an equivalently sensitive analytical method or the same analytical method, and

2. The substance has been statistically confirmed to be present above the preventive action limit or enforcement standard, determined by an appropriate statistical test with sufficient samples at a significance level of 0.05.

(c) If the preventive action limit or enforcement standard is between the limit of detection and the limit of quantitation, the regulatory agency shall consider the preventive action limit or enforcement standard to be attained or exceeded if the concentration of a substance is reported at or above the limit of quantitation.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (1) (intro.) and (b), r. and recr. (2), Register, October, 1988, No. 394, eff. 11-1-88; am. (1) (b), (2) and (3) (b), Register, September, 1990, No. 417, eff. 10-1-90; am. (1) (b), Register, March, 1994, No. 459, eff. 4-1-94; r. and recr. (3) (intro.), (a), (b), renum. (3) (c) to be 140.16 (5) and am., Register, August, 1995, No. 476, eff. 9-1-95.

NR 140.16 Monitoring and laboratory data requirements. (1) (a) All groundwater quality samples collected to determine compliance with ch. 160, Stats., shall comply with this section except as noted.

(b) *Groundwater sampling requirements.* All groundwater quality samples shall be collected and handled in accordance with procedures specified by the applicable regulatory agency or, where no sampling procedures are specified by that agency, in accordance with the sampling procedures referenced in par. (c). The sampling procedures specified by a regulatory agency may include requirements for field filtration.

(c) *Department groundwater sampling procedures.* 1. If sampling procedures are not specified by the applicable regulatory agency pursuant to par. (b), all groundwater quality samples shall be collected and handled in accordance with the sampling procedures contained in the following publications:

a. Groundwater Sampling Desk Reference. Wisconsin Department of Natural Resources, PUBL-DG-037-96, September, 1996.

b. Groundwater Sampling Field Manual. Wisconsin Department of Natural Resources, PUBL-DG-038-96, September, 1996.

Note: Copies of these publications may be purchased from:
Wisconsin Department of Administration
Document Sales Unit
4622 University Avenue
Madison, WI 53705-2156
These publications are available for inspection at the offices of the department, the secretary of state and the legislative reference bureau.

2. Where no procedure for collecting a particular groundwater quality sample is specified by the appropriate regulatory agency or in the publications referenced in subd. 1., other published scientifically valid groundwater sampling procedures may be used.

(d) *Laboratory requirements.*. All groundwater quality samples, except samples collected for total coliform bacteria laboratory analysis, *E. coli* laboratory analysis, field analyses for pH, field analysis for specific conductance, and field analysis for temperature, shall be analyzed in accordance with provisions under ch. NR 149 by a laboratory certified or registered under ch. NR 149. Samples for total coliform bacteria and *E. coli* analysis shall be analyzed by the state laboratory of hygiene or at a laboratory approved or certified by the department of agriculture, trade and consumer protection.

Note: Refer to s. NR 149.442 for sample preservation procedures and holding times.

(e) *Data submittal.* The results of the analysis of groundwater quality samples shall be submitted to the department and any applicable regulatory agency. Except as provided in s. NR 205.07 (3) (c) for wastewater permittees, this section does not require the submission of groundwater monitoring data which is collected voluntarily and is not required to be collected to determine compliance with this chapter or another rule or statute.

(2) The laboratory shall select the analytical methodology which:

(a) Is specified in rules or approved by the regulatory agency, and

(b) Is appropriate for the concentration of the sample, and

(c) Is one of the following:

1. Has a limit of detection and limit of quantitation below the preventive action limit, or

2. Produces the lowest available limit of detection and limit of quantitation if the limit of detection and limit of quantitation are above the preventive action limit.

(3) If the owner or operator of a facility, practice or activity believes that a sample result does not represent groundwater quality in the vicinity of the facility, practice or activity, the owner or operator shall resample the appropriate well or wells to obtain a representative sample at the earliest possible time. All sample results shall be submitted to the department and the appropriate regulatory agency with an explanation of why the owner or operator believes that all or some of the results are invalid.

(4) The department may reject groundwater quality data that does not meet the requirements of the approved or designated analytical methods.

(5) The owner or operator of the facility, practice or activity shall report the limit of detection and the limit of quantitation with the sample results. If a substance is detected below the limit of quantitation, the owner or operator shall report the detected value with the appropriate qualifier to the regulatory agency.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (1), Register, September, 1990, No. 417, eff. 10-1-90; am. (1), r. and recr. (2), Register, March, 1994, No. 459, eff. 4-1-94; (5) renum. from NR 140.14 (3) (c), cr. (4), Register, August, 1995, No. 476, eff. 9-1-95; r. and recr. (1), Register, December, 1998, No. 516, eff. 1-1-99; CR 22-061: am. (1) (d) Register July 2023 No. 811, eff. 8-1-23.

Subchapter III — Evaluation and Response Procedures

NR 140.20 Indicator parameter groundwater standards. (1) ESTABLISHING BACKGROUND WATER QUALITY. Background water quality at a facility, practice or activity at which monitoring is required shall be established by sampling one or more monitoring points at locations and depths sufficient to yield groundwater samples that are representative of background water quality at or near the facility, practice or activity. Background water quality shall be determined for indicator parameters specified by the department. Background water quality for indicator parameters shall be established by averaging a minimum of 8 sample results from each well. The department may exclude any sample result which is nonrepresentative of background water quality. In making the calculations required in this section, the department may use as many representative sample points as are available.

(2) ESTABLISHING PREVENTIVE ACTION LIMITS FOR INDICATOR PARAMETERS. For each indicator parameter, except total coliform bacteria, for which groundwater monitoring is required by the department, the preventive action limit shall be established based upon a change of water quality with respect to background water quality according to the methodology specified in any of the following:

(a) For field pH, the preventive action limit shall be one pH unit above or below the pH of the background water quality.

(b) For field temperature, the preventive action limit shall be 3 standard deviations or 10ºF (5.6ºC), whichever is greater, above or below the temperature of the background water quality.

(c) For all other indicator parameters, the preventive action limit shall be the background water quality for that parameter plus 3 standard deviations or the background water quality plus the increase of that parameter listed in Table 3, whichever is greater.

Note: The standard deviation for a group of samples is equal to the square root of: the value of the sum of the squares of the difference between each sample in the sample group and the mean for that sample group divided by the number of samples in the sample group where the sample group has 30 or more samples and by one less than the number of samples in the sample group where the sample group has less than 30 samples.

(3) TOTAL COLIFORM BACTERIA INDICATOR PARAMETER. The preventive action limit for total coliform bacteria is 0. If the source of total coliform bacteria is determined to be from a regulated facility, practice, or activity, response actions under s. NR 140.24 may be required.

Table 3
Methodology for Establishing Preventive Action Limit for Indicator Parameters

Parameter	*Minimum Increase (mg/l)*
Alkalinity	100
Biochemical oxygen demand (BOD_5)	25
Calcium	25
Chemical oxygen demand (COD)	25
Magnesium	25
Nitrogen series	
Organic nitrogen	2
Total nitrogen	5
Potassium	5
Sodium	10
Field specific conductance	200 microSiemens/cm
Total dissolved solids (TDS)	200
Total hardness	100
Total organic carbon (TOC)	1
Total organic halogen (TOX)	0.25

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. table 3, Register, October, 1990, No. 418, eff. 11-1-90; am. Table 3, Register, December, 1998, No. 516, eff. 1-1-99; CR 09-102: am. Table 3 Register December 2010 No. 660, eff. 1-1-11; CR 22-061: am. (2) (intro.), cr. (3), am. Table 3 Register July 2023 No. 811, eff. 8-1-23.

NR 140.22 Point of standards application for design and compliance. (1) DESIGN. Except as specified in sub. (1m), facilities, practices or activities regulated by the department, including remedial actions, shall be designed to minimize the level of substances in groundwater and to comply with the preventive action limits to the extent technically and economically feasible at all the following locations:

(a) Any point of present groundwater use.

(b) Any point beyond the boundary of the property on which the facility, practice or activity is located.

(c) Any point within the property boundaries beyond the 3-dimensional design management zone if one is established by the department at each facility, practice or activity under sub. (3).

(d) Every point at which groundwater is monitored to determine if a preventive action limit or enforcement standard has been attained or exceeded for sites identified under s. NR 140.22 (2) (c).

(1m) DESIGN OF ASR SYSTEMS; SPECIFIED SUBSTANCES. The point of standards application to determine if the design of an aquifer storage recovery system, regulated under ch. 280 or 281, Stats., complies with the preventive action limits for a specified substance is 1,200 feet from an aquifer storage and recovery well and at any other well that is not part of the ASR system and that is within 1,200 feet of an aquifer storage recovery well.

(2) COMPLIANCE. (a) Except as specified in par. (d), the point of standards application to determine if a preventive action limit has been attained or exceeded is any point at which groundwater is monitored.

(b) Except as specified in par. (d), the point of standards application to determine whether an enforcement standard has been attained or exceeded shall be the following locations:

1. Any point of present groundwater use;

2. Any point beyond the boundary of the property on which the facility, practice or activity is located;

3. Any point within the property boundaries beyond the 3 dimensional design management zone if one is established by the department at each facility, practice or activity under sub. (3).

Note: The boundary beyond which the enforcement standards apply is the closer of the property boundary or the design management zone boundary to the waste boundary for the facility, practice or activity.

(c) For discharges, releases, sites or facilities regulated under s. 292.11, 291.29 or 291.37, Stats., or s. NR 600.07, for which a design management zone has not been established in sub. (3), Table 4, the point of standards application shall be every point at which groundwater is monitored to determine if a preventive action limit or enforcement standard has been attained or exceeded.

Note: Section NR 600.07 no longer exists.

(d) The point of standards application to determine if a preventive action limit or enforcement standard for a specified substance has been attained or exceeded at an aquifer storage recovery well, regulated under ch. 280 or 281, Stats., is 1,200 feet from the aquifer storage and recovery well and at any other well that is not part of the ASR system and that is within 1,200 feet of the aquifer storage recovery well.

(3) DESIGN MANAGEMENT ZONE. (a) The design management zone for facilities, practices or activities subject to regulation by the department shall be an area enclosed by vertical boundaries which extend from the land surface downward through all saturated geological formations. The design management zone shall extend horizontally beyond the waste boundary or ASR displacement zone to the distance indicated in Table 4 for the specific type of facility, practice or activity. The waste boundary shall be the outermost limit at which waste from a facility, practice or activity has been stored, applied or disposed of, or permitted or approved for storage, application or disposal. For hazardous waste facilities regulated under ch. 291, Stats., the waste boundary shall include the horizontal space taken up by any liner, dike or other barrier to contain waste.

(b) In issuing or reissuing a permit, license or approval, the department may consider an expansion or reduction of the design management zone at a regulated or proposed facility, practice or activity by a horizontal distance not to exceed 50% of the distance listed in Table 4.

(c) The department shall consider the following factors in determining whether to expand or reduce the design management zone:

1. Nature, thickness and permeability of unconsolidated materials, including topography;

2. Nature and permeability of bedrock;

3. Groundwater depth, flow direction and velocity;

4. Waste volume, waste type and characteristics, including waste loading;

5. Contaminant mobility;

6. Distances to property boundary and surface waters;

7. Engineering design of the facility, practice or activity;

8. Life span of the facility, practice or activity;

9. Present and anticipated uses of land and groundwater; and

10. Potential abatement options if an enforcement standard is exceeded.

(d) The design management zone may not be expanded or reduced unless it has been demonstrated to the satisfaction of the department that the preventive action limits and enforcement standards will be met at the adjusted design management zone. The design management zone may not be expanded unless it has been demonstrated to the satisfaction of the department that the preventive action limits and enforcement standards cannot be met at the design management zone specified in Table 4.

Table 4

Type of Facility, Practice or Activity	*Horizontal Distances for the Design Management Zone*
Land disposal systems regulated under ch. 283, Stats.	250 feet
Wastewater and sludge storage or treatment lagoons regulated under ch. 281 or 283, Stats.	100 feet
Solid waste disposal facilities regulated under ch. 289, Stats., which have feasibility reports approved after October 1, 1985.	150 feet
All other solid waste disposal facilities regulated under ch. 289, Stats.	300 feet
Hazardous waste disposal facilities, waste piles, landfills and surface impoundments subject to regulation under ss. NR 665.0090 to 665.0094	300 feet
Hazardous waste disposal facilities, waste piles, landfills and surface impoundments subject to regulation under ss. NR 664.0090 to 664.0100.	0 feet
Aquifer storage recovery systems regulated under ch. 280 or 281, Stats.	0 feet

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (1) (b), Register, October, 1988, No. 394, eff. 11-1-88; am. (4) and table 4, Register, January, 1992, No. 433, eff. 2-1-92; am. (1), cr. (1) (d), renum. (2) to (5) to be (2) (a), (b), (c) and (3) and am. (2) (b) 3., Register, March, 1994, No. 459, eff. 4-1-94; CR 02-134: am. (1) (intro.), (2) (a), (b) (intro.), (3) (a) and Table 4, cr. (1m) and (2) (d) Register June 2003 No. 570, eff. 7-1-03; correction in Table 4 made under s. 13.93 (2m) (b) 7., Stats., Register November 2006 No. 611.

NR 140.24 Responses when a preventive action limit is attained or exceeded. (1) NOTIFICATION AND ASSESSMENT. If the concentration of a substance, including indicator parameters, in groundwater attains or exceeds a preventive action limit at a point of standards application as described in s. NR 140.22 (2):

(a) The owner or operator of the facility, practice or activity shall notify the department in writing when monitoring data is submitted that a preventive action limit has been attained or exceeded in accordance with any deadlines in applicable statutes, rules, permits or plan approvals. Where no deadlines are imposed, the owner or operator shall notify the department as soon as practical after the results are received. When the results of any private well sampling attain or exceed a preventive action limit, the owner or operator of the facility, practice or activity shall notify the department within 10 days after the results are received. The notification shall provide a preliminary analysis of the cause and significance of the concentration.

Note: Section 292.11 (2) (a), Stats., requires that the department be notified immediately of hazardous substance discharges.

Note: See s. NR 140.27.

(b) Upon receipt of the notice under par. (a), the department shall evaluate the information and, if further information is required to make the assessment under par. (c), direct the owner or operator to prepare and submit a report by a specified deadline. The report shall assess the cause and significance of the increased concentration based on a consideration of the factors identified in par. (c) and shall propose a response to meet the objectives of sub. (2).

(c) The department shall assess the cause and significance of the concentration of the substance in determining the appropriate response to meet the objectives of sub. (2). In addition to all other relevant information, the department shall consider the information submitted under par. (b) and the following factors where applicable:

1. Background water quality.

a. The department shall compare background water quality data and monitoring data from wells downgradient of the facility, practice or activity to determine if downgradient water quality is adversely affected. If the background water quality at a facility, practice or activity is not known or is inadequately defined, the department may require additional sampling of existing wells, or installation and sampling of additional wells, or both.

b. Except for substances which are carcinogenic, teratogenic or mutagenic in humans, before requiring a response at a site where the background concentration of a substance is determined to be equal to or greater than the preventive action limit, the department shall determine that the proposed remedial action will protect or substantially improve groundwater quality notwithstanding the background concentrations of naturally occurring substances.

2. Reliability of sampling data. As part of its review of the quality of the sampling data, the department shall evaluate the sampling procedures, precision and accuracy of the analytical test, size of the data set, and the quality control and quality assurance procedures used. If there is insufficient information to evaluate the reliability of the sampling data, the department may require additional samples or other changes in the monitoring program at the facility, practice or activity.

3. Public health, welfare and environmental effects of the substance. The department shall consider the public health, welfare and environmental effects of the substance, including but not limited to its mobility in the subsurface, environmental fate, the risks considered when the standard was adopted and whether it is carcinogenic, mutagenic, teratogenic or has interactive effects with other substances.

4. Probability that a preventive action limit or an enforcement standard may be attained or exceeded outside the design management zone. In evaluating the probability that a preventive action limit or an enforcement standard may be attained or exceeded outside the design management zone, the department shall consider, at a minimum, geologic conditions, groundwater flow rate and direction, contaminant mobility in the subsurface and environmental fate.

5. Performance of the facility, practice or activity. The department shall consider whether the facility, practice or activity is performing as designed in accordance with the design requirements in s. NR 140.22 (1). The department shall consider the type, age and size of the facility, practice or activity; the type of design, if applicable; the operational history; and other factors related to performance of the facility, practice or activity as appropriate.

6. Location of the monitoring point. The department shall consider the location of the monitoring point in relation to the facility, practice or activity and the design management zone in assessing the appropriate response.

7. Other known or suspected sources of the substance in the area. If other known or suspected sources are present in the

vicinity of a facility, practice or activity of concern, the department shall evaluate the probability of contributions from other sources of the substance. The department shall consider, at a minimum, the number, size, type and age of nearby sources; the groundwater flow patterns; and the substances involved.

8. Hydrogeologic conditions. The department shall consider the geologic and groundwater conditions, including but not limited to the nature, thickness and permeability of the unconsolidated materials; the nature and permeability of bedrock; the depth to the water table; groundwater flow gradients, both vertical and horizontal; the position of the facility, practice or activity within the groundwater flow system; and the present and potential groundwater use in the vicinity of the facility, practice or activity at which an exceedance occurs. If there is insufficient hydrogeologic information, the department may require additional information.

9. Extent of groundwater contamination. The department shall consider the current and anticipated future extent of groundwater contamination in 3 dimensions. If water supplies are affected or threatened, the department shall evaluate the existing effects and potential risks of the substance on the potable water supplies. If the extent of contamination is not known, the department may require further documentation of the extent of contamination.

10. Alternate responses. The department shall evaluate alternate responses, including consideration of the technical and economic feasibility of alternate responses from Table 5 or 6 or both, the practicality of stopping the further release of the substance and the risks and benefits of continued operation of the facility, practice or activity and the ability of a response to meet other applicable environmental protection laws.

(2) RESPONSE OBJECTIVES. Based on its evaluation of the report required under sub. (1), and the assessment criteria of sub. (1) (c), the department shall specify the responses to be implemented by the owner or operator of the facility, practice or activity designed to the extent technically and economically feasible to prevent any new releases of the substance from traveling beyond the design management zone or other applicable points of standards application described in s. NR 140.22 and restore contaminated groundwater within a reasonable period of time, considering the criteria specified in s. NR 722.07. Both the source control and the groundwater restoration components of the response shall be designed and implemented to:

(a) Minimize the concentration of the substance in groundwater at the point of standards application where technically and economically feasible;

(b) Regain and maintain compliance with the preventive action limit. If the department determines that compliance with the preventive action limit is either not technically or economically feasible, the owner or operator shall achieve compliance with the lowest possible concentration which is technically and economically feasible; and

(c) Ensure that the enforcement standard is not attained or exceeded at the point of standards application.

(3) RANGE OF RESPONSES FOR INDICATOR PARAMETERS. Except as otherwise provided in this subsection, the range of responses that the department may take or may require if a preventive action limit for an indicator parameter identified in Table 3 has been attained or exceeded, is one or more of the responses in items 1 to 4 in Table 5. If total coliform bacteria are detected at a facility, practice, or activity groundwater monitoring point, that monitoring point shall be sampled for *E. coli* bacteria. The range of responses that the department may take or may require if a preventive action limit for total coliform bacteria has been attained or exceeded, is one or more of the responses in Table 5. The range of responses is one or more of the responses in items 1 to 6 of Table 5 in the event the department determines that:

(a) There is a threat to public health or welfare as a result of a preventive action limit for an indicator parameter being attained or exceeded; or

(b) The results demonstrate a significant design flaw or failure of the facility to contain substances, such that the facility can be expected to emit one or more of the substances on Table 1 or 2 in excess of a preventive action limit at a point of standards application.

(4) RANGE OF RESPONSES FOR SUBSTANCES OF PUBLIC HEALTH OR WELFARE CONCERN. The range of responses which the department may take or may require the owner or operator of a facility, practice or activity to take if a preventive action limit for a substance of health or welfare concern has been attained or exceeded are listed in Table 5. More than one response may be taken or required by the department.

Table 5

Range of Responses for Exceedances of a Preventive Action Limit for Indicator Parameters and Substances of Health or Welfare Concern

1. No action pursuant to s. NR 140.24 (5) and consistent with s. 160.23, Stats.
2. Require the installation and sampling of groundwater monitoring wells.
3. Require a change in the monitoring program, including increased monitoring.
4. Require an investigation of the extent of groundwater contamination.
5. Require a revision of the operational procedures at the facility, practice or activity.
6. Require a change in the design or construction of the facility, practice or activity.
7. Require an alternate method of waste treatment or disposal.
8. Require prohibition or closure and abandonment of a facility, practice or activity in accordance with sub. (6).
9. Require remedial action to renovate or restore groundwater quality.
10. Require remedial action to prevent or minimize the further discharge or release of the substance to groundwater.
11. Revise rules or criteria on facility design, location or management practices.
12. Require the collection and evaluation of data to determine whether natural attenuation can be effective to restore groundwater quality within a reasonable period of time, considering applicable criteria specified in ss. NR 140.24, 722.07 and 722.09 or 722.11, and require monitoring to determine whether or not natural attenuation is occurring in compliance with the response objectives in s. NR 140.24 (2).

(5) NO ACTION RESPONSE CRITERIA. For facilities, practices and activities with a design management zone specified in s. NR 140.22 (3) Table 4, the department may determine that no response is necessary and that an exemption under s. NR 140.28 is not required when either of the following conditions is met:

(a) The concentration of a substance within a design management zone is detected above the preventive action limit, the enforcement standard has not been attained or exceeded within the design management zone, and the department determines that there is no indication that the preventive action limit will be at-

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tained or exceeded at any point outside the design management zone, or

(b) The background concentration of a substance is greater than the preventive action limit, the anticipated or detected incremental increase in the concentration of a substance which results from a specific facility, practice or activity is not greater than the preventive action limit, and the anticipated or detected concentration is not greater than the enforcement standard either within or outside of the design management zone.

(6) PROHIBITION AND CLOSURE CRITERIA. The department may not impose a prohibition on a practice or activity or require closure of a facility which produces the substance unless the department:

(a) Bases its decision upon reliable test data;

(b) Determines, to a reasonable certainty, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard at the point of standards application;

(c) Establishes the basis for the boundary and duration of the prohibition; and

(d) Ensures that any prohibition imposed shall be reasonably related in time and scope to maintaining compliance with the enforcement standard at the point of standards application.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (5) (intro.) and (6) (intro.), Register, October, 1988, No. 394, eff. 11-1-88; am. (1) (intro.), (a), (b), (c) (intro.), 5. and 10., (2) (intro.), and (5) (intro.), renum. (7) to be NR 104.02 (4), Register, January, 1992, No. 433, eff. 2-1-92; am. (1) (intro.), (c) (intro.), (3) (intro.) and Table 5, Register, March, 1994, No. 459, eff. 4-1-94; am. (1) (a), (5) (intro.), Register, August, 1995, No. 476, eff. 9-1-95; am. (2) (intro.), (4) and Table 5, Register, October, 1996, No. 490, eff. 11-1-96; am. (1) (a), Register, December, 1998, No. 516, eff. 1-1-99; CR 22-061: am. (3) (intro.) Register July 2023 No. 811, eff. 8-1-23.

NR 140.26 Responses when an enforcement standard is attained or exceeded. (1) NOTIFICATION AND ASSESSMENT. If the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application as described in s. NR 140.22 (2):

(a) The owner or operator of the facility, practice or activity shall notify the department in writing when monitoring data is submitted that an enforcement standard has been attained or exceeded in accordance with any deadlines in applicable statutes, rules, permits or plan approvals. Where no deadlines are imposed, the owner or operator shall notify the department as soon as practical after the results are received. When the results of any private well sampling attain or exceed an enforcement standard or preventive action limit, the owner or operator of the facility, practice or activity shall notify the department within 10 days after the results are received. The notification shall provide a preliminary analysis of the cause and significance of the concentration.

Note: Section 292.11 (2) (a), Stats., requires that the department be notified immediately of hazardous substance discharges.

Note: See s. NR 140.27.

(b) Upon receipt of the notice under par. (a), the department shall evaluate the information and, if further information is required to make the assessment under par. (c), direct the owner or operator to prepare and submit a report by a specified deadline. The report shall assess the cause and significance of the increased concentration based on a consideration of the factors identified in s. NR 140.24 (1) (c) and shall propose a response to achieve compliance with the enforcement standard at the point of standards application and to comply with sub. (4).

(c) The department shall assess the cause and significance of the concentration of the substance in determining the appropriate response measures to achieve compliance with the enforcement standard at the point of standards application and to comply with sub. (4). In addition to all other relevant information, the department shall consider the information submitted under sub. (1) and the factors listed in s. NR 140.24 (1) (c), where applicable.

(2) REGULATORY RESPONSES. (a) If a facility, activity or practice is regulated under subch. IV of ch. 283, Stats., ch. 289, 291, or 292, Stats., the department shall require responses as necessary, based on the evaluation of the increased concentration as outlined in sub. (1), to prevent any new releases of the substance from traveling beyond the design management zone or other applicable point of standards application described in s. NR 140.22 and restore contaminated groundwater within a reasonable period of time, considering the criteria specified in s. NR 722.07. Both the source control and the groundwater restoration components of the response shall be designed to achieve compliance with the enforcement standard at the point of standards application and to achieve compliance with the preventive action limit at the point of standards application unless compliance with the preventive action limit is not technically and economically feasible. The range of responses which the department may take or may require the owner or operator of a facility, practice or activity to take if an enforcement standard for a substance of public health or welfare concern has been attained or exceeded at a point of standards application is listed in Table 6. More than one response listed in Table 6 may be required by the department. In addition, the department may take or may require the owner or operator of a facility, practice or activity to take one or more responses from Table 5, except response number one.

Table 6

Range of Responses for Exceedance of Enforcement Standards for Substances of Health or Welfare Concern

1. Require a revision of the operational procedures at a facility, practice or activity.
2. Require a change in the design or construction of the facility, practice or activity.
3. Require an alternate method of waste treatment or disposal.
4. Require prohibition or closure and abandonment of a facility, practice or activity.
5. Require remedial action to renovate or restore groundwater quality.
6. Require remedial action to prevent or minimize the further release of the substance to groundwater.
7. Revise rules or criteria on facility design, location or management practices.
8. Require the collection and evaluation of data to determine whether natural attenuation can be effective to restore groundwater quality within a reasonable period of time, considering applicable criteria specified in ss. NR 140.24, 722.07 and 722.09 or 722.11, and require monitoring to determine whether or not natural attenuation is occurring in compliance with the requirements of s. NR 140.26 (2) (a).

(b) If an activity or practice is not subject to regulation under subch. IV of ch. 283, Stats., ch. 289, 291, or 292, Stats., and if the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application, the department shall take the following responses unless it can be shown to the department that, to a reasonable certainty, by the greater weight of the credible evidence, an alternative response will achieve compliance with the enforcement standard at the point of standards application:

1. Prohibit the activity or practice which uses or produces the substance; and

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2. Require remedial actions with respect to the specific site in accordance with this chapter.

(3) RESPONSES FOR NITRATE AND SUBSTANCES OF PUBLIC WELFARE CONCERN. If nitrates or any substance of welfare concern only attains or exceeds an enforcement standard, the department is not required to impose a prohibition or close a facility if it determines that:

(a) The enforcement standard was attained or exceeded, in whole or in part, because of high background concentrations of the substance; and

(b) The additional concentration does not represent a public welfare concern.

(4) COMPLIANCE WITH PREVENTIVE ACTION LIMITS. When compliance with the enforcement standard is achieved at the point of standards application, s. NR 140.24 applies.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (1) (intro.), (a), (b), (2), r. (6), Register, January, 1992, No. 433, eff. 2-1-92; am. (1) (intro.) and Table 6, renum. (2) to (5) to be (2) (a), (b), (3) and (4), Register, March, 1994, No. 459, eff. 4-1-94; am. (1) (a), Register, August, 1995, No. 476, eff. 9-1-95; correction in (1) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; am. (2) (a) and Table 6, Register, October, 1996, No. 490, eff. 11-1-96; am. (1) (a), Register, December, 1998, No. 516, eff. 1-1-99; correction in (2) (a), (b) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register February 2017 No. 734.

NR 140.27 Responses when an enforcement standard is attained or exceeded at a location other than a point of standards application. If the concentration of a substance in groundwater attains or exceeds an enforcement standard at a location other than a point of standards application for an enforcement standard, s. NR 140.24 shall apply.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

NR 140.28 Exemptions. (1) APPLICABILITY. (a) The department may not approve a proposed facility, practice or activity at a location where a preventive action limit or enforcement standard adopted under s. NR 140.10 or 140.12 has been attained or exceeded unless an exemption has been granted under this section.

(b) For an existing facility, practice or activity, a response is required under s. NR 140.24 (2) or 140.26 (2) when a preventive action limit or an enforcement standard has been attained or exceeded at a point of standards application unless an exemption has been granted under this section or the criteria of s. NR 140.24 (5) (a) or (b) are met.

(c) For an existing facility, practice or activity that has taken or is taking a response under s. NR 140.24 (2) or 140.26 (2), a continued response is required unless a substance no longer attains or exceeds a preventive action limit or an exemption has been granted under this section.

(d) If a substance or remedial material is to be infiltrated or injected into groundwater at a concentration which attains or exceeds a preventive action limit, or at any concentration for a substance or remedial material for which a groundwater quality standard has not been established under this chapter, a temporary exemption is required under sub. (5).

(2) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS BELOW THE PREVENTIVE ACTION LIMIT. (a) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of nitrate or a substance of public welfare concern is below the preventive action limit if the facility, practice or activity is designed and implemented to achieve the lowest possible concentration for that substance which is technically and economically feasible and the existing or anticipated increase in the concentration of that substance does not present a threat to public health or welfare.

(b) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of a substance of public health concern, other than nitrate, is below the preventive action limit for that substance if all of the following occur:

1. The measured or anticipated increase in the concentration of the substance will be minimized to the extent technically and economically feasible.

2. Compliance with the preventive action limit is either not technically or economically feasible.

3. The enforcement standard for that substance will not be attained or exceeded at the point of standards application.

4. Any existing or projected increase in the concentration of the substance above the background concentration does not present a threat to public health or welfare.

Note: An exemption may be considered under this subsection even if monitoring data indicates no detectable background concentration of the substance.

(3) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS ABOVE A PREVENTIVE ACTION LIMIT. (a) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of nitrate or a substance of public welfare concern attains or exceeds the preventive action limit if the facility, practice or activity is designed to achieve the lowest possible concentration for that substance which is technically and economically feasible and the existing or anticipated increase in the concentration of the substance does not present a threat to public health or welfare.

(b) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of a substance of public health concern, other than nitrate, attains or exceeds a preventive action limit for that substance:

1. If the facility, practice or activity has not caused and will not cause the further release of that substance into the environment; or

2. If the background concentration of the substance does not exceed the enforcement standard for that substance, the facility, practice or activity has not caused and will not cause the concentration of the substance to exceed the enforcement standard for that substance at a point of standards application and the facility, practice or activity is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible.

(4) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS ABOVE AN ENFORCEMENT STANDARD. (a) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of nitrate or a substance of public welfare concern attains or exceeds an enforcement standard if the facility, practice or activity is designed to achieve the lowest possible concentration for that substance which is technically and economically feasible and the existing or anticipated increase in the concentration of the substance does not present a threat to public health or welfare.

(b) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of a substance of public health concern, other than nitrate, attains or exceeds the enforcement standard for that substance if:

1. The facility has not caused and will not cause the further release of that substance into the environment; or

2. a. The facility is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible; and

b. The existing or anticipated increase in the concentration of the substance has not caused or will not cause an increased threat to public health or welfare; and

c. The existing or anticipated incremental increase in the concentration of the substance by itself, has not exceeded or will not exceed the preventive action limit.

(c) The department shall take action under s. NR 140.26 if it determines that the increase in the concentration of the substance causes an increased threat to public health or welfare or it determines that the incremental increase in the concentration of the substance, by itself, exceeds the preventive action limit.

(5) CRITERIA FOR GRANTING A TEMPORARY EXEMPTION WHERE INFILTRATION OR INJECTION IS UTILIZED FOR A REMEDIAL ACTION. (a) *General.* In lieu of an exemption granted in compliance with the criteria in subs. (2) to (4), the department may grant a temporary exemption if the criteria in this subsection are complied with. This exemption applies to the owner or operator of a facility, practice or activity that is undertaking a remedial action that: includes the infiltration or injection of contaminated groundwater or remedial material, has been approved by the department, and will comply with the applicable response objectives under s. NR 140.24 or 140.26 within a reasonable period of time. The owner or operator of the facility, practice or activity may submit a temporary exemption request to the department at the same time or after the department has approved the remedial action.

(b) *Exemption request.* The owner or operator of the facility, practice or activity shall submit a request for a temporary exemption to the department. As part of the request, the applicant shall indicate how the exemption prerequisites under par. (c) and applicable remedial design, operational and monitoring criteria under par. (d) will be met.

Note: For most remedial actions, a microcosm or treatability study, or other bench scale or pilot scale study will be required by the department prior to consideration of an exemption for the full-scale remedial action under this section. If a pilot scale study is deemed necessary before an exemption for a full-scale remedial action can be granted, a separate temporary exemption issued under this section is required before the pilot scale study can begin.

(c) *Exemption prerequisites.* As part of the temporary exemption request, the owner or operator shall demonstrate to the satisfaction of the department that all of the following requirements will be met:

1. The remedial action for restoring contaminated soil or groundwater, and any infiltrated or injected contaminated water and remedial material, shall achieve the applicable response objectives required by s. NR 140.24 (2) or 140.26 (2) within a reasonable period of time.

2. The type, concentration and volume of substances or remedial material to be infiltrated or injected shall be minimized to the extent that is necessary for restoration of the contaminated soil or groundwater and be approved by the department prior to use.

3. Any infiltration or injection of contaminated water or remedial material into soil or groundwater will not significantly increase the threat to public health or welfare.

4. No uncontaminated or contaminated water, substance or remedial material will be infiltrated or injected into an area where a floating non-aqueous phase liquid is present in the contaminated soil or groundwater.

5. There will be no expansion of soil or groundwater contamination, or migration of any infiltrated or injected contaminated water or remedial material, beyond the edges of previously contaminated areas, except that infiltration or injection into previously uncontaminated areas may be allowed if the department determines that expansion into adjacent, previously uncontaminated areas is necessary for the restoration of the contaminated soil or groundwater, and the requirements of subd. 1. will be met.

6. All necessary federal, state and local licenses, permits and other approvals are obtained and all applicable environmental protection requirements will be complied with.

Note: The issuance of a wastewater discharge permit by the department is required prior to the infiltration or injection of substances or remedial material into unsaturated soil or groundwater for discharges, as defined by s. 283.01 (4), Stats. A wastewater discharge permit establishes the effluent or injection limits for substances or remedial material which may be infiltrated or injected into unsaturated soil or groundwater. A temporary exemption granted under this subsection applies to substances or remedial material which may enter groundwater or may be detected at a point of standards applications; it does not apply to substances or remedial material infiltrated or injected into unsaturated soil.

(d) *Remedial action design, operation and monitoring criteria.* In addition to providing information on how the requirements under par. (c) will be met, the application shall specify the following information where applicable.

1. The remedial action design, operation and soil and groundwater monitoring procedures to insure compliance with the requirements under par. (c) and applicable criteria under this paragraph.

2. The level of pre-treatment for contaminated groundwater prior to reinfiltration or reinjection.

3. The types and concentrations of substances or remedial material being proposed for infiltration or injection.

4. The volume and rate of infiltration or injection of contaminated groundwater or remedial material.

5. The location where the contaminated groundwater or remedial material will be infiltrated or injected.

(e) *Granting an exemption.* The department may only grant a temporary exemption under this subsection at the same time or after the department has approved the remedial action. When the department grants an exemption under this subsection, it shall follow the exemption procedures included in sub. (6) and shall require the owner or operator of the facility, practice or activity to comply with the requirements and criteria in pars. (c) and (d). The temporary exemption shall also include:

1. The expiration date of the temporary exemption. The expiration date shall be selected to achieve the applicable response objectives required by s. NR 140.24 (2) or 140.26 (2) within a reasonable period of time, not to exceed 5 years from the effective date of the exemption. The temporary exemption may be reissued following a department review of information documenting the performance of the remedial action and a successful demonstration that reissuance of the exemption is necessary to achieve the response objectives required by s. NR 140.24 (2) or 140.26 (2).necessary relating to the temporary exemption.

(f) *Responses to exemption violations.* If the department determines that the conditions or requirements specified in the temporary exemption are not being met, the department may:

1. Require that the owner or operator of the facility, practice or activity revise the remedial action design, operation or monitoring procedures in accordance with par. (d). All revisions shall comply with the requirements established under pars. (c) and (e) and may require approval from the department prior to implementation.

2. Revoke the exemption and require implementation of an alternate remedial action to restore soil or groundwater quality.

(6) EXEMPTION PROCEDURES. If the department grants an exemption under this section for a substance or a remedial material, it shall specify:

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(a) The substance or remedial material to which the exemption applies;

(b) The terms and conditions of the exemption, which may include an alternative concentration limit, under which the department may seek a response under s. NR 140.24 or 140.26 relating to the substance or remedial material; and

(c) Any other conditions relating to the exemption.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (1) (a) and (b), (3) (a), (b) (intro.) and 2., (4) (a) and (b) 1. and (5) (b), Register, October, 1988, No. 394, eff. 11-1-88; am. (1) (b), Register, January, 1992, No. 433, eff. 2-1-92; correction in (4) (b) made under s. 13.93 (2m) (b) 1., Stats., Register, January, 1992, No. 433; am. (1) (b) and (5) (b), Register, March, 1994, No. 459, eff. 4-1-94; renum. (5) to be (6), cr. (5), Register, August, 1995, No. 476, eff. 9-1-95; cr. (1) (c), (d), am. (2) (intro.), (5) (a), (6) (intro.), (a) and (b), Register, December, 1998, No. 516, eff. 1-1-99; r. and recr. (2), Register, March, 2000, No. 531, eff. 4-1-00.

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CHAPTER NR 140
APPENDIX I TO TABLE 1
PUBLIC HEALTH GROUNDWATER QUALITY STANDARDS

Substance	CAS RN[1]	Common synonyms[2]
Acetochlor	34256-82-1	
Acetochlor ethane sulfonic acid + oxanilic acid	187022-11-3 (ESA) 184992-44-4 (OXA)	Acetochlor - ESA + OXA
Acetone	67-64-1	*Propanone*
Alachlor	15972-60-8	
Alachlor ethane sulfonic acid	142363-53-9	Alachlor-ESA, Alachlor Ethane Sulfonate, MON 5775
Aldicarb	116-06-3	
Aluminum	7429-90-5	
Ammonia	7664-41-7	
Anthracene	120-12-7	Para-naphthalene
Asbestos	1332-21-4	
Bentazon	25057-89-0	
Benzene	71-43-2	
Benzo(b)fluoranthene	205-99-2	B(b)F,3,4-Benzofluoranthene
Benzo(a)pyrene	50-32-8	BaP, B(a)P
Boron	7440-42-8	
Bromodichloromethane	75-27-4	Dichlorobromomethane, BDCM
Bromoform	75-25-2	Tribromomethane
Bromomethane	74-83-9	Methyl bromide
Butylate	2008-41-5	S-ethyl di-isobutylthiocarbamate
Carbaryl	63-25-2	
Carbofuran	1563-66-2	
Carbon disulfide	75-15-0	Carbon bisulfide
Carbon tetrachloride	56-23-5	Tetrachloromethane, Perchloroethane
Chloramben	133-90-4	
Chlordane	57-74-9	
Chlorodifluoromethane	75-45-6	HCFC-22, Freon 22
Chloroethane	75-00-3	Ethyl chloride, Monochloroethane
Chloroform	67-66-3	Trichloromethane
Chlorpyrifos	2921-88-2	
Chloromethane	74-87-3	Methyl chloride
Chromium (total)	7440-47-3	
Chrysene	218-01-9	1,2-Benzphenanthrene
Cobalt	7440-48-4	
Cyanazine	21725-46-2	2-chloro-4-ethylamino-6- nitriloisopropy-lamino-s-triazine
Cyanide, free	57-12-5	
Dacthal	1861-32-1	DPCA, Chlorothal, 1,4-benzenedicarboxylic acid
Dibromochloromethane	124-48-1	Chlorodibromomethane, DBCM
1,2-Dibromo-3-chloropropane	96-12-8	DBCP, Dibromochloropropane
1,2-Dibromoethane	106-93-4	EDB, Ethylene dibromide, Dibromoethane
Dibutyl phthalate	84-74-2	DP, Di-*n*-butyl phthalate, *n*-Butyl phthalate
Dicamba	1918-00-9	
1,2-Dichlorobenzene	95-50-1	o-Dichlorobenzene, o-DCB
1,3-Dichlorobenzene	541-73-1	m-Dichlorobenzene, m-DCB
1,4-Dichlorobenzene	106-46-7	p-Dichlorobenzene, p-DCB
Dichlorodifluoromethane	75-71-8	*Freon 12*
1,1,-Dichloroethane	75-34-3	Ethylidine chloride
1,2-Dichloroethane	107-06-2	1,2-DCA, Ethylene dichloride
1,1-Dichloroethylene	75-35-4	1,1-DCE, 1,1-Dichloroethene, Vinylidene chloride
1,2-Dichloroethylene (cis)	156-59-2	cis-Dichloroethylene, 1,2-Dichloroethene (cis)
1,2-Dichloroethylene (trans)	156-60-5	trans-1,2-Dichloroethylene
2,4-Dichlorophenoxyacetic acid	94-75-7	2,4-D
1,2-Dichloropropane	78-87-5	Propylene dichloride

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Substance	CAS RN[1]	Common synonyms[2]
1,3-Dichloropropene (cis/trans)[3]	542-75-6	DCP, Dichloropropylene
Di(2-ethylhexyl) phthalate	117-81-7	DEHP, Bis(2-ethylhexyl) phthalate, 1,2-Benzenedicarboxylic acid, Bis (2-ethylhexyl)ester
Dimethenamid/Dimethinamid-P	87674-68-8 163515-14-8 (-P)	
Dimethoate	60-51-5	
2,4-Dinitrotoluene	121-14-2	2,4-DNT, 1-methyl-2,4-dinitrobenzene
2,6-Dinitrotoluene	606-20-2	2,6-DNT, 2-methyl-1,3-dinitrobenzene
Dinitrotoluene, Total Residues	25321-14-6	Dinitrotoluene, DNT
Dinoseb	88-85-7	2-(1-methylpropyl)-4,6-dinitrophenol
1,4-Dioxane	123-91-1	*p*-Dioxane
Dioxin	1746-01-6	2,3,7,8-TCDD,2,3,7,8-Tetrachlorodibenzo-p-dioxin
Endrin	72-20-8	
EPTC	759-94-4	
Ethylbenzene	100-41-4	Phenylethane, EB
Ethyl ether	60-29-7	Diethyl Ether
Ethylene glycol	107-21-1	
Fluoranthene	206-44-0	Benzo(jk)fluorene
Fluorene	86-73-7	2,3-Benzidine, Diphenylenemethane
Fluoride	7681-49-4	
Fluorotrichloromethane	75-69-4	*Freon11*, Trichlorofluoromethane
Formaldehyde	50-00-0	
Heptachlor	76-44-8	
Heptachlor epoxide	1024-57-3	
Hexachlorobenzene	118-74-1	Perchlorobenzene
N-Hexane	110-54-3	Hexane, Skellysolve B
Hydrogen sulfide	7783-06-4	Dihydrogen sulfide
Lindane	58-89-9	
Manganese	7439-96-5	
Mercury	7439-97-6	
Methanol	67-56-1	Methyl alcohol, Wood alcohol
Methoxychlor	72-43-5	
Methylene chloride	75-09-2	Dichloromethane, Methylene dichloride
Methyl ethyl ketone	78-93-3	MEK, 2-Butanone
Methyl isobutyl ketone	108-10-1	MIBK, 4-Methyl-2-pentanone, Isopropylacetone, *Hexone*
Methyl tert-butyl ether	1634-04-4	MTBE, 2-Methoxy-2-methyl-propane, tert-Butyl methyl ether
Metolachlor/s-Metolachlor	51218-45-2 87392-12-9 (s-)	
Metolachlor ethane sulfonic acid + oxanilic acid	171118-09-5 (ESA) 152019-73-3 (OXA)	Metolachlor - ESA + OXA
Metribuzin	21087-64-9	
Molybdenum	7439-98-7	
Monochlorobenzene	108-90-7	Chlorobenzene
Naphthalene	91-20-3	
N-Nitrosodiphenylamine	86-30-6	NDPA
Pentachlorophenol	87-86-5	PCP, Pentachlorohydroxybenzene
Perchlorate	14797-73-0	Perchlorate and perchlorate salts, Perchlorate ion
Phenol	108-95-2	
Picloram	1918-02-1	4-amino-3,5,6-trichloropicolinic acid
Polychlorinated biphenyls[4]		PCBs
Prometon	1610-18-0	
Pyrene	129-00-0	Benzo(def)phenanthrene
Pyridine	110-86-1	Azabenzene
Simazine	122-34-9	2-chloro-4,6-diethylamino- s-triazine
Styrene	100-42-5	Ethenylbenzene, Vinylbenzene
Tertiary Butyl Alcohol	75-65-0	TBA
1,1,1,2-Tetrachlorethane	630-20-6	1,1,1,2-TCA, 1,1,1,2-PCA

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

Substance	CAS RN[1]	Common synonyms[2]
1,1,2,2,-Tetrachloroethane	79-34-5	1,1,2,2-TCA, 1,1,2,2-PCA
Tetrachloroethylene	127-18-4	Perchloroethylene, PERC, Tetrachloroethene
Tetrahydrofuran	109-99-9	THF
Toluene	108-88-3	Methylbenzene
Toxaphene	8001-35-2	
1,2,4-Trichlorobenzene	120-82-1	
1,1,1-Trichloroethane	71-55-6	Methyl chloroform, 1,1,1-TCA
1,1,2-Trichloroethane	79-00-5	1,1,2-TCA, Vinyl trichloride
Trichloroethylene	79-01-6	TCE, Chloroethene
2,4,5-Trichlorophenoxy-propionic acid	93-72-1	2,4,5-TP
1,2,3-Trichloropropane	96-18-4	1,2,3-TCP, Glycerol trichlorohyrin
Trifluralin	1582-09-8	
1,2,4-Trimethylbenzene	95-63-6	
1,3,5-Trimethylbenzene	108-67-8	
Vanadium	7440-62-2	
Vinyl chloride	75-01-4	VC, Chloroethene
Xylene[5]		

[1]Chemical Abstracts Service (CAS) registry numbers are unique numbers assigned to a chemical substance. The CAS registry numbers were published by the U.S. Environmental Protection Agency in 40 CFR Part 264, Appendix IV

[2]Common synonyms include those widely used in government regulations, scientific publications, commerce and the general public. Common synonyms should be cross-referenced with CAS registry number to ensure the correct substance is identified. Table 1 contains groundwater quality standards for pesticide active ingredients and their degradation breakdown products. Active ingredients are the chemicals in a pesticide product that kill, control, or repel pests. Pesticide products are given proprietary "trade names" by the pesticide product manufacturer. A database of pesticide products approved for use in Wisconsin is accessible through the Department of Agriculture, Trade and Consumer Protection (DATCP) home web page (search for "pesticide database"). The U.S. Environmental Protection Agency (EPA) also maintains a database of registered pesticide products, called the Pesticide Product and Label System (PPLS), on its website. These pesticide product databases can be searched by active ingredient to find the pesticide products, and their trade names, that contain a specific pesticide active ingredient.

[3]This is a combined chemical substance which includes cis 1,3-Dichloropropene (CAS RN 10061-01-5) and trans 1,3-Dichloropropene (CAS RN 10061-02-6).

[4]Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals (same molecular composition, different molecular structure and formula), including constituents of Aroclor-1016 (CAS RN12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

[5]Xylene (CAS RN 1330-20-7) refers to a mixture of three isomers, meta-xylene (CAS RN 108-38-3), ortho-xylene (CAS RN 95-47-6), and para-xylene (CAS RN 106-42-3).

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

Policy 1.9 (deleted)

~~1.9) Thermal discharges shall not raise the receiving water temperatures more than 3 degrees F above the existing natural temperature at the boundary of mixing zones. (See Wis. Stats. § 281.15, and Wis. Admin. Code NR 102.07. See also managed use #8)~~

the department shall be the agency for the enforcement of any such legislative agreement.

History: 1995 a. 227 ss. 376, 383, 385, 987; 1995 a. 378 s. 42; 2017 a. 183.

Cross-reference: See also chs. NR 809, 811, 812, and 845, and ss. NR 1.50, 1.95, and 103.05, Wis. adm. code.

The Department of Natural Resources' general supervision and control over the state's waters is not so sweeping as to authorize the department to ban all activities that might adversely affect water quality or to establish limitations for any one specific industry. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95-3125.

Through this section and s. 281.11, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170. See also Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

The legislature has granted the Department of Natural Resources the broad but explicit authority to consider the environmental effects of a proposed high capacity well under this section. That its explicit authority to do so is broad does not negate that authority. That authority to consider the environmental effects of all high capacity wells is consistent with s. 227.10 (2m). Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

281.13 Surveys and research. (1) (a) The department is authorized to act with the U.S. geological survey in determining the sanitary and other conditions and nature of the natural water sources in this state, for the following purposes:

1. To determine the nature and condition of the unpolluted natural water sources.

2. To determine to what extent the natural water sources are being contaminated by sewage from cities, villages and towns.

3. To determine to what extent the natural water sources are being polluted by other wastes.

4. To assist in determining the best sources of water.

(b) The department is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the U.S. geological department, to carry this subsection into effect.

(3) The department may conduct scientific experiments, investigations, waste treatment demonstrations and research on any matter under its jurisdiction. It may establish pilot plants, prototypes and facilities in connection therewith and lease or purchase land or equipment.

History: 1995 a. 227 ss. 372, 382; 1995 a. 378 s. 40; 1997 a. 35.

281.14 Wisconsin River monitoring and study. (1) In this section:

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

(b) "Point source" has the meaning given in s. 283.01 (12).

(2) The department shall conduct a program to monitor and study the introduction of nutrients from point sources and nonpoint sources into the Wisconsin River from the headwaters of the river to the Castle Rock Flowage dam. The department shall seek to do all of the following under this subsection:

(a) Identify the amounts of nutrients being introduced into the river.

(b) Characterize and quantify the nutrients, in particular nitrogen and phosphorus, introduced into the river from nonpoint sources relative to climate, land use, soil type, elevation, and drainage.

(c) Collect water quality information for locations on the river itself and for major tributaries and major impoundments to use in evaluating the biological, physical, and chemical properties of the water and to use as data in watershed and river models.

(d) Use watershed and river models and the information collected under this subsection and from other sources to forecast the effect on water quality of different methods of reducing the amounts of nutrients introduced into the river.

(e) Develop tools to use in selecting and implementing methods of reducing the amounts of nutrients introduced into the river.

History: 2009 a. 28; 2013 a. 20.

281.145 River and stream monitoring and study. (1) In this section:

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

(b) "Point source" has the meaning given in s. 283.01 (12).

(2) The department shall conduct a program to monitor and study the introduction of nutrients from point sources and nonpoint sources into the East and West Twin Rivers, the Manitowoc River, the Sheboygan River, and the streams that outlet to Lake Michigan and that lie in and between the Ahnapee River watershed and the Sauk Creek watershed. The department shall seek to do all of the following under this subsection:

(a) Identify the amounts of nutrients being introduced into these waters.

(b) Characterize and quantify the nutrients, in particular nitrogen and phosphorus, introduced into these waters from nonpoint sources relative to climate, land use, soil type, elevation, and drainage.

(c) Collect water quality information from locations on these waters and from major tributaries and major impoundments to use in evaluating the biological, physical, and chemical properties of the water and to use as data in watershed and river models.

(d) Use watershed and river models and the information collected under this subsection and from other sources to forecast the effect on water quality of different methods of reducing the amounts of nutrients introduced into these waters.

(e) Develop tools to use in selecting and implementing methods of reducing the amounts of nutrients introduced into these waters.

History: 2017 a. 59.

281.15 Water quality standards. (1) The department shall promulgate rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof and the water quality criteria for those waters based upon the designated use. Water quality standards shall protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water systems, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.

(2) In adopting or revising any water quality criteria for the waters of the state or any designated portion thereof, the department shall do all of the following:

(a) At least annually publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following year.

(b) Consider information reasonably available to the department on the likely social, economic, energy usage and environmental costs associated with attaining the criteria and provide a description of the economic and social considerations used in the establishment of the criteria.

(c) Establish criteria which are no more stringent than reason-

ably necessary to assure attainment of the designated use for the water bodies in question.

(d) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(e) Develop a technical support document which identifies the scientific data utilized, the margin of safety applied and any facts and interpretations of those data applied in deriving the water quality criteria, including the persistence, degradability and nature and effects of each substance on the designated uses, and which provides a summary of the information considered under this section.

(3) Subsection (2) does not apply to rules promulgated under this section by the department for any substance before November 10, 1987.

(4) By April 1, 1989, the department shall review, in accordance with sub. (2), and as necessary revise all water quality criteria, except those for dissolved oxygen, temperature, pH and ammonia, adopted under this section before November 10, 1987.

(5) The department shall comply with this section with respect to all water quality criteria adopted or revised after November 10, 1987.

(6) Every 3 years, as part of the review required by 33 USC 1313 (c) (1), the department shall review the water quality standards promulgated under this section and determine whether any existing standards should be modified or new standards should be adopted. The department shall hold a public hearing to receive information and public comment regarding water quality standards promulgated under this section. The department shall publish notice of the hearing on the department's Internet site at least 45 days before the hearing date. The department shall submit the results of a review under this subsection to the federal environmental protection agency.

History: 1995 a. 227 s. 377; 1995 a. 378 s. 41; 2015 a. 205.

Cross-reference: See also chs. NR 102, 103, 104, 105, 106, 207, and 213 Wis. adm. code.

281.16 Water quality protection; nonpoint sources.

(1) DEFINITIONS. In this section:

(a) "Agricultural facility" means a structure associated with an agricultural practice.

(b) "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

(bg) "Artificial water body" has the meaning given in s. 30.19 (1b) (a).

(br) "Covered municipality" means a municipality that has been issued an individual municipal separate storm sewer permit under s. 283.33 or that is covered by a general municipal separate storm sewer permit under s. 283.35.

(c) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(d) "Navigable waters" has the meaning given in s. 281.31 (2) (d).

(e) "Nonpoint source" means a facility or practice that causes, or has the potential to cause, nonpoint source water pollution.

(f) "Nonpoint source water pollution" means pollution of waters of the state that does not result from a point source, as defined in s. 283.01 (12).

(g) "Water quality management area" means any of the following:

1. The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, "water quality management area" means the area within 1,000 feet from the high-water mark of the lake.

2. The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.

3. A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(h) Notwithstanding s. 281.01 (18), "waters of the state" has the meaning given in s. 283.01 (20).

(2) NONPOINT SOURCES THAT ARE NOT AGRICULTURAL. (a) The department shall, by rule, prescribe performance standards for nonpoint sources that are not agricultural facilities or agricultural practices. The performance standards shall be designed to achieve water quality standards by limiting nonpoint source water pollution.

(am) 1. In this paragraph:

c. "New development" means development resulting from the conversion of previously undeveloped land or agricultural land.

d. "Redevelopment" means development that replaces older development.

2. Except as provided in subd. 3., the department may not enforce a provision in a rule that establishes a date by which a covered municipality must implement methods to achieve a specified reduction in the level of total suspended solids carried by runoff, if the provision requires the covered municipality to achieve a reduction of more than 20 percent. This subdivision does not apply to total suspended solids carried by runoff from new development or redevelopment in a covered municipality.

3. If a covered municipality has achieved, on July 1, 2011, a reduction of more than 20 percent of total suspended solids carried by runoff, the municipality shall, to the maximum extent practicable, maintain all of the best management practices that the municipality has implemented on or before July 1, 2011, to achieve that reduction.

(b) The department shall, by rule, specify a process for the development and dissemination of technical standards to implement the performance standards under par. (a).

(c) If a covered municipality has obtained all permits required for the construction of a storm water management pond in an artificial water body, whether navigable or nonnavigable, the department may not prohibit the construction of the storm water management pond as a method by which the covered municipality may achieve compliance with performance standards under par. (a) or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C). The department shall give credit to the covered municipality for any pollutant reduction achieved by the storm water management pond in determining compliance with performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr) or an approved total maximum daily load under 33 USC 1313 (d).

(3) NONPOINT SOURCES THAT ARE AGRICULTURAL. (a) The department of natural resources, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve water quality standards by limiting nonpoint source water pollution. At a minimum, the prohibitions shall include all of the following:

1. That a livestock operation may have no overflow of manure storage structures.

Removed by Register September 2010 No. 657. For current adm. code see: http://docs.legis.wisconsin.gov/code/admin_code .

Chapter NR 102

WATER QUALITY STANDARDS FOR WISCONSIN SURFACE WATERS

NR 102.01 Purpose.
NR 102.02 Applicability.
NR 102.03 Definitions.
NR 102.04 Categories of standards.
NR 102.05 Application of standards.
NR 102.06 Phosphorus.
NR 102.07 Lake Michigan and Lake Superior thermal standards.
NR 102.08 Mississippi river thermal standards.
NR 102.09 Review of thermal standards.
NR 102.10 Outstanding resource waters.
NR 102.11 Exceptional resource waters.
NR 102.12 Great Lakes system.
NR 102.13 Fish and aquatic life waters.
NR 102.14 Taste and odor criteria.

Note: Chapter NR 102 as it existed on September 30, 1973 was repealed and a new chapter NR 102 was created, effective October 1, 1973. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1997, No. 500.

NR 102.01 Purpose. (1) The purpose of this chapter is to establish, in conjunction with chs. NR 103 to 105, water quality standards for surface waters of the state pursuant to s. 281.15 (2) (b), Stats. This chapter describes the designated use categories for such waters and the water quality criteria necessary to support these uses. This chapter and chs. NR 103 to 105 constitute the water quality standards for the surface waters of Wisconsin.

(2) Water quality standards shall protect the public interest, which includes the protection of public health and welfare and the present and prospective uses of all waters of the state for public and private water supplies, propagation of fish and other aquatic life and wild and domestic animals, domestic and recreational purposes, and agricultural, commercial, industrial, and other legitimate uses. In all cases where the potential uses are in conflict, water quality standards shall protect the general public interest.

(3) Water quality standards serve as a basis for developing and implementing control strategies to achieve legislative policies and goals. Water quality standards are the basis for deriving water quality based effluent limitations. Water quality standards also serve as a basis for decisions in other regulatory, permitting or funding activities that impact water quality.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89.

NR 102.02 Applicability. The provisions of this chapter are applicable to surface waters of Wisconsin.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89.

NR 102.03 Definitions. (1) "Mixing zone" means a region in which a discharge of different characteristics than the receiving water is in transit and progressively diluted from the source to the receiving system.

(2) "Natural conditions" means the normal daily and seasonal variations in climatic and atmospheric conditions, and the existing physical and chemical characteristics of a water or the course in which it flows.

(3) "Natural temperature" means the normal existing temperature of a surface water including daily and seasonal changes outside the zone of influence of any artificial inputs.

(4) "Resource management" means the application of control techniques to enhance or preserve a surface water in accordance with statutory provisions and in the general public interest.

(5) "Sanitary survey" means a thorough investigation and evaluation of a surface water including bacteriological sampling to determine the extent and cause of any bacterial contamination.

(6) "Surface waters" means all natural and artificial named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters (the term waters as used in this chapter means surface waters).

(7) "Unauthorized concentrations of substances" means pollutants or other chemicals introduced into surface waters without prior permit or knowledge of the department, but not including accidental or unintentional spills.

(8) "Best practicable control technology" means that level of treatment established by the department under s. 283.13 (2) (a), Stats., for categories and classes of point sources to be achieved by not later than July 1, 1977.

(9) "Best available control technology" means that level of treatment established by the department under s. 283.13 (2) (b) 1., Stats., for categories and classes of point sources to be achieved by not later than July 1, 1983.

(10) Class I and Class II trout waters are as defined in s. NR 1.02 (7).

History: Cr. Register, September, 1973, No. 213, eff. 10–1–73; r. (1), renum. from NR 102.01, Register, February, 1989, No. 398, eff. 3–1–89; cr. (10), Register, May, 1993, No. 449, eff. 6–1–93.

NR 102.04 Categories of standards. (1) GENERAL. To preserve and enhance the quality of waters, standards are established to govern water management decisions. Practices attributable to municipal, industrial, commercial, domestic, agricultural, land development or other activities shall be controlled so that all waters including the mixing zone and the effluent channel meet the following conditions at all times and under all flow conditions:

(a) Substances that will cause objectionable deposits on the shore or in the bed of a body of water, shall not be present in such amounts as to interfere with public rights in waters of the state.

(b) Floating or submerged debris, oil, scum or other material shall not be present in such amounts as to interfere with public rights in waters of the state.

(c) Materials producing color, odor, taste or unsightliness shall not be present in such amounts as to interfere with public rights in waters of the state.

(d) Substances in concentrations or combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life.

(2) REVISED STANDARDS. It should be recognized that these standards will be revised as new information or advancing technology indicate that revisions are in the public interest. Water used for hydropower and commercial shipping depends mainly on quantity, depth and elevation; consequently, no specific quality standards for these uses have been prepared.

(3) FISH AND OTHER AQUATIC LIFE USES. The department shall classify all surface waters into one of the fish and other aquatic life subcategories described in this subsection. Only those use subcategories identified in pars. (a) to (c) shall be considered suitable for the protection and propagation of a balanced fish and other aquatic life community as provided in the federal water pollution control act amendments of 1972, P.L. 92–500; 33 USC 1251 et seq.

Removed by Register September 2010 No. 657. For current adm. code see: http://docs.legis.wisconsin.gov/code/admin_code.

(a) *Cold water communities.* This subcategory includes surface waters capable of supporting a community of cold water fish and other aquatic life, or serving as a spawning area for cold water fish species. This subcategory includes, but is not restricted to, surface waters identified as trout water by the department of natural resources (Wisconsin Trout Streams, publication 6–3600 (80)).

(b) *Warm water sport fish communities.* This subcategory includes surface waters capable of supporting a community of warm water sport fish or serving as a spawning area for warm water sport fish.

(c) *Warm water forage fish communities.* This subcategory includes surface waters capable of supporting an abundant diverse community of forage fish and other aquatic life.

(d) *Limited forage fish communities.* (Intermediate surface waters). This subcategory includes surface waters of limited capacity and naturally poor water quality or habitat. These surface waters are capable of supporting only a limited community of forage fish and other aquatic life.

(e) *Limited aquatic life.* (Marginal surface waters). This subcategory includes surface waters of severely limited capacity and naturally poor water quality or habitat. These surface waters are capable of supporting only a limited community of aquatic life.

(4) STANDARDS FOR FISH AND AQUATIC LIFE. Except for natural conditions, all waters classified for fish and aquatic life shall meet the following criteria:

(a) *Dissolved oxygen.* Except as provided in par. (e) and s. NR 104.02 (3), the dissolved oxygen content in surface waters may not be lowered to less than 5 mg/L at any time.

(b) *Temperature.* 1. There shall be no temperature changes that may adversely affect aquatic life.

2. Natural daily and seasonal temperature fluctuations shall be maintained.

3. The maximum temperature rise at the edge of the mixing zone above the existing natural temperature shall not exceed 5º F for streams and 3º F for lakes.

4. The temperature shall not exceed 89º F for warm water fish.

(c) *pH.* The pH shall be within the range of 6.0 to 9.0, with no change greater than 0.5 units outside the estimated natural seasonal maximum and minimum.

(d) *Other substances.* Unauthorized concentrations of substances are not permitted that alone or in combination with other materials present are toxic to fish or other aquatic life. Surface waters shall meet the acute and chronic criteria as set forth in or developed pursuant to ss. NR 105.05 and 105.06. Surface waters shall meet the criteria which correspond to the appropriate fish and aquatic life subcategory for the surface water, except as provided in s. NR 104.02 (3).

(e) *Temperature and dissolved oxygen for cold waters.* Streams classified as trout waters by the department of natural resources (Wisconsin Trout Streams, publication 6–3600 (80)) or as great lakes or cold water communities may not be altered from natural background temperature and dissolved oxygen levels to such an extent that trout populations are adversely affected.

1. There shall be no significant artificial increases in temperature where natural trout reproduction is to be protected.

2. Dissolved oxygen in classified trout streams shall not be artificially lowered to less than 6.0 mg/L at any time, nor shall the dissolved oxygen be lowered to less 7.0 mg/L during the spawning season.

3. The dissolved oxygen in great lakes tributaries used by stocked salmonids for spawning runs shall not be lowered below natural background during the period of habitation.

(5) STANDARDS FOR RECREATIONAL USE. A sanitary survey and/or evaluation to assure protection from fecal contamination is the chief criterion in determining the suitability of a surface water for recreational use.

(a) *Bacteriological guidelines.* The membrane filter fecal coliform count may not exceed 200 per 100 ml as a geometric mean based on not less than 5 samples per month, nor exceed 400 per 100 ml in more than 10% of all samples during any month.

(b) *Exceptions.* Whenever the department determines, in accordance with the procedures specified in s. NR 210.06, that wastewater disinfection is not required to protect recreational uses, the recreational use criteria and classifications as established in this subsection and in chs. NR 103 and 104 do not apply.

(6) STANDARDS FOR PUBLIC HEALTH AND WELFARE. All surface waters shall meet the human threshold and human cancer criteria specified in or developed pursuant to ss. NR 105.08 and 105.09, respectively. The applicable criteria vary depending on whether the surface water is used for public drinking water supplies and vary with the type of fish and other aquatic life subcategory. All surface waters providing public drinking water supplies or classified as cold water or warm water sport fish communities as described in sub. (3) shall meet the taste and odor criteria specified in or developed pursuant to s. NR 102.14.

(7) STANDARDS FOR WILDLIFE. All surface waters shall be classified for wildlife uses and meet the wildlife criteria specified in or developed pursuant to s. NR 105.07.

History: Cr. Register, September, 1973, No. 213, eff. 10–1–73; am. (3), Register, December, 1977, No. 264, eff. 1–1–78; renum. from NR 102.02, r. (3) (d) 1. to 3., and (5), renum. (3) (intro.) to (d) (intro.) and (e) and (4) to be (4) (intro.) to (e) and (5) and am. (4) (a), (d), (e) (intro.) and (5), cr. (6) and (7), Register, February, 1989, No. 398, eff. 3–1–89; am. (3) (intro.), (6), (7), r. (3) (a), renum. (3) (b) to (f) to be (3) (a) to (e) and am. (3) (a), Register, August, 1997, No. 500, eff. 9–1–97.

NR 102.05 Application of standards. (1) ANTIDEGRADATION. (a) No waters of the state shall be lowered in quality unless it has been affirmatively demonstrated to the department that such a change is justified as a result of necessary economic and social development, provided that no new or increased effluent interferes with or becomes injurious to any assigned uses made of or presently possible in such waters.

(b) *Classification system.* For the purposes of this subsection, all surface waters of the state, or portions thereof, shall be classified as one of the following:

1. Outstanding resource waters as listed in s. NR 102.10,
2. Exceptional resource waters as listed in s. NR 102.11,
3. Great Lakes system waters as listed in s. NR 102.12 (1),
4. Fish and aquatic life waters as described in s. NR 102.13, or
5. Waters listed in tables 3 through 8 in ss. NR 104.05 to 104.10.

(2) STREAMFLOW. Water quality standards will not be maintained under all natural occurrences of flow, temperature, or other water quality characteristics. The determination of water quality based effluent limitations or other management practices shall be based upon the following conditions except as provided in ch. NR 106 for toxic and organoleptic substances and whole effluent toxicity:

(a) The average minimum 7–day low streamflow which occurs once in 10 years (7–day Q_{10}); or,

(b) In the case of dissolved oxygen and wherever sufficient data on streamflow and temperature are available, by application of a 0.274% level of nonattainment. This is equivalent to an expected nonattainment of the dissolved oxygen criterion of one day per year.

(3) MIXING ZONES. Water quality standards shall be met at every point outside of a mixing zone. The size of the mixing zone cannot be uniformly prescribed, but shall be based on such factors as effluent quality and quantity, available dilution, temperature, current, type of outfall, channel configuration and restrictions to fish movement. For toxic and organoleptic substances with water quality criteria or secondary values specified in or developed pursuant to chs. NR 102 and 105, allowable dilution shall be determined as specified in ch. NR 106 in addition to the requirements

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specified in this subsection. As a guide to the delineation of a mixing zone, the following shall be taken into consideration:

(a) Limiting mixing zones to as small an area as practicable, and conforming to the time exposure responses of aquatic life.

(b) Providing passageways in rivers for fish and other mobile aquatic organisms.

(c) Where possible, mixing zones being no larger than 25% of the cross−sectional area or volume of flow of the stream and not extending more than 50% of the width.

(d) Final acute criteria and secondary values specified in or developed pursuant to s. NR 105.05 for the fish and aquatic life subcategory for which the receiving water is classified not being exceeded at any point in the mixing zone.

(e) Mixing zones not exceeding 10% of a lake's total surface area.

(f) Mixing zones not interfering with spawning or nursery areas, migratory routes, nor mouths of tributary streams.

(g) Mixing zones not overlapping, but where they do, taking measures to prevent adverse synergistic effects.

(h) Restricting the pH to values greater than 4.0 s.u. and to values less than 11.0 s.u. at any point in the mixing zone for the protection of indigenous fish and fish food organisms.

(4) EXEMPTIONS. The thermal mixing zone provisions of this chapter are not applicable to municipal waste and water treatment plants, to vessels, or to discharges to enclosed harbors.

(5) RESOURCE MANAGEMENT EXEMPTIONS. Application of chemicals for water resource management purposes in accordance with statutory provisions is not subject to the requirements of the standards except in case of water used for public water supply.

(6) ANALYTICAL PROCEDURES. (a) The criteria in the Radiation Protection Code, s. DHS 157.44, shall apply to the disposal and permissible concentrations of radioactive substances.

(b) Methods used for analysis of samples shall be as set forth in ch. NR 219 unless alternative methods are specified by the department.

History: Cr. Register, September, 1973, No. 213, eff. 10−1−73; renum. (5) and (6) to be (6) and (7), cr. (5), Register, July, 1975, No. 235, eff. 8−1−75; r. and recr. (3), Register, August, 1981, No. 308, eff. 9−1−81; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., cr. (4) (h), Register, September, 1984, No. 345, eff. 10−1−84; renum. from NR 102.03, r. (1), cr. (1) (b), renum. (2) to (7) to be (1) (a) to (6) and am. (2), (3) (intro.) and (d) and (6), Register, February, 1989, No. 398, eff. 3−1−89; am. (1) (b) 3., (3) (intro.) and (d), Register, August, 1997, No. 500, eff. 9−1−97; correction in (6) (a) made under s. 13.93 (2m) (b) 7., Stats. Register July 2006 No. 607, eff. 8−1−06; **correction in (6) (a) made under s. 13.92 (4) (b) 7., Stats., Register July 2010 No. 655.**

NR 102.06 Phosphorus. In addition to the requirements established in ch. NR 217, any wastewater discharger, regardless of population, volume or type of waste discharge, or geographic location, may be required to remove excess amounts of phosphorus. Effluent limitations for total phosphorus based on surface water quality may be established where, in the best professional judgment of the department, such limitations will result in an improvement in water quality, or preserve the quality of surface waters where long−term discharges may result in impairment of water quality. Such limitations for phosphorus shall include an evaluation of the discharges from point sources, nonpoint sources, background sources, tributaries, and a consideration of a margin of safety.

History: Cr. Register, July, 1975, No. 235, eff. 8−1−75; am. Register, October, 1986, No. 370, eff. 11−1−86; renum. from NR 102.04, Register, February, 1989, No. 398, eff. 3−1−89; am. Register, November, 1992, No. 443, eff. 12−1−92.

NR 102.07 Lake Michigan and Lake Superior thermal standards. For Lake Michigan and Lake Superior the following thermal standards are established so as to minimize effects on the aquatic biota in the receiving waters.

(1) (a) Thermal discharges shall not raise the receiving water temperature more than 3ºF above the existing natural temperature at the boundary of mixing zones established in pars. (b) and (c).

(b) 1. The mixing zone for a shoreline thermal discharge shall be the area included within the perimeter of a rectangular figure extending 1,250 feet in both directions along the shoreline from the outfall and 1,250 feet into the lake.

2. The mixing zone for an offshore thermal discharge shall be the area within a 1,000−foot radius circle with its center at the point of discharge.

(c) The department may, upon request from the owner of a source of thermal discharge, adjust the boundaries of the mixing zone established in par. (b) for that source. In no case may any mixing zone so established include an area greater than 72 acres nor may it include more than 2,800 feet of shoreline.

(2) In addition to the limitation set forth in sub. (1), but excepting the Milwaukee Harbor, Port Washington Harbor and the mouth of the Fox River, thermal discharges to Lake Michigan shall not raise the temperature of the receiving waters at the boundary of the established mixing zone above the following limits:

January	45°F
February	45°
March	45°
April	55°
May	60°
June	70°
July	80°
August	80°
September	80°
October	65°
November	60°
December	50°

History: Cr. Register, September, 1973, No. 213, eff. 10−1−73; r. and recr. Register, July, 1975, No. 235, eff. 8−1−75; renum. from NR 102.05, Register, February, 1989, No. 398, eff. 3−1−89.

NR 102.08 Mississippi river thermal standards. In addition to the standards for fish and aquatic life, the monthly average of the maximum daily temperature in the Mississippi river outside the mixing zone shall not exceed the following limits:

January	40°F
February	40°
March	54°
April	65°
May	75°
June	84°
July	84°
August	84°
September	82°
October	73°
November	58°
December	48°

History: Cr. Register, July, 1975, No. 235, eff. 8−1−75; renum. from NR 102.06, Register, February, 1989, No. 398, eff. 3−1−89.

NR 102.09 Review of thermal standards. (1) Whenever the owner of any source of thermal discharges that existed on or before July 31, 1975, in compliance with department guidelines and after opportunity for public hearing, can demonstrate to the satisfaction of the department that the mixing zone established pursuant to this chapter is more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the receiving water, the department may:

(a) Impose a mixing zone with respect to such thermal discharge that will assure the protection and propagation of such a population, or

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(b) Exempt such thermal discharge from the thermal requirements of this chapter provided this exemption will not endanger the propagation of such a population.

(2) Any owner desiring a review pursuant to sub. (1) shall submit a demonstration to the department no later than June 30, 1976. The department shall reach a decision no later than December 31, 1976.

(3) In the event the owner fails to make a satisfactory demonstration pursuant to sub. (1), the department shall establish a compliance date for the thermal component to be achieved no later than July 1, 1979.

(4) Whenever the owner of any source of thermal discharges that commenced on or after August 1, 1975, in compliance with department guidelines and after opportunity for public hearing, can demonstrate to the satisfaction of the department that the mixing zone established pursuant to this chapter is more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the receiving water, the department may:

(a) Impose a mixing zone with respect to such thermal discharge that will assure the protection and propagation of such a population, or

(b) Exempt such thermal discharge from the thermal requirements of this chapter provided this exemption will not endanger the propagation of such a population.

(5) In the event an owner fails to make a satisfactory demonstration pursuant to sub. (4), the discharge shall be in compliance with the thermal requirements of this chapter upon commencement of the discharge.

(6) The department may require the reduction of thermal discharges or the size and configuration of a mixing zone if it finds that environmental damage is imminent or existent.

History: Cr. Register, July, 1975, No. 235, eff. 8–1–75; am. Register, February, 1977, No. 254, eff. 3–1–77; renum. from NR 102.07, Register, February, 1989, No. 398, eff. 3–1–89.

NR 102.10 Outstanding resource waters. (1) The following surface waters are designated as outstanding resource waters:

(a) *National wild and scenic rivers.* All rivers designated under the national wild and scenic rivers act, as amended, 16 USC 1271 to 1287, except those portions flowing through Indian reservations, including:

1. St. Croix river between the northern boundary of the Hudson city limits and the St. Croix flowage dam in Douglas county except that the portion of the St. Croix river from the northern boundary of the St. Croix Falls city limits to a distance one mile below the STH 243 bridge at Osceola shall be classified exceptional resource waters under s. NR 102.11.

2. Namekagon river between its confluence with the St. Croix river and the outlet of Lake Namekagon in Bayfield county.

(b) *State wild and scenic rivers.* All state wild and scenic rivers designated under s. 30.26, Stats., including:

1. Pike river and its headwater branches in Marinette county.

2. Pine river and its headwater branches in Florence and Forest counties.

3. Popple River and its headwater branches in Florence and Forest counties.

4. The portion of the Brunsweiler River (Martin Hanson Wild River) from the point in Ashland County at which it leaves T44N R4W S22 QSW QQSW downstream to the point at which it crosses the boundary of the Chequamegon–Nicolet National Forest at T45N R4W S22 QNW.

5. Portions of the Totagatic River in Bayfield, Sawyer, Washburn, Douglas, and Burnett Counties as described in the following table:

SEG 1: From the outlet of Totogatic Lake located in Bayfield County to the upstream end of Nelson Lake at the southern edge of the walleye spawning refuge located in Sawyer County.

SEG 2: From a point 500 feet below the dam in the Totogatic Wildlife Area located in Washburn County to the upstream end of the Colton Flowage located in Washburn County.

SEG 3: From a point 500 feet below the dam that forms the Colton Flowage located in Washburn County to the point where the river crosses the Washburn–Douglas County line immediately above the upstream end of the Minong Flowage.

SEG 4: From the bridge on CTH "I" that crosses the river located in Washburn County to the confluence of the river with the Namekagon River located in Burnett County.

Note: Section NR 302.02 (1) contains a detailed description of the extent of the Pike, Pine, and Popple river systems designated as Wild Rivers.

(c) Wolf river upstream of the northern Menominee county line.

(d) The following Class I trout waters:

1. Adams county — Big Roche–a–Cri creek

2. Barron county — Yellow river

3. Bayfield county — Flag river, Sioux river

4. Burnett county — North Fork Clam river, South Fork Clam river

5. Chippewa county — Duncan creek, Elk creek, McCann creek

6. Dane county — Black Earth creek above the easternmost CTY KP crossing

7. Door county — Logan creek

8. Douglas county — Bois Brule river and its tributaries including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth

9. Dunn county — Elk creek

10. Florence county — Brule river including Montagne creek and Riley creek tributaries; tributaries to the Pine–Popple rivers including Chipmunk, Cody, Haley, Haymarsh, Lamon Tangue, Lepage, Lunds, Martin, Olson, Patten, Pine, Riley, Rock, Simpson, Seven Mile, Wakefield and Woods creeks; Little Popple river (T38N R19E S3)

11. Forest county — Brule river

13. Kewaunee county — Little Scarboro creek

14. Langlade county — Clearwater creek, Drew creek, Evergreen river, South Branch Oconto river

15. Lincoln county — Center fork New Wood creek, Little Pine creek, Prairie river

16. Marathon county — Holt creek, Spranger creek, Plover river

17. Marinette county — Cedarville creek, Otter creek, Holmes creek, East Thunder creek, North fork Thunder river, Eagle creek, Little Eagle creek, Plumadore creek, Meadow brook, Upper Middle Inlet creek, Middle Inlet creek, Wausaukee river, Little Wausaukee creek, Coldwater brook, Medicine brook, South Branch Miscauno creek, Miscauno creek, Swede John creek, South Branch Pemebonwon river, Spikehorn creek, Silver creek, Little Silver creek, Sullivan creek; tributaries to the Pike river including Little South Branch Pike river, Camp D creek, Camp F creek, Camp 9 creek, Cole creek, Glen creek, Harvey creek, North Branch Harvey creek, South Branch Harvey creek, Hemlock creek, Holloway creek, K.C. creek, Little Harvey creek, Lost creek, MacIntire creek, Phillips creek, Sackerson creek, Shinns branch, Sidney creek, Smeesters creek, Springdale brook, Whiskey creek

18. Marquette county — Chaffee creek, Lawrence creek, Tagatz creek

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19. Monroe county — Rullands Coulee creek

20. Oconto county — First South Branch Oconto river, Second South Branch Oconto river, South Branch Oconto river, Hills Pond creek

21. Polk county — Clam river, McKenzie creek

22. Portage county — Emmons creek, Radley creek, Sannes creek, Tomorrow river, Nace (Trout) creek

23. Richland county — Camp creek

24. Sheboygan county — Nichols creek

25. St. Croix county — Kinnickinnic river above STH "35"

26. Vernon county — Rullands Coulee creek, Spring Coulee creek, Timber Coulee creek

27. Vilas county — Deerskin river, Plum creek

28. Walworth county — Bluff creek, Potawatomi creek, Van Slyke creek

29. Waupaca county — Emmons creek, Griffin creek, Jackson creek, Leers creek, Peterson creek, Radley creek, Sannes creek, Spaulding creek, Trout creek, Whitcomb creek, Little Wolf river (North Branch Little Wolf river)

30. Waushara county — Chaffee creek, Willow creek north of Redgranite, Mecan river north of Richford, Little Pine creek, West Branch White river

(e) The following Class II trout waters:

1. Barron county — Yellow river
2. Burnett county — North Fork Clam river
3. Forest county — Brule river, Peshtigo river
4. Grant county — Big Green river, Castle Rock creek
5. Marinette county — Peshtigo river
6. Polk county — McKenzie creek
7. Vilas county — Plum creek

(f) The following cold or warm water streams and rivers or portions thereof:

1d.	Ashland	Bad River	SEG 1: Origin to Outfall in Mellen at NW¼SW¼ S6 T44N R2W
		Brunsweiler River	SEG 1: Origin to Inlet of Spider Lake
			SEG 2: Outlet of Moquah Lake to origin of Wild River designation under par. (b) 4. at T44N R4W S22 SW ¼ of SW ¼
			SEG 3: All portions included as Wild River under par. (b) 4.
			SEG 4: End of Wild River segment under par. (b) 4. at the boundary of the Chequamegon–Nicolet National Forest (T45N R4W S22 ¼ NW) to the Bad River Indian Reservation Boundary
1h.	Ashland & Bayfield	Marengo River	SEG 1: Origin to Inlet of Marengo Lake
			SEG 2: Outlet of Marengo Lake to Bad River Indian Reservation Boundary
1p.	Ashland & Sawyer	E. Fork Chippewa River	SEG1: T42N R1E S17/18 Line to Ashland County Highway "N" in Glidden
			SEG 6: Outlet of Barker Lake to Confluence with Chippewa Flowage
			SEG 3: Outlet of Pelican Lake to Inlet of Blaisdell Lake
			SEG 4: Outlet of Blaisdell Lake to Inlet of Hunter Lake
			SEG 5: Outlet of Hunter Lake to Inlet of Barker Lake
1t.	Barron	Engle Creek	Class I & II Portions
		Hickey Creek	Class I & II Portions
		Red Cedar River	SEG 1: Outlet of Red Cedar Lake to Inlet of Rice Lake
		Rock Creek	SEG 2: All within Barron County
		Upper Pine Creek	Above Dallas Flowage
2.	Bayfield	Bark River	All–Class I Portions including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth
		Big Brook	All
		Cranberry River & Tribs.	All–Class I Portion including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
		East Fork Iron River & Tribs.	All–Class I Portion
		East Fork White River	All–Class I Portion

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		Eighteen Mile Cr. & Tribs.	All–Class I Portion
		Fish Creek (Main)	All including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
		Long Lake Branch & Tribs.	From below Drummond Lake to White River
			All–Class I Portions
		No. Fork Fish Creek & Tribs.	All–Class I & II Portions
		Onion River & Tribs.	All–Class I Portions including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
		Pikes Creek & Tribs.	All–Class I Portion including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
		Sioux River & Tribs.	All–Class I & II Portions including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
		So. Fork White River	All–Class I Portion
		Thompson Creek	All–Class I Portion
		Twenty Mile Creek	All–Class I & II Portions
		White River	All–Class I Portion
		Whittlesey Creek & Tribs.	All–Class I Portions including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
2d.	Bayfield & Ashland	Beartrap Creek	SEG 1: Origin to Bad River Indian Reservation Boundary
2h.	Bayfield, Ashland & Sawyer	West Fork Chippewa River	SEG 1: Origin (Outlet of Chippewa Lake) to Inlet of Day Lake
			SEG 2: Outlet of Day Lake to Inlet of Upper Clam Lake
			SEG 3: Outlet of Upper Clam Lake to Inlet of Lower Clam Lake
			SEG 4: Outlet of Lower Clam Lake to Inlet of Cattail Lake
			SEG 5: Outlet of Cattail Lake to Inlet of Meadow Lake
			SEG 6: Outlet of Meadow Lake to Inlet of Partridge Crop Lake
			SEG 7: Outlet of Partridge Crop Lake to Inlet of Moose Lake
			SEG 8: Outlet of Moose Lake to Sawyer County Highway "B"
2p.	Bayfield, Sawyer, Washburn, Douglas & Burnett	Totagatic River	SEG 1: All portions included as Wild River under SEG 1 of par. (b) 5.
			SEG 2: All portions included as Wild River under SEG 2 of par. (b) 5., and the 500 feet immediately downstream of the dam in the Totagatic Wildlife Area in Washburn County
			SEG 3: All portions included as Wild River under SEG 3 of par. (b) 5., the 500 feet immediately downstream of the dam that forms the Colton Flowage, and from the end of the Wild River designation at the Douglas/Washburn County line to the inlet of Minong Flowage

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			SEG 4: All portions included as Wild River under SEG 4 of par. (b) 5.
3.	Burnett	North Fork Clam River	County Highway "H" to Confluence with Clam River
		Tributaries to the N. & S. Forks of the Clam River	All–Class I & II Portions
4.	Dane	Mt. Vernon Creek	All–Class I Portion
5.	Door	Mink River	All
5m.	Douglas	Amnicon River	SEG 1: Origin (Outlet of Amnicon Lake) to Inlet of Lyman Lake
			SEG 2: Outlet of Lyman Lake to mouth at Lake Superior, including the waters of Lake Superior within a ¼ mile semi–circular arc centered at the middle of the river mouth.
		Moose River	All
		Spruce River	All
		St. Croix River	SEG 1: Outlet of Upper St. Croix Lake to Inlet of St. Croix Flowage
6.	Forest	Allen Creek	All
		Brule Creek	All
		Elvoy Creek	All
		Jones Creek	Class I & II portions
		Otter Creek (T37N R14E S23, North Otter Creek)	All
6m.	Forest & Langlade	Swamp Creek	SEG 1: Outlet of Lake Lucerne to Mole Lake Indian Reservation Boundary
			SEG 3: All below Mole Lake Indian Reservation Boundary to Confluence of Wolf River
7.	Grant	Little Green River	All
7m.	Iron & Ashland	Tyler Forks	SEG 1: Origin in Iron County to Bad River Indian Reservation Eastern Boundary in Ashland County
			SEG 3: From Bad River Indian Reservation Southern Boundary to Confluence with Bad River
		Potato River	SEG 1: Origin to Bad River Indian Reservation Boundary
8.	Iron, Ashland & Price	Flambeau River	SEG 1: Turtle–Flambeau Flowage (Outlet @ Turtle–Flambeau Dam) to Inlet of Upper Park Falls Flowage
9.	LaCrosse	Berge Coulee Creek	All
10.	Langlade	Elton Creek	Class I Portion
		Evergreen Creek	All
		Mayking Creek	All
		Michelson Creek	All
		Mid Branch Embarrass River	Class I Portion
10m.	Lincoln	New Wood River	Origin (T33N R4E S14) to Confluence with Wisconsin River
11.	Marathon	Falstad Creek	Class II Portion
		So. Branch Embarrass River	Class I Portion
12.	Marinette	No. Branch Beaver Creek	Entire River & tributaries
13.	Oneida	Noisy Creek	Class II Portion
		Squirrel River	Outlet of Squirrel Lake to Confluence with Tomahawk River
		Tomahawk River	SEG 2: Outlet of Willow Flowage Dam to Inlet of Lake Nokomis
14.	Pierce	Kinnickinnic River	From Powell Dam to St. Croix River
15.	Polk	Sand Creek & Tribs	All–Class I & II Portions
15e.	Polk & Burnett	Clam River	SEG 1: Outlet of Clam Falls Flowage to Inlet of Clam Lake
			SEG 2: Outlet of Lower Clam Lake to Section Line @ T39N R16W S21/22
15m.	Price	Elk River	SEG 1: Headwaters to Inlet of Musser Lake

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	Price & Lincoln	Spirit River	Outlet of Spirit Lake to Inlet of Spirit River Flowage
16.	Price, Rusk & Sawyer	So. Fork Flambeau River	All–Round L. Dam downstream to Jxn with No. Fork Flambeau R.
17.	Richland	Elk Creek	All
18.	Rusk	Devils Creek	All–Class I & II Portions
		Soft Maple Creek	SEG 1: Origin to Rusk County Highway "F"
		So. Fork Main Creek	Class I & II Portions (T35N R3W S28 downstream to T34N R4W S11)
		Swift Creek	Outlet of Island Lake to Inlet of Fireside Lake
19.	Sauk	Otter Creek	From headwaters to southern section line of T11N R6E S33
		Parfrey's Glen	From headwaters to CTH DL
20.	Sawyer	Benson Creek	All–Class I Portion
		Couderay River	SEG 1: Origin at Outlet of Billy Boy Flowage to Inlet of Grimh Flowage (Including Waters within Lac Courte Oreilles Indian Reservation)
		Eddy Creek	All–Class I Portion
		Grindstone Creek	All–Class I Portion
		Knuteson Creek	SEG 1: Outlet of Wise Lake to Inlet of Knuteson Lake
			SEG 2: Outlet of Knuteson Lake to Inlet of Lake Chetek
		Little Weirgor Creek & Tribs	All–Class I & II Portions
		McDermott Brook	All
		Mosquito Brook	All–Class I Portion
		Teal River	Outlet of Teal Lake to Confluence with West Fork Chippewa River
20m.	Sawyer & Rusk	Thornapple River	SEG 1: Origin to Rusk County Highway "J"
		Chippewa River	SEG 1: Dam at Chippewa Flowage to Inlet of Radisson Flowage (T38N R7W S13)
21.	Shawano	Middle Br. Embarrass R.	Origin to but not including Homme Pond
		No. Br. Embarrass R.	Origin to CTH J
		So. Br. Embarrass R.	Origin to but not including Tigerton Pond
21g.	Taylor & Chippewa	Yellow River	SEG 1: Confluence with South Fork Yellow River to Inlet of Chequamegon Waters Flowage
			SEG 2: Outlet of Chequamegon Waters Flowage (at Miller Dam) to State Highway 64/73
21r.	Taylor & Price	Silver Creek	SEG 1: Origin to Westboro Sanitary District Outfall
22.	Vilas	Allequash Creek & Springs	Class I & II Portions
		Brule Creek	All
		East Br. Blackjack Cr.	All
		Elvoy Creek & Springs	Class I & II Portions
		Manitowish River	SEG 1: Adjacent to Dam Road Downstream to Inlet of Boulder Lake
			SEG 2: Outlet of Boulder Lake to Inlet of Island Lake
		Mishonagon Creek	Class I & II Portions
		Siphon Creek	All
		Spring Meadow Creek	Class I Portion
		Tamarack Creek	All
		Trout River	SEG 1: Outlet of Trout Lake to Lac Du Flambeau Indian Reservation Eastern Boundary

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22m.	Vilas & Oneida	Wisconsin River	SEG 1: Origin (Outlet of Lac Vieux Desert) to Inlet of Water-smeet Lake
23.	Wash-burn	Beaver Brook	All–Class I Portion
		Sawyer Creek	All–Class I & II Portions
		So. Fork Bean Brook	All–Class I Portion
		Stuntz Brook	Origin to Confluence with Namekagon River
23m.	Wash-burn & Barron	Bear Creek	SEG 1: Outlet of Kekegama Lake to Inlet of Bear Lake
			SEG 2: Outlet of Bear Lake to Inlet at Stump Lake

(1m) (a) The following lakes are designated as outstanding resource waters:

1.	Ashland	Bad River Slough
		Kakagon Slough
		Lake Superior within ¼ mile of the shoreline of the islands within the Apostle Island National Lakeshore
2.	Barron	Bear Lake (T36N R12W S2; also in Washburn County)
		Red Cedar Lake (also in Washburn County)
		Sand Lake
		Silver Lake
3.	Bayfield	Bark Bay Slough
		Diamond Lake
		Lake Owen
		Lake Superior within ¼ mile of the shoreline of the islands within the Apostle Island National Lakeshore
		Lower Eau Claire Lake (also in Douglas County)
		Middle Eau Claire Lake
		Namekagon Lake
		Pike Chain of Lakes (Pike, Millicent, Buskey Bay, Hart, Twin Bear, Eagle, Flynn and Hildur Lakes)
		Star Lake
		Upper Eau Claire Lake
4.	Burnett	Big Sand Lake
		McKenzie Lake (also in Washburn County)
		Middle McKenzie Lake (also in Washburn County)
		Sand Lake (T40N R15W S25)
4m.	Chippewa	Chain Lake (also in Rusk County)
5.	Columbia	Crystal Lake (T12N R10E S1)
6.	Douglas	Bardon Lake (Whitefish Lake)
		Bond Lake
		Lake Nebagamon
		Lower Eau Claire Lake (also in Bayfield County)
		St. Croix (Gordon) Flowage
		Upper St. Croix Lake
7.	Florence	Edith Lake
		Keyes Lake
		Lost Lake
		Perch Lake
		Riley Lake, South
8.	Forest	Butternut Lake
		Franklin Lake
		Lucerne Lake (Stone)
		Metonga Lake
9.	Iron	Catherine Lake
		Cedar Lake
		Gile Flowage
		Hewitt Lake
		Owl Lake
		Trude Lake
		Turtle–Flambeau Flowage
9m.	Marinette	Caldron Falls Flowage (also in Oconto County)
10.	Oconto	Archibald Lake
		Bass Lake (T32N R15E S9)
		Bear Paw Lake
		Boot Lake
		Caldron Falls Flowage (also in Marinette County)
		Chain Lake
11.	Oneida	Big Carr Lake
		Clear Lake (T39N R7E S16)
		Little Tomahawk Lake
		Tomahawk Lake
		Two Sisters Lake
		Willow Flowage
12.	Polk	Pipe Lake
13.	Price	Cochran Lake
		Tucker Lake
14.	Rusk	Bass Lake (T34N R9W S16)
		Fish Lake
		Island Chains of Lakes (Chain {also in Chippewa County}, Clear, McCann, and Island Lakes)
		Three Lakes No. 1 (T36N R9W S25)
15.	St. Croix	Bass Lake (T30N R19W S23)
		Perch Lake
16.	Sauk	Devils Lake
17.	Sawyer	Barker Lake
		Blaisdell Lake
		Evergreen Lake
		Grindstone Lake
		Lac Court Oreilles
		Lake Chippewa (Chippewa Flowage)

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		Nelson Lake
		Osgood Lake
		Perch Lake (T42N R6W S25)
		Round Lake (Big Round)
		Sand Lake
		Smith Lake
		Spider Lake
		Teal Lake
		Whitefish Lake
18.	Vilas	Black Oak Lake
		Crab Lake
		Crystal Lake (T41N R7E S27)
		Lac Vieux Desert
		North Twin Lake
		Pallette Lake (Clear)
		Partridge Lake
		Plum Lake
		South Twin Lake
		Star Lake
		Stormy Lake
		Trout Lake
		White Sand Lake (T42N R7E S26)
19.	Walworth	Lulu Lake
20.	Washburn	Bass Lake (T40N R10W S17)
		Bear Lake (T36N R12W S2; also in Barron County)
		Long Lake
		McKenzie Lake (also in Burnett County)
		Middle McKenzie Lake (also in Burnett County)
		Red Cedar Lake (also in Barron County)
		Shell Lake
		Stone Lake (T39N R10W S24)
21.	Waukesha	Spring Lake (T5N R18E S9)
22.	Waupaca	Graham Lake (Nelson)
		North Lake
23.	Waushara	Gilbert Lake
		Lucerne Lake (Egans)
		Norwegian Lake
		Pine Lake (Springwater)

(2) The waters in sub. (1) and (1m) may not be lowered in quality.

(3) Surface waters, or portions thereof, may be added to, or deleted from, the outstanding resource waters designation through the rule making process under the provisions of ch. 227, Stats., and s. NR 2.03.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89; am. (1) (d), cr. (1) (e), Register, July, 1989, No. 403, eff. 8–1–89; cr. (1) (f) and (1m), am. (2), Register, May, 1993, No. 449, eff. 6–1–93; am. (1m) 6., 9. and 11., cr. (1m) 9m., Register, February, 1998, No. 506, eff. 3–1–98; CR 05–089: am. (1) (d) 8., (f) 2., (1m) 1. and 3. Register July 2006 No. 607, eff. 8–1–06; CR 05–105: renum. (1) (f) 1. to be 1t. and am., cr. (1) (f) 1d., 1h., 1p., 2d., 2h., 2p., 5m., 6m.,, 7m., 10m., 15e., 15m., 15s., 20m., 21g., 21r., 22m., and 23m., am. (1) (f) 3., 8. 13., 18., 20., 22., and 23., Register November 2006 No. 611, eff. 12–1–06; reprinted to correct error in (1) (d) 6. Register March 2008 No. 627; **CR 09–123: am. (1) (b) 1., 2., (d) 10., 17., 22., 29., 30., (f) 1d., 2p., 6., 8., 10., 20., 22., 22m., (1m) (a) 2. to 6., 9m., 10., 13., 14., 17., 18., 20., cr. (1) (b) 3. to 5. and (1m) (a) 4m. Register July 2010 No. 655, eff. 8–1–10; renumber of (1m) to (1m) (a) made under s. 13.92 (4) (b) 1., Stats., Register July 2010 No. 655.**

NR 102.11 Exceptional resource waters. (1) Surface waters which provide valuable fisheries, hydrologically or geologically unique features, outstanding recreational opportunities, unique environmental settings, and which are not significantly impacted by human activities may be classified as exceptional resource waters. All the following surface waters are designated as exceptional resource waters:

(a) Class I trout waters listed in Wisconsin Trout Streams publication 6–3600 (80) that are not listed in s. NR 102.10.

(b) Other Class I trout waters:

1. Abraham Coulee creek in section 29, township 20 north, range 8 west from its headwaters to the upstream crossing of Oak Ridge Drive in Trempealeau county.

2. Bear creek originating in section 3, township 20 north, range 7 west in Trempealeau county.

3. Biser creek originating in section 19, township 12 north, range 3 west in Sauk county.

4. Bostwick creek from CTH M upstream 6.2 miles to the headwaters in LaCrosse county.

5. Bufton Hollow creek originating in section 19, township 12 north, range 2 west in Richland county.

6. Columbus creek originating in section 29, township 20 north, range 6 west in Jackson county.

7. Dutch creek originating in section 12, township 19 north, range 8 west in Trempealeau county.

8. Joe Coulee creek originating in section 1, township 20 north, range 7 west in Trempealeau county.

9. Little creek originating in section 21, township 20 north, range 6 west in Jackson county.

10. Marble creek originating in section 30, township 10 north, range 3 east in Sauk county.

11. Marshall creek originating in section 4, township 11 north, range 1 west in Richland county.

12. Martin creek originating in section 23, township 6 north, range 2 east in Iowa county.

13. South Bear creek originating in section 2, township 12 north, range 2 west in Richland county.

14. Spring brook downstream from CTH Y south of Antigo to its confluence with the Eau Claire river in Marathon county.

15. Spring Valley creek from the headwaters to SE 1/4, SE 1/4, section 33, township 16 north, range 1 east in Monroe county.

16. Unnamed creek 2–12 originating in section 36, township 20 north, range 7 west in Trempealeau county.

17. Unnamed creek 4–9 originating in section 4, township 11 north, range 1 west in Richland county.

18. Unnamed creek 5–6 originating in section 6, township 19 north, range 8 west in Trempealeau county.

19. Unnamed creek 7–4 originating in section 6, township 20 north, range 7 west in Trempealeau county.

20. Unnamed creek 8–9 originating in section 5, township 20 north, range 7 west in Trempealeau county.

21. Unnamed creek 8–14 originating in section 1, township 20 north, range 8 west in Trempealeau county.

22. Unnamed creek 9–13 originating in section 4, township 20 north, range 6 west in Jackson county.

23. Unnamed creek 10–8 originating in section 3, township 11 north, range 1 west in Richland county.

24. Unnamed creek 10–10 originating in section 14, township 20 north, range 6 west in Jackson county.

25. Unnamed creek 11–4 originating in section 1, township 20 north, range 7 west in Trempealeau county.

26. Unnamed creek 11–7 originating in section 2, township 20 north, range 7 west in Trempealeau county.

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27. Unnamed creek 13–3a originating in section 19, township 20 north, range 6 west in Jackson county.

28. Unnamed creek 13–3b originating in section 6, township 20 north, range 6 west in Trempealeau county.

29. Unnamed creek 15–13 originating in section 1, township 20 north, range 8 west in Trempealeau county.

30. Unnamed creek 15–4 originating in section 3, township 20 north, range 6 west in Trempealeau county.

31. Unnamed creek 16–2 originating in section 22, township 20 north, range 6 west in Jackson county.

32. Unnamed creek 17–5 originating in SE 1/4, section 5, township 20 north, range 6 west in Jackson county.

33. Unnamed creek 24–3a originating in section 18, township 11 north, range 1 west in Richland county.

34. Unnamed creek 26–7 originating in section 2, township 21 north, range 5 west in Jackson county.

35. Unnamed creek 34–2 originating in section 17, township 20 north, range 8 west in Trempealeau county.

36. Unnamed creek 34–15 originating in section 27, township 20 north, range 7 west in Trempealeau county.

37. Unnamed stream originating in section 33, township 10 north, range 3 east in Sauk county.

38. Washington Coulee creek originating in section 29, township 20 north, range 6 west in Jackson county.

(c) The following Class II trout waters:

1. Ashland county — White river above the Bad River Indian reservation

2. Bayfield county — White river

3. Dane county — Mt. Vernon creek

4. Forest county — North Branch Oconto river

5. Grant county — Blue river

6. Iowa county — Blue river

7. Langlade county — Prairie river, South Branch Oconto river

8. Lincoln county — Prairie river

9. Marquette county — Mecan river

10. Oconto county — North Branch Oconto river, South Branch Oconto river

11. Pierce county — Rush river

12. Portage county — Tomorrow river

13. Richland county — Willow creek

14. St. Croix county — Willow river, Race Branch

15. Waushara county — Mecan river

(d) The following cold or warm water streams and rivers or portions thereof:

1g.	Ashland	Bad River	SEG 2: Outfall in Mellen at NE¼SW¼ S6 T44N R2W to Bad River Indian Reservation Boundary
1r.	Ashland & Sawyer	East Fork Chippewa River	SEG 2: Ashland County Highway "N" to Confluence of Rocky Run Creek (Includes Glidden POTW)
1t.	Barron	Brill River	All–Class II Portion
2.	Crawford	Copper Creek	All
		Plum Creek	All
		Sugar Creek	From headwaters to T10N R6W S10
		Tainter Creek	From Vernon County Line to CTH B
3.	Dane	Blue Mounds Branch	All
		Deer Creek	All
		Dunlap Creek	All
		Elvers Creek (Bohn Cr.)	All
		Flynn Creek	All
		Fryes Feeder Creek	All
		Garfoot Creek	All
		Milum Creek	All
		Rutland Branch	All
		Ryan Creek	All
		Schalpbach Creek	All
		Sixmile Creek	All
		Spring Creek (Lodi)	All
4.	Dane, Sauk, Iowa, Grant, Richland, Crawford	Wisconsin River	From below Prairie du Sac to Prairie du Chien
5.	Dane & Green	Little Sugar River	Above New Glarus
		Story Creek (Tipperary)	All
		Sugar River	All
6.	Dunn	Sand Creek	From Chippewa County Line to mouth
7.	Eau Claire	Lowes Creek	From Hwy 37 & 85 upstream to headwaters
8.	Fond du Lac	Feldner's Creek	From headwaters to Mischo's Millpond
		Auburn Lake Creek (Lake Fifteen Creek)	Entire Creek above & below Auburn Lake
9.	Forest	Armstrong Creek	All
		Middle Br. Peshtigo R.	All
		North Br. Peshtigo R.	All

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		North Br. Popple R.	All
		West Br. Armstrong Creek	Class II Portion
10.	Grant	Doc Smith Branch	All
		Little Platte River	From Arthur downstream to Platte River
11.	Grant & Iowa	Big Spring Branch	From Springhead to Blue River
12.	Green	Burgy Creek	All
		Gill Creek	All
		Hefty Creek, North Branch	All
		Hefty Cr., Center Branch	All
		Liberty Creek	All
		Norwegian Creek	All
		Richland Creek	All
		Ross Crossing	All
		Sylvester Creek	All
		Spring Valley Creek	All
		Ward Creek	All
13.	Green & Rock	Allen Creek	Below Evansville
14.	Iowa	Harker–Lee–Martin System	From headwaters to T6N R2ES10
15.	Iron	Manitowish River	All
15m.	Iron & Ashland	Vaughn Creek	SEG 1: Origin to Bad River Indian Reservation Boundary
16.	Jackson	Trempealeau River	From STH 95 at Hixton to CTHP at Taylor
17.	Jefferson & Rock	Allen Creek	All
18.	Kewaunee	Casco Creek	From T24N R24E S19 downstream of Rock Ledge to Kewaunee River
19.	La Crosse	Bostwick Creek	From headwaters to County Hwy 'O'
		Coon Creek	All
		Dutch Creek	From headwaters to Russian Coulee Road (section 8)
20.	Lafayette	Galena River	From headwaters to Buncombe Road
21.	Langlade	East Br. Eau Claire R.	From STH 64 upstream to firelane crossing in T33N R11E S35 SW1/4
		Hunting River	From Fitzgerald Dam Road downstream to T33N R11E S1
22.	Lincoln	North Br. Prairie River	From headwaters to CTHJ to T33N R8E
		Silver Creek	All
23.	Manitowoc	Branch River	All
24.	Monroe	Big Creek	From headwaters to Acorn Rd (S7)
		Farmers Valley Creek & Tribs	From headwaters to I–90 (S19)
		Soper Creek	All
25.	Oneida	Bearskin Creek	From Tomahawk River to Little Bearskin Lake
25m.	Oneida & Lincoln	Wisconsin River	SEG 2: Hat Rapids Dam to Lincoln County A crossing
			SEG 4: Grandfather Dam to Inlet of Alexander Lake
26.	Pierce	Big River	Class I Portion
		Cady Creek	From CTH P upstream
		Trimbelle River	All
26b.	Polk	St. Croix River	From the northern boundary of the St. Croix Falls city limits to a distance one mile below the STH 243 bridge at Osceola
26c.	Polk & Burnett	Clam River	SEG 3: Section Line @ T39N R16W S21/22 to Inlet of Clam River Flowage
			SEG 4: Outlet of Clam River Flowage to Confluence with St. Croix River
26g.	Price	North Fork Jump River	SEG 1: Origin (outlet of Cranberry Lake) to Inlet of Spring Creek Flowage
			SEG 2: Outlet of Spring Creek Flowage to Confluence with South Fork Jump River

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26n.	Price, Rusk & Taylor	Jump River	SEG 1: Confluence of the North Fork Jump River and South Fork Jump River to the Village of Jump River
26r.	Price, Sawyer, Rusk	Flambeau River	SEG 2: Crowley Dam to Inlet of Big Falls Flowage
26w.	Price & Taylor	South Fork Jump River	Origin to Confluence with North Fork Jump River
27.	Richland	Babb Hollow	All–Trib to Mill Creek
		Hanzel Creek (Hansell)	All–Trib to Melancthon Cr.
		Melancthon Creek	Class II Section
		Coulter Hollow Creek	All–Trib to Mill Creek
		E. Branch Mill Creek	All
		Happy Hollow Creek	All–Trib to Willow Creek
		Higgins Creek	All–Trib to Mill Creek
		Hood Hollow Creek	All–Trib to Mill Creek
		Jacquish Hollow Creek	All–Trib to Willow Creek
		Kepler Branch	All–Trib to Mill Creek
		Mill Creek	From headwaters to above Boaz
		Miller Branch	All–Trib to Mill Creek
		Pine Valley Creek	All–Trib to Mill Creek
		Ryan Hollow	All–Trib to West Branch Mill Creek
		Wheat Hollow Creek	All
		W. Branch Mill Creek	All
28.	Rock	Bass Creek	All
		East Fork Raccoon Cr.	All
		Little Turtle Creek	All
		Raccoon Creek	All
		Spring Brook (T2N R14E S27)	All
		Turtle Creek	All
		Unnamed Creek T2N R14E S31	All
29.	Rusk	Big Weirgor Creek	All–Class III Portion
		Main Creek	Rusk County Highway P to Inlet of Holcombe Flowage
		Soft Maple Creek	SEG 2: Rusk County Highway "F" to Confluence with Chippewa River
30.	Rusk, Taylor & Chippewa	Jump River	From Village of Jump River downstream to Holcombe Flowage
31.	Sauk	Beaver Creek (Trib to Dell Creek)	All
		Camels Creek (Trib to Dell Creek)	All
		Dell Creek	All
31m.	Sawyer	Couderay River	SEG 2: Dam at Grimh Flowage to Confluence with Chippewa River
32.	Shawano	Kroenke Creek	Class II Portion
		Red River	From Lower Red Lake Dam to Wolf River
		West Br. Red River	Class II Portion
33.	Sheboygan	Ben Nutt Creek	Class II Portion to Junction with Mill Creek
34.	St. Croix	Apple River	From NSP plant below CTH I to Mouth
		Cady Creek	All
		Willow River	Extend Class II Portion into Delta in Lake Mallilieu
35.	St. Croix & Pierce	St. Croix River	From No. Boundary of Hudson City limits to the river mouth in Pierce Co.
35m.	Taylor & Price	Silver Creek	SEG 2: Westboro Sanitary District Outfall to Confluence with South Fork Jump River
36.	Trempealeau	Buffalo River	From Hwy 53 to Strum Pond
37.	Vernon	Bishop Branch	All
		Cheyenne Valley Creek	All
		Coon Creek	From La Crosse county line to Chaseburg
		Frohock Valley Creek	All
		Hornby Creek	All
		Reads Creek	All
		Tainter Creek	All

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38.	Vilas	Manitowish River	From Rest Lake Dam downstream to Iron County line
38m.	Vilas & Oneida	Wisconsin River	SEG 2: State Highway 70 to Inlet at Rainbow Flowage (Oneida County Line)
			SEG 3: Outlet of Rainbow Flowage (Oneida County Highway "D" to Inlet of Rhinelander Flowage (T37N R8E S8 SE¼NE¼)
39.	Washington & Fond du Lac	E. Branch Milwaukee R.	From Long Lake outlet to STH 28
40.	Waukesha	Genesee Creek	Above STH 59
		Mukwonago River	From Eagle Springs Lake to Upper Phantom Lake
		Oconomowoc River	From below North Lake to Okauchee Lake
41.	Waupaca	Blake Brook & Branches	Class II Portion
		Little Wolf River	From junction with Wolf River upstream to Manawa Dam
		Waupaca River	Class II portion
42.	Waupaca, Outagamie, & Shawano	Embarrass River	From Wolf River upstream to dam at Pella
43.	Waushara	Lower Pine River	From below Wild Rose Mill pond to dam at Poy Sippi

(2) The waters identified in sub. (1) may not be lowered in quality except as provided in ch. NR 207.

(3) Surface waters, or portions thereof, may be added to, or deleted from, the exceptional resource waters designation through the rule making process under the provisions of ch. 227, Stats., and s. NR 2.03.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89; cr. (1) (c), Register, July, 1989, No. 403, eff. 8–1–89; cr. (1) (d), Register, May, 1993, No. 449, eff. 6–1–93; CR 05–105: renum. (1) (d) 1. to be 1t., cr. 1g., 1r., 15m., 25m., 26c., 26n., 26r., 26w., 31m., 35m., and 38m., am. 29., Register November 2006 No. 611, eff. 12–1–06; **CR 09–123: am. (1) (b) 1., 5., 12., 15., 16., 23., 27., 33., 34., 37., (d) 5., 8., 15., 17., 28., 34., 39. and 42., cr. (1) (d) 26b. Register July 2010 No. 655, eff. 8–1–10.**

NR 102.12 Great Lakes system. (1) The Great Lakes system includes all the surface waters within the drainage basin of the Great Lakes.

(2) For the purpose of administering ch. NR 207 and consistent with chs. NR 105 and 106, the waters identified in sub. (1) are to be protected from the impacts of persistent, bioaccumulating toxic substances by avoiding or limiting to the maximum extent practicable increases in these substances.

(3) The waters of the Lake Superior basin shall be managed to prevent any new or increased discharges of the following pollutants: DDT, DDE and metabolites, chlordane, toxaphene, hexachlorobenzene, 2,3,7,8 TCDD, octachlorostyrene, mercury and PCB's. For purposes of administering ch. NR 207, new or increased discharges of these pollutants shall be prohibited unless the applicant certifies at time of application, that the new or increased discharge is necessary after utilization of best technology in process or control using waste minimization, pollution prevention, municipal pretreatment programs, material substitution or other means of commercially available technologies which have demonstrated capability for similar applications.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89; r. and recr. (1), am. (2), Register, August, 1997, No. 500, eff. 9–1–97; CR 05–089: cr. (3) Register July 2006 No. 607, eff. 8–1–06.

NR 102.13 Fish and aquatic life waters. All surface waters not included in s. NR 102.05 (1) (b) 1., 2., 3. or 5. are fish and aquatic life waters.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89.

NR 102.14 Taste and odor criteria. (1) At certain concentrations, substances may not be toxic to humans, but may impart undesirable taste or odor to water or aquatic organisms ingested by humans. The taste and odor criterion is derived to prevent substances from concentrating in surface waters or accumulating in aquatic organisms to a level which results in undesirable tastes or odors to human consumers.

(2) The taste and odor criterion is derived as follows:

(a) For substances which impart tastes and odors to waters, the taste and odor criterion shall equal that threshold concentration (TC_w) below which objectionable tastes or odors to human consumers do not occur. Threshold concentrations for substances imparting tastes and odors to water are listed in Table 1.

Table 1

Threshold Concentrations (TC_w) for Substances Causing Taste and Odor in Water

Substance	Threshold Concentration (ug/L)1
Acenaphthene	20
Chlorobenzene	20
2–Chlorophenol	0.1
3–Chlorophenol	0.1
4–Chlorophenol	0.1
Copper	1000
2,3–Dichlorophenol	0.04
2,4–Dichlorophenol	0.3
2,5–Dichlorophenol	0.5
2,6–Dichlorophenol	0.2
3,4–Dichlorophenol	0.3
2,4–Dimethylphenol	400
Hexachlorocyclopentadiene	1
2–Methyl–4–Chlorophenol	1800
3–Methyl–4–Chlorophenol	3000
3–Methyl–6–Chlorophenol	20
Nitrobenzene	30
Pentachlorophenol	30
Phenol	300
2,3,4,6–Tetrachlorophenol	1
2,4,5–Trichlorophenol	1
2,4,6–Trichlorophenol	2
Zinc	5000

[1] A threshold concentration expressed in micrograms per liter (ug/L) can be converted to milligrams per liter (mg/L) by dividing the threshold concentration by 1000.

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(b) For substances which impart tastes or odors to aquatic organisms, the taste and odor criterion shall be calculated as follows:

$$TOC = \frac{TC^{1}}{BAF}$$

Where:

TOC = Taste and odor criterion in milligrams per liter (mg/L).

TC = Threshold concentration in milligrams of substance per kilogram of wet tissue weight (mg/kg) of the aquatic organism being consumed below which undesirable taste and odor is not detectable to human consumers as derived in par. (d).

BAF = Aquatic life bioaccumulation factor with units of liter per kilogram (L/kg) as derived in s. NR 105.10.

(c) The lower of the taste and odor criteria derived as specified in pars. (a) and (b) is applicable to surface waters classified as public water supplies. The taste and odor criteria derived as specified in par. (b) are applicable to cold water and warm water sport fish communities.

(d) Threshold concentrations for substances imparting tastes or odors to water (TC_w) other than those listed in Table 1 and threshold concentrations for substances imparting tastes or odors to aquatic organisms (TC_f) shall be selected by the department using its best professional judgment.

History: Cr. Register, February, 1989, No. 398, eff. 3–1–89; am. (2) (b) and (c), Register, August, 1997, No. 500, eff. 9–1–97.

Policy 1.28 (revised)

1.~~28~~23) Owners or operators of municipal separate storm sewer systems shall obtain coverage from a Wisconsin pollutant discharge elimination system municipal storm water permit where the owner or operator serves an incorporated area with a population of 100~~0~~,000 or more, where the owner or operator has been notified in writing by the Wisconsin department of natural resources prior to August 1, 2004, or where the owner or operator of a municipal storm sewer system is within an urbanized area. (See Wis. Stats § 283.33, ch. 281 and Wis. Admin. Code ch. NR 216)

(4) The department shall prescribe conditions for permits issued under this section to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following, subject to sub. (5m):

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

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

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

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

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

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

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

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

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

(5m) The department shall include the requirements of 40 CFR 451.11 in permits issued under this section for concentrated aquatic animal production facilities described in 40 CFR 451.10. The department may not include additional conditions in a permit for a fish farm except as necessary for the farm to meet the applicable limitations, standards, and other provisions described in sub. (3) (a) to (f). Any conditions included in a permit issued under this section for a fish farm shall be limited to site-specific best management practices to the greatest extent allowed under federal law.

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

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

(8) The holder of a permit under this section for a concentrated animal feeding operation shall annually pay to the department a fee of $345, which shall be credited to the appropriation account under s. 20.370 (9) (ag). The department shall annually submit a report to the joint committee on finance and, under s. 13.172 (3), to the standing committees of the legislature with jurisdiction over agricultural and environmental matters describing the use of the moneys credited to the appropriation account under s. 20.370 (9) (ag) under this subsection and the use of the moneys appropriated under s. 20.370 (9) (ap).

History: 1973 c. 74; 1975 c. 349; 1983 a. 410; 1993 a. 16.; 1995 a. 227 s. 851, 857; Stats. 1995 s. 283.31; 1997 a. 27; 1999 a. 85; 2009 a. 28; 2011 a. 207; 2013 a. 70; 2015 a. 196; 2017 a. 21; 2019 a. 9.

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

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

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

The Department of Natural Resources had the explicit authority to impose both an animal unit maximum and an off-site groundwater monitoring condition upon a permittee's reissued permit, pursuant to subs. (3) to (5) and related regulations. Clean Wisconsin, Inc. v. DNR, 2021 WI 71, 398 Wis. 2d 386, 961 N.W.2d 346, 16-1688.

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

283.33 Storm water discharge permits. (1) REQUIREMENT. Except as provided in sub. (1m), an owner or operator shall obtain a permit under this section for any of the following:

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

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

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

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

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

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

(d) A discharge of storm water from a facility or activity, other than a facility or activity under pars. (a) to (cr), if the department

determines that the discharge either contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the state.

(1m) EXEMPTIONS; LIMITATION ON LOCAL PERMITTING. (a) An owner or operator is not required to obtain a permit under this section for any of the following:

1. A discharge of storm water associated with planting, growing, cultivating, or harvesting crops for use or consumption by humans, livestock, as defined in s. 95.80 (1) (b), or poultry, including sod farms and tree nurseries.

2. A discharge of storm water associated with pasturing or yarding livestock, as defined in s. 95.80 (1) (b), or poultry.

3. A discharge of storm water from land containing dredged material removed from a drainage district ditch, if the land is adjacent to the ditch from which the dredged material was removed.

4. Any other discharge of storm water exempted by the department by rule from obtaining a permit under this section.

(b) A political subdivision may not require an owner or operator to obtain a permit from the political subdivision for any discharge described under par. (a) 1. to 4. In this paragraph, "political subdivision" means a city, village, town, or county.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The location of the discharge.

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

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

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

(4m) TRANSPORTATION ACTIVITIES. (a) In this subsection, "transportation activity" has the meaning given in s. 30.2022 (1g).

(b) 1. The department of natural resources shall issue a general permit under this section on or before June 30, 2018, that authorizes the department of transportation to discharge storm water from the site of a transportation activity. A general permit issued under this paragraph is subject to the requirements for general permits issued under s. 283.35.

2. The department of natural resources shall notify the legislative reference bureau when it issues a general permit under subd. 1. The legislative reference bureau shall publish the notice in the Wisconsin Administrative Register.

(c) Beginning on the date on which the department of natural resources issues a general permit under par. (b) 1., the department of transportation may not discharge storm water from the site of a transportation activity unless it obtains an individual permit under sub. (1) or it is covered by a general permit issued under par. (b) 1.

(d) A general permit issued under this section shall incorporate the interdepartmental liaison procedures established under s. 30.2022 (2) and the requirements specified in rules promulgated under ss. 30.2022, 283.33, and 283.35.

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

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

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

(7) PETITIONS. The owner or operator of a municipal separate storm sewer system may petition the department to require a

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

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

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

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

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

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

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

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

(c) All moneys collected under par. (a) shall be credited to the appropriation under s. 20.370 (9) (bj).

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16; 2013 a. 20; 2015 a. 307; 2017 a. 59, 115.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1979 c. 221; 1995 a. 227 s. 853; Stats. 1995 s. 283.35; 2009 a. 28; 2013 a. 20; 2015 a. 55.

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

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

(3) The application form shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by the principal executive officer's authorized representative responsible for the overall operation of the point source for which a permit is sought.

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

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

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

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

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

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

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

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

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

283.39 Public notice. (1) The department shall promulgate

CHAPTER 281

WATER AND SEWAGE

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Cross-reference: See also chs. NR 102, 103, 104, 105, 809, 811, 812, and 845, Wis. adm. code.

SUBCHAPTER I

DEFINITIONS

281.01 Definitions. In this chapter, unless the context requires otherwise:

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

(4) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.

(5) "Industrial wastes" includes liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(6) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(7) "Other wastes" includes all other substances, except industrial wastes and sewage, which pollute any of the surface waters of the state. The term also includes unnecessary siltation resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(8) "Owner" means the state, county, town, town sanitary district, city, village, metropolitan sewerage district, corporation, firm, company, institution or individual owning or operating any water supply, sewerage or water system or sewage and refuse disposal plant.

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

(10) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(11) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(12) "Secretary" means the secretary of natural resources.

(13) "Sewage" means the water-carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (12), with such surface water or groundwater as may be present.

(14) "Sewerage system" means all structures, conduits and pipe lines by which sewage is collected and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

(15) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (1).

(16) "System or plant" includes water and sewerage systems and sewage and refuse disposal plants.

(17) "Wastewater" means all sewage.

(18) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

(19) "Water supply" means the sources and their surroundings from which water is supplied for drinking or domestic purposes.

(20) "Waterworks" or "water system" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served, and service pipes from building to street main.

(21) "Wetland" has the meaning given in s. 23.32 (1).

History: 1995 a. 227; 1999 a. 9; 2001 a. 6.

SUBCHAPTER II

WATER RESOURCES

Cross-reference: See also chs. NR 110 and 121, Wis. adm. code.

281.11 Statement of policy and purpose. The department shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Continued pollution of the waters of the state has aroused widespread public concern. It endangers public health and threatens the general welfare. A comprehensive action program directed at all present and potential sources of water pollution whether home, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic and ecological values and domestic, municipal, recreational, industrial, agricultural and other uses of water. The purpose of this subchapter is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. To the end that these vital purposes may be accomplished, this subchapter and all rules and orders promulgated under this subchapter shall be liberally construed in favor of the policy objectives set forth in this subchapter. In order to achieve the policy objectives of this subchapter, it is the express policy of the state to mobilize governmental effort and resources at all levels, state, federal and local, allocating such effort and resources to accomplish the greatest result for the people of the state as a whole. Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for those rivers emptying into Lakes Superior and Michigan and Green Bay shall be as high as is practicable.

History: 1995 a. 227 s. 374.

Cross-reference: See also s. NR 103.05, Wis. adm. code.

A possessor of land who withdraws ground water for beneficial purposes is not liable for interference with another's water use unless the withdrawal causes unreasonable harm by lowering the water table or artesian pressure, the ground water forms an underground stream, or the withdrawal has a substantial effect on a watercourse or lake. State v. Michels Pipeline Construction, Inc., 63 Wis. 2d 278, 217 N.W.2d 339 (1974).

A municipality's supplying of water to its inhabitant is not a proprietary function immune from the provisions of ch. 144 [now chs. 280 to 299]. The protection of public health is a matter of state-wide concern over which the legislature may exercise its police powers to insure a healthful water supply. Village of Sussex v. DNR, 68 Wis. 2d 187, 228 N.W.2d 173 (1975).

The state intended to create a comprehensive program for well construction supervision through the Department of Natural Resources (DNR). Under a liberal construction of its powers, DNR cannot be limited to regulating how groundwater is obtained. If a municipal body could make well construction contingent upon its own permit, based on its own standards, a DNR permit would be wholly insignificant, and the legislature's stated goal of creating a uniform scheme to supervise the extraction of groundwater would be eviscerated. The state legislature's explicit grant of authority to DNR preempts a municipal ordinance regulating the withdrawal of groundwater. Lake Beulah Management District v. Village of East Troy, 2010 WI App 127, 329 Wis. 2d 641, 791 N.W.2d 385, 09-2021.

Through this section and s. 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170. See also Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

The Public Trust Doctrine. Dumphy. 59 MLR 787 (1976).

Theories of Water Pollution Litigation. Davis. 1971 WLR 738.

Carrying Capacity Controls for Recreation Water Uses. Kusler. 1973 WLR 1.

Groundwater: Diminishing Resource, Increasing Conflict. Westerberg. Wis. Law. July/Aug. 2015.

281.12 General department powers and duties. (1) The department shall have general supervision and control over the waters of the state. It shall carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

(2) The department, on behalf of and at the direction of the governor, may submit an application to the federal environmental protection agency under 33 USC 1344 (g) seeking the delegation of authority to this state to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters of this state. If the federal environmental protection agency delegates this authority to this state, the department may assume that authority.

(3) The department, upon request, shall consult with and advise owners who have installed or are about to install systems or plants, as to the most appropriate water source and the best method of providing for its purity, or as to the best method of disposing of wastewater, including operations and maintenance, taking into consideration the future needs of the community for protection of its water supply. The department is not required to prepare plans.

(5) The department may enter into agreements with the responsible authorities of other states, subject to approval by the governor, relative to methods, means and measures to be employed to control pollution of any interstate streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided,

the department shall be the agency for the enforcement of any such legislative agreement.

History: 1995 a. 227 ss. 376, 383, 385, 987; 1995 a. 378 s. 42; 2017 a. 183.

Cross-reference: See also chs. NR 809, 811, 812, and 845, and ss. NR 1.50, 1.95, and 103.05, Wis. adm. code.

The Department of Natural Resources' general supervision and control over the state's waters is not so sweeping as to authorize the department to ban all activities that might adversely affect water quality or to establish limitations for any one specific industry. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95-3125.

Through this section and s. 281.11, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170. See also Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

The legislature has granted the Department of Natural Resources the broad but explicit authority to consider the environmental effects of a proposed high capacity well under this section. That its explicit authority to do so is broad does not negate that authority. That authority to consider the environmental effects of all high capacity wells is consistent with s. 227.10 (2m). Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

281.13 Surveys and research. (1) (a) The department is authorized to act with the U.S. geological survey in determining the sanitary and other conditions and nature of the natural water sources in this state, for the following purposes:

1. To determine the nature and condition of the unpolluted natural water sources.

2. To determine to what extent the natural water sources are being contaminated by sewage from cities, villages and towns.

3. To determine to what extent the natural water sources are being polluted by other wastes.

4. To assist in determining the best sources of water.

(b) The department is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the U.S. geological department, to carry this subsection into effect.

(3) The department may conduct scientific experiments, investigations, waste treatment demonstrations and research on any matter under its jurisdiction. It may establish pilot plants, prototypes and facilities in connection therewith and lease or purchase land or equipment.

History: 1995 a. 227 ss. 372, 382; 1995 a. 378 s. 40; 1997 a. 35.

281.14 Wisconsin River monitoring and study. (1) In this section:

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

(b) "Point source" has the meaning given in s. 283.01 (12).

(2) The department shall conduct a program to monitor and study the introduction of nutrients from point sources and nonpoint sources into the Wisconsin River from the headwaters of the river to the Castle Rock Flowage dam. The department shall seek to do all of the following under this subsection:

(a) Identify the amounts of nutrients being introduced into the river.

(b) Characterize and quantify the nutrients, in particular nitrogen and phosphorus, introduced into the river from nonpoint sources relative to climate, land use, soil type, elevation, and drainage.

(c) Collect water quality information for locations on the river itself and for major tributaries and major impoundments to use in evaluating the biological, physical, and chemical properties of the water and to use as data in watershed and river models.

(d) Use watershed and river models and the information collected under this subsection and from other sources to forecast the effect on water quality of different methods of reducing the amounts of nutrients introduced into the river.

(e) Develop tools to use in selecting and implementing methods of reducing the amounts of nutrients introduced into the river.

History: 2009 a. 28; 2013 a. 20.

281.145 River and stream monitoring and study. (1) In this section:

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

(b) "Point source" has the meaning given in s. 283.01 (12).

(2) The department shall conduct a program to monitor and study the introduction of nutrients from point sources and nonpoint sources into the East and West Twin Rivers, the Manitowoc River, the Sheboygan River, and the streams that outlet to Lake Michigan and that lie in and between the Ahnapee River watershed and the Sauk Creek watershed. The department shall seek to do all of the following under this subsection:

(a) Identify the amounts of nutrients being introduced into these waters.

(b) Characterize and quantify the nutrients, in particular nitrogen and phosphorus, introduced into these waters from nonpoint sources relative to climate, land use, soil type, elevation, and drainage.

(c) Collect water quality information from locations on these waters and from major tributaries and major impoundments to use in evaluating the biological, physical, and chemical properties of the water and to use as data in watershed and river models.

(d) Use watershed and river models and the information collected under this subsection and from other sources to forecast the effect on water quality of different methods of reducing the amounts of nutrients introduced into these waters.

(e) Develop tools to use in selecting and implementing methods of reducing the amounts of nutrients introduced into these waters.

History: 2017 a. 59.

281.15 Water quality standards. (1) The department shall promulgate rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof and the water quality criteria for those waters based upon the designated use. Water quality standards shall protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water systems, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.

(2) In adopting or revising any water quality criteria for the waters of the state or any designated portion thereof, the department shall do all of the following:

(a) At least annually publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following year.

(b) Consider information reasonably available to the department on the likely social, economic, energy usage and environmental costs associated with attaining the criteria and provide a description of the economic and social considerations used in the establishment of the criteria.

(c) Establish criteria which are no more stringent than reason-

ably necessary to assure attainment of the designated use for the water bodies in question.

(d) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(e) Develop a technical support document which identifies the scientific data utilized, the margin of safety applied and any facts and interpretations of those data applied in deriving the water quality criteria, including the persistence, degradability and nature and effects of each substance on the designated uses, and which provides a summary of the information considered under this section.

(3) Subsection (2) does not apply to rules promulgated under this section by the department for any substance before November 10, 1987.

(4) By April 1, 1989, the department shall review, in accordance with sub. (2), and as necessary revise all water quality criteria, except those for dissolved oxygen, temperature, pH and ammonia, adopted under this section before November 10, 1987.

(5) The department shall comply with this section with respect to all water quality criteria adopted or revised after November 10, 1987.

(6) Every 3 years, as part of the review required by 33 USC 1313 (c) (1), the department shall review the water quality standards promulgated under this section and determine whether any existing standards should be modified or new standards should be adopted. The department shall hold a public hearing to receive information and public comment regarding water quality standards promulgated under this section. The department shall publish notice of the hearing on the department's Internet site at least 45 days before the hearing date. The department shall submit the results of a review under this subsection to the federal environmental protection agency.

History: 1995 a. 227 s. 377; 1995 a. 378 s. 41; 2015 a. 205.

Cross-reference: See also chs. NR 102, 103, 104, 105, 106, 207, and 213 Wis. adm. code.

281.16 Water quality protection; nonpoint sources.

(1) DEFINITIONS. In this section:

(a) "Agricultural facility" means a structure associated with an agricultural practice.

(b) "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

(bg) "Artificial water body" has the meaning given in s. 30.19 (1b) (a).

(br) "Covered municipality" means a municipality that has been issued an individual municipal separate storm sewer permit under s. 283.33 or that is covered by a general municipal separate storm sewer permit under s. 283.35.

(c) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(d) "Navigable waters" has the meaning given in s. 281.31 (2) (d).

(e) "Nonpoint source" means a facility or practice that causes, or has the potential to cause, nonpoint source water pollution.

(f) "Nonpoint source water pollution" means pollution of waters of the state that does not result from a point source, as defined in s. 283.01 (12).

(g) "Water quality management area" means any of the following:

1. The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, "water quality management area" means the area within 1,000 feet from the high-water mark of the lake.

2. The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.

3. A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(h) Notwithstanding s. 281.01 (18), "waters of the state" has the meaning given in s. 283.01 (20).

(2) NONPOINT SOURCES THAT ARE NOT AGRICULTURAL. (a) The department shall, by rule, prescribe performance standards for nonpoint sources that are not agricultural facilities or agricultural practices. The performance standards shall be designed to achieve water quality standards by limiting nonpoint source water pollution.

(am) 1. In this paragraph:

c. "New development" means development resulting from the conversion of previously undeveloped land or agricultural land.

d. "Redevelopment" means development that replaces older development.

2. Except as provided in subd. 3., the department may not enforce a provision in a rule that establishes a date by which a covered municipality must implement methods to achieve a specified reduction in the level of total suspended solids carried by runoff, if the provision requires the covered municipality to achieve a reduction of more than 20 percent. This subdivision does not apply to total suspended solids carried by runoff from new development or redevelopment in a covered municipality.

3. If a covered municipality has achieved, on July 1, 2011, a reduction of more than 20 percent of total suspended solids carried by runoff, the municipality shall, to the maximum extent practicable, maintain all of the best management practices that the municipality has implemented on or before July 1, 2011, to achieve that reduction.

(b) The department shall, by rule, specify a process for the development and dissemination of technical standards to implement the performance standards under par. (a).

(c) If a covered municipality has obtained all permits required for the construction of a storm water management pond in an artificial water body, whether navigable or nonnavigable, the department may not prohibit the construction of the storm water management pond as a method by which the covered municipality may achieve compliance with performance standards under par. (a) or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C). The department shall give credit to the covered municipality for any pollutant reduction achieved by the storm water management pond in determining compliance with performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr) or an approved total maximum daily load under 33 USC 1313 (d).

(3) NONPOINT SOURCES THAT ARE AGRICULTURAL. (a) The department of natural resources, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve water quality standards by limiting nonpoint source water pollution. At a minimum, the prohibitions shall include all of the following:

1. That a livestock operation may have no overflow of manure storage structures.

2. That a livestock operation may have no unconfined manure pile in a water quality management area.

3. That a livestock operation may have no direct runoff from a feedlot or stored manure into the waters of the state.

4. That a livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

(b) The department of agriculture, trade and consumer protection, in consultation with the department of natural resources, shall promulgate rules prescribing conservation practices to implement the performance standards and prohibitions under par. (a) and specifying a process for the development and dissemination of technical standards to implement the performance standards and prohibitions under par. (a).

(c) Using the process specified under par. (b), the department of agriculture, trade and consumer protection shall develop and disseminate technical standards to implement the performance standards and prohibitions under par. (a). The department of agriculture, trade and consumer protection shall disseminate alternative technical standards for situations in which more than one method exists to implement the performance standards and prohibitions.

(d) The conservation practices and technical standards under pars. (b) and (c) shall at a minimum cover animal waste management, nutrients applied to the soil and cropland sediment delivery.

(e) An owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that specify criteria for determining whether cost-sharing is available under s. 281.65 and the department of agriculture, trade and consumer protection shall promulgate rules that specify criteria for determining whether cost-sharing is available under s. 92.14 or from any other source. The rules may not allow a determination that cost-sharing is available to meet local regulations under s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance standards, prohibitions, conservation practices or technical standards under this subsection unless the cost-sharing is at least 70 percent of the cost of compliance or is from 70 percent to 90 percent of the cost of compliance in cases of economic hardship, as defined in the rules.

(4) APPLICATION TO ANIMAL FEEDING OPERATIONS. If the department issues a notice of discharge under ch. 283 for an animal feeding operation, the performance standards, prohibitions, conservation practices and technical standards under sub. (3) apply to the animal feeding operation, except that if the animal feeding operation is in existence before October 14, 1997, the performance standards, prohibitions, conservation practices and technical standards only apply if the department determines that cost-sharing is available to the owner or operator of the animal feeding operation under s. 92.14 or 281.65 or from any other source.

History: 1997 a. 27; 1999 a. 9; 2009 a. 28; 2011 a. 32; 2015 a. 387.

Cross-reference: See also chs. NR 151 and 243, Wis. adm. code.

281.165 Compliance with water quality standards for wetlands. (1) COMPLIANCE; EXEMPTION. An activity shall be considered to comply with the water quality standards that are applicable to wetlands and that are promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292 or 299 or specified under any rule promulgated, order issued or ordinance adopted under any of those sections or chapters, if the activity meets all of the requirements under sub. (2), (3), or (4).

(2) TREMPEALEAU COUNTY. Subsection (1) applies to an activity that meets all of the following requirements:

(a) The wetland area that will be affected by the activity is less than 15 acres in size.

(b) The site of the activity is zoned for industrial use and is in the vicinity of a manufacturing facility.

(c) The site of the activity is within the corporate limits of a city on January 1, 1999.

(d) The governing body of the city adopts a resolution stating that the exemption under this section is necessary to protect jobs that exist in the city on the date of the adoption of the resolution or is necessary to promote job creation.

(e) The site of the activity is located in Trempealeau County.

(3) DUNN COUNTY. (a) Subsection (1) applies to an activity that meets the requirements under sub. (2) (c) and (d) and all of the following requirements:

1. The wetland area that will be affected by the activity is no more than 4.2 acres in size.

2. The site of the activity is zoned for technology park use and is in the vicinity of a manufacturing facility.

3. The site of the activity is located in Dunn County.

(b) Before any person engages in the activity described in par. (a), the U.S. army corps of engineers shall have issued a permit for the activity that contains a mitigation plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland affected by the activity.

(4) VILLAGE OF ASHWAUBENON. (a) Subsection (1) applies to an activity that meets all of the following requirements:

1m. The wetland area is not subject to federal jurisdiction under 33 USC 1344, and the activity will affect less than 3 acres of that wetland area.

2. The site of the activity is zoned for community business use and is part of a tax incremental district.

3m. The site of the activity is located in the village of Ashwaubenon in the vicinity of a professional football stadium.

4m. The person who will engage in the activity shall have provided wetland mitigation at the ratio of at least 1.5 acres of wetland for each acre of wetland affected by the activity. Evidence of the mitigation can be provided by a written affidavit demonstrating a purchase of credits from any of the wetland mitigation banks that are located in the state and that are approved by the department or by an alternative mitigation project approved by the department.

History: 1999 a. 9; 2011 a. 6, 118; 2015 a. 196.

281.17 Water quality and quantity; specific regulations. (2) The department shall supervise chemical treatment of waters for the suppression of nuisance-producing organisms that are not regulated by the program established under s. 23.24 (2). It may purchase equipment and may make a charge for the use of the same and for materials furnished, together with a per diem charge for any services performed in such work. The charge shall be sufficient to reimburse the department for the use of the equipment, the actual cost of materials furnished, and the actual cost of the services rendered.

(2m) In permitting under its authority under sub. (2) the chemical treatment of water for the suppression of mosquito larvae in the cities of Brookfield and La Crosse, the department may

not impose as a condition to that permission a requirement that monitoring or additional testing be conducted as to the effectiveness or the impact of the treatment.

(3) The department shall promulgate rules establishing an examining program for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles operated under a license issued under s. 281.48 (3), setting such standards as the department finds necessary to accomplish the purposes of this chapter and chs. 285 and 289 to 299, including requirements for continuing education. The department may charge applicants a fee for certification, except that the department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay a fee. All moneys collected under this subsection for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles shall be credited to the appropriation under s. 20.370 (4) (bL). No person may operate a water systems, wastewater treatment plant or septage servicing vehicle without a valid certificate issued under this subsection. The department may suspend or revoke a certificate issued under this subsection for a violation of any statute or rule relating to the operation of a water system or wastewater treatment plant or to septage servicing, for failure to fulfill the continuing education requirements or as provided under s. 145.20 (5). The owner of any wastewater treatment plant shall be, or shall employ, an operator certified under this subsection who shall be responsible for plant operations, unless the department by rule provides otherwise. In this subsection, "wastewater treatment plant" means a system or plant used to treat industrial wastewater, domestic wastewater or any combination of industrial wastewater and domestic wastewater.

(5) The department may prohibit the installation or use of septic tanks in any area of the state where the department finds that the use of septic tanks would impair water quality. The department shall prescribe alternate methods for waste treatment and disposal in such prohibited areas.

(6) On and after December 31, 1965, the sale and use of nondegradable detergents containing alkyl benzene sulfonate is prohibited in this state.

(7) Discharge of mercury compounds and metallic mercury into the waters of this state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more than one-half pound in any one day. The department may establish lower maximum discharge limits by rule.

(8) (a) The department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j-26.

(b) Notwithstanding par. (a) and s. 280.11 (1), the department may not require a municipal water system to provide continuous disinfection of the water that it provides, unless one of the following applies:

1. Continuous disinfection is required under federal law.

2. Water quality data, well construction, or water system construction indicate a potential health hazard.

(9) The department may require owners of water systems to demonstrate the technical, managerial and financial capacity to comply with national primary drinking water regulations under 42 USC 300g-1 and may assist owners of water systems to develop that capacity.

(10) (a) No person may conduct an activity for which the department denies a water quality certification required by rules promulgated under this subchapter to implement 33 USC 1341 (a).

(b) No person may violate a condition imposed by the department in a water quality certification required by rules promulgated under this subchapter to implement 33 USC 1341 (a).

(c) This subsection does not apply to discharges into wetlands that are subject to regulation under s. 281.36.

History: 1995 a. 227 ss. 380, 384, 387, 389, 392, 418, 420; 1995 a. 378 s. 43; 1997 a. 27, 35; 1999 a. 147; 2001 a. 16, 109; 2003 a. 310; 2005 a. 347; 2011 a. 19, 118, 209.

Cross-reference: See also chs. NR 100, 107, 114, 142 and 815, Wis. adm. code.

Madison's power to forbid chemical treatment of Madison lakes was withdrawn by s. 144.025 (2) (i) [now sub. (2)]. Wisconsin's Environmental Decade, Inc. v. DNR, 85 Wis. 2d 518, 271 N.W.2d 69 (1978).

A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The department is granted statewide supervision over aquatic nuisance control under s. 144.025 (2) (i) [now sub. (2)]. Applications for permits to chemically treat aquatic nuisances under s. 144.025 (2) (i) [now sub. (2)] may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counter-productive in achieving the goals set out in s. 144.025 (1). 63 Atty. Gen. 260.

281.19 Orders. (1) The department may issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties.

(2) (a) The department may issue special orders directing particular owners to remedy violations of the safe drinking water program under s. 281.17 (8) and (9) or to secure such operating results toward the control of pollution of the waters of the state as the department prescribes, within a specified time. Pending efforts to comply with any order, the department may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, the owner may, before the date set in the order, petition the department to modify the order. The department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the department shall immediately notify the attorney general of this fact. After receiving the notice, the attorney general shall commence an action under s. 299.95.

(b) The department may issue temporary emergency orders without prior hearing when the department determines that the protection of the public health necessitates such immediate action. Such emergency orders shall take effect at such time as the department determines. As soon as is practicable, the department shall hold a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under par. (a).

(3) The department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues. In the exercise of this power the department may require the submission and approval of plans for the installation of systems and devices for handling, treating or disposing of any wastes.

(4) The department may, under s. 254.59, order or cause the abatement of any nuisance affecting the waters of the state.

(5) If the department finds that a system or plant tends to create a nuisance or menace to health or comfort, it shall order the owner or the person in charge to secure such operating results as the department prescribes, within a specified time. If the order is not complied with, the department may order designated changes in operation, and if necessary, alterations or extension to the system or plant, or a new system or plant. If the department finds that the absence of a municipal system or plant tends to create a nuisance or menace to health or comfort, it may order the city, village, town or town sanitary district embracing the area where such conditions exist to prepare and file complete plans of a cor-

rective system as provided by s. 281.41, and to construct such system within a specified time.

(6) Orders issued by the department shall be signed by the person designated by the board.

(7) In cases of noncompliance with any order issued under sub. (2) or (5) or s. 281.20 (1), the department may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The department shall have all the necessary powers needed to carry out this subsection including powers granted municipalities under ss. 66.0821 and 200.01 to 200.15. It shall also be eligible for financial assistance under ss. 281.55, 281.57, 281.58 and 281.59.

(8) Any owner or other person in interest may secure a review of the necessity for and reasonableness of any order of the department under this section or s. 281.20 in the following manner:

(a) They shall first file with the department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the department shall order a public hearing thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the department may suspend such orders under terms and conditions to be fixed by the department on application of any such petitioner. The department shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the department shall be subject to review as provided in ch. 227.

History: 1995 a. 227 ss. 378, 379, 381, 386, 388, 390, 391, 397, 987; 1997 a. 27, 193; 1999 a. 32; 1999 a. 150 s. 672.

The Department of Natural Resources is authorized, not required, to set standards for sewer extension approvals and may process sewer extension applications on a case by case basis under s. 144.025 (2) (c) [now sub. (1)]. Wisconsin's Environmental Decade, Inc. v. DNR, 82 Wis. 2d 97, 260 N.W.2d 674 (1978).

The Department of Natural Resources has the authority to order a municipality to construct a public water supply upon a finding that the absence of a public water supply constitutes a nuisance or menace to health or comfort, even if the electors of the municipality vote against construction in a referendum. 60 Atty. Gen. 523.

281.20 Orders; nonpoint source pollution. (1) Under the procedure specified in sub. (3), the department may do any of the following:

(a) Order or cause the abatement of pollution which the department, in consultation with the department of agriculture, trade and consumer protection if the source is agricultural, has determined to be significant and caused by a nonpoint source, as defined in s. 281.65 (2) (b), including pollution which causes the violation of a water quality standard, pollution which significantly impairs aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health or pollution which otherwise significantly impairs water quality, except that under this paragraph the department may not order or cause the abatement of any pollution caused primarily by animal waste or of pollution from an agricultural source that is located in a priority watershed or priority lake area unless the source is designated as a critical site in a priority watershed or priority lake plan under s. 281.65 (5m) or a modification to such a plan under s. 281.65 (5s).

(b) If it provided notice under s. 281.65 (5w), order the owner or operator of a source that is designated as a critical site in a priority watershed or priority lake plan under s. 281.65 (5m) or in a modification to such a plan under s. 281.65 (5s) to implement best management practices, but not with respect to any pollution caused primarily by animal waste.

(3) (a) 1. If the department determines that it is authorized to issue an order under sub. (1) (a) to abate pollution caused by a nonpoint source, the department shall send a written notice of intent to issue the order to abate the pollution to the person whom the department determines to be responsible for the nonpoint source.

2. If the department determines under sub. (1) (b) that an owner or operator is required to implement best management practices in a priority watershed or priority lake area, the department shall send a written notice of intent to issue an order to implement the designated best management practices to the owner or operator.

3. The notice of intent to issue an order shall describe the department's findings and intent, and shall include a date by which that person is required to abate the pollution or implement the best management practices. That date shall be at least one year after the date of the notice unless the department determines that the pollution is causing or will cause severe water quality degradation that could be mitigated or prevented by abatement action taken in less than one year. In its determination under this subsection, the department shall consider the nature of the actual or potential damage caused by the pollution and the feasibility of measures to abate that pollution.

(b) If the nonpoint source that is the subject of a notice under par. (a) is agricultural, the department shall send the notice to the land conservation committee created under s. 92.06 of any county in which the source is located. If the notice is issued under par. (a) 2., the land conservation committee may disapprove issuance of an order within 60 days after the department issues the notice of intent to issue the order.

(c) If the nonpoint source which is the subject of a notice under par. (a) is agricultural, the department shall send the notice to the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall do all of the following:

1. Upon receipt of the notice and in cooperation with the land conservation committee, provide to the person whom the department has determined to be responsible for the nonpoint source under sub. (1) (a) a listing of management practices which, if followed, would reduce pollution to an amount determined to be acceptable by the department, in consultation with either the department of agriculture, trade and consumer protection or the land conservation committee. The list shall, with reasonable limits, set forth all of the options which are available to the person to reduce pollution to that amount of pollution. The department of agriculture, trade and consumer protection shall provide to each person receiving a notice an explanation of financial aids and technical assistance which may be available to the person for the abatement of pollution or the implementation of best management practices from the department of agriculture, trade and consumer protection under s. 92.14 and from other sources.

2. Issue a report to the department within one year after the date of the notice describing the actions taken by the person receiving the notice and a recommendation as to whether the department should issue an order to abate the pollution or implement the best management practices. Notwithstanding par. (a), the department may not issue an order until the department receives that report unless the department determines that the pollution is causing or will cause severe water quality degradation which could be mitigated or prevented by abatement action taken in less than one year and unless the department of agriculture, trade and consumer protection files a concurring determination in writing with the department within 30 days after receiving notice of the department's determination.

(d) The department may issue a temporary emergency order prior to issuing a notice under par. (a) if all of the following apply:

1. The department determines that the pollution is causing or will cause severe water quality degradation.

2. The abatement action required by the order does not involve a capital expenditure.

3. If the nonpoint source is agricultural, the department provides a copy of the temporary emergency order to the department of agriculture, trade and consumer protection and to the land conservation committee created under s. 92.06 in every county in which the nonpoint source is located.

4. As soon as practicable after issuing the temporary emergency order, the department issues a written notice of intent to issue an order under pars. (a) and (b) or rescinds the temporary emergency order.

(5) (a) Except as provided in par. (c), if the department issues a notice under sub. (3) (a) 2., the source is agricultural and no land conservation committee disapproves the proposed order under sub. (3) (b), the owner or operator of the critical site may obtain a review of the proposed order by filing a written request with the land and water conservation board within 60 days after the expiration of the time limit under sub. (3) (b). If the land conservation committee of any county in which a source is located disapproves of a proposed order under sub. (3) (b), the department may obtain a review of that disapproval by filing a written request with the land and water conservation board within 60 days after receiving the decision of the land conservation committee.

(b) The owner or operator of a critical site may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (a) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(c) The owner or operator of a critical site who obtains review of the critical site determination under any or all of the review procedures in s. 281.65 (7) may not obtain review of a proposed order under this subsection.

History: 1995 a. 227 ss. 393, 394, 395.
Cross-reference: See also ch. NR 120, Wis. adm. code.

SUBCHAPTER III

WATER QUALITY AND QUANTITY; GENERAL REGULATIONS

281.31 Navigable waters protection law. (1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

(e) "Regulation" means ordinances enacted under ss. 59.692, 61.351, 61.353, 62.23 (7), 62.231, and 62.233 and refers to subdivision and zoning regulations which include control of uses of lands under, abutting, or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages, and counties.

(f) "Shorelands" means the lands specified under par. (e) and s. 59.692 (1) (b).

(g) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(2m) Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.693, 60.627, 61.354, or 62.234, or a wetland zoning ordinance required under s. 61.351 or 62.231 does not apply to any of the following:

(a) Lands adjacent to farm drainage ditches if all of the following apply:

1. The lands are not adjacent to a natural navigable stream or river.

2. Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching.

(bg) Lands adjacent to artificially constructed drainage ditches, ponds, or storm water retention basins that are not hydrologically connected to a natural navigable water body.

(c) Lands adjacent to an impoundment described under s. 30.10 (2) (b) that does not discharge directly into a natural navigable waterway.

(3) (a) The department shall coordinate the activities of the several state agencies in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the University of Wisconsin, local units of government and other sources.

3. Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(5) (a) The department shall prepare a comprehensive plan as a guide for the application of municipal ordinances regulating navigable waters and their shorelands as defined in this section for the preventive control of pollution. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state or within counties and shall be governed by the following general standards:

1. Domestic uses shall be generally preferred.

2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

4. Use locations within an area tending to minimize the pos-

sibility of pollution shall be preferred over use locations tending to increase that possibility.

5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(b) The department shall apply to the plan the standards and criteria set forth in sub. (6).

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and ss. 59.692, 61.351, 61.353, 62.231, and 62.233 shall be construed together to accomplish the purposes and objective of this section.

(9) Sections 30.50 to 30.80 are not affected or superseded by this section.

(10) A person aggrieved by an order or decision of the department under this section may cause its review under ch. 227.

History: 1975 c. 232; 1977 c. 29; 1981 c. 330, 339; 1983 a. 189, 416; 1993 a. 246; 1995 a. 201; 1995 a. 227 s. 432; Stats. 1995 s. 281.31; 2013 a. 80; 2013 a. 151 s. 28; 2015 a. 55; 2017 a. 164.

Cross-reference: See also chs. NR 115 and 117, Wis. adm. code.

A prohibition against filling in wetlands pursuant to an ordinance adopted under ss. 59.971 and 144.26 [now this section and s. 59.692] does not amount to an unconstitutional taking of property. Discussing police powers and eminent domain. Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972).

The concept that an owner of real property can, in all cases, do as the owner pleases with the owner's property is no longer in harmony with the realities of society. The "reasonable use" rule codified in the second Restatement of the Law of Torts is adopted. State v. Deetz, 66 Wis. 2d 1, 224 N.W.2d 407 (1974).

By enactment of this section and s. 59.692, the legislature intended that towns would not have authority to regulate shorelands except where such regulation fell within the language of s. 59.692 (2) (b) [now s. 59.692 (2) (b), (bg), and (bm)]. That statutory scheme does not distinguish between towns with village powers and those without. Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12-2058.

A drainage board is subject to shoreland zoning ordinances, as is any other person. Navigable drainage ditches are within the jurisdiction of the Department of Natural Resources under s. 144.26 (2) (d) [now sub. (2) (d)]. 63 Atty. Gen. 355.

The Necessity of Zoning Variance or Amendments Notice to the Wisconsin Department of Natural Resources Under the Shoreland Zoning and Navigable Waters Protection Acts. Whipple. 57 MLR 25 (1973).

The Public Trust Doctrine. Dumphy. 59 MLR 787 (1976).

Water Quality Protection for Inland Lakes in Wisconsin: A Comprehensive Approach to Water Pollution. Kusler. 1970 WLR 35.

This Land Is Whose Land? Changing Concepts of Land as Property. Large. 1973 WLR 1039.

Wisconsin's Shoreland Management Program: An Assessment with Implications for Effective Natural Resources Management and Protection. Kuczenski. 1999 WLR 273.

281.33 Construction site erosion control and storm water management. (1) OBJECTIVES. To aid in the fulfillment of the state's role as trustee of its navigable waters, to promote public health, safety and general welfare and to protect natural resources, it is declared to be in the public interest to make studies, establish policies, make plans, authorize municipal construction site erosion control and storm water management zoning ordinances for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources and establish a state storm water management plan for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources while at the same time encouraging sound economic growth in this state. The purposes of the municipal ordinances and state plan shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; prevent and control the adverse effects of storm water; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(2) STATE STORM WATER MANAGEMENT PLAN. The department, in consultation with the department of safety and professional services, shall promulgate by rule a state storm water management plan. This state plan is applicable to activities contracted for or conducted by any agency, as defined under s. 227.01 (1) but also including the office of district attorney, unless that agency enters into a memorandum of understanding with the department of natural resources in which that agency agrees to regulate activities related to storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in storm water management and make recommendations to these agencies concerning activities related to storm water management.

(3) STANDARDS RELATED TO STORM WATER AND CERTAIN CONSTRUCTION ACTIVITIES. (a) 1. Except as restricted under subd. 2., the department shall establish by rule uniform statewide standards for all of the following:

a. Activities related to construction site erosion control at sites that have a land disturbance that is one acre or more in area.

b. Activities related to construction site erosion control at sites that have a land disturbance that is less than one acre and to which ss. 101.1206 and 101.653 do not apply.

c. Storm water management.

2. The department, in cooperation with the department of transportation, shall establish by rule uniform statewide standards for activities related to construction site erosion control and storm water management if those activities concern street, highway, road or bridge construction, enlargement, relocation or reconstruction.

3. Uniform statewide standards for storm water management established under this paragraph are applicable to the state plan under sub. (2). The department shall require a city, village, town, or county to comply with uniform statewide standards established under this paragraph for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354 or 62.234.

4. The department shall identify low-cost practices which would enable a person to comply with these uniform statewide standards.

(b) The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that:

1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

2. Involves the excavation or filling or a combination of excavation and filling which affects 400 cubic yards or more of dirt, sand or other excavation or fill material.

3. Involves street, highway, road or bridge construction, enlargement, relocation or reconstruction.

4. Involves the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more.

5. Requires a subdivision plat approval or a certified survey.

(c) The uniform statewide standards for storm water management shall provide for the regulation of any construction activity which:

1. Is a residential development with a gross aggregate area of 5 acres or more.

2. Is a residential development with a gross aggregate area of 3 acres or more with at least 1.5 acres of impervious surfaces.

3. Is a development other than a residential development with a gross aggregate area of 3 acres or more.

4. Is likely to result in storm water runoff which exceeds the safe capacity of the existing drainage facilities or receiving body of water, which causes undue channel erosion, which increases water pollution by scouring or the transportation of particulate matter or which endangers downstream property.

(d) If the department determines that rules promulgated under s. 281.16 (2) prescribe performance standards that meet the requirements for establishing uniform statewide standards under this subsection, the department's rules promulgated under s. 281.16 (2) satisfy the rule-making requirements under this subsection and shall apply as if they were promulgated under this subsection.

(3m) REQUIREMENTS FOR ORDINANCES. A city, village, town, or county may enact an ordinance regulating the conduct regulated under this section only if the ordinance strictly conforms with uniform statewide standards established under sub. (3).

(4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall prepare a model zoning ordinance for construction site erosion control at sites described in sub. (3) (a) 1. a. and b. and for storm water management in the form of an administrative rule. The model ordinance is subject to s. 227.19 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any city, village, town or county that submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

(5) COOPERATION. The department, the municipalities, and all state agencies shall cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure uniformity of regulations, shall prepare model ordinances under sub. (4), shall extend assistance to municipalities under this section, shall prepare the plan under sub. (2), shall obtain uniformity through the implementation of this plan and the utilization of memoranda of understanding which are substantially similar to the plan, and shall extend assistance to agencies under this section.

(6) EXCEPTIONS. (a) Notwithstanding subs. (3) and (3m), a city, village, town, or county may enact and enforce provisions of an ordinance that are stricter than the uniform standards for storm water management established by the department under this section if the stricter provisions are necessary to do any of the following:

1. Control storm water quantity or peak flow to address existing flooding problems or prevent future flooding problems, except that an ordinance under this subdivision may not require more than 90 percent of the difference between the pre-development annual runoff volume at a site and the post-development annual runoff volume at that site to be retained on site.

2. Comply with federally approved total maximum daily load requirements.

(b) Subsection (3m) does not apply to provisions of an ordinance enacted by a city, village, town, or county if the provisions of the ordinance regulate storm water management relating to existing development or redevelopment, as defined in NR 151.002, Wis. Adm. Code.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32; 2013 a. 20; 2017 a. 243.

Cross-reference: See also chs. NR 152 and 216, Wis. adm. code.

281.34 Groundwater withdrawals. (1) DEFINITIONS. In this section:

(ae) "Fire protection well" means a well used primarily for fire protection purposes.

(am) "Groundwater protection area" means an area within 1,200 feet of any of the following:

1. An outstanding resource water identified under s. 281.15 that is not a trout stream.

2. An exceptional resource water identified under s. 281.15 that is not a trout stream.

3. A class I, class II, or class III trout stream, other than a class I, class II, or class III trout stream that is a farm drainage ditch with no prior stream history, as identified under sub. (8) (a).

(b) "High capacity well" means a well, except for a residential well or fire protection well, that, together with all other wells on the same property, except for residential wells and fire protection wells, has a capacity of more than 100,000 gallons per day.

(c) "Local governmental unit" means a city, village, town, county, town sanitary district, utility district under s. 66.0827 that provides water, public inland lake protection and rehabilitation district that has town sanitary district powers under s. 33.22 (3), joint local water authority created under s. 66.0823, or municipal water district under s. 198.22.

(d) "Owner" means a person who owns property on which a well is located or proposed to be located or the designated representative of such a person.

(e) "Potentiometric surface" means a measure of pressure of groundwater in an aquifer based on the level to which groundwater will rise in a well placed in the aquifer.

(ek) "Reconstruct" means to modify original construction including deepening, lining, installing or replacing a screen, and underreaming.

(em) "Residential well" means a well that has a capacity of 100,000 gallons per day or less and that is used primarily to provide water to a single-family or multifamily residence.

(f) "Spring" means an area of concentrated groundwater discharge occurring at the surface of the land that results in a flow of at least one cubic foot per second at least 80 percent of the time.

(g) "Water loss" means a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use or both.

(h) "Well" means any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface and is constructed for the purpose of obtaining groundwater.

(2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. Except as provided under sub. (2g), an owner shall apply to the department for approval before construction of a high capacity well begins. Except as provided under sub. (2g), no person may construct or withdraw water from a high capacity well without the approval of the department under this section or under s. 281.17 (1), 2001 stats. An owner applying for approval under this subsection shall pay a fee of $500.

(2g) REPAIR, REPLACEMENT, RECONSTRUCTION, AND TRANSFER OF OWNERSHIP OF AN APPROVED HIGH CAPACITY WELL. (a) Except as provided in par. (e), if a high capacity well has been approved under this section or under s. 281.17 (1), 2001 stats., the

owner of that well may take any of the following actions without obtaining an additional approval under this section:

1. Repair and maintain the high capacity well.

2. Construct a new high capacity well to replace the existing high capacity well if the new high capacity well will be constructed in accordance with department standards that apply to the construction of new high capacity wells on the date that construction of the replacement high capacity well begins, if the existing high capacity well is filled and sealed as provided in rules promulgated by the department, and if any of the following applies:

a. The purpose of replacement is to remedy or prevent contamination. The owner of the well shall submit documentation of the contamination to the department in the manner and form required by the department.

b. The replacement high capacity well will be drilled to substantially the same depth as the existing high capacity well and either will be located within a 75-foot radius of the existing high capacity well or will be located farther from the nearest groundwater protection area than the existing high capacity well and not be located within any other groundwater protection area.

3. Reconstruct the high capacity well, if the reconstructed high capacity well is constructed to substantially the same depth and specifications as the existing high capacity well.

4. Transfer the approval, concurrent with transferring the land on which the high capacity well is located, to the person to whom the land is transferred.

(b) The department may not impose a fee for any action taken under this subsection.

(c) No later than 90 days after taking any action under par. (a) 2., 3., or 4., the owner of the high capacity well shall notify the department of the action taken on a form prescribed by the department. For any action taken under par. (a) 2., the owner shall, on the same form, notify the department of the location of the replacement high capacity well and the method by which the existing well was filled and sealed.

(d) Except as provided in sub. (7), the conditions included in the approval for the high capacity well continue to apply after an owner takes any of the actions under par. (a).

(e) An owner of a well may not take an action under par. (a) if the action would be inconsistent with the conditions included in the approval for the high capacity well.

(2m) TEMPORARY DEWATERING WELLS. The department shall issue a single approval under sub. (2) for all high capacity wells constructed for one project, as determined by the department, for temporary dewatering of a construction site, including a construction site for a building, road, or utility. The department shall provide for amendments to a project under this subsection. A person applying for approval of high capacity wells for a project under this subsection is only required to pay one $500 fee.

(3) NOTIFICATION REQUIRED FOR OTHER WELLS. (a) An owner shall notify the department of the location of a well that is not a high capacity well before construction of the well begins. An owner notifying the department under this subsection shall pay a fee of $50.

(b) The department may appoint any person who is not an employee of the department as the department's agent to accept and process notifications and collect the fees under par. (a).

(c) Any person, including the department, who accepts and processes a well notification under par. (a) shall collect in addition to the fee under par. (a) a processing fee of 50 cents. An agent appointed under par. (b) may retain the processing fee to compensate the agent for the agent's services in accepting and processing the notification.

(4) ENVIRONMENTAL REVIEW. (a) The department shall review an application for approval of any of the following using the environmental review process in its rules promulgated under s. 1.11:

1. A high capacity well that is located in a groundwater protection area.

2. A high capacity well with a water loss of more than 95 percent of the amount of water withdrawn.

3. A high capacity well that may have a significant environmental impact on a spring.

(b) If, under sub. (5) (b), (c), or (d), the department requests an environmental impact report under s. 23.11 (5) for a proposed high capacity well, the department may only request information in that report that relates to the decisions that the department makes under this section related to the proposed high capacity well.

(5) STANDARDS AND CONDITIONS FOR APPROVAL. (a) *Public water supply.* If the department determines that a proposed high capacity well may impair the water supply of a public utility engaged in furnishing water to or for the public, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that will ensure that the water supply of the public utility will not be impaired.

(b) *Groundwater protection area.* 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well located in a groundwater protection area, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

2. Subdivision 1. does not apply to a proposed high capacity well that is located in a groundwater protection area and that is a water supply for a public utility engaged in supplying water to or for the public, if the department determines that there is no other reasonable alternative location for a well and is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

(c) *High water loss.* If the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

(d) *Impact on a spring.* 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well that may have a significant environmental impact on a spring, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

2. Subdivision 1. does not apply to a proposed high capacity well that may have a significant environmental impact on a spring and that is a water supply for a public utility engaged in supplying water to or for the public, if the department determines that there is no other reasonable alternative location for a well and is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

(dm) *Water supply service area plan.* If a proposed high capacity well is covered by an approved water supply service area plan under s. 281.348, the department may not approve the high capacity well unless it is consistent with that plan.

(e) *All high capacity wells.* 1. If s. 281.35 (4) applies to a proposed high capacity well, the department shall include in the approval conditions that ensure that the high capacity well complies with s. 281.35 (4) to (6).

2. The department shall include in the approval for each high capacity well requirements that the owner identify the location of the high capacity well and submit an annual pumping report.

(5m) CONSIDERATION OF CUMULATIVE IMPACTS. No person may challenge an approval, or an application for approval, of a high capacity well based on the lack of consideration of the cumulative environmental impacts of that high capacity well together with existing wells.

(6) PREEXISTING HIGH CAPACITY WELLS. (a) The owner of a high capacity well for which the department issued an approval under s. 281.17 (1), 2001 stats., shall provide to the department information concerning the location of the well and an annual pumping report.

(b) The department shall promulgate rules specifying the date and method by which owners of high capacity wells shall comply with par. (a).

(7) MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS. The approval of a high capacity well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect unless the department modifies or rescinds the approval because the high capacity well or the use of the high capacity well is not in conformance with standards or conditions applicable to the approval of the high capacity well.

(7m) DESIGNATED STUDY AREA. (a) In this subsection:

1. "Designated study area" means the area made up of the Fourteenmile Creek Watershed, the Ten Mile Creek Watershed, and the Lone Rock-Fourteenmile Creek Watershed, located in Adams, Portage, Waushara, and Wood counties, as designated by the U.S. Geological Survey.

2. "Qualified lake association" means an association that meets the qualifications under s. 281.68 (3m) (a).

(b) The department shall evaluate and model the hydrology of Pleasant Lake in Waushara County, Plainfield Lake and Long Lake in the designated study area, and any other navigable stream or navigable lake located in the designated study area for which the department seeks to determine whether existing and potential groundwater withdrawals are causing or are likely to cause a significant reduction of the navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels. The department may request, under s. 13.10, the joint committee on finance to provide funding and positions for the evaluation and modeling under this paragraph. The evaluation under this paragraph shall include all relevant factors that may affect groundwater and water levels and rates of flow of navigable waters, including topography, ground cover, annual and seasonal variations in precipitation, and plant life. The department shall begin the evaluation and modeling under this paragraph no later than June 3, 2018.

(c) If upon conclusion of the evaluation and modeling of the area under par. (b) the department determines that special measures relating to existing and potential groundwater withdrawal are necessary in all or part of that area to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels, the department shall issue a decision on whether it recommends that the legislature adopt, by statute, special measures relating to groundwater withdrawal in all or part of that area. If the department issues a decision recommending that the legislature adopt, by statute, special measures relating to groundwater withdrawal in all or part of that area, the decision shall contain all of the following information:

1. A description of the extent to which the department has determined that cumulative groundwater withdrawals in all or part of the area cause, or are expected to cause, a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels.

2. A description of the concrete scientific information that the department used to establish that there is a hydrologic connection between the groundwater in all or part of the area and the navigable waters in all or part of the area and a causal relationship between groundwater withdrawal in all or part of the area and an existing or potential significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels, and the degree to which the department verified the connection and causal relationship by the use of field work or field study.

3. A description of the geographical boundaries of the area to which the department recommends special measures relating to groundwater withdrawal should apply. The department shall identify in the description the specific navigable water or part of the navigable water that is or may be affected by cumulative groundwater withdrawals and shall identify the location of the groundwater withdrawals that the department has determined are causing or may cause a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels.

4. Any proposed special measures in the area described under subd. 3. that the department recommends that the legislature adopt, by statute, to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels.

5. An economic impact analysis of the economic effect of the special measures recommended under subd. 4. on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.

(d) The department shall hold a public informational hearing to solicit comments on the department's decision under par. (c). The department shall give notice of the hearing to each person who owns land in the area that would be affected by the proposed special measures under par. (c) 4. and to each owner of a well in that area if the well owner has notified the department of the location of that well.

(e) After holding the public hearing under par. (d), the department shall prepare a report on whether it recommends that the legislature adopt, by statute, special measures relating to groundwater withdrawal in the area described in its decision under par. (c) 3. No later than 3 years after beginning the evaluation and modeling under par. (b), the department shall submit the report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the

appropriate legislative standing committees generally responsible for legislation related to environmental issues.

(f) If the department recommends in its report submitted under par. (e) that the legislature adopt, by statute, special measures relating to groundwater withdrawal in the area described in its decision under par. (c) 3., the department shall prepare an additional report specifying the special measures relating to groundwater withdrawal in that area that the department recommends that the legislature adopt, by statute, to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels. No later than 3 years after beginning the evaluation and modeling under par. (b), the department shall submit the report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the appropriate legislative standing committees generally responsible for legislation related to environmental issues.

(g) Neither a decision of the department under par. (c) nor a recommendation of the department under par. (e) are final decisions. Notwithstanding ss. 227.42 (1) and 227.52, no person is entitled to administrative or judicial review of a department decision under par. (c) or a department recommendation under par. (e).

(h) The special measures relating to groundwater withdrawal recommended by the department under par. (c) 4. or (f) shall not be effective unless adopted by the legislature by statute. Notwithstanding par. (j), nothing in this subsection shall affect the department's review of applications and issuance of approvals for high capacity wells located in the area studied under par. (b).

(i) The owner of a high capacity well that is constructed in the area studied under par. (b) after June 3, 2017, or who takes any of the actions described in sub. (2g) (a) 2. to 4. in the area studied under par. (b) after June 3, 2017, shall provide to the department, with the owner's annual pumping report under sub. (5) (e) 2., readings of a water meter showing the volume of water usage of that high capacity well in gallons.

(j) 1. The department may issue an approval under this section to a qualified lake association or lake district to construct and operate a new high capacity well, or to operate an existing approved high capacity well, for the sole purpose of providing water to a lake that is located wholly or partially in the area studied under par. (b) to assist the department in evaluating and modeling the hydrology of that area under par. (b), if the department determines that the lake's water level has been significantly reduced below its average seasonal levels. For any approval application submitted by a qualified lake association or lake district under this paragraph, the department shall waive the application fee under sub. (2), expedite the review and approval process to the greatest extent possible, and include, as a condition of the approval, a limit on the water level of the lake that may be reached as a result of the water provided by the proposed well. The department may not issue an approval to a qualified lake association or lake district under this paragraph if it determines that providing water from the proposed high capacity well to a lake is likely to result in a violation of a water quality standard under s. 281.15 for that lake.

2. The department shall develop and administer a financial assistance program to provide assistance to qualified lake associations and lake districts for all or part of the cost of constructing or operating an approved high capacity well under this paragraph. The financial assistance program shall include provisions relating to cost-sharing from qualified lake associations and lake districts receiving assistance under the program.

3. The department shall consider, in its evaluation and modeling under par. (b), the effects of the groundwater withdrawal and the supply of water to a lake resulting from any high capacity well constructed under this paragraph.

(k) Paragraphs (i) and (j) cease to apply in, and, notwithstanding sub. (7), approvals shall expire that were issued under par. (j) in, any part of the area studied under par. (b) to which any of the following applies:

1. The department submits a report under par. (e) recommending that no special measures relating to groundwater withdrawal in that part of the area be adopted.

2. The department does not submit the report under par. (e) or (f) within 3 years after beginning the evaluation and modeling under par. (b).

3. The legislature does not adopt, by statute, special measures relating to groundwater withdrawal in that part of the area within 12 months after receiving a report from the department under par. (f).

4. The legislature adopts, by statute, special measures relating to groundwater withdrawal in that part of the area.

(8) GROUNDWATER PROTECTION AREAS. (a) The department shall promulgate rules identifying class I, class II, and class III trout streams for the purposes of this section. The department shall identify as a class I trout stream a stream or portion of a stream with a self-sustaining population of trout. The department shall identify as a class II trout stream a stream or portion of a stream that contains a population of trout made up of one or more age groups, above the age one year, in sufficient numbers to indicate substantial survival from one year to the next but in which stocking is necessary to fully utilize the available trout habitat or to sustain the fishery. The department shall identify as a class III trout stream a stream or portion of a stream that has marginal trout habitat with no natural reproduction of trout occurring, requiring annual stocking of trout to provide trout fishing, and generally without carryover of trout from one year to the next. In the rules under this paragraph, the department shall identify any class I, class II, or class III trout stream that is a farm drainage ditch with no prior stream history.

(b) The department shall create accurate images of groundwater protection areas.

(c) A person who proposes to construct a high capacity well may request the department to determine whether the proposed location of the high capacity well is within a groundwater protection area.

(d) The department shall administer a program to mitigate the effects of wells constructed before May 7, 2004, that are located in groundwater protection areas. Mitigation may include abandonment of wells and replacement of wells, if necessary, and management strategies. Under the mitigation program, the department may order the owner of a well constructed before May 7, 2004, that is located in a groundwater protection area to undertake mitigation but only if the department provides funding for the full cost of the mitigation, except that full funding is not required if the department is authorized under ch. 280 to require the well to be abandoned because of issues regarding public health.

(9) GROUNDWATER MANAGEMENT AREAS. (a) The department shall, by rule, designate 2 groundwater management areas including and surrounding Brown County and Waukesha County consisting of the entire area of each city, village, and town at least a portion of which is within the area in which, on May 7, 2004, the groundwater potentiometric surface has been reduced 150 feet or more from the level at which the potentiometric surface would be if no groundwater had been pumped.

(b) The department shall assist local governmental units and regional planning commissions in groundwater management areas designated under par. (a) by providing advice, incentives, and

funding for research and planning related to groundwater management.

(c) If the groundwater advisory committee created under 2003 Wisconsin Act 310, section 15 (2) (b) does not issue the report under 2003 Wisconsin Act 310, section 15 (2) (e) by January 1, 2007, the department shall promulgate rules using its authority under ss. 281.12 (1) and 281.35 to address the management of groundwater in groundwater management areas.

(d) If the department promulgates rules under par. (c) and the rules require mitigation in the same or a similar manner as under sub. (8) (d), the department may not require mitigation for a well under the rules unless the department provides funding for the full cost of the mitigation, except that full funding is not required if the department is authorized under ch. 280 to require the well to be abandoned because of issues regarding public health.

(10) RESEARCH AND MONITORING. To aid in the administration of this section the department shall, with the advice of the groundwater coordinating council, conduct monitoring and research related to all of the following:

(a) Interaction of groundwater and surface water.

(b) Characterization of groundwater resources.

(c) Strategies for managing water.

History: 2003 a. 310; 2007 a. 227; 2009 a. 28; 2013 a. 20; 2015 a. 177; 2017 a. 10.

Cross-reference: See also ch. NR 820, Wis. adm. code.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170. See also Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

There is nothing in either this section or s. 281.35 that limits the Department of Natural Resources' (DNR) authority to consider the environmental impacts of a proposed high capacity well, nor is there any language in subch. II of this chapter that requires DNR to issue a permit for a well if the statutory requirements are met and no formal review or findings are required. There being no language expressly revoking or limiting DNR's authority and general duty to protect and manage waters of the state, DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170. See also Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

The Department of Natural Resources (DNR) is required to consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state. Upon what evidence, and under what circumstances, that duty is triggered is a highly fact-specific matter that depends upon the information submitted by the well owner in the well permit application and any other information submitted to DNR decision makers. DNR should use both its expertise in water resources management and its discretion to determine whether its duty as trustee of public trust resources is implicated by a proposed high capacity well permit application such that it has an obligation to consider environmental concerns. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

The legislature has granted the Department of Natural Resources the broad but explicit authority to consider the environmental effects of a proposed high capacity well under s. 281.12. That its explicit authority to do so is broad does not negate that authority. That authority to consider the environmental effects of all high capacity wells is consistent with s. 227.10 (2m). Clean Wisconsin, Inc. v. DNR, 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611, 18-0059.

Groundwater: Diminishing Resource, Increasing Conflict. Westerberg. Wis. Law. July/Aug. 2015.

281.343 Great Lakes — St. Lawrence River Basin Water Resources Compact.

(1) LEGISLATIVE DETERMINATION. The legislature determines that it is in the interests of this state to ratify the Great Lakes — St. Lawrence River Basin Water Resources Compact. Nothing in this section may be interpreted to change the application of the public trust doctrine under article IX, section 1, of the Wisconsin Constitution or to create any new public trust rights.

(1b) RATIFICATION. The Great Lakes — St. Lawrence River Basin Water Resources Compact, contained in subs. (1e) to (9), is ratified and approved, as implemented and interpreted in ss. 14.95, 281.346, and 281.348.

(1e) DEFINITIONS. In this section, except as otherwise required by the context:

(a) "Adaptive management" means a water resources management system that provides a systematic process for evaluation, monitoring, and learning from the outcomes of operational programs and adjustment of policies, plans, and programs based on experience and the evolution of scientific knowledge concerning water resources and water dependent natural resources.

(am) "Agreement" means the Great Lakes — St. Lawrence River Basin Sustainable Water Resources Agreement.

(b) "Applicant" means a person who is required to submit a proposal that is subject to management and regulation under this compact. "Application" has a corresponding meaning.

(c) "Basin" or "Great Lakes — St. Lawrence River Basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

(cm) "Basin ecosystem" or "Great Lakes — St. Lawrence River Basin ecosystem" means the interacting components of air, land, water, and living organisms, including humankind, within the basin.

(d) "Community within a straddling county" means any incorporated city, town, or the equivalent thereof, that is located outside the basin but wholly within a county that lies partly within the basin and that is not a straddling community.

(dm) "Compact" means this compact.

(e) "Consumptive use" means that portion of the water withdrawn or withheld from the basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into products, or other processes.

(em) "Council" means the Great Lakes — St. Lawrence River Basin Water Resources Council, created by this compact.

(f) "Council review" means the collective review by the council members as described in subs. (4) to (4z).

(fm) "County" means the largest territorial division for local government in a state. The county boundaries shall be defined as those boundaries that exist as of December 13, 2005.

(g) "Cumulative impacts" means the impact on the basin ecosystem that results from incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions, and consumptive uses regardless of who undertakes the other withdrawals, diversions, and consumptive uses. Cumulative impacts can result from individually minor but collectively significant withdrawals, diversions, and consumptive uses taking place over a period of time.

(gm) "Decision-making standard" means the decision-making standard established by sub. (4r) for proposals subject to management and regulation in sub. (4p).

(h) "Diversion" means a transfer of water from the basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck, or rail tanker but does not apply to water that is used in the basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the basin or watershed. "Divert" has a corresponding meaning.

(i) "Environmentally sound and economically feasible water conservation measures" mean those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive

use, or diversion that are environmentally sound, reflect best practices applicable to the water use sector, are technically feasible and available, are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs, and consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts, and other appropriate factors.

(im) "Exception" means a transfer of water that is excepted under sub. (4n) from the prohibition against diversions in sub. (4m).

(j) "Exception standard" means the standard for exceptions established in sub. (4n) (d).

(jm) "Intrabasin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

(k) "Measures" means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice, or other procedure.

(km) "New or increased diversion" means a new diversion, an increase in an existing diversion, or the alteration of an existing withdrawal so that it becomes a diversion.

(L) "New or increased withdrawal or consumptive use" means a new withdrawal or consumptive use or an increase in an existing withdrawal or consumptive use.

(Lm) "Originating party" means the party within whose jurisdiction an application or registration is made or required.

(n) "Party" means a state that is a party to this compact.

(nm) "Person" means a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

(o) 1. "Product" means something produced in the basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial, or other processes or intended for intermediate or end use consumers.

2. Water used as part of the packaging of a product shall be considered to be part of the product.

3. Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the basin is not a product or part of a product.

4. Except as provided in subd. 2., water that is transferred as part of a public or private supply is not a product or part of a product.

5. Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a product.

(om) "Proposal" means a withdrawal, diversion, or consumptive use of water that is subject to this compact.

(p) "Province" means Ontario or Quebec.

(pm) "Public water supply purposes" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water withdrawn directly from the basin and not through such a system shall not be considered to be used for public water supply purposes.

(q) "Regional body" means the members of the council and the premiers of Ontario and Quebec or their designee as established by the agreement.

(qm) "Regional review" means the collective review by the regional body as described in sub. (4h).

(r) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was withdrawn.

(rm) "Standard of review and decision" means the exception standard, decision-making standard, and reviews as outlined in subs. (4) to (4z).

(s) "State" means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, or Wisconsin or the Commonwealth of Pennsylvania.

(t) "Straddling community" means any incorporated city, town, or the equivalent thereof, wholly within any county that lies partly or completely within the basin, whose corporate boundary existing as of the effective date of this compact is partly within the basin or partly within 2 Great Lakes watersheds.

(u) "Technical review" means a detailed review conducted to determine whether or not a proposal that requires regional review under this compact meets the standard of review and decision following procedures and guidelines as set out in this compact.

(v) "Water" means groundwater or surface water contained within the basin.

(w) "Water dependent natural resources" means the interacting components of land, water, and living organisms affected by the waters of the basin.

(x) "Waters of the basin" or "basin water" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the basin.

(y) "Withdrawal" means the taking of water from surface water or groundwater. "Withdraw" has a corresponding meaning.

(1m) FINDINGS AND PURPOSES. The legislative bodies of the respective parties hereby find and declare:

(a) Findings:

1. The waters of the basin are precious public natural resources shared and held in trust by the states;

2. The waters of the basin are interconnected and part of a single hydrologic system;

3. The waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic, and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

4. Future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy, and welfare of the Great Lakes — St. Lawrence River region;

5. Continued sustainable, accessible, and adequate water supplies for the people and economy of the basin are of vital importance; and

6. The parties have a shared duty to protect, conserve, restore, improve, and manage the renewable but finite waters of the basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving, and managing the basin waters is through the joint pursuit of unified and coopera-

tive principles, policies, and programs mutually agreed upon, enacted, and adhered to by all parties.

(b) Purposes:

1. To act together to protect, conserve, restore, improve, and effectively manage the waters and water dependent natural resources of the basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the basin ecosystem;

2. To remove causes of present and future controversies;

3. To provide for cooperative planning and action by the parties with respect to such water resources;

4. To facilitate consistent approaches to water management across the basin while retaining state management authority over water management decisions within the basin;

5. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation on the potential effects of proposed withdrawals and losses on the waters and water dependent natural resources of the basin;

6. To prevent significant adverse impacts of withdrawals and losses on the basin's ecosystems and watersheds;

7. To promote interstate and state-provincial comity; and

8. To promote an adaptive management approach to the conservation and management of basin water resources that recognizes, considers, and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the basin's waters and water dependent natural resources.

(1s) SCIENCE. (a) The parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision making under this compact.

(b) The strategy shall guide the collection and application of scientific information to support:

1. An improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed;

2. The periodic assessment of cumulative impacts of withdrawals, diversions, and consumptive uses on a Great Lake and St. Lawrence River watershed basis;

3. Improved scientific understanding of the waters of the basin;

4. Improved understanding of the role of groundwater in basin water resources management; and

5. The development, transfer, and application of science and research related to water conservation and water use efficiency.

(2) ORGANIZATION. (a) *Council created.* The Great Lakes — St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective parties.

(b) *Council membership.* The council shall consist of the governors of the parties, ex officio.

(c) *Alternates.* Each member of the council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the council and with power to vote in the absence of the member. Unless otherwise provided by law of the party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

(d) *Voting.* 1. Each member is entitled to one vote on all matters that may come before the council.

2. Unless otherwise stated, the rule of decision shall be by a simple majority.

3. The council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the parties by unanimous vote of the council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective parties.

4. The participation of council members from a majority of the parties shall constitute a quorum for the transaction of business at any meeting of the council.

(e) *Organization and procedure.* The council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review, and consideration of proposals that come before the council for its review and action. The council shall organize, annually, by the election of a chairperson and vice chairperson from among its members. Each member may appoint an advisor, who may attend all meetings of the council and its committees, but shall not have voting power. The council may employ or appoint professional and administrative personnel, including an executive director, as it may deem advisable, to carry out the purposes of this compact.

(f) *Use of existing offices and agencies.* It is the policy of the parties to preserve and utilize the functions, powers, and duties of existing offices and agencies of government to the extent consistent with this compact. Further, the council shall promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the basin. To this end, but without limitation, the council may:

1. Advise, consult, contract, assist, or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the parties for any purpose; and

3. Develop and adopt plans consistent with the water resources plans of the parties.

(g) *Jurisdiction.* The council shall have, exercise, and discharge its functions, powers, and duties within the limits of the basin. Outside the basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the basin and subject to the consent of the jurisdiction wherein it proposes to act.

(h) *Status, immunities, and privileges.* 1. The council, its members and personnel in their official capacity and when engaged directly in the affairs of the council, its property, and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the parties, except to the extent that the council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation, or any other form of taking or foreclosure by executive or legislative action.

3. The council, its property and its assets, income, and the operations it carries out pursuant to this compact shall be immune from all taxation by or under the authority of any of the parties or any political subdivision thereof; provided, however, that in lieu of property taxes the council may make reasonable payments to local taxing districts in annual amounts that shall approximate the taxes lawfully assessed upon similar property.

(i) *Advisory committees.* The council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, tribal, county, and local governments, water resources agencies, water-using industries and sectors, water-interest groups, and academic experts in related fields.

(3) GENERAL POWERS AND DUTIES. (a) *General.* 1. The waters and water dependent natural resources of the basin are subject to the sovereign right and responsibilities of the parties, and it is the purpose of this compact to provide for joint exercise of such powers of sovereignty by the council in the common interests of the people of the region, in the manner and to the extent provided in this compact. The council and the parties shall use the standard of review and decision and procedures contained in or adopted pursuant to this compact as the means to exercise their authority under this compact.

2. The council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all council members, by regulation duly adopted in accordance with par. (c) and in accordance with each party's respective statutory authorities and applicable procedures.

3. The council shall identify priorities and develop plans and policies relating to basin water resources. It shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin.

(b) *Council powers.* The council may plan; conduct research and collect, compile, analyze, interpret, report, and disseminate data on water resources and uses; forecast water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real and personal property and any interest therein as it may deem necessary, useful, or convenient to carry out the purposes of this compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by any party or by any other public or private agency, corporation, or individual; and exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or that may be reasonably implied therefrom.

(c) *Rules and regulations.* 1. The council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this compact. The council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to those proposals for exceptions that are subject to council review under sub. (4n). Any rule or regulation of the council, other than one that deals solely with the internal management of the council or its property, shall be adopted only after public notice and hearing.

2. Each party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this compact and the programs adopted by such party to carry out the management programs contemplated by this compact.

(d) *Program review and findings.* 1. Each party shall submit a report to the council and the regional body detailing its water management and conservation and efficiency programs that implement this compact. The report shall set out the manner in which water withdrawals are managed by sector, water source, quantity, or any other means, and how the provisions of the standard of review and decision and conservation and efficiency programs are implemented. The first report shall be provided by each party one year from the effective date of this compact and thereafter every 5 years.

2. The council, in cooperation with the provinces, shall review its water management and conservation and efficiency programs and those of the parties that are established in this compact and make findings on whether the water management program provisions in this compact are being met, and if not, recommend options to assist the parties in meeting the provisions of this compact. Such review shall take place:

a. Thirty days after the first report is submitted by all parties; and

b. Every 5 years after the effective date of this compact; and

c. At any other time at the request of one of the parties.

3. As one of its duties and responsibilities, the council may recommend a range of approaches to the parties with respect to the development, enhancement, and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the basin, including groundwater, and the impacts of withdrawals on the basin ecosystem.

(4) WATER MANAGEMENT AND REGULATION; WATER RESOURCES INVENTORY, REGISTRATION, AND REPORTING. (a) Within 5 years of the effective date of this compact, each party shall develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the water resources of the party, including but not limited to information on the location, type, quantity, and use of those resources and the location, type, and quantity of withdrawals, diversions, and consumptive uses. To the extent feasible, the water resources inventory shall be developed in cooperation with local, state, federal, tribal, and other private agencies and entities, as well as the council. Each party's agencies shall cooperate with that party in the development and maintenance of the inventory.

(b) The council shall assist each party to develop a common base of data regarding the management of the water resources of the basin and to establish systematic arrangements for the exchange of those data with other states and provinces.

(c) To develop and maintain a compatible base of water use information, within 5 years of the effective date of this compact any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period, including consumptive uses, from all sources, or diverts water of any amount, shall register the withdrawal or diversion by a date set by the council unless the person has previously registered in accordance with an existing state program. The person shall register the withdrawal or diversion with the originating party using a form prescribed by the originating party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the withdrawal or diversion; the capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source; the uses made of the water; places of use and places of discharge; and such other information as the originating party may require. All registrations shall include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.

(d) All registrants shall annually report the monthly volumes of the withdrawal, consumptive use, and diversion in gallons to the originating party and any other information requested by the originating party.

(e) Each party shall annually report the information gathered pursuant to this subsection to a Great Lakes — St. Lawrence River water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in sub. (8) (c).

(f) Information gathered by the parties pursuant to this sub-

section shall be used to improve the sources and applications of scientific information regarding the waters of the basin and the impacts of the withdrawals and diversions from various locations and water sources on the basin ecosystem and to better understand the role of groundwater in the basin. The council and the parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses, and diversions shall be assessed.

(4b) WATER MANAGEMENT AND REGULATION; WATER CONSERVATION AND EFFICIENCY PROGRAMS. (a) The council commits to identify, in cooperation with the provinces, basin-wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency programs. These objectives are based on the goals of:

1. Ensuring improvement of the waters and water dependent natural resources;

2. Protecting and restoring the hydrologic and ecosystem integrity of the basin;

3. Retaining the quantity of surface water and groundwater in the basin;

4. Ensuring sustainable use of waters of the basin; and

5. Promoting the efficiency of use and reducing losses and waste of water.

(b) Within 2 years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives consistent with the basin-wide goals and objectives and shall develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party shall annually assess its programs in meeting the party's goals and objectives, report to the council and the regional body, and make this annual assessment available to the public.

(c) Beginning 5 years after the effective date of this compact, and every 5 years thereafter, the council, in cooperation with the provinces, shall review and modify as appropriate the basin-wide objectives, and the parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of water use, new resource demands and threats, and cumulative impact assessment under sub. (4z).

(d) Within 2 years of the effective date of this compact, the parties commit to promote environmentally sound and economically feasible water conservation measures such as:

1. Measures that promote efficient use of water;

2. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;

3. Application of sound planning principles;

4. Demand-side and supply-side measures or incentives; and

5. Development, transfer, and application of science and research.

(e) Each party shall implement in accordance with par. (b) a voluntary or mandatory water conservation program for all, including existing, basin water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

(4d) WATER MANAGEMENT AND REGULATION; PARTY POWERS AND DUTIES. (a) Each party, within its jurisdiction, shall manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions, in accordance with this compact.

(b) Each party shall require an applicant to submit an application in such manner and with such accompanying information as the party shall prescribe.

(c) No party may approve a proposal if the party determines that the proposal is inconsistent with this compact or the standard of review and decision or any implementing rules or regulations promulgated thereunder. The party may approve, approve with modifications, or disapprove any proposal depending on the proposal's consistency with this compact and the standard of review and decision.

(d) Each party shall monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions.

(e) No party shall approve a proposal subject to council or regional review, or both, pursuant to this compact unless it shall have been first submitted to and reviewed by either the council or regional body, or both, and approved by the council, as applicable. Sufficient opportunity shall be provided for comment on the proposal's consistency with this compact and the standard of review and decision. All such comments shall become part of the party's formal record of decision, and the party shall take into consideration any such comments received.

(4f) WATER MANAGEMENT AND REGULATION; REQUIREMENT FOR ORIGINATING PARTY APPROVAL. No proposal subject to management and regulation under this compact shall hereafter be undertaken by any person unless it shall have been approved by the originating party.

(4h) WATER MANAGEMENT AND REGULATION; REGIONAL REVIEW. (a) *General.* 1. It is the intention of the parties to participate in regional review of proposals with the provinces, as described in this compact and the agreement.

2. Unless the applicant or the originating party otherwise requests, it shall be the goal of the regional body to conclude its review no later than 90 days after notice under par. (b) of such proposal is received from the originating party.

3. Proposals for exceptions subject to regional review shall be submitted by the originating party to the regional body for regional review and, where applicable, to the council for concurrent review.

4. The parties agree that the protection of the integrity of the Great Lakes — St. Lawrence River Basin ecosystem shall be the overarching principle for reviewing proposals subject to regional review, recognizing uncertainties with respect to demands that may be placed on basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data, and the extent to which diversions may harm the integrity of the basin ecosystem.

5. The originating party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a proposal and shall consult with the applicant throughout the regional review process.

6. A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent setting proposal. Such regional review must be conducted, to the extent possible, within the time frames set forth in this subsection. Any such regional review shall be undertaken only after consulting the applicant.

(b) *Notice from originating party to the regional body.* 1. The originating party shall determine if a proposal is subject to regional review. If so, the originating party shall provide timely notice to the regional body and the public.

2. Such notice shall not be given unless and until all information, documents, and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

3. An originating party may:

a. Provide notice to the regional body of an application, even if notification is not required; or

b. Request regional review of an application, even if regional review is not required. Any such regional review shall be undertaken only after consulting the applicant.

4. An originating party may provide preliminary notice of a potential proposal.

(c) *Public participation.* 1. To ensure adequate public participation, the regional body shall adopt procedures for the review of proposals that are subject to regional review in accordance with subs. (4) to (4z).

2. The regional body shall provide notice to the public of a proposal undergoing regional review. Such notice shall indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision.

3. The regional body shall hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision.

4. The regional body shall consider the comments received before issuing a declaration of finding.

5. The regional body shall forward the comments it receives to the originating party.

(d) *Technical review.* 1. The originating party shall provide the regional body with its technical review of the proposal under consideration.

2. The originating party's technical review shall thoroughly analyze the proposal and provide an evaluation of the proposal sufficient for a determination of whether the proposal meets the standard of review and decision.

3. Any member of the regional body may conduct the member's own technical review of any proposal subject to regional review.

4. At the request of the majority of its members, the regional body shall make such arrangements as it considers appropriate for an independent technical review of a proposal.

5. All parties shall exercise their best efforts to ensure that a technical review undertaken under subd. 3. or 4. does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews shall be completed no later than 60 days after the date the notice of the proposal was given to the regional body.

(e) *Declaration of finding.* 1. The regional body shall meet to consider a proposal. The applicant shall be provided with an opportunity to present the proposal to the regional body at such time.

2. The regional body, having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections including the analysis of comments made by the public and first nations and federally recognized tribes, and any other information that is provided under this compact shall issue a declaration of finding that the proposal under consideration:

a. Meets the standard of review and decision;

b. Does not meet the standard of review and decision; or

c. Would meet the standard of review and decision if certain conditions were met.

3. An originating party may decline to participate in a declaration of finding made by the regional body.

4. The parties recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision.

5. If the members of the regional body who participate in the declaration of finding all agree, they shall issue a written declaration of finding with consensus.

6. In the event that the members cannot agree, the regional body shall make every reasonable effort to achieve consensus within 25 days.

7. Should consensus not be achieved, the regional body may issue a declaration of finding that presents different points of view and indicates each party's conclusions.

8. The regional body shall release the declarations of finding to the public.

9. The originating party and the council shall consider the declaration of finding before making a decision on the proposal.

(4j) WATER MANAGEMENT AND REGULATION; PROPOSALS SUBJECT TO PRIOR NOTICE. (a) Beginning no later than 5 years after the effective date of this compact, the originating party shall provide all parties and the provinces with detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of 5,000,000 gallons per day or greater average in any 90-day period. Comments shall address whether or not the proposal is consistent with the standard of review and decision. The originating party shall provide a response to any such comment received from another party.

(b) A party may provide notice, an opportunity to comment, and a response to comments even if this is not required under par. (a). Any provision of such notice and opportunity to comment shall be undertaken only after consulting the applicant.

(4L) WATER MANAGEMENT AND REGULATION; COUNCIL ACTIONS. (a) Proposals for exceptions subject to council review shall be submitted by the originating party to the council for council review, and where applicable, to the regional body for concurrent review.

(b) The council shall review and take action on proposals in accordance with this compact and the standard of review and decision. The council shall not take action on a proposal subject to regional review pursuant to this compact unless the proposal shall have been first submitted to and reviewed by the regional body. The council shall consider any findings resulting from such review.

(4m) WATER MANAGEMENT AND REGULATION; PROHIBITION OF NEW OR INCREASED DIVERSIONS. All new or increased diversions are prohibited, except as provided for in sub. (4n).

(4n) WATER MANAGEMENT AND REGULATION; EXCEPTIONS TO THE PROHIBITION OF DIVERSIONS. (a) *Straddling communities.* A proposal to transfer water to an area within a straddling community but outside the basin or outside the source Great Lake watershed shall be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume of water transferred, all of the water so transferred shall be used solely for public water supply purposes within the straddling community, and:

1. All water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin may be used to satisfy any portion of this criterion except if it:

a. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the basin;

b. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the basin;

c. Maximizes the portion of water returned to the source wa-

tershed as basin water and minimizes the surface water or groundwater from outside the basin;

2. If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal shall also meet the exception standard; and

3. If the proposal results in a new or increased consumptive use of 5,000,000 gallons per day or greater average over any 90-day period, the proposal shall also undergo regional review.

(b) *Intrabasin transfer.* A proposal for an intrabasin transfer that would be considered a diversion under this compact, and not already excepted pursuant to par. (a), shall be excepted from the prohibition against diversions, provided that:

1. If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period, the proposal shall be subject to management and regulation at the discretion of the originating party.

2. If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than 5,000,000 gallons per day average over any 90-day period:

a. The proposal shall meet the exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed;

b. The applicant shall demonstrate that there is no feasible, cost-effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and

c. The originating party shall provide notice to the other parties prior to making any decision with respect to the proposal.

3. If the proposal results in a new or increased consumptive use of 5,000,000 gallons per day or greater average over any 90-day period:

a. The proposal shall be subject to management and regulation by the originating party and shall meet the exception standard, ensuring that water withdrawn shall be returned to the source watershed;

b. The applicant shall demonstrate that there is no feasible, cost-effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies;

c. The proposal undergoes regional review; and

d. The proposal is approved by the council. Council approval shall be given unless one or more council members vote to disapprove.

(c) *Straddling counties.* 1. A proposal to transfer water to a community within a straddling county that would be considered a diversion under this compact shall be excepted from the prohibition against diversions, provided that it satisfies all of the following conditions:

a. The water shall be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water;

b. The proposal meets the exception standard, maximizing the portion of water returned to the source watershed as basin water and minimizing the surface water or groundwater from outside the basin;

c. The proposal shall be subject to management and regulation by the originating party, regardless of its size;

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. Caution shall be used in determining whether or not the proposal meets the conditions for this exception. This exception should not be authorized unless it can be shown that it will not endanger the integrity of the basin ecosystem;

f. The proposal undergoes regional review; and

g. The proposal is approved by the council. Council approval shall be given unless one or more council members vote to disapprove.

2. A proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the basin.

(d) *Exception standard.* Proposals subject to management and regulation in this subsection shall be declared to meet this exception standard and may be approved as appropriate only when the following criteria are met:

1. The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

2. The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

3. All water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin may be used to satisfy any portion of this criterion except if it:

a. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the basin; and

b. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the basin;

4. The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the basin with consideration given to the potential cumulative impacts of any precedent-setting consequences associated with the proposal;

5. The exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use;

6. The exception will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

7. All other applicable criteria in this subsection have also been met.

(4p) WATER MANAGEMENT AND REGULATION; MANAGEMENT AND REGULATION OF NEW OR INCREASED WITHDRAWALS AND CONSUMPTIVE USES. (a) Within 5 years of the effective date of this compact, each party shall create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party, through a considered process, shall set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water dependent natural resources of the basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the compact are achieved. Each party may determine the scope and

thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

(b) Any party that fails to set threshold levels that comply with par. (a) any time before 10 years after the effective date of this compact shall apply a threshold level for management and regulation of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90-day period.

(c) The parties intend programs for new or increased withdrawals and consumptive uses to evolve as may be necessary to protect basin waters. Pursuant to sub. (3) (d), the council, in cooperation with the provinces, shall periodically assess the water management programs of the parties. Such assessments may produce recommendations for the strengthening of the programs, including, without limitation, establishing lower thresholds for management and regulation in accordance with the decision-making standard.

(4r) WATER MANAGEMENT AND REGULATION; DECISION-MAKING STANDARD. Proposals subject to management and regulation in sub. (4p) shall be declared to meet this decision-making standard and may be approved as appropriate only when the following criteria are met:

(a) All water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use;

(b) The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed;

(c) The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures;

(d) The withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

(e) The proposed use is reasonable, based upon a consideration of the following factors:

1. Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water and will avoid or minimize the waste of water;

2. If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies;

3. The balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

4. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

5. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water dependent natural resources of the basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and

6. If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

(4t) WATER MANAGEMENT AND REGULATION; APPLICABILITY. (a) *Minimum standard.* This standard of review and decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision it may not be approved under the laws of the originating party that has implemented more restrictive measures.

(b) *Baseline.* 1. To establish a baseline for determining a new or increased diversion, consumptive use, or withdrawal, each party shall develop either or both of the following lists for the party's jurisdiction:

a. A list of existing withdrawal approvals as of the effective date of the compact.

b. A list of the capacity of existing systems as of the effective date of this compact. The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

2. For all purposes of this compact, volumes of diversions, consumptive uses, or withdrawals of water set forth in the lists prepared by each party in accordance with this paragraph shall constitute the baseline volume.

3. The lists shall be furnished to the regional body and the council within one year of the effective date of this compact.

(c) *Timing of additional applications.* Applications for new or increased withdrawals, consumptive uses, or exceptions shall be considered cumulatively within 10 years of any application.

(d) *Change of ownership.* Unless a new owner proposes a project that shall result in a proposal for a new or increased diversion or consumptive use subject to regional review or council approval, the change of ownership in and of itself shall not require regional review or council approval.

(e) *Groundwater.* The basin surface water divide shall be used for the purpose of managing and regulating new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

(f) *Withdrawal systems.* The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a withdrawal, consumptive use, or diversion.

(g) *Connecting channels.* The watershed of each Great Lake shall include its upstream and downstream connecting channels.

(h) *Transmission in water lines.* Transmission of water within a line that extends outside the basin as it conveys water from one point to another within the basin shall not be considered a diversion if none of the water is used outside the basin.

(i) *Hydrologic units.* The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

(j) *Bulk water transfer.* A proposal to withdraw water and to remove it from the basin in any container greater than 5.7 gallons shall be treated under this compact in the same manner as a proposal for a diversion. Each party shall have the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the basin in any container of 5.7 gallons or less.

(4v) WATER MANAGEMENT AND REGULATION; EXEMPTIONS. Withdrawals from the basin for the following purposes are exempt from the requirements of subs. (4) to (4z):

(a) To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

(b) To use in a noncommercial project on a short-term basis for fire fighting, humanitarian, or emergency response purposes.

(4x) WATER MANAGEMENT AND REGULATION; U.S. SUPREME COURT DECREE IN WISCONSIN ET AL. V. ILLINOIS ET AL. (a) Notwithstanding any terms of this compact to the contrary, with the exception of par. (e), current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois shall be governed by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* and shall not be subject to the terms of this compact nor any rules or regulations promulgated pursuant to this compact. This means that, with the exception of par. (e), for purposes of this compact, current, new, or increased withdrawals, consumptive uses, and diversions of basin water within the state of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.*

(b) The parties acknowledge that the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* shall continue in full force and effect, that this compact shall not modify any terms thereof, and that this compact shall grant the parties no additional rights, obligations, remedies, or defenses thereto. The parties specifically acknowledge that this compact shall not prohibit or limit the state of Illinois in any manner from seeking additional basin water as allowed under the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.*, any other party from objecting to any request by the state of Illinois for additional basin water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the parties to this compact who are also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and Quebec with respect to the proposed modification, shall use best efforts to facilitate the appropriate participation of said provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

(c) With the exception of par. (e), because current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois are not subject to the terms of this compact, the state of Illinois is prohibited from using any term of this compact, including sub. (4n), to seek new or increased withdrawals, consumptive uses, or diversions of basin water.

(d) With the exception of par. (e), because subs. (4d), (4f), (4h), (4j), (4L), (4m), (4n), (4p), (4r), (4t) (a), (b), (c), (d), (f), and (j), and (4v) all relate to current, new, or increased withdrawals, consumptive uses, and diversions of basin waters, said provisions do not apply to the state of Illinois. All other provisions of this compact not listed in the preceding sentence shall apply to the state of Illinois, including the water conservation programs provision of sub. (4b).

(e) In the event of a proposal for a diversion of basin water for use outside the territorial boundaries of the parties to this compact, decisions by the state of Illinois regarding such a proposal would be subject to all terms of this compact, except pars. (a), (c), and (d).

(f) For purposes of the state of Illinois' participation in this compact, the entirety of this subsection is necessary for the continued implementation of this compact and, if severed, this compact shall no longer be binding on or enforceable by or against the state of Illinois.

(4z) WATER MANAGEMENT AND REGULATION; ASSESSMENT OF CUMULATIVE IMPACTS. (a) The parties in cooperation with the provinces shall collectively conduct within the basin, on a lake watershed and St. Lawrence River basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the basin, every 5 years or each time the incremental basin water losses reach 50,000,000 gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the parties. The assessment shall form the basis for a review of the standard of review and decision, council and party regulations, and their application. This assessment shall:

1. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to council on environmental quality and environment Canada guidelines;

2. Give substantive consideration to climate change or other significant threats to basin waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate measures to exercise caution in cases of uncertainty if serious damage may result; and

3. Consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of, science concerning the basin's water resources, watersheds, and ecosystems, including potential changes to basin-wide processes, such as lake level cycles and climate.

(b) The parties have the responsibility of conducting this cumulative impact assessment. Applicants are not required to participate in this assessment.

(c) Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application but shall submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how the applicant's proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

(5) CONSULTATION WITH TRIBES. (a) In addition to all other opportunities to comment pursuant to sub. (6) (b), appropriate consultations shall occur with federally recognized tribes in the originating party for all proposals subject to council or regional review pursuant to this compact. Such consultations shall be organized in the manner suitable to the individual proposal and the laws and policies of the originating party.

(b) All federally recognized tribes within the basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the council or the regional body, or both, and other relevant organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or council approval. Any notice from the council shall inform the tribes of any meeting or hearing that is to be held under sub. (6) (b) and invite them to attend. The parties and the council shall consider the comments received under this subsection before approving, approving with modifications, or disapproving any proposal subject to council or regional review.

(c) In addition to the specific consultation mechanisms described above, the council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from, federally recognized tribes on matters to be dealt with by the council; and the council shall seek to establish mechanisms and processes with federally recognized tribes designed to facilitate ongoing scientific and technical interaction and data exchange regarding matters falling within the scope of this compact. This may include participation of tribal representatives on advisory committees established under this compact or such other processes that are mutually agreed upon with federally recognized tribes individually or through duly authorized intertribal agencies or bodies.

(6) PUBLIC PARTICIPATION. (a) *Meetings, public hearings, and records.* 1. The parties recognize the importance and neces-

sity of public participation in promoting management of the water resources of the basin. Consequently, all meetings of the council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the council shall be a public record open to inspection at its offices during regular business hours.

(b) *Public participation.* It is the intent of the council to conduct public participation processes concurrently and jointly with processes undertaken by the parties and through regional review. To ensure adequate public participation, each party or the council shall ensure procedures for the review of proposals subject to the standard of review and decision consistent with the following requirements:

1. Provide public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon.

2. Assure public accessibility to all documents relevant to an application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an application, time and place of such a meeting or hearing, and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses, and approvals, approvals with conditions, and disapprovals.

(7) DISPUTE RESOLUTION AND ENFORCEMENT; GOOD FAITH IMPLEMENTATION. Each of the parties pledges to support implementation of all provisions of this compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other party carrying out any provision of this compact.

(7g) DISPUTE RESOLUTION AND ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION. (a) Desiring that this compact be carried out in full, the parties agree that disputes between the parties regarding interpretation, application, and implementation of this compact shall be settled by alternative dispute resolution.

(b) The council, in consultation with the provinces, shall provide by rule procedures for the resolution of disputes pursuant to this subsection.

(7r) DISPUTE RESOLUTION AND ENFORCEMENT; ENFORCEMENT. (a) Any person aggrieved by any action taken by the council pursuant to the authorities contained in this compact shall be entitled to a hearing before the council. Any person aggrieved by a party action shall be entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, any aggrieved person shall have the right to judicial review of a council action in the United States district court for the District of Columbia or the district court in which the council maintains offices, provided such action is commenced within 90 days; and any aggrieved person shall have the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the party's law. For the purposes of this paragraph, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to this compact.

(b) 1. Any party or the council may initiate actions to compel compliance with the provisions of this compact, and the rules and regulations promulgated hereunder by the council. Jurisdiction over such actions is granted to the court of the relevant party, as well as the United States district court for the District of Columbia and the district court in which the council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

2. Each party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this compact in accordance with the provisions of the laws adopted in each party's jurisdiction.

(c) 1. Any aggrieved person, party, or the council may commence a civil action in the relevant party's courts and administrative systems to compel any person to comply with this compact should any such person, without approval having been given, undertake a new or increased withdrawal, consumptive use, or diversion that is prohibited or subject to approval pursuant to this compact.

2. No action under this paragraph may be commenced if:

a. The originating party or council approval for the new or increased withdrawal, consumptive use, or diversion has been granted; or

b. The originating party or council has found that the new or increased withdrawal, consumptive use, or diversion is not subject to approval pursuant to this compact.

3. No action under this paragraph may be commenced unless:

a. A person commencing such action has first given 60 days prior notice to the originating party, the council, and person alleged to be in noncompliance; and

b. Neither the originating party nor the council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this compact.

(d) The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

(e) Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this compact.

(8) ADDITIONAL PROVISIONS. (a) *Effect on existing rights.* 1. Nothing in this compact shall be construed to affect, limit, diminish, or impair any rights validly established and existing as of the effective date of this compact under state or federal law governing the withdrawal of waters of the basin.

2. Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

3. Nothing in this compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the federal government of the United States based upon its status as a tribe recognized by the federal government of the United States.

4. An approval by a party or the council under this compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to or held in trust by a party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, state, or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

(b) *Relationship to agreements concluded by the United States of America.* 1. Nothing in this compact is intended to provide nor shall be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this compact is intended to infringe nor shall be

construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this compact.

(c) *Confidentiality.* 1. Nothing in this compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure or to compromise security of commercially sensitive or proprietary information.

2. A party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to other parties. The party shall summarize or paraphrase any such information in a manner sufficient for the council to exercise its authorities contained in this compact.

(d) *Additional laws.* Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction.

(e) *Amendments and supplements.* The provisions of this compact shall remain in full force and effect until amended by action of the governing bodies of the parties and consented to and approved by any other necessary authority in the same manner as this compact is required to be ratified to become effective.

(f) *Severability.* Should a court of competent jurisdiction hold any part of this compact to be void or unenforceable, it shall be considered severable from those portions of the compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

(g) *Duration of compact and termination.* 1. Once effective, the compact shall continue in force and remain binding upon each and every party unless terminated.

2. This compact may be terminated at any time by a majority vote of the parties. In the event of such termination, all rights established under it shall continue unimpaired.

(9) EFFECTUATION. (b) *Effectuation by chief executive.* The governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the compact and the initial organization and operation thereunder, consistent with s. 281.346.

(c) *Entire agreement.* The parties consider this compact to be complete and an integral whole. Each provision of this compact is considered material to the entire compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this compact, any change or amendment made to the compact by any party in its implementing legislation or by the U.S. Congress when giving its consent to this compact is not considered effective unless concurred in by all parties.

(d) *Effective date and execution.* This compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin and the Commonwealth of Pennsylvania and consented to by the U.S. Congress.

NOTE: The compact became effective on December 8, 2008.

History: 2007 a. 227.

281.344 Water conservation, reporting, and supply regulation; when compact is not in effect. (1) DEFINITIONS. In this section:

(d) "Community within a straddling county" means any city, village, or town that is not a straddling community and that is located outside the Great Lakes basin but wholly within a county that lies partly within the Great Lakes basin.

(dm) "Compact" means the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343.

(dr) "Compact's effective date" means the effective date of the compact under s. 281.343 (9) (d).

(e) "Consumptive use" means a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.

(g) "Cumulative impacts" means the impacts on the Great Lakes basin ecosystem that result from incremental effects of all aspects of a withdrawal, interbasin transfer, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, interbasin transfers, and consumptive uses regardless of who undertakes the other withdrawals, interbasin transfers, and consumptive uses, including individually minor but collectively significant withdrawals, interbasin transfers, and consumptive uses taking place over a period of time.

(i) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, or technologies for efficient water use and for reducing water loss and waste or for reducing the amount of a withdrawal, consumptive use, or interbasin transfer that are, taking into account environmental impact, the age and nature of equipment and facilities involved, the processes employed, the energy impacts, and other appropriate factors, all of the following:

1. Environmentally sound.

2. Reflective of best practices applicable to the water use sector.

3. Technically feasible and available.

4. Economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

(j) "Facility" means an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties.

(je) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec.

(ji) "Great Lakes basin ecosystem" means the interacting components of air, land, water, and living organisms, including humans, within the Great Lakes basin.

(k) "Interbasin transfer" means a transfer of water from the Great Lakes basin into a watershed outside of the Great Lakes basin or from the watershed of one of the Great Lakes into that of another, except that "interbasin transfer" does not include any of the following:

1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed.

2. The transmission of water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin.

3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(km) "Intrabasin transfer" means the transfer of water from

the watershed of one of the Great Lakes into the watershed of another of the Great Lakes.

(o) "Product" means something produced by human or mechanical effort or through agricultural processes and used in manufacturing, commercial, or other processes or intended for intermediate or ultimate consumers, subject to all of the following:

1. Water used as part of the packaging of a product is part of the product.

2. Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the Great Lakes basin is not a product or part of a product.

3. Except as provided in subd. 1., water that is transferred as part of a public or private supply is not a product or part of a product.

4. Water in its natural state, such as in lakes, rivers, reservoirs, aquifers, or water basins, is not a product.

(pm) "Public water supply" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(ps) "Reasonable water supply alternative" means a water supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased interbasin transfer and that does not have greater adverse environmental impacts than the proposed new or increased interbasin transfer.

(q) "Regional body" means the body consisting of the governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and the premiers of Ontario and Quebec, Canada, or their designees, as established by the Great Lakes — St. Lawrence River Basin Sustainable Water Resources Agreement.

(r) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively.

(t) "Straddling community" means any city, village, or town that is partly within the Great Lakes basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin.

(tm) "Straddling county" means a county that lies partly within the Great Lakes basin.

(w) "Water dependent natural resources" means the interacting components of land, water, and living organisms affected by the waters of the Great Lakes basin.

(wm) "Water loss" means the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of an interbasin transfer or consumptive use or both.

(wp) "Water supply system," when not preceded by "public," means one of the following:

1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used.

2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed.

(wr) "Water utility" means a public utility, as defined in s. 196.01 (5), that furnishes water.

(x) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes basin.

(y) "Withdraw" means to take water from surface water or groundwater.

(z) "Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

(zm) "Without adequate supplies of potable water" means without a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply in the quantity and quality that complies with applicable drinking water standards, is protective of public health, is available at a reasonable cost, and does not have adverse environmental impacts greater than those likely to result from the proposed new or increased interbasin transfer.

(2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) *Use of surface water divide.* For the purposes of this section, the surface water divide is used to determine whether a withdrawal or transfer of surface water or groundwater is from the Great Lakes basin.

(b) *Transfers and withdrawals from more than one source.* For the purposes of this section, the interbasin transfer or withdrawal of water from more than one source within the Great Lakes basin to supply a single facility or public water supply system is considered one interbasin transfer or withdrawal.

(c) *Water loss.* The department shall promulgate rules for determining the amount of water loss from consumptive uses.

(d) *County boundaries.* For the purposes of sub. (1) (d), (t), and (tm), a county's boundaries as of December 13, 2005, shall be used to determine whether a county lies partly within the Great Lakes basin.

(e) *Public trust doctrine.* Nothing in this section may be interpreted to change the application of the public trust doctrine under article IX, section 1, of the Wisconsin Constitution or to create any new public trust rights.

(f) *Water resources protection act.* 1. In this paragraph, "historic" means made before June 11, 2008.

2. The department may not change its historic interpretation or application of 42 USC 1962d-20 (d) to a public water supply for a community in this state until that provision is amended. The department shall evaluate all applications under sub. (4) (b) using the requirements in sub. (4) and shall apply those requirements uniformly.

(3) STATEWIDE REGISTRATION AND REPORTING. (a) 1. Any person who, on June 1, 2011, has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period or is making any interbasin transfer shall register the withdrawal or interbasin transfer with the department by the deadline specified by the department by rule. A person may register a withdrawal or interbasin transfer before June 1, 2011.

2. Any person who, after June 1, 2011, proposes to begin a withdrawal from the waters of the state using a water supply system that will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period, to increase the capacity of a water supply system that existed on June 1, 2011, so that it will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period, or to begin an interbasin transfer shall register the withdrawal or interbasin transfer with the department.

(b) A person to whom par. (a) applies shall register on a form prescribed by the department and provide all of the following information:

1. The name and address of the registrant and the date of registration.

2. The locations and sources of the withdrawal or interbasin transfer.

3. The daily capacity of the withdrawal or interbasin transfer and the daily capacity to withdraw or transfer from each source.

4. An estimate of the volume of the withdrawal or interbasin transfer in terms of gallons per day average in any 30-day period.

4m. For a withdrawal from the Great Lakes basin that averages 100,000 gallons per day or more in any 30 day period, an estimate of the maximum hydraulic capacity of the most restrictive component in each water supply system used for the withdrawal.

5. The uses made of the water.

6. The places at which the water is used.

7. The places at which any of the water is discharged.

8. Whether the water use is continuous or intermittent.

9. Whether the person holds a permit under s. 283.31.

10. Other information required by the department by rule.

(c) The department shall maintain a registry containing the information provided under par. (b).

(cm) The department may consider domestic security concerns when determining whether information regarding locations of withdrawals and interbasin transfers contained in the registry under par. (c) may be released to the public.

(e) 1. Each person who makes a withdrawal from the waters of the state that averages 100,000 gallons per day or more in any 30-day period or transfers from the Great Lakes basin any amount and who has registered the withdrawal or interbasin transfer under par. (a) shall annually report to the department the monthly volumes of withdrawal, whether the person ever withdraws at least 1,000,000 gallons per day for 30 consecutive days, and, if applicable, the volumes of interbasin transfer and, subject to par. (em), water loss from consumptive use.

2. In addition to the information required under subd. 1., the department may, by rule, create different reporting frequencies or require additional information from a person who registers a withdrawal, or interbasin transfer under par. (a) based upon the type or category of water use.

(em) If a person to whom par. (e) 1. applies provides any of the water that the person withdraws to a public water supply system, the person who operates the public water supply system, rather than the person who withdraws the water, shall annually report to the department the volume of water loss from the consumptive use of the water provided to the public water supply system.

(f) The department may require additional information under par. (b) 10. or (e) 2. only if the information is necessary to effectuate this section.

(3e) DETERMINING INITIAL INTERBASIN TRANSFER AMOUNTS. (a) Before issuing an automatic approval under sub. (3m) (a) for an interbasin transfer to a person operating a public water supply system, the department shall determine the initial interbasin transfer amount for the interbasin transfer under par. (b).

(b) The department shall determine the initial interbasin transfer amount for a public water supply system to be the amount of water necessary to provide water for public water supply purposes in the area in at least part of which the public water supply system delivers water to customers before the compact's effective date that is all of the following:

1. Outside of the Great Lakes basin.

2. Within a sewer service territory that provides for return of wastewater to the Great Lakes basin and that is specified in the sewer service area provisions of an areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007.

(c) The department shall use the population and related service projections in the sewer service area provisions described in par. (b) 2. in making the determination under par. (b).

(d) Before issuing an automatic approval under sub. (3m) (b) for an interbasin transfer to a person who does not operate a public water supply system, the department shall determine the initial interbasin transfer amount for the interbasin transfer. The department shall determine the interbasin transfer amount using the process and standards that it uses under sub. (4e) to determine an initial withdrawal amount.

(3m) AUTOMATIC APPROVAL FOR EXISTING INTERBASIN TRANSFERS. (a) Before the compact's effective date, the department shall automatically issue an approval for an interbasin transfer that begins before the compact's effective date, to a person who operates a public water supply system that receives water from the interbasin transfer and that delivers water to customers in an area that is outside of the Great Lakes basin and that is within a sewer service territory that provides for return of wastewater to the Great Lakes basin as specified in the sewer service area provisions of an areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007. The department may not issue an automatic approval under this subsection before the interbasin transfer begins. In the automatic approval, the department shall specify an interbasin transfer amount equal to the amount determined under sub. (3e) (b) and an interbasin transfer area that is the area described in sub. (3e) (b).

(b) Before the compact's effective date, the department shall automatically issue an approval for an interbasin transfer that begins before June 11, 2008, and that is not for public water supply purposes to the person who makes the interbasin transfer. In the automatic approval, the department shall specify an interbasin transfer amount equal to the amount determined under sub. (3e) (d).

(4) NEW OR INCREASED INTERBASIN TRANSFERS. (a) *Prohibition.* Beginning on June 11, 2008, all of the following apply:

1. No person may begin an interbasin transfer, other than an interbasin transfer for which the department is required to issue an automatic permit under sub. (3m) (a), unless the interbasin transfer is covered by an approval under par. (c), (d), or (e).

2. No person may increase an interbasin transfer over the interbasin transfer amount in an approval issued under this subsection unless the department modifies the approval under par. (c), (d), or (e) to increase the interbasin transfer amount.

3. No person may increase an interbasin transfer over the interbasin transfer amount in an approval issued under sub. (3m) (a) or expand the interbasin transfer area beyond the area specified in an approval under sub. (3m) (a) unless the department modifies the approval under par. (c), (d), or (e) to increase the interbasin transfer amount or to expand the interbasin transfer area.

4. No person may increase an interbasin transfer over the interbasin transfer amount in an approval issued under sub. (3m) (b).

(b) *Application.* 1. A person who proposes to begin an interbasin transfer, increase the amount of an interbasin transfer, or expand the interbasin transfer area of an interbasin transfer covered by an approval issued under sub. (3m) (a) shall apply to the department for approval.

2. A person may apply under subd. 1. for approval of a new, increased, or expanded interbasin transfer under par. (c) or (e)

only if the person operates a public water supply system that receives or would receive water from the new, increased, or expanded interbasin transfer.

3. Operators of 2 or more public water supply systems may submit a joint application under subd. 1. for a new, increased, or expanded interbasin transfer under par. (c) or (e).

4. A person who applies under subd. 1. shall provide information about the potential impacts of the interbasin transfer on the waters of the Great Lakes basin and water dependent natural resources and any other information required by the department by rule.

4m. If a person who applies under subd. 1. will not directly withdraw the water proposed to be transferred, the person shall identify any entities that may withdraw the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4p. If the person who applies under subd. 1. will not directly return the water to the Great Lakes basin, the person shall identify any entities that may return the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4s. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide documentation of how the physical, chemical, and biological integrity of the receiving water under par. (f) 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering potential adverse impacts due to changes in temperature and nutrient loadings. If the receiving water is a surface water body that is tributary to one of the Great Lakes, the person shall include a description of the flow of the receiving water before the proposal is implemented, considering both low and high flow conditions.

5. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide an assessment of the individual impacts of the proposal for the purposes of par. (f) 5. The person may also include a cumulative impact assessment.

(bg) *Determinations.* 1. The department shall determine whether a proposal under par. (b) is subject to par. (c) or (e) as follows:

a. If the proposal is to provide a public water supply within a single city, village, or town, the proposal is subject to par. (c) or (e) based on the boundaries of that city, village, or town.

b. If the proposal is to provide a public water supply within more than one city, village, or town, any portion of the proposal that provides a public water supply within a straddling community is subject to par. (c) and any portion of the proposal that provides a public water supply within a community described in par. (e) 1. (intro.) is subject to par. (e).

2. For the purposes of applying the requirements in pars. (c), (e), and (f) to a proposal under par. (b), the department shall use, as appropriate, the planned service area of the public water supply system receiving water under the proposal. The planned service area is the service area of the system at the end of any planning period authorized by the department in the approved water supply service area plan under s. 281.348 that covers the public water supply system.

(c) *Straddling communities.* The department may approve a proposal under par. (b) to begin an interbasin transfer, increase an interbasin transfer, or expand an interbasin transfer area, to an area within a straddling community but outside the Great Lakes basin or outside the source watershed if the water transferred will be used solely for public water supply purposes in the straddling community and all of the following apply:

1. An amount of water equal to the amount of water withdrawn from the Great Lakes basin, less an allowance for consumptive use, will be returned to the source watershed.

2. No surface water or groundwater from outside the source watershed will be returned to the source watershed unless all of the following apply:

a. The returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin.

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

2m. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

3. If the proposal would result from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period, the proposal meets the exception standard under par. (f).

(d) *Intrabasin transfer.* 1. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply that would average less than 100,000 gallons per day in every 90-day period, if the proposal meets the applicable requirements under s. 30.18, 281.34, or 281.41 or, if those sections do not apply, any requirements specified by the department by rule and, if the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

2. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in or expansion of an intrabasin transfer to which par. (c) does not apply that would average more than 100,000 gallons per day in any 90-day period with a new water loss or an increase in water loss that would average less than 5,000,000 gallons per day in every 90-day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f), except that the water may be returned to a watershed within the Great Lakes basin other than the source watershed and par. (f) 3m. does not apply.

b. The applicant demonstrates that there is no feasible, cost-effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

3. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply with a new water loss or an increase in water loss that would average 5,000,000 gallons per day or more in any 90-day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f).

b. The applicant demonstrates that there is no feasible, cost-effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

(e) *Straddling counties.* 1. The department may approve a proposal under par. (b) for a new interbasin transfer or an increase in an interbasin transfer if the water transferred will be used solely for public water supply purposes in a community within a straddling county or, if a community is partly within a straddling county and partly within a county that lies entirely outside the Great Lakes basin, the water transferred will be used solely for public water supply purposes in the portion of the community that is within the straddling county and all of the following apply:

a. The community is without adequate supplies of potable water.

b. The proposal meets the exception standard under par. (f).

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

d. There is no reasonable water supply alternative within the watershed in which the community is located, including conservation of existing water supplies as determined under par. (g).

e. The proposal will not endanger the integrity of the Great Lakes basin ecosystem based upon a determination that the proposal will have no significant adverse impact on the Great Lakes basin ecosystem.

em. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

2. In determining whether to approve a proposal under this paragraph, the department shall give substantive consideration to whether the applicant provides sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Great Lakes basin. The department may not use a lack of hydrological connection to the waters of the Great Lakes basin as a reason to disapprove a proposal.

(f) *Exception standard.* A proposal to which par. (fm) does not apply meets the exception standard if subds. 1. to 7. apply to the proposal. A proposal to which par. (fm) applies meets the exception standard if the department considers, under par. (fm), whether:

1. The need for the proposed interbasin transfer cannot reasonably be avoided through the efficient use and conservation of existing water supplies as determined under par. (g).

2. The interbasin transfer is limited to quantities that are reasonable for the purposes for which the interbasin transfer is proposed.

3. An amount of water equal to the amount of water withdrawn from the Great Lakes basin will be returned to the source watershed, less an allowance for consumptive use.

3m. The place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn, unless the applicant demonstrates that returning the water at that place is one of the following:

a. Not cost-effective.

b. Not environmentally sound.

c. Not in the interest of public health.

4. No water from outside the Great Lakes basin will be returned to the source watershed unless all of the following apply:

a. The returned water is from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin and the department has approved the permit under s. 283.31.

c. If the water is returned through a structure on the bed of a navigable water, the structure is designed and will be operated to meet the applicable permit requirements under s. 30.12 and the department has approved the permit under s. 30.12.

4m. If water will be returned to the source watershed through a stream tributary to one of the Great Lakes, the physical, chemical, and biological integrity of the receiving water under subd. 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering both low and high flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings.

5. The interbasin transfer will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin or to water dependent natural resources, including cumulative impacts that might result due to the proposed interbasin transfer, based upon a determination that the proposed interbasin transfer will not have any significant adverse impacts on the sustainable management of the waters of the Great Lakes basin.

6. The applicant commits to implementing the applicable water conservation measures under sub. (8) (d) that are environmentally sound and economically feasible for the applicant.

7. The interbasin transfer will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

(fm) *Approval of certain applications.* The department shall determine whether to grant an approval under par. (c) or (e) of an application under par. (b) 1. through the water supply service area planning process under s. 281.348, considering the items in par. (f) 1. to 7. as factors in the cost-effectiveness analysis under s. 281.348 (3) (d) 1.

(g) *Conservation and efficient use of existing water supplies.* The department shall promulgate rules specifying the requirements for an applicant for a new, increased, or expanded interbasin transfer subject to par. (f) to demonstrate the efficient use and conservation of existing water supplies for the purposes of pars. (d) 2. b. and 3. b., (e) 1. d., and (f) 1., including requiring the applicant to document the water conservation planning and analysis used to identify the water conservation and efficiency measures that the applicant determined were feasible.

(i) *Interbasin transfer amount.* In an approval issued under this subsection or a modification granted under this subsection to increase the amount of an interbasin transfer, the department shall specify an interbasin transfer amount equal to the quantity of water that is reasonable for the purposes for which the interbasin transfer is proposed.

(4e) DETERMINING INITIAL WITHDRAWAL AMOUNTS FOR WITHDRAWALS FROM THE GREAT LAKES BASIN. (a) Before issuing automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c) for a withdrawal from the Great Lakes basin for which the department is required to issue automatic notice of coverage under a general permit or an automatic individual permit, the department shall determine the initial withdrawal amount for the withdrawal under this subsection.

(b) 1. Except as provided in subds. 2. and 3e. and par. (f), the department shall estimate the initial withdrawal amount for a withdrawal based on the maximum hydraulic capacity of the most restrictive component in the water supply system used for

the withdrawal as of the date that the department makes the estimate, based on information available to the department.

2. Except as provided in subd. 3e., if the department has issued an approval under s. 30.12, 30.18, 281.34, or 281.41, or s. 281.17, 2001 stats., that is required for a withdrawal and the approval contains a limit on the amount of water that may be withdrawn, the department shall provide an estimate of the initial withdrawal amount equal to the limit in the approval.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the amount under subd. 1. for each of the water supply systems to which subd. 2. does not apply and shall determine the amount under subd. 2. for each of the water supply systems to which subd. 2. applies and shall provide an estimate of the initial withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

(c) The department shall provide the estimate under par. (b) for a withdrawal to the person making the withdrawal.

(d) After receiving an estimate under par. (c), a person making a withdrawal may provide the department with information relating to any of the following:

1. The components of the water supply system used for the withdrawal.

2. Seasonal variations in the amount of water supplied by the water supply system.

3. Plans for expanding the capacity of the water supply system submitted to the department no later than 2 years after June 11, 2008.

4. Amounts withdrawn during the 5 years before the year in which the person submits the information.

5. Successful water conservation efforts by persons using the water that is withdrawn.

6. Water loss from consumptive uses of similar types of users compared to the water loss from consumptive use of persons using the water that is withdrawn.

7. Other relevant information.

(e) Except as provided in par. (f), the department shall determine the initial withdrawal amount for a withdrawal based on the estimate under par. (b) and the department's evaluation of any information provided under par. (d). The department may not consider information provided by any other person.

(f) For a public water supply system that, on June 11, 2008, has approval under s. 281.41 to provide water from the Great Lakes basin for public water supply purposes outside of the Great Lakes basin and approval under s. 283.31 to return the associated wastewater to the Great Lakes basin, the department shall determine the initial withdrawal amount to be the amount of water necessary to provide water for public water supply purposes in the service territory specified in the sewer service area provisions of the areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007, based on the population and related service projections in those provisions.

(g) The department's determination of an initial withdrawal amount under par. (e) or (f) is not subject to administrative review under ch. 227 except at the request of the person making the withdrawal.

(h) If 2 or more public water supply systems merge after the department determines their initial withdrawal amounts under par. (e) and before the department issues the initial individual permits under sub. (5) (c) for the systems, the initial withdrawal amount for the new system is the sum of the amounts determined under par. (e) for the individual systems.

(4m) WATER USE PERMITS REQUIRED IN THE GREAT LAKES BASIN. Beginning on June 1, 2015, except as provided in sub. (4s) (bm), a person may not make a withdrawal from the Great Lakes basin that averages 100,000 gallons per day or more in any 30-day period unless the withdrawal is covered under a general permit under sub. (4s) or an individual permit under sub. (5).

(4s) GENERAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) *Department to issue.* The department shall issue one or more general permits to cover withdrawals from the Great Lakes basin that average 100,000 gallons per day or more in any 30-day period but that do not equal at least 1,000,000 gallons per day for any 30 consecutive days. The department shall include all of the following in a general permit:

1. Reference to the database of withdrawal amounts under par. (i).

2. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, as provided in rules promulgated by the department.

3. Requirements for water conservation, as provided in rules promulgated by the department under sub. (8) (d).

(am) *Term of general permit.* The term of a general permit issued under par. (a) is 25 years.

(b) *General requirement.* Beginning on the date under sub. (4m), a person who does not hold an individual permit under sub. (5) may not make a withdrawal that averages 100,000 gallons per day or more in any 30-day period, but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, unless the withdrawal is covered under a general permit, except as provided in par. (bm). A person to whom the department has issued a notice of coverage under a general permit shall comply with the general permit.

(bm) *Waiver.* The department may waive the requirement to obtain coverage under a general permit for a person making a withdrawal that is covered by a permit under s. 30.18 (2) (a).

(c) *Automatic notice of coverage for existing withdrawals.* The department shall automatically issue a notice of coverage under a general permit to a person who makes a withdrawal from the Great Lakes basin and who reports under sub. (3) (e) before the date under sub. (4m), if the withdrawal averages 100,000 gallons per day or more in any 30-day period but does not equal at least 1,000,000 gallons per day for any 30 consecutive days. If necessary, the department may request additional information before issuing a notice under this paragraph. The department shall issue a notice under this paragraph no later than the date under sub. (4m). The department may promulgate a rule under which the department issues automatic notices of coverage under a general permit on a staggered schedule before the date under sub. (4m). In the notice provided under this paragraph for a withdrawal, the department shall specify a withdrawal amount equal to the initial withdrawal amount determined under sub. (4e) for the withdrawal.

(d) *Coverage under general permit for new or increased withdrawals.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin that will average 100,000 gallons per day or more in any 30-day period, or to increase an existing withdrawal so that it will average 100,000 gallons per day or more in any 30-day period, after June 1, 2011, and to whom the department is not required to issue automatic notice of coverage under a general permit under par. (c), but who does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, shall apply to the department for coverage under a general permit. In the application, the person shall provide the information required by the department by rule.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether the withdrawal qualifies for coverage un-

der a general permit or notify the applicant of any additional information needed to determine whether the withdrawal qualifies for coverage under a general permit.

3. Except as provided in subd. 3m., if the department determines that a withdrawal qualifies for coverage under a general permit and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue a notice of coverage. In the notice, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amounts under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue a notice of coverage. In the notice of coverage the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

4. If the department determines that a withdrawal does not qualify for coverage under a general permit, the department shall notify the applicant in writing of the reason for that determination.

(dm) *Requiring individual permit.* The department may require a person who is making or proposes to make a withdrawal that averages 100,000 gallons per day or more in any 30-day period, but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit under sub. (5) if the withdrawal is located in a groundwater protection area, as defined in s. 281.34 (1) (am), or a groundwater management area designated under s. 281.34 (9).

(e) *Increase in withdrawal amount.* 1. Before the compact's effective date, if a person making a withdrawal that is covered under a general permit proposes to increase the amount of the withdrawal over the withdrawal amount specified in the database under par. (i) for the withdrawal, but does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, the person shall apply to the department for a modification of the withdrawal amount.

3. Except as provided in subd. 3m., if the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the withdrawal amount to an amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall modify the withdrawal amount to an amount equal to the withdrawal amount in the water supply service area plan.

(f) *Term of coverage.* Coverage under a general permit ends on the date that the term of the general permit under par. (am) ends.

(g) *Redetermination.* A person to whom the department has issued a notice of coverage under a general permit shall apply to the department for redetermination of coverage under a new general permit at least 180 days before the end of the term of the current general permit if the person intends to continue to withdraw from the Great Lakes basin an average of 100,000 gallons per day or more in any 30-day period but does not intend to withdraw at least 1,000,000 gallons per day for any 30 consecutive days. If the person is in substantial compliance with the current general permit and the withdrawal qualifies for coverage under the new general permit, the department shall issue a notice of coverage under the new general permit.

(h) *Suspension and revocation.* After an opportunity for a hearing, the department may suspend or revoke coverage under a general permit issued under this subsection for cause, including obtaining coverage under the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.

(i) *Database.* The department shall maintain a database of the withdrawal amounts for all withdrawals that are covered under general permits under this subsection.

(5) INDIVIDUAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) *Requirement.* Beginning on the date under sub. (4m), a person may not make a withdrawal from the Great Lakes basin that equals at least 1,000,000 gallons per day for any 30 consecutive days unless the withdrawal is covered by an individual permit. A person to whom the department has issued an individual permit shall comply with the individual permit.

(b) *Content of individual permits.* The department shall include all of the following in an individual permit:

1. A withdrawal amount as determined under par. (d) 3., 3e., or 3m. or (e) 3., 3e., or 3m. or sub. (4e).

3. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, as provided in rules promulgated by the department.

4. Requirements for water conservation, as provided in rules promulgated by the department under sub. (8) (d).

5. Limits on the location and dates or seasons of the withdrawal and on the allowable uses of the water, as provided in rules promulgated by the department.

6. Conditions on any interbasin transfer under sub. (4) made by the person making the withdrawal.

6m. If s. 281.35 (4) applies to the withdrawal, the matters under s. 281.35 (6) (a).

(c) *Automatic issuance of individual permits for existing withdrawals.* The department shall automatically issue an individual permit to a person who makes a withdrawal from the Great Lakes basin and who reports under sub. (3) (e) before the date under sub. (4m), if the withdrawal equals at least 1,000,000 gallons per day for any 30 consecutive days. If necessary, the department may request additional information before issuing a permit under this paragraph. The department shall issue a permit under this paragraph no later than the date under sub. (4m). In the permit, the department shall specify a withdrawal amount equal to the initial withdrawal amount determined under sub. (4e) for the withdrawal. The department may promulgate a rule under which the department issues automatic individual permits on a staggered schedule before the date under sub. (4m).

(d) *Individual permit for new or increased unpermitted withdrawals.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin that will equal at least 1,000,000 gallons per day for any 30 consecutive days or to modify an existing withdrawal so that it will equal at least 1,000,000 gallons per day for any 30 consecutive days, after June 1, 2011, and to whom the department is not required to issue an automatic individual permit under par. (c), shall apply to the department for an individual permit. In the application, the person shall provide the information required by the department by rule.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether to approve the application or notify the applicant of any additional information needed to determine whether to approve the application.

3. Except as provided in subd. 3m., if the department approves an application under subd. 1. and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smaller of the amounts under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(e) *Increase in withdrawal amount.* 1. Before the compact's effective date, if a person making a withdrawal that is covered under an individual permit proposes to increase the amount of the withdrawal over the withdrawal amount specified in the permit, the person shall apply to the department for a modification of the permit to increase the withdrawal amount.

3. Except as provided in subd. 3m., if the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the withdrawal amount to an amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall modify the withdrawal amount to an amount equal to the withdrawal amount in the water supply service area plan.

(f) *Term of coverage.* The term of an individual permit is 10 years.

(g) *Reissuance.* A person to whom the department has issued an individual permit under this subsection shall apply to the department for reissuance of the individual permit at least 180 days before the end of the term of the permit if the person intends to continue to withdraw from the Great Lakes basin at least 1,000,000 gallons per day for any 30 consecutive days. If the de-

partment determines that the person is in substantial compliance with the individual permit and that the withdrawal continues to qualify for an individual permit, the department shall reissue the permit.

(h) *Suspension and revocation.* After an opportunity for a hearing, the department may suspend or revoke a permit issued under this subsection for cause, including obtaining the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.

(i) *Transfer of control.* A permit is not transferable to any person except after notice to the department. A person who proposes to assume control over a permitted withdrawal shall file with the department a permit application and a statement of acceptance of the permit. The department may require modification or revocation and reissuance of the permit to change the name of the permittee.

(5m) INTERIM APPROVAL. If a person making a withdrawal that averages 100,000 gallons per day or more in any 30-day period registers the withdrawal under sub. (3) (a) 1. and reports as required under sub. (3) (e) and the department does not automatically issue a notice of coverage under sub. (4s) (c) or an individual permit under sub. (5) (c) for the withdrawal before the compact's effective date, the registration of the withdrawal constitutes an approval for the purposes of s. 281.343 (4t) (b) 1. The withdrawal amount is the total amount reported under sub. (3) (b) 4m., except that if there is a limit in an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., on the amount of water that may be withdrawn by any water supply system used for the withdrawal and that limit is less than the amount reported under sub. (3) (b) 4m. for that water supply system, the withdrawal amount is the total amount reported under sub. (3) (b) 4m. reduced by the difference between the reported amount for that water supply system and the limit in the approval.

(7) EXEMPTIONS. Subsections (3) to (5) do not apply to withdrawals or interbasin transfers for any of the following purposes:

(a) To supply vehicles, including vessels and aircraft, for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

(b) To use in a noncommercial project that lasts no more than 3 months for fire fighting, humanitarian, or emergency response purposes.

(7m) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom the department has issued an individual permit or notice of coverage under a general permit under this section to immediately stop a withdrawal if the department determines that there is a danger of imminent harm to the public health, safety, or welfare, to the environment, or to the water resources or related land resources of this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a hearing. An emergency order remains in effect pending the result of the hearing.

(8) STATEWIDE WATER CONSERVATION AND EFFICIENCY. (a) *Goals and objectives.* The department shall specify water conservation and efficiency goals and objectives for the waters of the state. The department shall specify goals and objectives for the waters of the Great Lakes basin that are consistent with the goals under s. 281.343 (4b) (a) and the objectives identified by the regional body under Article 304 (1) of the Great Lakes — St. Lawrence River Basin Sustainable Water Resources Agreement. In specifying these goals and objectives, the department shall consult with the department of safety and professional services and the public service commission.

(b) *Statewide program.* In cooperation with the department of safety and professional services and the public service commission, the department shall develop and implement a statewide water conservation and efficiency program that includes all of the following:

1. Promotion of environmentally sound and economically feasible water conservation measures through a voluntary statewide program.

1m. Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin that are necessary to implement subs. (4), (4s), and (5) and s. 281.348.

2. Water conservation and efficiency measures that the public service commission requires or authorizes a water utility to implement under ch. 196.

3. Water conservation and efficiency measures that the department of safety and professional services requires or authorizes to be implemented under chs. 101 and 145.

(d) *Water conservation and efficiency measures.* The department shall promulgate rules specifying water conservation and efficiency measures for the purposes of implementing par. (b). In the rules, the department may not require retrofitting of existing fixtures, appliances, or equipment. In specifying the measures, the department shall consider the results of any pilot water conservation program conducted by the department in cooperation with the regional body.

(9) PUBLIC PARTICIPATION. (b) *Public notice.* 1. The department shall, by rule, create procedures for circulating to interested and potentially interested members of the public notices of each complete application that the department receives under sub. (4). The department shall include, in the rule, at least the following procedures:

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

b. Mailing of the notice to any person, group, local governmental unit, or state agency upon request.

2. The department shall establish the form and content of a public notice by rule. The department shall include in every public notice concerning an application under sub. (4) at least the following information:

a. The name and address of each applicant.

b. A brief description of the proposal for which the application is made under sub. (4), including the amount of the proposed interbasin transfer.

c. A brief description of the procedures for the formulation of final determinations on applications, including the 30-day comment period required under par. (c).

(c) *Public comment.* The department shall receive public comments on a proposal for which it receives an application under sub. (4) for a 30-day period beginning when the department gives notice under par. (b) 1. The department shall retain all written comments submitted during the comment period and shall consider the comments in making its decisions on the application.

(d) *Public hearing.* 1. The department shall provide an opportunity for any interested person or group of persons, any affected local governmental unit, or any state agency to request a public hearing with respect to a proposal for which the department receives an application under sub. (4). A request for a public hearing shall be filed with the department within 30 days after the department gives notice under par. (b). The party filing a request for a public hearing shall indicate the interest of the party and the reasons why a hearing is warranted. The department shall hold a public hearing on a proposal for which the department receives an application under sub. (4) if the department de-

termines that there is a significant public interest in holding a hearing.

2. The department shall promulgate, by rule, procedures for the conduct of public hearings held under this paragraph. A hearing held under this paragraph is not a contested case hearing under ch. 227.

3. The department shall circulate public notice of any hearing held under this paragraph in the manner provided under par. (b) 1.

(e) *Public access to information.* Any record or other information provided to or obtained by the department regarding a proposal for which an application under sub. (4) is received is a public record as provided in subch. II of ch. 19. The department shall make available to and provide facilities for the public to inspect and copy any records or other information provided to or obtained by the department regarding a proposal for which an application for a new or increased interbasin transfer under sub. (4) is received, except that any record or other information provided to the department may be treated as confidential upon a showing to the secretary that the record or information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), or upon a determination by the department that domestic security concerns warrant confidential treatment. Nothing in this subsection prevents the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if the analyses or summaries do not identify a specific owner or operator.

(11) WATER USE REPORT. Beginning no later than 8 years after June 11, 2008, and every 5 years thereafter, the department, using water use data reported under this section, shall publish a water use report to summarize water usage, identify related trends, identify areas of future water usage concerns, and recommend future actions to promote sustainable water use. The department shall also include in the report water resource information derived from reporting and data accumulation requirements under other water regulatory laws.

(13m) EXCEEDANCES. It is not a violation of this section to withdraw an amount of water that exceeds the withdrawal amount specified in a permit issued under sub. (5) or in the database under sub. (4s) (i).

(14) PENALTIES. (a) Any person who violates this section or any rule promulgated or approval issued under this section shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of continued violation is a separate offense.

(c) In addition to the penalties under par. (a), the court may order the defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the violation.

(15) SUNSET. This section does not apply after the compact's effective date.

History: 2007 a. 227; 2009 a. 180; 2011 a. 32; 2015 a. 177.

281.346 Water conservation, reporting, and supply regulation; after the compact takes effect. (1) DEFINITIONS. In this section:

(d) "Community within a straddling county" means any city, village, or town that is not a straddling community and that is located outside the Great Lakes basin but wholly within a county that lies partly within the Great Lakes basin.

(dm) "Compact" means the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343.

(dr) "Compact's effective date" means the effective date of the compact under s. 281.343 (9) (d).

(e) "Consumptive use" means a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.

(g) "Cumulative impacts" means the impacts on the Great Lakes basin ecosystem that result from incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions, and consumptive uses regardless of who undertakes the other withdrawals, diversions, and consumptive uses, including individually minor but collectively significant withdrawals, diversions, and consumptive uses taking place over a period of time.

(h) "Diversion" means a transfer of water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great Lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker except that "diversion" does not include any of the following:

1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed.

2. The transmission of water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin.

3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(hm) "Divert" means to transfer water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great Lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker except that "divert" does not include any of the following:

1. To transfer a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed.

2. To transmit water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin.

3. To transfer bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(i) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, or technologies for efficient water use and for reducing water loss and waste or for reducing the amount of a withdrawal, consumptive use, or diversion that are, taking into account environmental impact, the age and nature of equipment and facilities involved, the processes employed, the energy impacts, and other appropriate factors, all of the following:

1. Environmentally sound.

2. Reflective of best practices applicable to the water use sector.

3. Technically feasible and available.

4. Economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

(j) "Facility" means an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or

establishments under common ownership or control located on contiguous properties.

(je) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties.

(ji) "Great Lakes basin ecosystem" means the interacting components of air, land, water, and living organisms, including humans, within the Great Lakes basin.

(jj) "Great Lakes council" means the Great Lakes — St. Lawrence River Basin Water Resources Council, created under s. 281.343 (2) (a).

(jm) "Intrabasin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes.

(n) "Party" means a state that is a party to the compact.

(nm) Notwithstanding s. 281.01 (9), "person" means an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government.

(o) "Product" means something produced by human or mechanical effort or through agricultural processes and used in manufacturing, commercial, or other processes or intended for intermediate or ultimate consumers, subject to all of the following:

1. Water used as part of the packaging of a product is part of the product.

2. Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the Great Lakes basin is not a product or part of a product.

3. Except as provided in subd. 1., water that is transferred as part of a public or private supply is not a product or part of a product.

4. Water in its natural state, such as in lakes, rivers, reservoirs, aquifers, or water basins, is not a product.

(pm) "Public water supply" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(ps) "Reasonable water supply alternative" means a water supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased diversion and that does not have greater adverse environmental impacts than the proposed new or increased diversion.

(q) "Regional body" means the body consisting of the governors of the parties and the premiers of Ontario and Quebec, Canada, or their designees as established by the Great Lakes — St. Lawrence River Basin Sustainable Water Resources Agreement.

(qd) "Regional declaration of finding" means a declaration of finding issued by the regional body under s. 281.343 (4h) (e).

(qm) "Regional review" means review by the regional body as described in s. 281.343 (4h).

(r) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively.

(t) "Straddling community" means any city, village, or town that, based on its boundary existing as of the compact's effective date, is partly within the Great Lakes basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin.

(tm) "Straddling county" means a county that lies partly within the Great Lakes basin.

(u) "Technical review" means a thorough analysis and evaluation conducted to determine whether a proposal that is subject to regional review under this section meets the criteria for approval under sub. (4), (5), or (6).

(w) "Water dependent natural resources" means the interacting components of land, water, and living organisms affected by the waters of the Great Lakes basin.

(wm) "Water loss" means the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of a diversion or consumptive use or both.

(wp) "Water supply system," when not preceded by "public," means one of the following:

1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used.

2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed.

(wr) "Water utility" means a public utility, as defined in s. 196.01 (5), that furnishes water.

(x) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes basin.

(y) "Withdraw" means to take water from surface water or groundwater.

(z) "Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

(zm) "Without adequate supplies of potable water" means lacking a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply in the quantity and quality that complies with applicable drinking water standards, is protective of public health, is available at a reasonable cost, and does not have adverse environmental impacts greater than those likely to result from the proposed new or increased diversion.

(2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) *Use of surface water divide.* For the purposes of this section, the surface water divide is used to determine whether a withdrawal or transfer of surface water or groundwater is from the Great Lakes basin.

(b) *Diversions and withdrawals from more than one source.* For the purposes of this section, the diversion or withdrawal of water from more than one source within the Great Lakes basin to supply a single facility or public water supply system is considered one diversion or withdrawal.

(bm) *Subsequent withdrawals for aquacultural purposes.* If a fish farm withdraws water and places it in an aquacultural pond that is registered with the department of agriculture, trade and consumer protection, any subsequent use of that water from that pond is not a withdrawal for the purposes of this section, if the subsequent use is not, and does not result in, a diversion or an intrabasin transfer.

(c) *Water loss.* The department shall promulgate rules for determining the amount of water loss from consumptive uses.

(d) *County boundaries.* For the purposes of sub. (1) (d), (t),

and (tm), a county's boundaries as of December 13, 2005, shall be used to determine whether a county lies partly within the Great Lakes basin.

(e) *Baseline.* 1g. The baseline for a withdrawal that before December 8, 2008, averaged 100,000 gallons per day or more in any 30-day period but to which subd. 1m. does not apply is the amount determined under sub. (4e).

1m. If a person making a withdrawal that averages 100,000 gallons per day or more in any 30-day period registered the withdrawal under s. 281.344 (3) (a) 1. and reported as required under s. 281.344 (3) (e) and the department did not automatically issue a notice of coverage under s. 281.344 (4s) (c) or an individual permit under s. 281.344 (5) (c) for the withdrawal, the baseline for the withdrawal is the amount determined under s. 281.344 (5m) for the withdrawal or, if the department determines a different amount under sub. (4e), the amount determined under sub. (4e).

1r. The baseline for a withdrawal not covered by subd. 1g. or 1m. is zero.

2. The baseline water loss for a consumptive use for which the department has specified an authorized base level of water loss under s. 281.35 (6) (a) 2. is the amount of that authorized base level on the compact's effective date.

4. The baseline volume for a diversion for which the department has issued an approval under s. 281.344 (3m) or (4) before the compact's effective date is the interbasin transfer amount specified in the approval on the compact's effective date.

6. The department shall provide a list of the baseline volumes determined under this paragraph to the Great Lakes council and the regional body no later than 12 months after the compact's effective date.

(em) *Change of ownership.* Regional review or Great Lakes council approval is not required when there is a change of ownership of a water supply system that withdraws, diverts, or consumptively uses waters of the Great Lakes basin unless the new owner proposes a change that is otherwise subject to regional review or Great Lakes council approval.

(f) *Hydrologic units.* The Lake Michigan and Lake Huron watershed shall be considered to be a single hydrologic unit and watershed.

(g) *Public trust doctrine.* Nothing in this section may be interpreted to change the application of the public trust doctrine under article IX, section 1, of the Wisconsin Constitution or to create any new public trust rights.

(3) STATEWIDE REGISTRATION AND REPORTING. (a) 1. Any person who proposes to begin a withdrawal from the waters of the state using a water supply system that will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period, to increase the capacity of a water supply system so that it will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period, or to begin a diversion shall register the withdrawal or diversion with the department.

2. Any person who, on July 1, 2009, has a water supply system with the capacity to make a withdrawal from the waters of this state averaging 100,000 gallons per day or more in any 30-day period and who has not registered the withdrawal under s. 281.344 (3) (a) shall register the withdrawal with the department.

(b) A person to whom par. (a) applies shall register on a form prescribed by the department and provide all of the following information:

1. The name and address of the registrant and the date of registration.

2. The locations and sources of the withdrawal or diversion.

3. The daily capacity of the withdrawal or diversion and the daily capacity to withdraw or divert from each source.

4. An estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.

5. The uses made of the water.

6. The places at which the water is used.

7. The places at which any of the water is discharged.

8. Whether the water use is continuous or intermittent.

9. Whether the person holds a permit under s. 283.31.

10. Other information required by the department by rule.

(c) The department shall maintain a registry containing the information provided under par. (b) and s. 281.344 (3) (b).

(cm) The department may consider domestic security concerns when determining whether information regarding locations of withdrawals and diversions contained in the registry under par. (c) may be released to the public.

(e) 1. Each person who makes a withdrawal from the waters of the state that averages 100,000 gallons per day or more in any 30-day period or diverts any amount and who has registered the withdrawal or diversion under par. (a) or s. 281.344 (3) (a) shall annually report to the department the monthly volumes of withdrawal, whether the person withdraws at least 1,000,000 gallons per day for 30 consecutive days, and, if applicable, the volumes of diversion and, subject to par. (em), water loss from consumptive use.

2. In addition to the information required under subd. 1., the department may, by rule, create different reporting frequencies or require additional information from a person who registers a withdrawal, or diversion under par. (a) or s. 281.344 (3) (a) based upon the type or category of water use.

(em) If a person to whom par. (e) 1. applies provides any of the water that the person withdraws to a public water supply system, the person who operates the public water supply system, rather than the person who withdraws the water, shall annually report to the department the volume of water loss from the consumptive use of the water provided to the public water supply system.

(f) The department may require additional information under par. (b) 10. or (e) 2. only if the information is related to the purposes of the compact.

(4) DIVERSIONS. (a) *Prohibition.* Beginning on the compact's effective date, no person may begin a diversion, except as authorized under par. (c), (d), or (e) or an approval issued under s. 281.344 (4), and no person may increase the amount of a diversion over the diversion amount specified in an approval under this subsection or over the interbasin transfer amount specified in an approval issued under s. 281.344 (3m) or (4), except as authorized under par. (c), (d), or (e).

(b) *Application.* 1. A person who proposes to begin a diversion or to increase the amount of a diversion under par. (c), (d), or (e) shall apply to the department for approval.

2. A person may apply under subd. 1. for approval of a new or increased diversion under par. (c) or (e) only if the person operates a public water supply system that receives or would receive water from the new or increased diversion.

3. Operators of 2 or more public water supply systems may submit a joint application under subd. 1. for a new or increased diversion under par. (c) or (e).

4. A person who applies under subd. 1. shall provide information about the potential impacts of the diversion on the waters of the Great Lakes basin and water dependent natural resources and any other information required by the department by rule.

4m. If a person who applies under subd. 1. will not directly withdraw the water proposed to be diverted, the person shall

identify any entities that may withdraw the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4p. If the person who applies under subd. 1. will not directly return the water to the Great Lakes basin, the person shall identify any entities that may return the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4s. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide documentation of how the physical, chemical, and biological integrity of the receiving water under par. (f) 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering potential adverse impacts due to changes in temperature and nutrient loadings. If the receiving water is a surface water body that is tributary to one of the Great Lakes, the person shall include a description of the flow of the receiving water before the proposal is implemented, considering both low and high flow conditions.

5. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide an assessment of the individual impacts of the proposal for the purposes of par. (f) 5. The person may also include a cumulative impact assessment.

(bg) *Determinations.* 1. The department shall determine whether a proposal under par. (b) is subject to par. (c) or (e) as follows:

a. If the proposal is to provide a public water supply within a single city, village, or town, the proposal is subject to par. (c) or (e) based on the boundaries of that city, village, or town.

b. If the proposal is to provide a public water supply within more than one city, village, or town, any portion of the proposal that provides a public water supply within a straddling community is subject to par. (c) and any portion of the proposal that provides a public water supply within a community described in par. (e) 1. (intro.) is subject to par. (e).

2. For the purposes of applying the requirements in pars. (c), (e), and (f) to a proposal under par. (b), the department shall use, as appropriate, the current or planned service area of the public water supply system receiving water under the proposal. The planned service area is the service area of the system at the end of any planning period authorized by the department in the approved water supply service area plan under s. 281.348 that covers the public water supply system.

(c) *Straddling communities.* The department may approve a proposal under par. (b) to begin a diversion, or to increase the amount of a diversion, to an area within a straddling community but outside the Great Lakes basin or outside the source watershed if the water diverted will be used solely for public water supply purposes in the straddling community and all of the following apply:

1. An amount of water equal to the amount of water withdrawn from the Great Lakes basin, less an allowance for consumptive use, will be returned to the source watershed.

2. No surface water or groundwater from outside the source watershed will be returned to the source watershed unless all of the following apply:

a. The returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin.

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

2m. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system unless the proposal is to provide water to a straddling community that includes an electronics and information technology manufacturing zone designated under s. 238.396 (1m).

3. If the proposal would result from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period, the proposal meets the exception standard under par. (f).

4. If the proposal would result in a new water loss or an increase in a water loss from consumptive use that would average 5,000,000 gallons or more per day in any 90-day period, all of the following apply:

a. The department conducts a technical review.

b. The department notifies the regional body as required in s. 281.343 (4h) (b) 1.

c. The proposal undergoes regional review.

d. The department considers the regional declaration of finding in determining whether to approve the proposal.

(d) *Intrabasin transfer.* 1. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply that would average less than 100,000 gallons per day in every 90-day period, if the proposal meets the applicable requirements under s. 30.18, 281.34, or 281.41 or, if those sections do not apply, any requirements specified by the department by rule and, if the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

2. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply that would average more than 100,000 gallons per day in any 90-day period with a new water loss or an increase in water loss that would average less than 5,000,000 gallons per day in every 90-day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f), except that the water may be returned to a watershed within the Great Lakes basin other than the source watershed and par. (f) 3m. does not apply.

b. The applicant demonstrates that there is no feasible, cost-effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

d. The department provides notice of the proposal to the other parties.

3. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply with a new water loss or an increase in water loss that would average 5,000,000 gallons per day or more in any 90-day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f).

b. The applicant demonstrates that there is no feasible, cost-effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, in-

cluding conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

d. The department conducts a technical review.

e. The department notifies the regional body as required in s. 281.343 (4h) (b) 1.

f. The proposal undergoes regional review.

g. The department considers the regional declaration of finding in determining whether to approve the proposal.

h. The proposal is approved by the Great Lakes council.

(e) *Straddling counties.* 1. The department may approve a proposal under par. (b) for a new diversion or an increase in a diversion if the water diverted will be used solely for public water supply purposes in a community within a straddling county or, if a community is partly within a straddling county and partly within a county that lies entirely outside the Great Lakes basin, the water diverted will be used solely for public water supply purposes in the portion of the community that is within the straddling county and all of the following apply:

a. The community is without adequate supplies of potable water.

b. The proposal meets the exception standard under par. (f).

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

d. There is no reasonable water supply alternative within the watershed in which the community is located, including conservation of existing water supplies as determined under par. (g).

e. The proposal will not endanger the integrity of the Great Lakes basin ecosystem based upon a determination that the proposal will have no significant adverse impact on the Great Lakes basin ecosystem.

em. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

f. The department conducts a technical review.

g. The department notifies the regional body as required in s. 281.343 (4h) (b) 1.

h. The proposal undergoes regional review.

i. The department considers the regional declaration of finding in determining whether to approve the proposal.

j. The proposal is approved by the Great Lakes council.

2. In determining whether to approve a proposal under this paragraph, the department shall give substantive consideration to whether the applicant provides sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Great Lakes basin. The department may not use a lack of hydrological connection to the waters of the Great Lakes basin as a reason to disapprove a proposal.

(f) *Exception standard.* A proposal meets the exception standard if all of the following apply:

1. The need for the proposed diversion cannot reasonably be avoided through the efficient use and conservation of existing water supplies as determined under par. (g).

2. The diversion is limited to quantities that are reasonable for the purposes for which the diversion is proposed.

3. An amount of water equal to the amount of water withdrawn from the Great Lakes basin will be returned to the source watershed, less an allowance for consumptive use.

3m. The place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn, unless the applicant demonstrates that returning the water at that place is one of the following:

a. Not economically feasible.

b. Not environmentally sound.

c. Not in the interest of public health.

4. No water from outside the Great Lakes basin will be returned to the source watershed unless all of the following apply:

a. The returned water is from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin and the department has approved the permit under s. 283.31.

c. If the water is returned through a structure on the bed of a navigable water, the structure is designed and will be operated to meet the applicable permit requirements under s. 30.12 and the department has approved the permit under s. 30.12.

4m. If water will be returned to the source watershed through a stream tributary to one of the Great Lakes, the physical, chemical, and biological integrity of the receiving water under subd. 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering both low and high flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings.

5. The diversion will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin or to water dependent natural resources, including cumulative impacts that might result due to any precedent-setting aspects of the proposed diversion, based upon a determination that the proposed diversion will not have any significant adverse impacts on the sustainable management of the waters of the Great Lakes basin.

6. The applicant commits to implementing the applicable water conservation measures under sub. (8) (d) that are environmentally sound and economically feasible for the applicant.

7. The diversion will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

(g) *Conservation and efficient use of existing water supplies.* The department shall promulgate rules specifying the requirements for an applicant for a new or increased diversion subject to par. (f) to demonstrate the efficient use and conservation of existing water supplies for the purposes of pars. (d) 2. b. and 3. b., (e) 1. d., and (f) 1., including requiring the applicant to document the water conservation planning and analysis used to identify the water conservation and efficiency measures that the applicant determined were feasible.

(i) *Diversion amount.* In an approval issued under this subsection or a modification granted under this subsection to increase the amount of a diversion, the department shall specify a diversion amount equal to the quantity of water that is reasonable for the purposes for which the diversion is proposed.

(4e) DETERMINING BASELINES FOR PREEXISTING WITHDRAWALS. (a) Before issuing automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c) for a withdrawal from the Great Lakes basin for which the department is required to issue automatic notice of

coverage or an automatic individual permit, the department shall determine a baseline for the withdrawal under this subsection.

(b) 1. Except as provided in subds. 2. and 3e. and par. (f), the department shall estimate the baseline for a withdrawal based on the maximum hydraulic capacity of the most restrictive component in the water supply system used for the withdrawal as of December 8, 2008, based on information available to the department.

2. Except as provided in subd. 3e., if the department has issued an approval under s. 30.12, 30.18, 281.34, or 281.41, or s. 281.17, 2001 stats., that is required for a withdrawal and the approval contains a limit on the amount of water that may be withdrawn, the department shall provide an estimate of the baseline equal to the limit in the approval as of December 8, 2008.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the amount under subd. 1. for each of the water supply systems to which subd. 2. does not apply and shall determine the amount under subd. 2. for each of the water supply systems to which subd. 2. applies and shall provide an estimate of the baseline that is equal to the sum of the amounts determined for each of the water supply systems.

(c) The department shall provide the estimate under par. (b) for a withdrawal to the person making the withdrawal.

(d) After receiving an estimate under par. (c), a person making a withdrawal may provide the department with information relating to any of the following:

1. The components of the water supply system used for the withdrawal as of December 8, 2008.

2. Seasonal variations in the amount of water supplied by the water supply system.

3. Plans for expanding the capacity of the water supply system submitted to the department before December 8, 2008.

4. Amounts withdrawn during the 5 years before the year in which the person submits the information.

5. Successful water conservation efforts by persons using the water that is withdrawn.

6. Water loss from consumptive uses of similar types of users compared to the water loss from consumptive use of persons using the water that is withdrawn.

7. Other relevant information.

(e) Except as provided in par. (f), the department shall determine the baseline for a withdrawal based on the estimate under par. (b) and the department's evaluation of any information provided under par. (d). The department may not consider information provided by any other person.

(f) For a public water supply system that, on June 11, 2008, has approval under s. 281.41 to provide water from the Great Lakes basin for public water supply purposes outside of the Great Lakes basin and approval under s. 283.31 to return the associated wastewater to the Great Lakes basin, the department shall determine the baseline to be the amount of water necessary to provide water for public water supply purposes in the service territory specified in the sewer service area provisions of the areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007, based on the population and related service projections in those provisions.

(g) The department's determination of a baseline under par. (e) or (f) is not subject to administrative review under ch. 227 except at the request of the person making the withdrawal.

(h) If 2 or more public water supply systems merge after the department determines their baselines under par. (e) and before the department issues the initial individual permits under sub. (5) (c) for the systems, the baseline for the new system is the sum of the amounts determined under par. (e) for the individual systems.

(4g) DETERMINING WITHDRAWAL AMOUNTS FOR PREEXISTING WITHDRAWALS. (a) Before issuing automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c) for a withdrawal from the Great Lakes basin for which the department is required to issue automatic notice of coverage or an automatic individual permit, the department shall determine a withdrawal amount for the withdrawal under this subsection.

(b) Except as provided in par. (c), the withdrawal amount for a withdrawal under this subsection is the same as the baseline determined under sub. (4e).

(c) 1. Except as provided in subd. 3., if a person making a withdrawal has increased the amount of the withdrawal over the baseline before the department issues an automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c), the department shall specify a withdrawal amount that is, except as provided in subd. 2., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component in the water supply system used for the withdrawal.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

2. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 1. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3. For a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

(4m) WATER USE PERMITS REQUIRED IN THE GREAT LAKES BASIN. Beginning on December 8, 2011, a person may not make a withdrawal from the Great Lakes basin that averages 100,000 gallons per day or more in any 30-day period unless the withdrawal is covered under a general permit issued under sub. (4s), an individual permit issued under sub. (5), or an interim approval under s. 281.344 (5m), except as provided in sub. (4s) (bm).

(4s) GENERAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) *Department to issue.* The department shall issue one or more general permits to cover withdrawals from the Great Lakes basin that average 100,000 gallons per day or more in any 30-day period but that do not equal at least 1,000,000 gallons per day for any 30 consecutive days. The department shall include all of the following in a general permit:

1. Reference to the database under par. (i).

2. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, as provided in rules promulgated by the department.

3. Requirements for water conservation, as provided in rules promulgated by the department under sub. (8) (d).

(am) *Term of general permit.* The term of a general permit issued under par. (a) is 25 years.

(b) *General requirement.* Beginning on December 8, 2011, a person who does not hold an individual permit under sub. (5) may not make a withdrawal that averages 100,000 gallons per day or more in any 30-day period, but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, unless the withdrawal is covered under a general permit issued under this subsection, except as provided in par. (bm). A person to whom the department has issued a notice of coverage under a general permit shall comply with the general permit.

(bm) *Waiver.* The department may waive the requirement to obtain coverage under a general permit for a person making a withdrawal that is covered by a permit under s. 30.18 (2) (a).

(c) *Automatic notice of coverage for preexisting withdrawals.* The department shall automatically issue a notice of coverage under a general permit to a person who makes a withdrawal that is covered by an interim approval under s. 281.344 (5m) and that averages 100,000 gallons per day or more in any 30-day period but does not equal at least 1,000,000 gallons per day for any 30 consecutive days, or who makes a withdrawal that is not covered by an interim approval and that before December 8, 2008, averaged 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days. If necessary, the department may request additional information before issuing a notice under this paragraph. The department shall issue a notice under this paragraph no later than December 8, 2011. In the notice provided under this paragraph for a withdrawal, the department shall specify a baseline equal to the baseline determined under sub. (4e) for the withdrawal and a withdrawal amount equal to the withdrawal amount determined under sub. (4g) for the withdrawal.

(d) *Coverage under general permit for withdrawals not entitled to automatic notice of coverage.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin after December 7, 2011, that will average 100,000 gallons per day or more in any 30-day period, or to increase an existing withdrawal so that it will average 100,000 gallons per day or more in any 30-day period, but who does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, shall apply to the department for coverage under a general permit, unless the person applies for an individual permit under sub. (5). In the application, the person shall provide the information required by the department by rule.

1m. A person who makes a withdrawal from the Great Lakes basin that, before December 8, 2011, averages at least 100,000 gallons per day in any 30-day period, but does not equal 1,000,000 gallons per day for any 30 consecutive days and who is not entitled to automatic issuance of notice of coverage under par. (c) shall apply to the department for coverage under a general permit, unless the person applies for an individual permit under sub. (5). In the application, the person shall provide the information required by the department by rule.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether the withdrawal qualifies for coverage under a general permit or notify the applicant of any additional information needed to determine whether the withdrawal qualifies for coverage under a general permit.

3. Except as provided in subd. 3m., if the department determines that a withdrawal qualifies for coverage under a general permit and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue a notice of coverage. In the notice, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. or 1m. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the withdrawal is covered by an approved water supply service area plan under s. 281.348.

b. The department may not approve an application under subd. 1. or 1m. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

c. If the department approves an application under subd. 1. or 1m. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue a notice of coverage. In the notice of coverage the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

4. If the department determines that a withdrawal does not qualify for coverage under a general permit, the department shall notify the applicant in writing of the reason for that determination.

(dm) *Requiring individual permit.* The department may require a person who is making or proposes to make a withdrawal that averages 100,000 gallons per day or more in any 30-day period, but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit under sub. (5) if the withdrawal is located in a groundwater protection area, as defined in s. 281.34 (1) (am), or a groundwater management area designated under s. 281.34 (9).

(e) *Increase in withdrawal amount.* 1. If a person making a withdrawal that is covered under a general permit issued under this subsection or s. 281.344 (4s) proposes to increase the amount of the withdrawal over the withdrawal amount specified in the database under par. (i) for the withdrawal, but does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, the person shall apply to the department for a modification of the withdrawal amount.

3. Except as provided in subd. 3m., if the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the withdrawal amount to an amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or

281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the withdrawal is covered by an approved water supply service area plan under s. 281.348.

b. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

c. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue a notice of coverage. In the notice of coverage the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

(f) *Term of coverage.* Coverage under a general permit ends on the date that the term of the general permit under par. (am) ends.

(g) *Redetermination.* A person to whom the department has issued a notice of coverage under a general permit issued under this subsection or s. 281.344 (4s) shall apply to the department for redetermination of coverage under a new general permit issued under this subsection at least 180 days before the end of the term of the current general permit if the person intends to continue to withdraw from the Great Lakes basin an average of 100,000 gallons per day or more in any 30-day period but does not intend to withdraw at least 1,000,000 gallons per day for any 30 consecutive days. If the person is in substantial compliance with the current general permit and the withdrawal qualifies for coverage under the new general permit, the department shall issue a notice of coverage under the new general permit.

(h) *Suspension and revocation.* After an opportunity for a hearing, the department may suspend or revoke coverage under a general permit issued under this subsection or s. 281.344 (4s) for cause, including obtaining coverage under the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.

(i) *Database.* The department shall maintain a database of the withdrawal amounts for all withdrawals that are covered under general permits issued under this subsection. Until December 8, 2021, the department shall include in the database the baselines for all withdrawals that are covered under general permits issued under this subsection.

(5) INDIVIDUAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) *Requirement.* Beginning on December 8, 2011, a person may not make a withdrawal from the Great Lakes basin that equals at least 1,000,000 gallons per day for any 30 consecutive days unless the withdrawal is covered by an individual permit issued under this subsection. A person to whom the department has issued an individual permit shall comply with the individual permit.

(b) *Content of individual permits.* The department shall include all of the following in an individual permit:

1. A withdrawal amount as determined under par. (d) 3., 3e., or 3m., (g) 3., 3e., or 3m., or (j) 3., 3e., or 3m., or sub. (4g).

2. Provisions for estimating and, if necessary, monitoring substantial increases in water loss resulting from increases in withdrawal amounts during the term of a permit and reporting the results of the estimating and monitoring, as provided in rules promulgated by the department.

3. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, as provided in rules promulgated by the department.

4. Requirements for water conservation, as provided in rules promulgated by the department under sub. (8) (d).

5. Limits on the location and dates or seasons of the withdrawal and on the allowable uses of the water, as provided in rules promulgated by the department.

5m. If a decision-making standard under sub. (5m) or (6) applies to the withdrawal, any limit on the amount of the withdrawal necessary to ensure compliance with the decision-making standard.

6. Conditions on any diversion approved under sub. (4) made by the person making the withdrawal.

6m. If s. 281.35 (4) applies to the withdrawal, the matters under s. 281.35 (6) (a).

7. If the withdrawal is from a surface water body tributary to one of the Great Lakes and would result in a water loss of more than 95 percent of the amount of water withdrawn, conditions that ensure that the withdrawal does not cause significant adverse environmental impact.

(c) *Automatic issuance of individual permits for preexisting withdrawals.* The department shall automatically issue an individual permit to a person who makes a withdrawal from the Great Lakes basin that is covered by an interim approval under s. 281.344 (5m) and that equals at least 1,000,000 gallons per day for any 30 consecutive days, or who makes a withdrawal that is not covered by an interim approval, that equals at least 1,000,000 gallons per day for any 30 consecutive days, and that before December 8, 2008, averaged 100,000 gallons per day or more in any 30-day period. If necessary, the department may request additional information before issuing a permit under this paragraph. The department shall issue a permit under this paragraph no later than December 8, 2011. In the permit, the department shall specify a baseline equal to the baseline determined under sub. (4e) for the withdrawal and a withdrawal amount equal to the withdrawal amount determined under sub. (4g) for the withdrawal.

(cm) *Initial individual permit for existing withdrawals not entitled to automatic notice of coverage.* 1. A person who makes a withdrawal from the Great Lakes basin that, before December 8, 2011, equals at least 1,000,000 gallons per day for any 30 consecutive days and who is not entitled to automatic issuance of an individual permit under par. (c) shall apply to the department for an individual permit.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether to approve the application or notify the applicant of any additional information needed to determine whether to approve the application.

3. Except as provided in subd. 5., if the department approves an application under subd. 1. and the department has issued any approvals that are required for the withdrawal under s. 30.12,

30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is, except as provided in subd. 4., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component in the water supply system used for the withdrawal.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

4. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

5. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

6. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(d) *Initial individual permit for withdrawal begun or increased after December 7, 2011.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin after December 7, 2011, that will equal at least 1,000,000 gallons per day for any 30 consecutive days or to modify an existing withdrawal so that it will equal at least 1,000,000 gallons per day for any 30 consecutive days shall apply to the department for an individual permit.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether to approve the application or notify the applicant of any additional information needed to determine whether to approve the application.

3. Except as provided in subd. 3m., if the department approves an application under subd. 1. and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

c. Any limit on the amount of the withdrawal necessary to ensure compliance with a decision-making standard applicable under par. (e) or (f).

3e. If water is withdrawn through more than one water supply system to serve a facility and subd. 3. c. does not apply, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(dm) *Consistency with water supply plans.* 1. The department may not approve an application under par. (d) 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the public water supply system is covered by an approved water supply service area plan under s. 281.348.

2. The department may not approve an application under par. (d) 1. for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 unless the withdrawal is consistent with the water supply service area plan.

(e) *Standards for approval of certain unpermitted withdrawals.* 1. Except as provided in par. (dm), the department may not approve an application under par. (d) 1. for a new withdrawal that will equal at least 1,000,000 gallons per day for any 30 consecutive days, or for an existing withdrawal that is not covered by a general permit under sub. (4s) and that is proposed to be modified so that it will equal at least 1,000,000 gallons per day for any 30 consecutive days, but to which subd. 2. does not apply, unless the withdrawal meets the state decision-making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (dm), the department may not approve an application under par. (d) 1. for a new withdrawal that will equal at least 10,000,000 gallons per day for any 30 consecutive days, or for an existing withdrawal that is not covered by a general permit under sub. (4s) and that is proposed to be modified so that it will equal at least 10,000,000 gallons per day for any 30 consecutive days, unless the withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits an application under par. (d) 1., to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the withdrawal. If the person demonstrates that the water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the withdrawal.

(f) *Standards for approval of withdrawals covered by general permits.* 1. Except as provided in par. (dm), the department may not approve an application under par. (d) 1. for a withdrawal that is covered under a general permit under sub. (4s) if the applicant proposes to modify the withdrawal before December 8, 2021, so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the applicant proposes to modify the withdrawal after December 7, 2021, so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued the current notice of coverage under the general permit and if subd. 2. does not apply, unless the withdrawal meets the state decision-making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (dm), the department may not approve an application under par. (d) 1. for a withdrawal that is covered under a general permit under sub. (4s) if the applicant proposes to modify the withdrawal before December 8, 2021, so that it equals 10,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the applicant proposes to modify the withdrawal after December 7, 2021, so that it equals 10,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued the current notice of coverage under the general permit, unless the withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits an application under par. (d) 1., to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the withdrawal amount, whichever is applicable under subd. 2. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the increase in the withdrawal.

(g) *Modification of individual permit for increased withdrawal.* 1. If a person making a withdrawal that is covered under an individual permit issued under this subsection or s. 281.344 (5) proposes to increase, during the term of the permit, the amount of the withdrawal over the withdrawal amount specified in the permit, the person shall apply to the department for a modification of the permit to increase the withdrawal amount.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether to approve the application for modification of the permit or notify the applicant of any additional information needed to determine whether to approve the application.

3. Except as provided in subd. 3m., if the department approves an application under subd. 1. and the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the individual permit. In the modified permit, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

c. Any limit on the amount of the withdrawal necessary to ensure compliance with a decision-making standard applicable under par. (e) or (f).

3e. If water is withdrawn through more than one water supply system to serve a facility and subd. 3. c. does not apply, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall modify the individual permit. In the modified permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(gm) *Consistency with water supply plans.* 1. The department may not approve an application under par. (g) 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the public water supply system is covered by an approved water supply service area plan under s. 281.348.

2. The department may not approve an application under par. (g) 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 unless the withdrawal is consistent with the water supply service area plan.

(h) *Standards for approval of certain modifications.* 1. Except as provided in par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal before December 8, 2021, and after the increase the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued that modified permit and if subd. 2. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m).

1m. Except as provided in par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal after December 7, 2021, and after the increase the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term or the date that the department issued a modified permit for the withdrawal if the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), whichever is later, and if subd. 2m. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal before December 8, 2021, and after the increase the withdrawal would equal at least 10,000,000 gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the compact decision-making standard under sub. (6), over the withdrawal amount as of the date that the department issued that modified permit unless the withdrawal meets the compact decision-making standard under sub. (6).

2m. Except as provided in subd. 3. or par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal after December 7, 2021, and after the increase the withdrawal would equal at least 10,000,000 gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term, or the date that the department issued a modified permit for the withdrawal if the modification was subject to the compact decision-making standard under sub. (6), whichever

is later, unless the withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits an application under par. (g) 1., to which subd. 2. or 2m. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the applicable withdrawal amount, whichever applies under subd. 2. or 2m. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the increase in the withdrawal.

(i) *Term of permit.* The term of an individual permit is 10 years.

(j) *Reissuance.* 1. A person to whom the department has issued an individual permit under this subsection or s. 281.344 (5) shall apply to the department for reissuance of the individual permit at least 180 days before the end of the term of the permit if the person intends to continue to withdraw from the Great Lakes basin at least 1,000,000 gallons per day for any 30 consecutive days.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether to approve the application or notify the applicant of any additional information needed to determine whether to approve the application.

3. Except as provided in subd. 3m., if the department approves an application under subd. 1., determines that the person is in substantial compliance with the current individual permit, and has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall reissue the individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the amount in the current permit, except that, if the person proposes in the application to increase the amount of the withdrawal, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

c. Any limit on the amount of the withdrawal necessary to ensure compliance with a decision-making standard applicable under par. (e) or (f).

3e. If water is withdrawn through more than one water supply system to serve a facility and subd. 3. c. does not apply, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 and determines that the person is in substantial compliance with the current individual permit, the department shall reissue the individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(jm) *Consistency with water supply plans; reissuance.* 1. The department may not approve an application under par. (j) 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 if the person proposes to increase the amount of the withdrawal over the amount in the current permit, unless the public water supply system is covered by an approved water supply service area plan under s. 281.348.

2. The department may not approve an application under par. (j) 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 unless the withdrawal is consistent with the water supply service area plan.

(k) *Standards for reissuance in certain cases.* 1. Except as provided in par. (jm), the department may not approve an application under par. (j) 1., if the person proposes in the application to increase the amount of the withdrawal so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term or the date that the department issued a modified permit for the withdrawal if the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), whichever is later, and if subd. 2. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (jm), the department may not approve an application under par. (j) 1., if the person proposes in the application to increase the amount of the withdrawal so that it equals at least 10,000,000 gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term or the date that the department issued a modified permit for the withdrawal if the modification was subject to the compact decision-making standard under sub. (6), whichever is later, unless the withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits an application under par. (j) 1., to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the withdrawal amount as of the later of the dates under subd. 2. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the increase in the withdrawal.

(L) *Prior notice.* Beginning no later than 60 months after the compact's effective date, if a proposal for which approval is required under this subsection will result in a new water loss or an increase in a water loss that will average more than 5,000,000 gallons per day in any 90-day period, the department shall provide the other parties and the provinces of Ontario and Quebec, Canada, with detailed notice of the proposal and an opportunity to comment on the proposal. The department shall provide a response to any comment received under this paragraph. The department may not grant an approval under this subsection until at least 90 days after the day on which it provided notice under this paragraph.

(m) *Regional review.* If a majority of the members of the regional body request regional review of a proposal described in s. 281.343 (4h) (a) 6. for a withdrawal and the department deter-

mines under s. 281.343 (4h) (b) 1. that the proposal is subject to regional review, the department shall conduct a technical review of the proposal and submit the proposal for regional review. The department may not determine under s. 281.343 (4h) (b) 1. that the proposal is subject to regional review unless the proposal will result in a water loss that will average more than 5,000,000 gallons per day in any 90-day period. If the department submits the proposal for regional review, the department may not act on the proposal until the proposal has undergone regional review and the department has considered the regional declaration of finding in determining whether to approve the proposal or until 90 days after the department submits the proposal for regional review, whichever is sooner.

(n) *Information to be provided.* A person who submits an application under par. (d) 1., (g) 1., or (j) 1. shall provide the information required by the department by rule. If a decision-making standard under sub. (5m) or (6) applies, the person shall provide information about the potential impacts of the withdrawal on the waters of the Great Lakes basin and water dependent natural resources. If the compact decision-making standard under sub. (6) applies, the person shall provide an assessment of the individual impacts of the proposal for the purposes of sub. (6) (b). The person may also include a cumulative impact assessment.

(o) *Departmental modifications.* After an opportunity for a hearing, the department may modify a permit issued under this subsection as necessary to ensure that a withdrawal complies with any applicable requirement under sub. (5m) or (6).

(p) *Suspension and revocation.* The department may suspend or revoke a permit issued under this subsection for cause, including obtaining the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.

(q) *Transfer of control.* A permit is not transferable to any person except after notice to the department. A person who proposes to assume control over a permitted withdrawal shall file with the department a permit application and a statement of acceptance of the permit. The department may require modification or revocation and reissuance of the permit to change the name of the permittee.

(5e) REQUIREMENTS FOR WATER SUPPLY SERVICE AREA PLANS FOR PUBLIC WATER SUPPLY SYSTEMS IN THE GREAT LAKES BASIN. (a) *Unpermitted withdrawals.* 1. Beginning on December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for a new withdrawal from the Great Lakes basin of at least 1,000,000 gallons per day for any 30 consecutive days, or for modification of an existing withdrawal that is not covered by a general permit under sub. (4s) so that it will equal at least 1,000,000 gallons per day for any 30 consecutive days, but to which subd. 2. does not apply, unless the withdrawal meets the state decision-making standard under sub. (5m).

2. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for a new withdrawal from the Great Lakes basin of at least 10,000,000 gallons per day for any 30 consecutive days, or for modification of an existing withdrawal that is not covered by a general permit under sub. (4s) so that it will equal at least 10,000,000 gallons per day for any 30 consecutive days, unless the withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits a water supply service area plan under s. 281.348, that provides for a new withdrawal to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the withdrawal. If the person demonstrates that the water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the withdrawal.

(b) *Increased withdrawals covered by general permits.* 1. Beginning on December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for modifying a withdrawal that is covered under a general permit under sub. (4s) before December 8, 2021, so that the withdrawal equals 1,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the plan provides for modifying the withdrawal after December 7, 2021, so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued the current notice of coverage under the general permit and if subd. 2. does not apply, unless the withdrawal meets the state decision-making standard under sub. (5m).

2. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for modifying a withdrawal that is covered under a general permit under sub. (4s) before December 8, 2021, so that the withdrawal equals 10,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the plan provides for modifying the withdrawal after December 7, 2021, so that it equals 10,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued the current notice of coverage under the general permit, unless the withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits a water supply service area plan under s. 281.348, that provides for an increase in a withdrawal to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the withdrawal amount, whichever is applicable under subd. 2. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the increase in the withdrawal.

(c) *Increased withdrawals covered by individual permits.* 1. Beginning on the December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, before December 8, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) if after the increase the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued that modified permit and if subd. 2. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m).

1m. Beginning on December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, after December 7, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) and after the increase the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term or the date that the department issued a modified per-

mit for the withdrawal if the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), whichever is later, and if subd. 2m. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m).

2. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, before December 8, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) if after the increase the withdrawal would equal 10,000,000 or more gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the compact decision-making standard under sub. (6), the withdrawal would equal 10,000,000 gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued that modified permit, unless the increased withdrawal meets the compact decision-making standard under sub. (6).

2m. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, after December 7, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) and after the increase the withdrawal would equal 10,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term or the date that the department issued a modified permit for the withdrawal if the modification was subject to the compact decision-making standard under sub. (6), whichever is later, unless the increased withdrawal meets the compact decision-making standard under sub. (6).

3. A person who submits a water supply service area plan under s. 281.348, that provides for an increase in a withdrawal to which subd. 2. or 2m. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the withdrawal amount, whichever is applicable under subd. 2. or 2m. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90-day period, the state decision-making standard under sub. (5m), rather than the compact decision-making standard under sub. (6), applies to the increase in the withdrawal.

(d) *Providing prior notice.* The department may not approve a water supply service area plan under s. 281.348 that provides for a withdrawal described in sub. (5) (L) unless the department has provided notice as required under sub. (5) (L) at least 90 days before approving the water supply service area plan and has provided a response to any comment received.

(e) *Regional review.* The department may not approve a water supply service area plan under s. 281.348 if a majority of the members of the regional body request regional review of a withdrawal described in s. 281.343 (4h) (a) 6. provided for in the plan unless the department complies with sub. (5) (m).

(5m) STATE DECISION-MAKING STANDARD. A proposal meets the state decision-making standard if all of the following apply:

(a) The amount of the withdrawal or increase in the withdrawal is needed to meet the projected needs of the person who will use the water.

(b) For an increase in a withdrawal, cost-effective conservation practices have been implemented for existing uses of the water, as required under rules promulgated by the department under sub. (8) (d).

(c) The applicant has assessed other potential water sources for cost-effectiveness and environmental effects.

(d) Cost-effective conservation practices will be implemented to ensure efficient use of the water, for a new withdrawal, or of the increased amount of an existing withdrawal.

(e) One of the following applies:

1. No significant adverse environmental impacts to the waters of the state will result from the new or increased withdrawal.

2. If the withdrawal is from a surface water body, the applicant demonstrates that the withdrawal will not result in the violation of water quality standards under s. 281.15 or impair fish populations.

3. The department has issued a permit under s. 30.18 for the new or increased withdrawal or has issued a permit under s. 30.12 for a structure that will be used for the new or increased withdrawal.

4. The department has issued an approval under s. 281.34, or s. 281.17, 2001 stats., for the new or increased withdrawal.

(6) COMPACT DECISION-MAKING STANDARD. A proposal meets the compact decision-making standard if all of the following apply:

(a) All of the water withdrawn from the Great Lakes basin will be returned to the source watershed, less an allowance for consumptive use.

(b) The withdrawal will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin, to water dependent natural resources, to the source watershed, or, if the withdrawal is from a stream tributary to one of the Great Lakes, to the watershed of that stream.

(c) The withdrawal will be implemented in a way that incorporates environmentally sound and economically feasible water conservation measures.

(d) The withdrawal will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

(e) The proposed use of the water is reasonable, based on a consideration of all of the following:

1. Whether the proposed withdrawal is planned in a way that provides for efficient use of the water and will avoid or minimize the waste of water.

2. If the proposal would result in an increased water loss, whether efficient use is made of existing water supplies.

3. The balance of the effects of the proposed withdrawal and use, and other existing or planned withdrawals and water uses from the water source, on economic development, social development, and environmental protection.

4. The supply potential of the water source, considering quantity, quality, reliability, and safe yield of hydrologically interconnected water sources.

5. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful consumptive uses or nonconsumptive uses of water or to the quantity or quality of the waters of the Great Lakes basin and water dependent natural resources, and the proposed plans and arrangements for avoidance or mitigation of those impacts.

6. Any provisions for restoration of hydrologic conditions and functions of the source watershed or, if the withdrawal is from the stream tributary to one of the Great Lakes, of the watershed of that stream.

(7) EXEMPTIONS. Subsections (3) to (6) do not apply to withdrawals from the Great Lakes basin or diversions for any of the following purposes:

(a) To supply vehicles, including vessels and aircraft, for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

(b) To use in a noncommercial project that lasts no more than 3 months for fire fighting, humanitarian, or emergency response purposes.

(7m) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom the department has issued an individual permit or notice of coverage under a general permit under this section or s. 281.344 to immediately stop a withdrawal if the department determines that there is a danger of imminent harm to the public health, safety, or welfare, to the environment, or to the water resources or related land resources of this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a hearing. An emergency order remains in effect pending the result of the hearing.

(8) STATEWIDE WATER CONSERVATION AND EFFICIENCY. (a) *Goals and objectives.* The department shall specify water conservation and efficiency goals and objectives for the waters of the state and for the waters of the Great Lakes basin. The department shall specify goals and objectives for the waters of the Great Lakes basin that are consistent with the goals under s. 281.343 (4b) (a) and the objectives identified by the Great Lakes council under s. 281.343 (4b) (a) and (c). In specifying these goals and objectives, the department shall consult with the department of safety and professional services and the public service commission and consider the water conservation and efficiency goals and objectives developed in any pilot program conducted by the department in cooperation with the regional body.

(b) *Statewide program.* In cooperation with the department of safety and professional services and the public service commission, the department shall develop and implement a statewide water conservation and efficiency program that includes all of the following:

1. Promotion of environmentally sound and economically feasible water conservation measures through a voluntary statewide program.

1m. Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin that are necessary to implement subs. (4), (4s), (5), (5m), and (6) and s. 281.348.

2. Water conservation and efficiency measures that the public service commission requires or authorizes a water utility to implement under ch. 196.

3. Water conservation and efficiency measures that the department of safety and professional services requires or authorizes to be implemented under chs. 101 and 145.

(c) *Great Lakes basin program.* No later than the 24th month beginning after the compact's effective date, the department shall implement a Great Lakes basin water conservation and efficiency program as part of the statewide program under par. (b), for all users of the waters of the Great Lakes basin, that is designed to achieve the goals and objectives for the waters of the Great Lakes basin that are specified under par. (a). The department shall include in the Great Lakes basin program the activities in par. (b) 1. to 3. applicable in the Great Lakes basin and application of the water conservation and efficiency measures specified under par. (d) in subs. (4) (f) 6. and (g) and (6) (c).

(d) *Water conservation and efficiency measures.* The department shall promulgate rules specifying water conservation and efficiency measures for the purposes of implementing par. (b). In the rules, the department may not require retrofitting of existing fixtures, appliances, or equipment. The department shall specify measures based on all of the following:

1. The amount and type of diversion, withdrawal, or consumptive use and whether the diversion, withdrawal, or consumptive use exists on December 8, 2008, is expanded, or is new.

2. The results of any pilot water conservation program conducted by the department in cooperation with the regional body.

3. The results of any assessments under sub. (11) (d).

(9) TRIBAL CONSULTATION; PUBLIC PARTICIPATION. (a) *Tribal consultation.* The department shall consult with a federally recognized American Indian tribe or band in this state concerning a proposal that may affect the tribe or band and that is subject to regional review or Great Lakes council approval under sub. (4) or (5).

(b) *Public notice.* 1. The department shall, by rule, create procedures for providing to interested members of the public notices of each complete application that the department receives under sub. (5) to which the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6) applies, other than an application from a person operating a public water supply system that is covered by an approved water supply service area plan under s. 281.348, and each complete application that the department receives under sub. (4) and of each general permit that the department proposes to issue under sub. (4s) (a). The department shall include, in the rule, at least the following procedures:

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

b. Mailing of the notice to any person, group, local governmental unit, or state agency upon request.

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

d. Publication of the notice on the department's Internet website.

2. The department shall establish the form and content of a public notice by rule. The department shall include in every public notice concerning an application to which subd. 1. applies at least the following information:

a. The name and address of each applicant.

b. A brief description of the proposal for which the application is made, including the amount of the proposed withdrawal or diversion.

c. A brief description of the procedures for the formulation of final determinations on applications, including the 30-day comment period required under par. (c).

d. Information indicating where the complete application may be viewed on the department's Internet website.

(bm) *Notice date.* For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(c) *Public comment.* The department shall receive public comments on a proposal for which it receives an application to which par. (b) 1. applies or on a proposed general permit under sub. (4s) (a) for a 30-day period beginning when the department gives notice under par. (b) 1. The department shall retain all written comments submitted during the comment period and shall consider the comments in making its decisions on the application.

(d) *Public hearing.* 1. The department shall provide an opportunity for any interested person or group of persons, any affected local governmental unit, or any state agency to request a public hearing with respect to a proposal for which the department receives an application to which par. (b) 1. applies or on a proposed general permit under sub. (4s) (a). A request for a pub-

lic hearing shall be filed with the department within 30 days after the department gives notice under par. (b). The party filing a request for a public hearing shall indicate the interest of the party and the reasons why a hearing is warranted. The department shall hold a public hearing on a proposal for which the department receives an application to which par. (b) 1. applies or on a proposed general permit under sub. (4s) (a) if the department determines that there is a significant public interest in holding a hearing.

2. The department shall promulgate, by rule, procedures for the conduct of public hearings held under this paragraph. A hearing held under this paragraph is not a contested case hearing under ch. 227.

3. The department shall provide public notice of any hearing held under this paragraph in the manner provided under par. (b) 1. The notice shall include the time, date, and location of the hearing, a summary of the subject matter of the application or proposed general permit, and information indicating where a copy of the application or proposed general permit that is the subject of the hearing may be found on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application or proposed general permit. If the hearing concerns an application received by the department, the notice shall also include the name and address of the applicant.

(e) *Public access to information.* Any record or other information provided to or obtained by the department regarding a proposal for which an application under sub. (4) or (5) is received is a public record as provided in subch. II of ch. 19. The department shall make available to and provide facilities for the public to inspect and copy any records or other information provided to or obtained by the department regarding a proposal for which an application for a new or increased diversion or withdrawal under sub. (4) or (5) is received, except that any record or other information provided to the department may be treated as confidential upon a showing to the secretary that the record or information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), or upon a determination by the department that domestic security concerns warrant confidential treatment. Nothing in this subsection prevents the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if the analyses or summaries do not identify a specific owner or operator.

(h) *Expediting review.* The department shall take appropriate measures to expedite, to the extent feasible, applicable reviews by the regional body, Great Lakes council, parties, and the provinces of Ontario and Quebec of applications under this section that are subject to regional review.

(10m) AMENDMENT OF COASTAL MANAGEMENT PROGRAM. (a) The Wisconsin coastal management council, created under s. 14.019, shall amend this state's coastal management program submitted to the U.S. secretary of commerce under 16 USC 1455, to incorporate the requirements of this section, as they apply to the water resources of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S. secretary of commerce.

(b) After approval of the amendments submitted to the U.S. secretary of commerce under par. (a), the Wisconsin coastal management council shall, when conducting federal consistency reviews under 16 USC 1456 (c), consider the requirements specified under par. (a), if applicable.

(c) If the department issues a permit for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(11) INFORMATION, REPORTS, AND ASSESSMENTS. (a) *Statewide inventory.* 1. The department shall develop and maintain a water resources inventory consisting of information about the waters of the state including information about the location, type, quantity, and uses of water resources and the location, and type of diversions, withdrawals, and consumptive uses and quantities of withdrawals and water losses. The department shall develop the inventory in cooperation with federal and local governmental entities, agencies of this state and of the other parties, tribal agencies, and private entities. The department shall use information in the registry under sub. (3) (c) in creating the inventory.

2. The department shall create the water resources inventory under subd. 1. no later than June 1, 2014, or the first day of the 60th month beginning after the compact's effective date, whichever is later.

(b) *Annual report on water resources.* Beginning within 60 months after the compact's effective date, the department shall annually report to the Great Lakes council the information from par. (a) regarding withdrawals that average 100,000 gallons per day or more over a 30-day period, including consumptive uses, in the basin and any diversions, as well as the amounts of the withdrawals, water losses from consumptive uses, and diversions in the basin reported under sub. (3) (e).

(c) *Program report.* No later than 12 months after the compact's effective date, and every 5 years thereafter, the department shall submit a report to the Great Lakes council and the regional body describing the implementation of the program under this section, including the manner in which withdrawals from the Great Lakes basin are managed, how the criteria for approval under subs. (4), (5), and (6) are applied, and how conservation and efficiency measures are implemented.

(d) *Assessment of water conservation and efficiency program.* After the compact's effective date, the department shall annually assess the effectiveness of the water conservation and efficiency program under sub. (8) (c) in meeting the Great Lakes basin water conservation and efficiency goals under sub. (8) (a). In each assessment, the department shall consider whether there is a need to adjust the Great Lakes basin water conservation and efficiency program in response to new demands for water from the basin and the potential impacts of the cumulative effects of diversions, withdrawals, and consumptive uses and of climate. The department shall provide the assessment to the Great Lakes council and the regional body and make it available to the public.

(e) *Assessment of cumulative impacts.* The department shall participate in the periodic assessment of the impacts of withdrawals, diversions, and consumptive uses under s. 281.343 (4z) (a).

(f) *Report on threshold.* No later than the 60th month beginning after the compact's effective date, the department shall submit to the legislature under s. 13.172 (2) a report analyzing the impact of the threshold under sub. (5) (a) and providing any recommendations to change the threshold.

(g) *Water use report.* Beginning no later than 8 years after June 11, 2008, or 5 years after the last report published under s. 281.344 (11), whichever is earlier, and every 5 years thereafter, the department, using water use data reported under this section, shall publish a water use report to summarize water usage, identify related trends, identify areas of future water usage concerns, and recommend future actions to promote sustainable water use. The department shall also include in the report water resource information derived from reporting and data accumulation requirements under other water regulatory laws.

(12) FEES. (a) Subject to par. (am), a person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department an annual fee of $125, except that the department may promulgate a rule specifying a different amount and except that, notwithstanding the department's rule-making authority, no person is required to pay more than $1,000 per year under this paragraph.

(am) The following are not considered in determining the capacity of a water supply system for the purposes of par. (a):

1. The capacity of a well that has a capacity of less than 100,000 gallons per day and that is used primarily to provide water to a single-family or multifamily residence.

2. The capacity of a well used primarily for fire protection purposes.

(b) In addition to the fee under par. (a), a person who withdraws from the Great Lakes basin more than 50,000,000 gallons per year shall pay to the department an annual fee in an amount specified under par. (c).

(c) The department shall promulgate a rule specifying the amount of the fee under par. (b).

(d) A person who submits an application under sub. (4) shall pay to the department a review fee of $5,000 and shall pay to the department an amount equal to any fees imposed on this state related to review of the proposed diversion by the Great Lakes council or the regional body.

(13m) EXCEEDANCES. It is not a violation of this section to withdraw an amount of water that exceeds the withdrawal amount specified in a permit issued under sub. (5) or in the database under sub. (4s) (i), unless the amount by which the withdrawal exceeds the withdrawal amount would result in the application of the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6).

(14) PENALTIES. (a) Any person who violates this section or any rule promulgated or approval issued under this section shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of continued violation is a separate offense.

(c) In addition to the penalties under par. (a), the court may order the defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the violation.

History: 2007 a. 227; 2009 a. 28, 180, 276; 2011 a. 32, 167; 2015 a. 177; 2017 a. 21, 58; 2017 a. 365 s. 112.

Cross-reference: See also ch. NR 860, Wis. adm. code.

Diversions from the Great Lakes: Out of the Watershed and in Contravention of the Compact. Wabiszewski. 100 MLR 627 (2016).

281.348 Water supply service area plans for public water supply systems.

(1) DEFINITIONS. In this section:

(a) "Compact's effective date" means the effective date of the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343 (9) (d).

(b) "Cost-effectiveness analysis" means a systematic comparison of alternative means of providing a water supply in order to identify alternatives that will minimize total resources costs and maximize environmental benefits over a planning period.

(c) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec.

(cm) "Great Lakes council" means the Great Lakes — St. Lawrence River Basin Water Resources Council, created under s. 281.343 (2) (a).

(d) "Public water supply" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(e) "Total resources costs" includes monetary costs and direct and indirect environmental as well as other nonmonetary costs.

(f) "Withdraw" means to take water from surface water or groundwater.

(g) "Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

(2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) For the purposes of this section, the surface water divide is used to determine whether a withdrawal of surface water or groundwater is from the Great Lakes basin.

(b) For the purposes of this section, the withdrawal of water from more than one source within the Great Lakes basin to supply a common distribution system is considered one withdrawal.

(3) REQUIREMENTS. (a) 1. The department shall establish, by rule, and administer a continuing water supply planning process for the preparation of water supply plans for persons operating public water supply systems. The period covered by a plan under this subsection may not exceed 20 years. A regional planning commission may prepare plans for persons operating public water supply systems.

2. A person operating a public water supply system that serves a population of 10,000 or more and that withdraws water from the waters of the state shall prepare a plan under this section no later than December 31, 2025.

3. A person operating a public water supply system shall obtain department approval of a water supply service area plan that provides for a new or increased diversion that requires approval under s. 281.346 (4) or a new or increased withdrawal that requires approval under s. 281.346 (4s) or (5).

4. Except as provided in subd. 3., a person operating a public water supply system is not required to obtain department approval of a water supply service area plan.

(b) The department shall include in the process under par. (a) procedures and requirements for all of the following:

1. Public review and comment on a proposed plan. For a plan prepared after the compact's effective date covering a public water supply system that withdraws water from the Great Lakes basin, the procedures and requirements under this subdivision shall be consistent with s. 281.343 (6) (b).

2. Submission of the plan to the governing body of each city, village, and town whose public water supply is addressed by the plan.

2e. Submission of the plan to the department if department approval is required under par. (a) 3.

2m. Approval of the plan by the department if department approval is required under par. (a) 3.

3. Ensuring that plans remain current.

5. Reopening or reconsideration by the department of a previously approved plan.

(bm) A person preparing a plan under par. (a) shall consider existing regional water needs assessments and other regional water supply planning information.

(c) A person preparing a plan under par. (a) shall include all of the following in the plan:

1. Delineation of the area for which the plan is being prepared.

1m. If department approval is required, delineation of proposed water supply service areas for each public water supply system making a withdrawal covered by the plan, except as provided in par. (cr).

2. An inventory of the sources and quantities of the current water supplies in the area.

3. A forecast of the demand for water in the area over the period covered by the plan.

3m. Identification of the existing population and population density of the area for which the plan is prepared and forecasts of the expected population of the area during the period covered by the plan based on growth projections for the area and municipally planned population densities.

4. Identification of options for supplying water in the area for the period covered by the plan that are approvable under other applicable statutes and rules.

4m. A cost-effectiveness analysis of regional and individual water supply and water conservation alternatives if the plan provides for a new or increased diversion requiring approval under s. 281.346 (4) or a new or increased withdrawal requiring approval under s. 281.346 (4s) or (5).

5. An assessment of the environmental and economic impacts of carrying out specific significant recommendations of the plan.

6. A demonstration that the plan will effectively utilize existing water supply storage and distribution facilities and wastewater infrastructure to the extent practicable.

7. Identification of the procedures for implementing and updating the plan.

8. An analysis of how the plan supports and is consistent with applicable comprehensive plans, as defined in s. 66.1001 (1) (a), and applicable approved areawide water quality management plans under s. 283.83.

9. Other information specified by the department.

(cm) For the purposes of plans under par. (a), an areawide water quality planning agency designated by the governor under ch. NR 121, Wis. Adm. Code, may provide regional water needs assessments and other regional water supply planning information.

(cr) For the purposes of plans under par. (a), if the Great Lakes council approves a diversion area for a public water supply system proposing to make a diversion from the Great Lakes basin under s. 281.346 (4) (e), that diversion area shall be the delineated water supply service area for purposes of this section and does not need to be consistent with the approved areawide water quality management plan under s. 283.83 for the planning area.

(d) If department approval of a plan is required, the department may not approve a plan unless all of the following apply:

1. The plan provides for a water supply system that is approvable under this section and other applicable statutes and rules based on a cost-effectiveness analysis of regional and individual water supply and water conservation alternatives.

2. The plan will effectively utilize existing water supply storage and distribution facilities and wastewater infrastructure to the extent practicable.

3. The plan is consistent with applicable comprehensive plans, as defined in s. 66.1001 (1) (a).

5. Beginning on December 8, 2011, if the plan covers a public water supply system that withdraws water from the Great Lakes basin, the plan complies with any applicable requirements in s. 281.346 (5e).

(e) The department shall specify in its approval of a plan under this section a water supply service area for each public water supply system making a withdrawal covered by the plan. The department may not limit water supply service areas based on jurisdictional boundaries, except as necessary to prevent waters of the Great Lakes basin from being transferred from a county that lies completely or partly within the Great Lakes basin into a county that lies entirely outside the Great Lakes basin, or except where the water supply service area is delineated by a diversion area approved by the Great Lakes council under par. (cr).

(f) A person applying for an approval under s. 281.344 (4) or 281.346 (4) may use elements of an approved plan under this subsection to show compliance with requirements under s. 281.344 (4) or 281.346 (4) to which the plan is relevant.

(4) WITHDRAWAL AMOUNT IN CERTAIN PLANS. If a plan under this section that covers a public water supply system making a withdrawal from the Great Lakes basin requires department approval, the department shall specify a withdrawal amount for the public water supply system equal to the greatest of the following:

(a) The amount needed for the public water supply system to provide a public water supply in the water supply service area in the plan during the period covered by the plan, as determined using the population and related service projections in the plan.

(b) If the withdrawal is covered by an individual permit issued under s. 281.344 (5) or 281.346 (5) when the department approves the plan, the withdrawal amount in that permit when the department approves the plan or, if the withdrawal is covered by a general permit issued under s. 281.344 (4s) or 281.346 (4s) when the department approves the plan, the withdrawal amount for the public water supply system in the database under s. 281.346 (4s) (i) when the department approves the plan.

(5) WATER SUPPLY SERVICE AREA. A water supply service area plan prepared under this section does not create, establish, or evidence an obligation for any water utility to provide service to the service area delineated or covered in the plan. The public service commission may not require a water utility to extend or provide service to an area on the basis of the provisions of a plan.

History: 2007 a. 227; 2009 a. 28; 2017 a. 38; 2021 a. 126.

281.35 Water resources conservation and management.

(1) DEFINITIONS. In this section:

(a) "Approval" means a permit issued under s. 30.18, 281.344 (5), or 281.346 (5) or an approval under s. 281.17 (1), 2001 stats., or s. 281.34 or 281.41.

(b) "Authorized base level of water loss" means any of the following:

1. The maximum 30-day average water loss authorized as a condition of an approval.

2. If subd. 1. does not apply, the highest average daily water loss over any 30-day period that is reported to the department under s. 281.17, 2001 stats., or s. 30.18 (6) (c), 281.34, 281.344 (5), 281.346 (5), or 281.41.

3. If there is no water loss from an existing withdrawal, zero gallons per day.

(bm) "Compact's effective date" means the effective date of the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343.

(c) "Consumptive use" means a use of waters of the state, other than an interbasin diversion, that results in a failure to return any or all of the water to the basin from which it is withdrawn. "Consumptive uses" include, but are not limited to, evaporation and incorporation of water into a product or agricultural crop.

(cm) "Facility" means an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties.

(d) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec.

(e) "Great Lakes charter" means the document establishing the principles for the cooperative management of Great Lakes

water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(f) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, the commonwealth of Pennsylvania and the provinces of Ontario and Quebec, Canada.

(g) "Interbasin diversion" means a transfer of the waters of the state from either the Great Lakes basin or the upper Mississippi River basin to any other basin.

(h) "International joint commission" means the commission established by the boundary water agreement of 1909 between the United States and Canada.

(i) "Person" has the meaning given in s. 281.01 (9) and also includes special purpose districts established under s. 66.0827, other states and provinces and political subdivisions of other states and provinces.

(j) "Upper Mississippi River basin" means the watershed of the Mississippi River upstream from Cairo, Illinois.

(k) "Upper Mississippi River region" means the geographic region composed of the states of Illinois, Iowa, Minnesota, Missouri and Wisconsin.

(L) "Water loss" means a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use or both.

(m) "Withdrawal" means the removal or taking of water from the waters of the state.

(2) AGGREGATION OF MULTIPLE WITHDRAWALS. In calculating the total amount of an existing or proposed water loss for purposes of determining the applicability of sub. (4), a person shall include all separate interbasin diversions and consumptive uses, or combinations thereof, which the person makes or proposes to make to supply a single facility or public water supply system.

(4) WATER LOSS APPROVAL REQUIRED. (a) This subsection applies to all of the following:

1. A person to whom a permit has been issued under s. 30.18 or who is required to obtain a permit under that section before beginning or increasing a withdrawal.

2. A person who is operating a well under an approval issued under s. 281.17 (1), 2001 stats.

2m. A person who is operating a well under an approval issued under s. 281.34 or who is required to obtain an approval under that section before constructing a well.

3. An owner who is operating a system or plant under plans approved under s. 281.41 or who is required to submit plans and obtain an approval under that section before construction or extension of a proposed system or plant.

4. A person to whom a permit under s. 281.344 (5) or 281.346 (5) has been issued or who is required to obtain a permit under one of those provisions before beginning or increasing a withdrawal.

(b) Before any person specified in par. (a) may begin a new withdrawal or increase the amount of an existing withdrawal, the person shall apply to the department under s. 30.18, 281.34, 281.344 (5), 281.346 (5), or 281.41 for a new approval or a modification of its existing approval if either of the following conditions applies:

1. The person proposes to begin a new withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

2. The person proposes to increase an existing withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss.

(5) APPLICATION; APPROVAL; DENIAL. (a) *Application.* An application under sub. (4) (b) shall contain a statement of and documentation for all of the following:

1. The current operating capacity of the withdrawal system, if the proposed increase requires the expansion of an existing system.

2. The total new or increased operating capacity of the withdrawal system.

3. The place and source of the proposed withdrawal.

4. The place of the proposed discharge or return flow.

5. The place and nature of the proposed water use.

6. The estimated average annual and monthly volumes and rates of withdrawal.

7. The estimated average annual and monthly volumes and rates of water loss.

8. The anticipated effects, if any, that the withdrawal will have on existing uses of water resources and related land uses both within and outside of the Great Lakes basin or the upper Mississippi River basin.

9. Any land acquisition, equipment, energy consumption or the relocation or resiting of any existing community, facility, right-of-way or structure that will be required.

10. The total anticipated costs of any proposed construction.

11. A list of all federal, state, provincial and local approvals, permits, licenses and other authorizations required for any proposed construction.

13. A statement as to whether the proposed withdrawal complies with all applicable plans for the use, management and protection of the waters of the state and related land resources, including plans developed under s. 283.83.

14. A description of other ways the applicant's need for water may be satisfied if the application is denied or modified.

15. A description of the conservation practices the applicant intends to follow.

16. Any other information required by the department by rule.

(b) *Great Lakes basin; consultation required.* If the department receives an application before the compact's effective date that, if approved, will result in a new water loss to the Great Lakes basin averaging more than 5,000,000 gallons per day in any 30-day period, or an increase in an existing withdrawal that will result in a water loss averaging 5,000,000 gallons per day in any 30-day period above the applicant's authorized base level of water loss, the department shall notify the office of the governor or premier and the agency responsible for management of water resources in each state and province of the Great Lakes region and, if required under the boundary water agreement of 1909, the international joint commission. The department shall also request each state and province that has cooperated in establishing the regional consultation procedure under sub. (11m) to comment on the application. In making its determination on an application, the department shall consider any comments that are received within the time limit established under par. (c).

(c) *Department response.* Within the time limit established by the department by rule, which shall be consistent with the time limit, if any, established by the governors and premiers of the Great Lakes states and provinces, the department shall do one of the following in writing:

1. Notify the applicant that the application is approved or denied, and if it is denied, the reason for the denial.

2. Notify the applicant of any modifications necessary to qualify the application for approval.

(d) *Grounds for approval.* Before approving an application, the department shall determine all of the following:

1. That no public water rights in navigable waters will be adversely affected.

2. That the proposed withdrawal does not conflict with any applicable plan for future uses of the waters of the state, including plans developed under ss. 281.12 (1) and 283.83.

3. That both the applicant's current water use, if any, and the applicant's proposed plans for withdrawal, transportation, development and use of water resources incorporate reasonable conservation practices.

4. That the proposed withdrawal and uses will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the upper Mississippi River basin.

5. That the proposed withdrawal and uses are consistent with the protection of public health, safety and welfare and will not be detrimental to the public interest.

6. That the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state.

7. If the proposed withdrawal will result in an interbasin diversion, all of the following:

a. That each state or province to which the water will be diverted has developed and is implementing a plan to manage and conserve its own water quantity resources, and that further development of its water resources is impracticable or would have a substantial adverse economic, social or environmental impact.

b. That granting the application will not impair the ability of the Great Lakes basin or upper Mississippi River basin to meet its own water needs.

c. That the interbasin diversion alone, or in combination with other water losses, will not have a significant adverse impact on lake levels, water use, the environment or the ecosystem of the Great Lakes basin or upper Mississippi River basin.

d. That the proposed withdrawal is consistent with all applicable federal, regional and interstate water resources plans.

(e) *Right to hearing.* Any person who receives notice of a denial or modification requirement under par. (c) is entitled to a contested case hearing under ch. 227 if the person requests the hearing within 30 days after receiving the notice.

(f) The department shall charge each applicant for an approval under this subsection the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(6) APPROVAL. (a) *Issuance; contents.* Subject to par. (am), if an application is approved under sub. (5), the department shall modify the applicant's existing approval or shall issue a new approval that specifies all of the following:

1. The location of the withdrawal.

2. The authorized base level of water loss from the withdrawal.

3. The dates on which or seasons during which water may be withdrawn.

4. The uses for which water may be withdrawn.

5. The amount and quality of return flow required and the place of discharge.

6. The requirements for reporting volumes and rates of withdrawal and any other date specified by the department.

7. Any other conditions, limitations and restrictions that the department determines are necessary to protect the environment and the public health, safety and welfare and to ensure the conservation and proper management of the waters of the state.

8. Any requirements for metering, surveillance and reporting that the department determines are necessary to ensure compliance with other conditions, limitations or restrictions of the approval.

9. If the department determines that a time limit is necessary, the date on which approval for the withdrawal expires.

(am) *Water loss permit.* If the department approves an application under sub. (5) for a withdrawal that is covered by a permit under s. 281.344 (5) or s. 281.346 (5) and another approval, the department shall modify the permit under s. 281.344 (5) or 281.346 (5), rather than the other approval, to specify the matters under par. (a).

(b) *Review.* The department shall review each approval prior to the expiration date specified under par. (a) 9., if any, or within 5 years from the date of issuance and at least every 5 years thereafter.

(c) *Modification by department.* The department may at any time propose modifications of the approval or additional conditions, limitations or restrictions determined to be necessary to ensure continued compliance with this section or with any other applicable statute or rule.

(d) *Revocation.* If the department determines that a person to whom an approval has been issued would be unable under any conditions, limitations or restrictions to comply with this section or another applicable statute or rule, it shall revoke the approval.

(e) *Request for modification.* A person to whom an approval has been issued or any person adversely affected by a condition, limitation or restriction of an approval may request that the department modify a condition, limitation or restriction of an approval.

(f) *Notice; right to hearing.* The department shall notify the person to whom the approval has been issued and any other person who has in writing requested notice of the receipt of a request to modify an approval or of the department's intent to modify or revoke an approval. The person to whom the approval is issued is entitled to a contested case hearing under ch. 227 before a revocation or modification takes effect. Any other person who may be adversely affected by a proposed modification is entitled to a contested case hearing under ch. 227.

(g) *Fees.* The department shall periodically collect from each person whose application under this subsection is approved the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(7) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom an approval is issued to immediately stop a withdrawal if the department determines that there is a danger of imminent harm to the public health, safety or welfare, to the environment or to the water resources or related land resources of this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a hearing. An emergency order remains in effect pending the result of the hearing.

(9) AMENDMENT OF COASTAL MANAGEMENT PROGRAM. (a) The Wisconsin coastal management council, established under executive order number 62, dated August 2, 1984, shall amend this state's coastal management program submitted to the U.S. secretary of commerce under 16 USC 1455, to incorporate the requirements of this section and, before the compact's effective date, s. 281.344 and the findings and purposes specified in 1985 Wisconsin Act 60, section 1, as they apply to the water resources of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S. secretary of commerce.

(b) After approval of the amendments submitted to the U.S. secretary of commerce under par. (a), the Wisconsin coastal man-

agement council shall, when conducting federal consistency reviews under 16 USC 1456 (c), consider the requirements, findings and purposes specified under par. (a), if applicable.

(c) If the department issues an approval for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(d) This subsection does not apply after the compact's effective date.

(10) RULE MAKING; FEES. (a) The department shall promulgate rules establishing all of the following:

1. The procedures for reviewing and acting on applications under subs. (4) and (5).

2. Requirements for reporting volumes and rates of withdrawals.

3. The method for determining what portion of a withdrawal constitutes a consumptive use.

5. A graduated schedule for the fees required under subs. (5) (f) and (6) (g) and a schedule for collecting the fees under sub. (6) (g) periodically.

(b) The department may promulgate any other rule necessary to implement this section.

(11) COOPERATION WITH OTHER STATES AND PROVINCES. Before the compact's effective date, the department shall do all of the following:

(a) Cooperate with the other Great Lakes states and provinces to develop and maintain a common base of information on the use and management of the water resources of the Great Lakes basin and to establish systematic arrangements for the exchange of such information.

(b) Collect and maintain information regarding the locations, types and quantities of water use, including water losses, in a form that is comparable to the form used by the other Great Lakes states and provinces.

(c) Collect, maintain and exchange information on current and projected future water needs with the other Great Lakes states and provinces.

(d) Cooperate with the other Great Lakes states and provinces in developing a long-term plan for developing, conserving and managing the water resources of the Great Lakes basin.

(e) As provided in the Great Lakes charter, participate in the development of a regional consultation procedure for use in exchanging information on effects of proposed interbasin diversions and consumptive uses.

(11m) UPPER MISSISSIPPI RIVER BASIN CONSULTATION. The department shall participate in the development of an upper Mississippi River basin regional consultation procedure for use in exchanging information on the effects of proposed water losses from that basin.

(12) MISCELLANEOUS PROVISIONS. (a) The enumeration of any remedy under this section does not limit the right to any other remedy available in an action under the statutory or common law of this state or any other state or province, federal law or Canadian law.

(b) Proof of compliance with this section is not a defense in any action not founded on this section.

(c) This state reserves the right to seek, in any state, federal or provincial forum, an adjudication of the equitable apportionment of the water resources of the upper Mississippi River basin and, before the compact's effective date, of the Great Lakes basin, and the protection and determination of its rights and interests in those water resources, in any manner provided by law.

History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672; 2003 a. 310; 2007 a. 96, 227; 2009 a. 180; 2017 a. 134.

NOTE: Section 1 of 1985 Wis. Act 60, which created this section, is entitled "Legislative findings; purpose."

Cross-reference: See also ch. NR 142, Wis. adm. code.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

There is nothing in either this section or s. 281.34 that limits the Department of Natural Resources' (DNR) authority to consider the environmental impacts of a proposed high capacity well, nor is there any language in subch. II of this chapter that requires DNR to issue a permit for a well if the statutory requirements are met and no formal review or findings are required. There being no language expressly revoking or limiting DNR's authority and general duty to protect and manage waters of the state, DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

The Department of Natural Resources (DNR) is required to consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state. Upon what evidence, and under what circumstances, that duty is triggered is a highly fact-specific matter that depends upon the information submitted by the well owner in the well permit application and any other information submitted to DNR decision makers. DNR should use both its expertise in water resources management and its discretion to determine whether its duty as trustee of public trust resources is implicated by a proposed high capacity well permit application such that it has an obligation to consider environmental concerns. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

281.36 Permits for discharges into wetlands; mitigation.

(1) DEFINITIONS. In this section:

(a) "Additional federal law or interpretation" means any of the following:

1. An amendment to 33 USC 1344 (f) that becomes effective after January 9, 2001.

2. Any other federal statutory provision that affects the exemptions under 33 USC 1344 (f) and that becomes effective after January 9, 2001.

3. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that becomes effective after January 9, 2001.

4. A decision issued by a federal district or federal appellate court that affects the application of a federal amendment or provision described in subds. 1. to 3., that applies to wetlands located in this state, and that is issued after January 9, 2001.

(ad) "Bank service area" means the geographic area corresponding to the HUC 6 within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between the department and the U.S. army corps of engineers and referenced in a mitigation banking instrument under sub. (3w).

(ae) "Basin" means the Lake Michigan, Lake Superior, or Mississippi River basin.

(am) "Demonstrable economic public benefit" means an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

(b) "Existing federal law or interpretation" means any of the following:

1. 33 USC 1344 (f), as amended to January 8, 2001.

2. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344

(f), that applies to wetlands located in this state, and that is in effect on January 8, 2001.

3. A decision issued by a federal district or federal appellate court that affects the application of a federal statute or provision described in subd. 1. or 2., that applies to wetlands located in this state, and that is issued on or before January 8, 2001.

(bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning exists on July 1, 2012.

(bf) "HUC 6" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 6-digit basin scale (the hydrologic unit code 6).

(bg) "HUC 8" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 8-digit subbasin scale (the hydrologic unit code 8).

(bj) "Mitigation" means the restoration, enhancement, creation, or preservation of wetlands to compensate for adverse impacts to other wetlands.

(bL) "Mitigation bank" means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands.

(bn) "Mitigation project" means mitigation of the type specified in sub. (3r) (a) 3.

(br) "Nonfederal wetland" means a wetland that is not subject to federal jurisdiction under 33 USC 1344.

(cp) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

(ct) "Small business" has the meaning given in s. 227.114 (1).

(d) "Water quality standards" means water quality standards set under rules promulgated by the department under s. 281.15.

(2m) DELINEATION PROCEDURES. For purposes of delineating the boundary of a wetland under this section, the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers shall be used. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department designates that edition as the one to be used under this subsection.

(3b) PERMIT REQUIRED. (a) For purposes of this section, a wetland general or individual permit issued by the department constitutes water quality certification as required by 33 USC 1341 (a).

(b) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition contained in a wetland general or individual permit issued by the department under this section. The department may not issue a wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

(3g) WETLAND GENERAL PERMITS. (a) *Required permits.* The department shall issue a wetland general permit for each of the following types of discharges:

1. A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than 2 acres of wetland.

2. A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than 2 acres of wetland.

3. A temporary or permanent discharge for routine utility construction and maintenance projects and activities.

4. A discharge that is part of a development for industrial purposes, if the discharge does not affect more than 10,000 square feet of wetland. For purposes of this subdivision, the development of a waste disposal site is considered to be a development for industrial purposes.

5. A discharge that is part of a development for commercial purposes, if the discharge does not affect more than 10,000 square feet of wetland.

6. A discharge that is part of a development for residential purposes, if the discharge does not affect more than 10,000 square feet of wetland.

7. A discharge that is part of a development for agricultural or aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.

8. A discharge that is part of a development for municipal purposes, if the discharge does not affect more than 10,000 square feet of wetland.

9. A discharge that is part of a development for recreational purposes, if the discharge does not affect more than 10,000 square feet of wetland.

10. A discharge that is necessary for the construction, reconstruction, or maintenance of a bridge or culvert that is part of a transportation project that is being carried out under the direction and supervision of a city, village, town, or county.

(b) *Additional required permits.* In addition to the wetland general permits required under par. (a), the department shall issue wetland general permits that are consistent with, and correspond to, any general permits that are issued under 33 USC 1344 (e) and that regulate discharges other than those regulated under the required wetland general permits issued under par. (a).

(c) *Additional permits.* The department may issue wetland general permits, in addition to those required under pars. (a) and (b), to regulate other discharges that affect wetlands located in this state.

(d) *Requirements; conditions; restrictions.* In issuing wetland general permits under this subsection, the department shall establish requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects, and a general permit may apply only to a single and complete project. As part of a general permit, the department may prohibit discharges into wetlands that are identified by the department as being one of the following:

1. Great Lakes ridge and swale complexes.

2. Interdunal wetlands.

3. Coastal plain marshes.

4. Emergent marshes containing wild rice.

5m. Sphagnum bogs that are located in the area located south of a horizontal line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago.

6. Boreal rich fens.

7. Calcareous fens.

(e) *Period of validity; subsequent actions.* A wetland general permit issued under this subsection is valid for a period of 5 years. Upon compliance with the requirements under pars. (f) to

(g), the department may renew, modify, or revoke a wetland general permit issued under this subsection.

(f) *Public notice.* The department shall provide to interested members of the public notices of its intention to issue, renew, modify, or revoke a wetland general permit under this subsection. Procedures for providing public notices shall include all of the following:

1. Publication of a class 1 notice under ch. 985.

2. Providing a copy of the notice to any person or group upon request of the person or group.

3. Publication of the notice on the department's Internet website.

(fg) *Date of notice.* For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(fm) *Written comments.* The department shall provide a period of not less than 30 days after the date of the public notice during which time interested persons may submit their written comments on the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. All written comments submitted during the period for comment shall be retained by the department and considered by the department in acting on the general permit.

(fr) *Description in notice.* Every public notice provided by the department under par. (f) shall include a description of the discharges to be authorized under the wetland general permit.

(g) *Public informational hearing.* 1. The department shall provide an opportunity for any interested state agency or federal agency or person or group of persons to request a public informational hearing with respect to the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. The request for the hearing shall be filed with the department within 30 days after the provision of the public notice under par. (f) and shall indicate the interest of the party filing the request and the reasons why the hearing is warranted.

2. The department shall hold a public informational hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this subsection are not contested cases under s. 227.01 (3).

3. Public notice of any hearing held under this subsection shall be circulated in accordance with the requirements under par. (f). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the wetland general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

(h) *Authorizations for discharges under wetland general permits.* 1. A person wishing to proceed with a discharge that may be authorized under a wetland general permit shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the discharge authorized by the general permit unless subd. 4. applies. The application shall provide information describing the discharge in order to allow the department to determine whether the discharge is authorized by the wetland general permit and shall give the department consent to enter and inspect the site, subject to sub. (9). The application shall identify all activities affecting wetlands that will be conducted as part of the single and complete project. The application shall include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable. The application shall be accompanied by the fee specified in sub. (12) (a). If the application is for authorization to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as calculated under sub. (11). The department may make a request for additional information one time during this 30-day period.

2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice, hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit, except as provided in s. 295.60 (3) (b).

2m. If adverse weather conditions prevent the department from conducting an accurate on-site inspection during this 30-day period specified in subd. 1., the department shall give notice to the person wishing to proceed with the discharge that adverse weather conditions will prevent the department from complying with the 30-day deadline and shall complete the inspection as soon as weather conditions permit.

3. If the department requests additional information under subd. 1., the 30-day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives all of the additional information.

4. As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

5. Authorization to proceed under a wetland general permit is valid for 5 years after the date on which the discharge is considered to be authorized or until the discharge is completed, whichever occurs first.

(i) *Wetland individual permit in lieu of wetland general permit.* For a proposed discharge for which an application has been received by the department under par. (h), the department may decide to require that a person who submitted the application apply for a wetland individual permit if the department has inspected the site as provided in par. (h) and has determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

(3m) WETLAND INDIVIDUAL PERMITS. (a) *When permit required.* Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4), (4m) (a), (4n), or (4r). Before submitting the application, the department shall hold a meeting with the applicant to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating the wetland. An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a).

(b) *Analysis of practicable alternatives.* An applicant shall include in an application submitted under par. (a) an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, subject to the limitations in sub. (3n) (a).

(c) *Review; no additional information required.* In issuing

wetland individual permits under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30-day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure for purposes of par. (g) 1.

(d) *Additional information requested.* If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30-day period specified in par. (c). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) *Specificity of notice; limits on information.* Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed.

(f) *Failure to meet time limits.* If the department fails to meet the 30-day time limit under par. (c) or 10-day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30-day or 10-day time period for purposes of par. (g) 1.

(g) *Notice of application.* 1. Within 15 days after the date of closure, as determined under par. (c) or (d), the department shall provide notice of pending application to interested members of the public. If the applicant has requested a public informational hearing as part of the submitted application, a notice of the public hearing shall be part of the notice of pending application.

2. If the notice of pending application does not contain a notice of public informational hearing, any person may request a public informational hearing in writing or the department may decide to hold a public informational hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(h) *Request for hearing.* A request for a public informational hearing under par. (g) 2. must be submitted to the department or the department's decision to hold a public informational hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public informational hearing within 15 days after the request for the public hearing is submitted or the department makes its decision to hold a public informational hearing.

(i) *Decision.* Within 20 days after the period for public comment under par. (j) has ended or if no public informational hearing is held, within 30 days after the 30-day comment period under par. (j) has ended, the department shall render a decision issuing or denying the wetland individual permit that is the subject of the application submitted under par. (a). If the decision issued by the department under this paragraph is a denial, the department shall include in the decision the specific grounds and reasons as to how the applicable provisions of this section were not met. If the denial is based on an incomplete application, the department shall inform the applicant of the areas of the application that were incomplete.

(j) *Public comment.* 1. The department shall provide a period for public comment after the department has provided a notice of pending application under par. (g) during which time any person may submit written comments with respect to the application for a wetland individual permit. The department shall retain all of the written comments submitted during this period and shall consider all of the comments in rendering a decision on the application. The period for public comment shall end on the 30th day following the date on which the department provides the notice of pending application except as provided in subd. 2.

2. If a public informational hearing is held, the period for public comment shall end on the 10th day following the date on which the hearing is completed.

(3n) REVIEW BY DEPARTMENT. (a) *Review limits.* For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the analysis of practicable alternatives presented in the application under sub. (3m) (b). The department shall limit its review of practicable alternatives as follows:

1. The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated any of the following:

a. That the proposed project causing the discharge will result in a demonstrable economic public benefit.

b. That the proposed project is necessary for the expansion of an existing industrial, commercial, agricultural, or aquacultural facility that is in existence at the time the application is submitted.

c. That the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

2. Except as provided in par. (am), the department shall limit its review to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:

a. The construction or expansion of a single-family home and attendant features.

b. The construction or expansion of a barn or farm buildings.

c. The expansion of a small business project.

3. The department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department.

(am) *Exception to review limit.* A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review under par. (a) 2.

(b) *Factors used in review.* In its review under par. (a), the department shall consider all of the following factors when it assesses the impacts to wetland functional values:

1. The direct impacts of the proposed project to wetland functional values.

2. The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.

3. Potential secondary impacts of the proposed project to wetland functional values.

4. The impact on functional values resulting from the mitigation that is required under sub. (3r).

5. The net positive or negative environmental impact of the proposed project.

(c) *Standards for issuing permits.* The department shall make a finding that a proposed project causing a discharge is in compliance with water quality standards and that a wetland individual permit may be issued if the department determines that all of the following apply:

1. The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.

2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.

3. The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

(d) *Mitigation required.* 1. Except as provided in subd. 2., the department shall require mitigation under the program established under sub. (3r) for wetland individual permits it issues under this subsection and for a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland. This subsection does not entitle an applicant to a wetland individual permit or any other approval in exchange for conducting mitigation.

2. If the department issues a wetland individual permit under sub. (3m) to a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, water, or power to its members only, the department may not require mitigation under the program established under sub. (3r) unless the discharge authorized by the wetland individual permit will result in a permanent fill of more than 10,000 square feet of wetland.

(3p) NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS. (a) The department shall establish procedures for providing notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). The procedures shall require all of the following:

1. That the notice be published as a class 1 notice under ch. 985.

2. That the notice be provided to any person or group upon request of the person or group.

3. That the notice be published on the department's Internet website.

(b) The department shall prescribe the form and content of notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). Each notice shall include all of the following information:

1. The name and address of the applicant.

2. A brief description of the discharge that requires the permit and the project that includes the discharge.

3. For a notice of a public informational hearing, the time, date, and location of the hearing.

4. For a notice of pending application and a notice of a public informational hearing, a brief, precise, easily understandable, plain-language description of the discharge and information indicating where the pending application may be viewed on the department's Internet website.

5. For a notice of complete application and a notice of a public informational hearing, a statement of the tentative determination of the department on the permit.

6. For a notice of complete application and a notice of public informational hearing, a brief description of the procedures for the formulation of final determinations, including a description of the comment period required under sub. (3m) (j).

(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet website.

(d) 1m. The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

a. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices.

b. Requiring that the applicant for the permit pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.

2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3m) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing under this chapter class 1 notices under ch. 985.

(3q) ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this subsection, "applicant" means any person applying for a wetland individual permit under this section or any person who has been issued such a permit under this section.

(b) *Request for administrative review.* Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any wetland individual permit issued under this section.

2. The imposition of, or failure to impose, a condition on any wetland individual permit issued under this section.

(c) *Content of the petition.* If the petitioner is not the applicant, the petition shall describe the petitioner's objection to the wetland individual permit and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed discharge under the wetland individual permit is allowed to proceed.

2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

(d) *Stays.* 1. The discharge shall be stayed pending an administrative hearing under this subsection if the petition contains a request for the stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

2. If a stay is requested under subd. 1., the stay shall be in effect until either the department denies the request for an administrative hearing or the hearing examiner determines that the stay is not necessary.

(e) *Filings.* The petitioner shall file a copy of the petition with the department. If the petitioner is not the applicant, the petitioner shall simultaneously provide a copy of the petition to the

applicant. The applicant may file a response to the petition with the department. If the applicant files a response under this paragraph, it shall be filed within 15 days after the petition is filed.

(f) *Action on petition.* 1m. The department shall grant or deny the petition within 30 days after the petition is filed. The failure of the department to dispose of the petition within this 30-day period is a denial. The department shall deny the petition if any of the following applies:

a. The petitioner is not the applicant, and the petition does not comply with the requirements of par. (c).

b. The objection contained in the petition is not substantive. The department shall determine that an objection is substantive if the supporting facts contained in the objection appear to be substantially true and raise reasonable grounds to believe that the provisions of this section may be violated if the activity or project is undertaken.

3. If the department denies the petition, the department shall send the petitioner the denial in writing, stating the reasons for the denial.

4. If the department grants a petition under this subsection, the department shall refer the matter to the division of hearings and appeals in the department of administration within 15 days after granting the petition unless the petitioner and the applicant agree to an extension.

(g) *Administrative hearing.* 1. An administrative hearing under this subsection shall be treated as a contested case under ch. 227.

2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30 days after receipt of the referral under par. (f) 4., determine whether continuation of the stay is necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the administrative hearing. The hearing examiner shall make the determination based on the request under par. (d) 1., any response from the applicant under par. (e), and any testimony at a public hearing or any public comments. The determination shall be made without a hearing.

3. An administrative hearing under this subsection shall be completed within 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties agree to an extension of that period. In addition, a hearing examiner may grant a one-time extension for the completion of the hearing of up to 60 days on the motion of any party and a showing of good cause demonstrating extraordinary circumstances justifying an extension.

4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the administrative hearing at least 30 days before the date of the hearing to all of the following:

a. The applicant.

b. Each petitioner, if other than the applicant.

c. Any other persons required to receive notice as provided under sub. (3p).

5. In an administrative hearing under this subsection, the petitioner shall proceed first with the presentation of evidence and shall have the burden of proof.

(h) *Judicial review.* 1. Any person whose substantial interest is affected by a decision of the department under par. (b) 1. or 2. may commence an action in circuit court to review that decision.

2. Any party aggrieved by a decision of the hearing examiner under par. (g) may commence an action in circuit court to review that decision.

(3r) MITIGATION; IN LIEU FEE SUBPROGRAM. (a) The department shall establish a mitigation program that applies only to the issuance of wetland individual permits and, with respect to a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland, the portion of the affected wetland that exceeds 10,000 square feet or 1.5 acres, respectively. Under the mitigation program, subject to par. (am), the department shall allow mitigation to be accomplished by any of the following methods:

1. a. Except as provided in subd. 1. b. and par. (ag), purchasing credits from a mitigation bank located in the same HUC 8 as the wetland impacted by the discharge.

b. Except as provided in subd. 1. c. and par. (ag), if credits are not available to be purchased as provided under subd. 1. a., credits may be purchased from a mitigation bank within the same bank service area as the wetland impacted by the discharge.

c. Except as provided in par. (ag), if credits are not available to be purchased as provided under subd. 1. b., credits may be purchased from a mitigation bank in the same basin as the wetland impacted by the discharge.

2. Participating in the in lieu fee subprogram under par. (e).

3. Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

(ag) The department may, in consultation with the U.S. army corps of engineers, allow credits to be purchased from a different mitigation bank than the one prescribed under par. (a) 1. or allow mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank if the department determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching the impacted wetland type. The department may also consider economic factors when making this determination only if the HUC 8 has one approved mitigation bank and that bank is charging a price for credits in that watershed that is in excess of 150 percent of the price of a credit in that watershed under the in lieu fee subprogram.

(am) For a discharge that is exempt from permitting requirements under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted by a mitigation bank or under the in lieu fee subprogram, shall be completed within the same compensation search area, as defined by the department by rule, as the discharge.

(b) Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram shall be the preferred types of mitigation.

(c) The department shall establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state. The system shall be consistent with federal regulations.

(cm) Before entering into an agreement with a sponsor of a mitigation bank to establish such a bank or before otherwise approving a mitigation bank, the department shall provide written notice that a mitigation bank may be established. The notice shall be given to each city, village, town, and county in which each proposed mitigation bank site will be located. Each city, village, town, and county receiving the notice shall be given an opportunity to submit comments regarding the establishment of the mitigation bank. The notice shall contain all of the following information:

1. The name of the sponsor of the proposed mitigation bank.

2. A brief description of the mitigation bank and all of its bank sites.

3. A date after which the department will not accept comments from the affected cities, villages, towns, or counties.

4. An address to which any comments shall be submitted.

(d) 1. The department shall establish under the mitigation program mitigation ratios that are consistent, to the greatest extent possible, with the federal regulations that apply to mitigation

and mitigation banks but, unless subd. 2. applies, the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

2. For mitigation that occurs within the same watershed in which the discharge is located or within one-half mile of the site of the discharge, the ratio established by the department shall equal 90 percent of the ratio that would apply if the mitigation were to occur outside the watershed or were to occur one-half mile or more from the site of the discharge, but the ratio established under this subdivision may be no less than 1.2 acres for each acre affected by the discharge.

(e) As part of the mitigation program established under par. (a), the department shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The subprogram must be approved by the U.S. army corps of engineers. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the subprogram may be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof. In determining approved mitigation projects that benefit from the subprogram, the department shall, to the extent practicable, ensure that there is no net loss of public access to wetlands. If the wetlands that benefit from the subprogram are open to the public, the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

(3t) RULES FOR MITIGATION. The department shall promulgate rules to establish a process for the mitigation program under sub. (3r). The rules shall address all of the following:

(a) Requirements for the analysis of practicable alternatives that is included in an application for a wetland individual permit under sub. (3m) (b).

(b) The conditions under which credits may be purchased from a mitigation bank to comply with the mitigation program under sub. (3r).

(c) Enforcement of requirements under the mitigation program under sub. (3r) that apply to mitigation projects and mitigation banks.

(d) Baseline studies of wetlands that will be affected by the discharges and of sites for mitigation projects.

(e) Plan and design requirements for mitigation projects and mitigation bank sites, which shall include requirements for relating the design of a mitigation project or a mitigation bank site to the hydrology of the watershed in which a mitigation project or mitigation bank site is located.

(f) Standards for comparing wetlands that will be restored, enhanced, created, or preserved as a mitigation project or at a mitigation bank site to the wetlands that will be adversely affected by discharges, including all of the following:

1. Consideration of the size, location, type and quality of the wetlands.

2. Consideration of the functional values performed by the wetlands.

(g) Financial assurance requirements for the construction of mitigation projects by mitigation banks.

(h) Standards for measuring the short-term and long-term success of mitigation projects and mitigation bank sites and requirements for the short-term and long-term monitoring of mitigation projects and mitigation bank sites.

(i) Remedial actions to be taken by holders of wetland individual permits for mitigation projects that are not successful and actions to be taken by mitigation banks for mitigation projects performed by the mitigation banks that are not successful.

(3w) RELEASE OF CREDITS. (a) In this subsection:

1. "Applicant" means the applicant for a wetland individual permit for which wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland mitigation project required under sub. (3n) (d).

2. "Bank sponsor" means any public or private entity financially responsible for establishing or operating a mitigation bank.

3. "Compensation site plan" means a comprehensive document prepared by an applicant or bank sponsor that provides a thorough description of a proposed wetland mitigation project.

4. "Developing mitigation bank" means a mitigation bank that has not completed its mitigation project and that has not yet been established under an agreement between the bank sponsor and the department or otherwise approved by the department.

5. "Estimated credits" means the total number of credits that a developing mitigation bank estimates it will have once its mitigation project is constructed.

6. "Mitigation banking instrument" means the legal document that governs the establishment, operation, and use of a mitigation bank.

(b) A developing mitigation bank may sell its estimated credits under the mitigation program under sub. (3r) only if the mitigation bank has met the financial assurance requirements established by the department under sub. (3t) (g) and, except as provided under par. (c), only in accordance with the following schedule:

1. No more than 20 percent of the estimated credits after the department approves and executes the mitigation banking instrument.

2. No more than 65 percent of the estimated credits after the department issues a letter of compliance stating that construction and all corrective actions are complete.

3. No more than 85 percent of the estimated credits after the department approves a monitoring report for the mitigation bank or after 2 years have passed after construction of the mitigation project is completed, whichever is later.

4. One hundred percent of the estimated credits after the department approves the final monitoring report for the mitigation bank and determines that all performance standards identified in the compensation site plan are met.

(c) The department may authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule under par. (b) allows if the bank provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.

(d) After the department approves and executes a mitigation banking instrument establishing the specifications for a developing mitigation bank, the sponsor of the bank may not change the mitigation banking instrument without the approval of the department. After the sponsor of a developing mitigation bank submits to the department a proposed change to the mitigation banking instrument for review, the mitigation bank may not sell any estimated credits under par. (b) until one of the following occurs:

1. The department approves the change to the mitigation banking instrument, and the mitigation bank sponsor and the department adjust the estimated credits and make any necessary adjustments to the credit release schedule under par. (b), if the department believes these adjustments are necessary based on the change to the mitigation banking instrument.

2. The department rejects the changes submitted by the mitigation bank sponsor, in which case the existing mitigation banking instrument remains effective.

(4) EXEMPTIONS; CERTAIN ACTIVITIES. Except as provided in sub. (5), the permitting requirement under sub. (3b) does not apply to any discharge that is the result of any of the following activities:

(a) Normal farming, silviculture, or ranching activities.

(am) Normal aquaculture activities, if the discharge is to a wetland created for aquacultural purposes in an area without any prior wetland history. In this paragraph, "normal aquaculture activities" includes all of the following:

1. Construction, maintenance, or repair of ponds, raceways, or other similar retention structures used in fish farms.

2. The filling in or drawing down of ponds, raceways, or other similar retention structures used in fish farms.

3. Maintenance or improvement of swales or other drainage areas into or out of ponds used in fish farms.

4. Maintenance, repair, or replacement of drains, pipes, or other flowage controls used in fish farms.

(b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a wetland.

(c) Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.

(d) Maintenance of drainage ditches.

(e) Construction or maintenance of farm roads, roads used in fish farms, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

1. That the flow and circulation patterns and chemical and biological characteristics of the affected wetland are not impaired.

2. That the reach of the affected wetland is not reduced.

3. That any adverse effect on the aquatic environment of the affected wetland is minimized to the degree required by the department.

(f) Maintenance, operation, or abandonment of a sedimentation or stormwater detention basin and associated conveyance features that were not originally constructed in a wetland.

(4m) EXEMPTION AND WAIVER; ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE. (a) The permitting requirement under sub. (3b) does not apply to any discharge into a wetland located in an electronics and information technology manufacturing zone designated under s. 238.396 (1m) if the discharge is related to the construction, access, or operation of a new manufacturing facility in the zone and all adverse impacts to functional values of wetlands are compensated at a ratio of 2 acres per each acre impacted through any of the following methods, consistent with the rules promulgated under this section:

1. Purchasing credits from a mitigation bank located in this state.

2. Participating in the in lieu fee subprogram under sub. (3r), under which the department shall identify and consider mitigation that could be conducted within the same watershed and may locate mitigation outside the watershed only upon agreement of the department and the person exempt from permitting under this subsection.

3. Completing mitigation within this state.

(b) The department shall waive water quality certification under 33 USC 1341 (a) (1) for a discharge under par. (a).

(4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS. (a) In this subsection:

1. "Artificial wetland" means a landscape feature where hydrophitic vegetation may be present as a result of human modification to the landscape or hydrology and for which the department has no definitive evidence showing a prior wetland or stream history that existed before August 1, 1991, but does not include any of the following:

a. A wetland that serves as a fish spawning area or a passage to a fish spawning area.

b. A wetland created as a result of a mitigation requirement under sub. (3r).

2. "Definitive evidence" means documentary evidence such as any of the following:

a. Maps.

b. Aerial photographs.

c. Surveys that use a scale of not more than 100 feet per inch.

d. Wetland delineations.

3. "Rare and high quality wetland" means a wetland that is directly adjacent or contiguous to a class I or class II trout stream or that consists of 75 percent or more of any of the following wetland types:

a. Alder thicket.

b. Calcareous fen.

c. Coniferous swamp.

d. Coniferous bog.

e. Floodplain forest.

f. Hardwood swamp.

g. Interdunal wetland.

h. Open bog.

i. Ridge and swail complex.

j. Deep marsh.

k. Sedge meadow.

4. "Sewerage system" has the meaning given in s. 281.01 (14).

5. "Urban area" means any of the following:

a. An incorporated area.

b. An area within one-half mile of an incorporated area.

c. An area in a town that is served by a sewerage system.

(b) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs in an urban area and to which all of the following apply:

1. The discharge does not affect more than one acre of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is carried out in compliance with any applicable storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354, or 62.234 or storm water discharge permit issued under s. 283.33.

(c) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs outside an urban area and to which all of the following apply:

1. The discharge does not affect more than 3 acres of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is a structure, such as a building, driveway, or road, with an agricultural purpose.

(d) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into an artificial wetland.

(e) 1. A person who proposes a project that may affect a wetland or landscape feature under par. (b), (c), or (d) shall notify the department no fewer than 15 working days before initiating the project. The notice shall include one of the following to show

that the wetland or landscape feature is eligible for the relevant exemption:

a. A statement issued by a professional who has investigated the wetland and who is qualified to give such an opinion.

b. A wetland delineation prepared by a qualified professional showing the exact location and boundaries of the wetland.

2. Except as provided in subd. 3., if the department receives the notice and information required under subd. 1., the department shall presume that the wetland or landscape feature is eligible for the exemption unless the department, within 15 working days after receiving notification of the proposed project under subd. 1., notifies the person that one of the following conditions applies:

a. The eligibility requirements are not met.

b. The location and boundaries of the wetland identified in a wetland delineation included with the notification under subd. 1. are not accurate.

c. With respect to an exemption under par. (d) only, the department determines that the landscape feature is providing significant functions that either protect adjacent or downstream property or infrastructure from flooding or significantly improve the water quality of an adjacent or downstream water body.

3. If the department receives the notice and information required under subd. 1. but is unable to determine based on that information whether the eligibility requirements are met, the department may, within 15 working days after the notification under subd. 1., notify the person one time to request additional information about the parcel of land. The person shall cooperate with the department's efforts to obtain information about the relevant parcel of land and may proceed with the project only upon notification that the department has determined the landscape feature to be eligible for the exemption based on the definitive evidence.

4. If, within 15 working days after the notification is delivered to the department, the department notifies the person that subd. 2. a., b., or c. applies, the person may not proceed with the project unless authorized by, or otherwise exempted from, a wetland general or individual permit under this section.

(4r) DRAINAGE DISTRICT ACTIVITY EXEMPTION. (a) The permitting requirement under sub. (3b) does not apply to any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the department of agriculture, trade and consumer protection.

(b) The department shall waive any water quality certification requested under 33 USC 1341 (a) for a discharge described under par. (a).

(5) INAPPLICABILITY OF EXEMPTIONS. Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the permitting requirement under sub. (3b) if the discharge is incidental to an activity that has as its purpose bringing a wetland, or part of a wetland, into a use for which it was not previously subject and if the activity may do any of the following:

(a) Impair the flow or circulation of any wetland.

(b) Reduce the reach of any wetland.

(6) RULES FOR EXEMPTIONS. (a) The department shall promulgate rules to interpret and implement the provisions under subs. (4), (4n), (4r), and (5). In promulgating these rules, the department shall do all of the following:

1. Make the rules consistent with existing federal law or interpretation.

2. Incorporate any applicable additional federal law or interpretation into the rules.

(b) Whenever an additional federal law or interpretation is initially incorporated into the rules, the department may modify the additional federal law or interpretation as it determines is necessary, but the department may not otherwise amend or modify any of the rules promulgated under this subsection.

(8m) SUBSEQUENT PROTECTION FOR WETLANDS. (a) 1. A person who is the holder of a wetland individual permit that authorizes a mitigation project shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that a wetland that is being restored, enhanced, created, or preserved will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall revoke the wetland individual permit if the holder of the individual permit fails to take these measures.

2. A person who is restoring, enhancing, creating, or preserving a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that the wetland will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located.

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a) or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

1. The department determines that part or all of the restored, enhanced or created wetland ceases to be a wetland.

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.

3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

(9) INSPECTION AUTHORITY. (a) For purposes of determining whether to issue a wetland individual permit, whether authorization to proceed as authorized under a wetland general permit is appropriate, or whether an exemption under sub. (4), (4n), or (4r) is appropriate, and for purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

1. Enter and inspect any property on which is located a wetland or part of a wetland, for which an application has been submitted under sub. (3g) or (3m).

2. Enter and inspect any property on which is located a wetland to investigate a discharge that the department has reason to believe is in violation of this section.

3. Gain access to and inspect any records that a holder of a wetland individual permit or a person acting under the authority of a wetland general permit is required by the department to keep.

(d) The department shall provide reasonable advance notice to the property owner before entering and inspecting property as authorized under par. (a).

(e) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

2. Deny an application for a wetland individual permit or deny authorization to proceed under a wetland general permit.

(10) ADDITIONAL REQUIREMENTS. The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland.

This section governs the determination of whether a discharge is in compliance with water quality standards but does not affect the authority of the department to otherwise regulate the discharge of dredged or fill material in a wetland under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

(11) RESTORATION; SURCHARGE FEE. (a) The department shall set a surcharge fee to be charged for each application to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by the department and may not exceed more than 50 percent of the market price, as determined by the department, for the equivalent purchase of credits from a mitigation bank. These fees shall be credited to the appropriation account under s. 20.370 (9) (bm) for the restoration and creation of wetlands. The department may enter into agreements with other entities for the restoration and creation of such wetlands.

(b) Any wetland that is restored or created using funding from the appropriation under s. 20.370 (9) (bm) shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

(12) APPLICATION FEES AND TIME LIMITS. (a) *Fees required.* The department shall charge a fee for reviewing, investigating, and making decisions on applications to proceed under wetland general permits under sub. (3g) and on applications for wetland individual permits under sub. (3m). For an authorization to proceed under a wetland general permit, the application fee shall be $500. For a wetland individual permit, the application fee shall be $800.

(b) *Additional fee.* The department may set and charge a fee in the amount necessary to meet the costs incurred by the department in reviewing mitigation that is conducted by mitigation banks.

(c) *Adjustments in fees.* 1. The department shall refund an application fee charged for a wetland individual permit under par. (a) if the applicant requests a refund before the department determines that the application is complete. The department may not refund a fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.

2. If the applicant submits an application for authorization to proceed under a wetland general or a wetland individual permit after the discharge is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

3. The department may increase the fee specified in par. (a) only if the increase is necessary to meet the costs of the department in performing the activities for which the fee is charged.

(d) *Fee for expedited service.* 1. The department, by rule, may charge a supplemental fee that is in addition to a fee charged under this subsection if all of the following apply:

a. The applicant requests in writing that the decision on the application be issued within a time period that is shorter than the time limit promulgated under subd. 2. for the decision.

b. The department verifies that it will be able to comply with the request.

2. If the department promulgates a rule under subd. 1., the rule shall contain a time limit for making decisions on the application.

(e) *Exemptions from fees.* Paragraphs (a), (b), (c), and (d) do not apply to any federal agency or state agency.

(12m) LOCAL REGULATION OF NONFEDERAL OR ARTIFICIAL WETLANDS. A local government may not enact an ordinance or adopt a resolution regulating a matter regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated under sub. (4n). If a local government has in effect on March 30, 2018, an ordinance or resolution regulating nonfederal wetlands or artificial wetlands, the ordinance or resolution does not apply and may not be enforced.

(13) PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission of a violation of this section for which a forfeiture is imposed is a principal and may be charged and found in violation although he or she did not directly commit the violation and although the person who directly committed it has not been found in violation.

(b) A person is concerned in the commission of the violation if the person does any of the following:

1. Directly commits the violation.

2. Aids and abets the commission of the violation.

3. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

(13m) REPORT TO LEGISLATURE. No later than January 31, 2003, and no later than January 31 of each subsequent odd-numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that provides an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. The department shall include in its report a discussion of proposals and projects under the property development grant program under s. 23.099.

(14) PENALTIES. (a) Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than $100 nor more than $10,000 for the first offense and shall forfeit not less than $500 nor more than $10,000 upon being found in violation of the same offense a 2nd or subsequent time.

(b) Any person who violates a wetland general permit issued under sub. (3g) shall forfeit not less than $10 nor more than $500 for the first offense and shall forfeit not less than $50 nor more than $500 upon being found in violation of the same offense a 2nd or subsequent time.

(c) A violation of any condition contained in a wetland general permit issued under sub. (3g) is a violation of the statute under which the general permit was issued.

(d) In addition to the forfeitures specified under pars. (a) and (b), a court may order a defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

(e) Each day of a continuing violation is a separate offense.

(f) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

History: 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112; 2019 a. 59; 2023 a. 111.

Cross-reference: See also chs. NR 300, 351, 352, and 353, Wis. adm. code.

Once a violation of sub. (2) (a) [now sub. (3b) (b)] is proven, *Goode*, 219 Wis. 2d 654 (1998), sets forth a rebuttable presumption that the court should grant an injunction. The state is not required to prove particular instances of environmental harm to obtain an injunction. Once a violation is proven, it is the defendant who must establish compelling equitable reasons not to grant injunctive relief. State v. CGIP Lake Partners, LLP, 2013 WI App 122, 351 Wis. 2d 100, 839 N.W.2d 136, 12-2346.

Sub. (3n) (b) 5. requires that the Department of Natural Resources (DNR) consider the net positive or negative environmental impact of a proposed project before

deciding to issue a wetland-fill permit. This consideration is necessary for DNR to meet the mandate in sub. (3n) (c) 3. that it may issue a wetland-fill permit only if it determines that the proposed project will not result in significant adverse environmental impacts. In this case, the permit stated that DNR lacked sufficient information to enable it to assess the proposed project's net positive or negative environmental impact. Accordingly, DNR improperly issued the permit without being able to consider the proposed project's net positive or negative environmental impact, contrary to sub. (3n) (b) 5. Meteor Timber, LLC v. Division of Hearings & Appeals, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.

The legislature has set a tight timeline for the Department of Natural Resources (DNR) to process a wetland-fill permit application, and the legislature has mandated that at the end of that timeline DNR must decide to issue or deny the permit and explain in the case of a denial why the permit does not meet statutory standards or is incomplete. The applicant in this case pointed to no statutory language authorizing DNR to issue a permit if it had not received sufficient information within that timeline. In that situation, the legislature has provided that DNR must deny the permit as incomplete, and the applicant may seek administrative and judicial review of that denial or submit a new application with all necessary information. Meteor Timber, LLC v. Division of Hearings & Appeals, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.

Sub. (3n) (b) and (c) requires the Department of Natural Resources (DNR) to consider the entirety of a proposed project when addressing a wetland individual permit, not just the wetlands within the proposed project. By its plain meaning, sub. (3n) (c) instructs DNR to determine whether a proposed project will result in significant adverse impacts to wetland functional values and water quality and whether the proposed project will result in other significant adverse environmental consequences. That review necessarily requires DNR to consider impacts beyond the physical footprint of directly impacted wetlands. For example, DNR must consider potential secondary impacts to wetland functional values and the net positive or negative environmental impact of the proposed project. Kohler Co. v. DNR, 2024 WI App 2, 410 Wis. 2d 433, 3 N.W.3d 172, 21-1187.

Wisconsin's Wetland Reform Act. Kent & Lamb. Wis. Law. Feb. 2013.

281.37 Wetland mitigation grant program. (1) In this subsection:

(a) "Department land" means land owned by or under easement to the state that is under the jurisdiction of the department and used for one of the purposes specified in s. 23.09 (2) (d).

(b) "Mitigation program" means the wetland mitigation grant program established under sub. (2).

(c) "Nonprofit organization" means an organization that is described in section 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) The department shall establish a wetland mitigation grant program under which it awards grants to nonprofit organizations to conduct projects to create, restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e) on department land as provided in this subsection.

(3) No later than 6 months after March 30, 2018, the department shall identify department land that is appropriate to include in the mitigation program. The department shall identify no less than 25 percent of department land for this purpose. The land identified shall include land in every watershed in the state.

(4) (a) No later than 3 months after completion of the land identification stage under sub. (3) or at the beginning of the following fiscal year, whichever is earlier, and no later than July 1 of each subsequent year, the department shall issue a request for proposals from nonprofit organizations for grants to conduct wetland mitigation projects on department land identified under sub. (3). The issuance of each new request for proposal begins a new grant cycle.

(b) The department shall require applications for grants under this section to include all of the following:

1. The scope of the proposed project.

2. A project timeline.

3. If possible, a specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely provides.

4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the proposed project would create, restore, or enhance.

5. All information required to be submitted for approval to the U.S. army corps of engineers under 33 CFR part 332 and the Wisconsin Wetland Conservation Trust program instrument.

(c) After issuing the request for proposals under par. (a), the department shall accept grant applications on a rolling basis over the course of a fiscal year. The department shall select and announce grant recipients under this subsection at the end of each quarter as funds are available.

(5) (a) If an application under sub. (4) is approved, the grantee and the department, in consultation, shall identify all department permits required for the grantee to conduct the project. The department shall waive all permit fees for the grantee in relation to department permits required to conduct the project.

(b) Notwithstanding timelines otherwise established for individual permits, within 60 days of receiving the grantee's application for an individual permit that is required to conduct the project, the department shall render a decision issuing, denying, or modifying the permit, and the department shall adjust all other deadlines relating to the review of the application accordingly.

(7) (a) The department shall pay out a grant under the mitigation program quarterly unless the department determines that more frequent payments are necessary to fulfill the objectives of the grant program. The department shall withhold the final payment until the grantee certifies that the project is complete.

(b) If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the department shall use the remaining unpaid grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project. An organization that fails to certify completion of a project by the date indicated in its application for completion is not eligible for a new grant under the mitigation program for 2 grant cycles.

(c) The department may agree to a modified deadline for the project if unusual or unforeseen circumstances cause a delay. If the department agrees to a modified deadline, the consequences under par. (b) apply only if the grantee fails to certify that a project is complete by the date indicated in that agreement.

(8) Before 6 months have elapsed after the 5th anniversary of the department's first issuance of a request for proposals under sub. (4), the department shall submit to the legislature under s. 13.172 (2) a report analyzing the effectiveness of the first 5 years of the mitigation program and making recommendations for changes to the program.

History: 2017 a. 183.

SUBCHAPTER IV

WATER AND SEWAGE FACILITIES; SEPTAGE DISPOSAL

281.41 Approval of plans. (1) (a) Except as provided under sub. (2), every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and any other information concerning maintenance, operation and other details that the department requires, including the information specified under s. 281.35 (5) (a), if applicable. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn, a statement concerning the improvement may be made to the department and the department may, if requested, outline generally what it will require. Upon receipt of the plans for approval, the department or its authorized representative shall notify the owner of the date of receipt.

(b) Within 90 days from the time of receipt of complete plans or within the time specified in s. 281.35 (5) (c), if applicable, the

department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of the plans and specifications may not be contingent upon eligibility of the proposed project for federal aid. The time period for review may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the specified time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of $350,000 or more. The extension may not exceed 6 months. Failure of the department or its authorized representative to act before the expiration of the time period allowed for review shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice.

(c) Construction or material change shall be according to approved plans only. The department may disapprove plans that are not in conformance with any existing approved areawide waste treatment management plan prepared pursuant to the federal water pollution control act, P.L. 92-500, as amended, and shall disapprove plans that do not meet the grounds for approval specified under s. 281.35 (5) (d), if applicable.

(2) The department may, by rule, exempt an owner of a specific type of system or plant from the requirements of sub. (1) or modify the requirements of sub. (1) for a specific type of system or plant.

(3) (a) In this subsection, "septage service area" means the area containing private on-site wastewater treatment systems served or anticipated to be served by a sewage disposal plant during the planning period.

(b) If an owner proposes a sewage disposal plant or an extension of an existing sewage disposal plant that increases the capacity of the existing plant by at least 20 percent, the department shall require that owner, in preparing a plan under this section, to address the need for, and include plans for, the disposal of septage, as defined in s. 281.48 (2) (d). The department shall require an owner to address all of the following under this paragraph:

1. The amount of septage produced throughout the septage service area and the expected increase in septage production during the planning period.

2. The capacity for the disposal of septage during the planning period on land within the septage service area, in the sewage disposal plant, and by other available methods.

3. The location of private on-site wastewater treatment systems within the septage service area, and the distances required to haul septage for disposal either on land or in the sewage disposal plant.

4. The potential for contracts with private on-site wastewater treatment system owners, licensed disposers, as defined in s. 281.49 (1) (b), or municipalities to assure delivery of septage to the sewage disposal plant.

(c) In addressing the need for the disposal of septage and the information required under par. (b), the owner is required only to use data or other information that has previously been collected, whether by the owner or by others, and the owner is not required to conduct new research.

(d) The information required under par. (b) is for the purpose of assuring that septage disposal needs are considered in the decision-making process for sewage disposal plant planning, but par. (b) does not require construction of facilities for the handling or disposal of septage.

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

(5) The department shall establish an expedited procedure for approval of plans under this section. The expedited procedure shall apply, in lieu of the procedure under sub. (1) (b), if the department determines that all of the following are satisfied:

(a) The plan design is of a common construction and size or is for a minor addition to an existing facility.

(b) The plan design is submitted by a registered professional engineer.

(c) The plan design is submitted by a person who has designed similar facilities and none of those similar facilities has caused adverse impacts to the environment.

(d) The plan design contains no unusual siting requirements or other unique design features.

(e) The plan design is not likely to have an adverse impact on the environment.

History: 1977 c. 418; 1985 a. 60; 1991 a. 39; 1995 a. 227 s. 405; Stats., 1995 s. 281.41; 1999 a. 85; 2005 a. 347; 2007 a. 227; 2011 a. 146, 167; 2021 a. 126.

Cross-reference: See also chs. NR 108, 110, and 142, Wis. adm. code.

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

281.43 Joint sewerage systems. (1) The department of natural resources may require the sewerage system, or sewage or refuse disposal plant of any governmental unit including any town, village or city, to be so planned and constructed that it may be connected with that of any other town, village or city, and may, after hearing, upon due notice to the governmental units order the proper connections to be made or a group of governmental units including cities, villages, town sanitary districts or town utility districts may construct and operate a joint sewerage system under this statute without being so required by order of the department of natural resources but following hearing and approval of the department.

(1m) An order by the department for the connection of unincorporated territory to a city or village system or plant under this section shall not become effective for 30 days following issuance. Within 30 days following issuance of the order, the governing body of a city or village subject to an order under this section may commence an annexation proceeding under s. 66.0219 to annex the unincorporated territory subject to the order. If the result of the referendum under s. 66.0219 (4) is in favor of annexation, the territory shall be annexed to the city or village for all purposes, and sewerage service shall be extended to the territory subject to the order. If an application for an annexation referendum is denied under s. 66.0219 (2) or the referendum under s. 66.0219 (4) is against the annexation, the order shall be void. If an annexation proceeding is not commenced within the 30-day period, the order shall become effective.

(2) (a) When one governmental unit renders service to another under this section, reasonable compensation shall be paid. The officials in charge of the system, of the governmental unit furnishing the service shall determine the reasonable compensation and report to its clerk who shall, on or before August 1 of each year, certify a statement thereof to the clerk of the governmental unit receiving the service. The clerk of the governmental unit receiving the service shall extend the amount shown in the statement as a charge on the tax roll, in the following manner:

1. If the service rendered is available to substantially all improved real estate in the member governmental unit receiving the service, the charges shall be placed upon the tax roll of the member governmental unit as a general tax.

2. If the service rendered is for the benefit of public highways in, or real estate owned or operated by, the member governmental unit receiving the service, the charges for the service shall be placed upon the tax roll of the member governmental unit as a general tax.

3. If the service rendered does not come under the provisions of subd. 1. or 2., the charges for the service shall be placed upon the tax roll of the member governmental unit as a special tax upon each parcel of real estate benefited; and when collected it shall be paid to the treasurer of the member governmental unit rendering the service. Where the charges are to be extended on the tax roll under the provisions of this subdivision, the clerk of the member governmental unit furnishing the service shall itemize the statement showing separately the amount charged to each parcel of real estate benefited.

(b) If, due to delay in determination, a charge described in par. (a) cannot be extended on the tax roll of any particular year, it shall be extended as soon as possible.

(3) If the governing body of any governmental unit deems the charge unreasonable, it may by resolution within 20 days after the filing of the report with its clerk:

(a) Submit to arbitration by 3 reputable and experienced engineers, one chosen by each governmental unit, and the 3rd by the other 2. If the engineers are unable to agree, the vote of 2 shall be the decision. They may affirm or modify the report, and shall submit their decision in writing to each governmental unit within 30 days of their appointment unless the time be extended by agreement of the governmental units. The decision shall be binding. Election to so arbitrate shall be a waiver of right to proceed by action. Two-thirds of the expense of arbitration shall be paid by the governmental unit requesting it, and the balance by the other.

(b) Institute a proceeding for judicial review under ch. 227.

(4) (a) Any 2 or more governmental units, including cities, villages, town sanitary districts or town utility districts not wishing to proceed under sub. (2) may jointly construct, operate and maintain a joint sewerage system, inclusive of the necessary intercepting sewers and sewerage treatment works. Such joint action by 2 governmental units shall be carried out by a sewerage commission consisting of one member appointed by each of the governing bodies of such governmental units and a 3rd member to be selected by the 2 members so appointed, or in lieu thereof said sewerage commission may consist of 2 members appointed by the governing body of each governmental unit and a 5th member to be selected by the 4 members so appointed or where more than 2 governmental units act to form the commission, the representation on the commission shall be in accordance with a resolution approved by the member governmental units.

(b) 1. Where such sewerage commission shall consist of 3 members, the members chosen by the 2 members first appointed shall serve for 2 years, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 4 and 6 years, respectively, the length of term of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

2. Where such sewerage commission shall consist of 5 members, the member chosen by the 4 members first appointed shall serve for one year, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 2, 3, 4 and 5 years respectively, the length of terms of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

3. Where such sewerage commission representation shall be formed by approval of a resolution, the resolution shall state the method of appointing commissioners and the term of office of each commissioner.

(c) The sewerage commissioners shall project, plan, construct and maintain in the district comprising the member governmental units intercepting and other main sewers for the collection and transmission of house, industrial and other sewage to a site or sites for disposal selected by them, such sewers to be sufficient, in the judgment of the sewerage commissioners, to care for such sewage of the territory included in such district. The sewerage commissioners shall project, plan, construct and operate sewage disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district. The sewerage commissioners may also project, plan, construct and maintain intercepting and other main sewers for the collection and disposal of storm water which shall be separate from the sanitary sewerage system. The sewerage commissioners may also project, plan, construct and operate solid waste disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district or by contract with counties or municipalities which have solid waste disposal facilities. The sewerage commissioners may employ and fix compensation for engineers, assistants, clerks, employees and laborers, or do such other things as may be necessary for the due and proper execution of their duties. Such sewage disposal works may be used by the sewerage commissioners and by such governmental units for the disposal of garbage, refuse and rubbish.

(d) Such sewerage commission shall constitute a body corporate by the name of "(Insert name of governmental units or area) Sewerage Commission," by which in all proceedings it shall thereafter be known. It may purchase, take and hold real and personal property for its use and convey and dispose of the same. This grant of power shall be retroactive to September 13, 1935 for commissions formed prior to January 1, 1972. Except as provided in this subsection the sewerage commissioners shall have the power and proceed as a common council and board of public works in cities in carrying out the provisions of par. (c). All borrowing under s. 24.61 (3) (a) 5. and all bond issues and appropriations made by said sewerage commission shall be subject to the approval of the governing bodies of the respective governmental units.

(e) Each such governmental unit shall pay for its proportionate share of such sewerage system, including additions thereto, and also its proportionate share of all operation and maintenance costs as may be determined by the sewerage commission. Each governmental unit may borrow money and issue revenue or general obligation bonds therefor, for the acquisition, construction, erection, enlargement and extension of a joint sewage disposal plant or refuse or rubbish or solid waste disposal plant or system or any combination of plants provided under this section, and to purchase a site or sites for the same. Each governmental unit may, if it so desires, proceed under s. 66.0821 in financing its portion of the cost of the construction, operation and maintenance of the joint sewage disposal plant or plants provided for in this section, or system.

(f) Any such governmental unit being aggrieved by the determination of the sewerage commission on matters within its jurisdiction may appeal to the circuit court as provided in sub. (3) (b).

History: 1971 c. 89, 276; 1977 c. 187; 1979 c. 176; 1985 a. 49; 1995 a. 225; 1995 a. 227 s. 408; Stats. 1995 s. 281.43; 1997 a. 35; 1999 a. 150 s. 672.

Section 144.07 (1m) [now sub. (1m)], which voids a Department of Natural Resources sewerage connection order if the electors in the affected town area reject annexation to the city ordered to extend sewerage service, represents a valid legislative

balancing and accommodation of two statewide concerns: urban development and pollution control. City of Beloit v. Kallas, 76 Wis. 2d 61, 250 N.W.2d 342 (1977).

A joint sewerage commission may enact and enforce regulations required of it under the federal Clean Water Act of 1977, but it cannot make appropriations or issue bonds without approval of the governing bodies that established it. 68 Atty. Gen. 83.

281.45 House connections. To assure preservation of public health, comfort and safety, any city, village or town or town sanitary district having a system of waterworks or sewerage, or both, may by ordinance require buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of these systems extend, to be connected with either or both in the manner prescribed. If any person fails to comply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in 1st class cities, the owner may, within 30 days after the completion of the work, file a written option with the municipal clerk stating that he or she cannot pay the amount in one sum and asking that it be levied in not to exceed 5 equal annual installments, and the amount shall be so collected with interest at a rate not to exceed 15 percent per year from the completion of the work, the unpaid balance to be a special tax lien.

History: 1979 c. 110 s. 60 (13); 1979 c. 221; 1983 a. 150; 1995 a. 227 s. 407; Stats. 1995 s. 281.45.

281.47 Sewage drains; sewage discharge into certain lakes. (1) (a) When any city, village, town or owner has constructed or constructs a sewage system complying with s. 281.41, the outflow or effluent from such system may be discharged into any stream or drain constructed pursuant to law, but no such outflow of untreated sewage or effluent from a primary or secondary treatment plant from a city, village, town, town sanitary district or metropolitan sewage district in a county having a population of 240,000 or more, according to the latest U.S. bureau of census figures available including any special census of municipalities within the county, any part of which is located within a drainage basin which drains into a lake of more than 2 square miles and less than 16 square miles in area, shall be discharged directly into, or through any stream, or through any drain, into such a lake located within 18 miles of the system or plant of such city, village, town, town sanitary district or metropolitan sewage district. All necessary construction of plant, system or drains for full compliance with this subsection in the discharge of untreated sewage or sewage effluent from all existing primary or secondary plants shall be completed by September 1, 1970, and the plans for any new system or plant shall include provisions for compliance with this subsection. The department may at any time order and require any owner of an existing plant to prepare and file with it, within a prescribed time, preliminary or final plans or both, for proposed construction to comply with this subsection.

(b) Any municipality, which, on April 30, 1972, has an operating sewerage collection and treatment system and has an application for attachment to a metropolitan sewerage district pending in the county court, in such a county, any part of which is located within such a drainage basin and which is located within 10 miles of a metropolitan sewerage district on September 1, 1967, shall be added to the metropolitan sewerage district upon application of the governing body of the municipality as provided in s. 66.205 (1), 1969 stats., if such petitioning municipality pays its fair share of the cost of attachment as determined by mutual agreement or a court of competent jurisdiction.

(c) 1. Except as provided in subd. 2., in lieu of construction in compliance with par. (a) for diversion from lakes described in par. (a), any owner of an existing plant, on or before September 1, 1967, or any owner of a new system or plant prior to construction of the new system or plant, may file with the department plans for advanced treatment of effluent from primary or secondary treatment that in the judgment of the department will accomplish substantially the same results in eliminating nuisance conditions on a lake described in par. (a) as would be accomplished by diversion of secondary sewage effluent from the lake, without at the same time creating other objectionable or damaging results. The owner of the plant or system is exempt from par. (a) for diversion from the lakes described in par. (a) upon approval of the plans submitted under this paragraph and installation of advanced treatment facilities and procedures in compliance therewith.

2. Nothing in subd. 1. impairs the authority of the department to require at any time preliminary or final plans, or both, for diversion construction.

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than $100 nor more than $500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 281.19 (8) until final disposition thereof by the courts, if judicial review is sought under ch. 227.

(2) The city, village or town or the owner of land through which the drain is constructed may apply to the circuit court of the county in which the land is located to determine the damages, if any. No injunction against the use shall be granted until the damages are finally determined and payment refused. Unless within 6 months after the system is completed the owner of the land institutes such proceedings the owner is barred. The proceedings shall be according to ch. 32, so far as applicable.

History: 1971 c. 164, 276; 1979 c. 34 s. 2102 (39) (g); 1979 c. 176; 1981 c. 374 s. 150; 1993 a. 246; 1995 a. 227 s. 406; Stats. 1995 s. 281.47; 1997 a. 254; 1999 a. 85.

281.48 Servicing septic tanks, soil absorption fields, holding tanks, grease interceptors and privies. (2) DEFINITIONS. In this section:

(b) "Grease interceptor" means a receptacle designed to intercept and retain grease or fatty substances.

(bm) "Private on-site wastewater treatment system" has the meaning given in s. 145.01 (12).

(c) "Privy" means an enclosed nonportable toilet into which human wastes not carried by water are deposited to a subsurface storage chamber that may or may not be watertight.

(d) "Septage" means the scum, liquid, sludge or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system.

(e) "Septic tank" means any watertight enclosure used for storage and anaerobic decomposition of human excrement or domestic or industrial wastewater.

(f) "Servicing" means removing septage from a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system and disposing of the septage.

(g) "Soil absorption field" means an area or cavity in the ground which receives the liquid discharge of a septic tank or similar component of a private on-site wastewater treatment system.

(2m) POWERS OF THE DEPARTMENT. The department has general supervision and control of servicing septic tanks, soil absorption fields, holding tanks, grease interceptors, privies, and other components of private on-site wastewater treatment systems.

(3) LICENSE; CERTIFICATION. (a) *License; application.* Every person before engaging in servicing in this state shall submit an application for a license on forms prepared by the department.

Except as provided in ss. 299.07 and 299.08, if the department, after investigation, is satisfied that the applicant has the qualifications, experience, understanding of proper servicing practices, as demonstrated by the successful completion of an examination given by the department, and equipment to perform the servicing in a manner not detrimental to public health it shall issue the license. The license fee shall accompany all applications.

(b) *Expiration date of license.* All licenses issued under this section for a period beginning before July 1, 1997, are for one year. All licenses issued under this section for a period beginning after June 30, 1997, are for 2 years. All licenses issued under this section expire on June 30. Application for renewal shall be filed on or before June 1 and if filed after that date a penalty shall be charged. The department shall promulgate a rule setting the amount of the penalty for late filing.

(c) *Wisconsin sanitary licensee.* Any person licensed under this section shall paint on the side of any vehicle that is used for servicing, the words "Wisconsin Sanitary Licensee" and immediately under these words "License No. ...." with the number of the license in the space so provided with letters and numbers at least 2 inches high; and all lettering and numbering shall be in distinct color contrast to its background.

(d) *License exception.* A farmer who disposes of septage on land is exempt from the licensing requirement under par. (a) if all of the conditions in sub. (4m) (b) apply.

(e) *Operator certification.* No person, except for a farmer exempted from licensing under par. (d), may service a private on-site wastewater treatment system or operate a septage servicing vehicle unless the person is certified as an operator of a septage servicing vehicle under s. 281.17 (3).

(4g) RULES ON SERVICING. The department shall promulgate rules relating to servicing septic tanks, soil absorption fields, holding tanks, grease interceptors, privies, and other components of private on-site wastewater treatment systems in order to protect the public health against unsanitary and unhealthful practices and conditions, and to protect the surface waters and groundwaters of the state from contamination by septage. The rules shall comply with ch. 160. The rules shall apply to all septage disposal, whether undertaken pursuant to a license or a license exemption under sub. (3). The rules shall require each person with a license under sub. (3) to maintain records of the location of private on-site wastewater treatment systems serviced and the volume of septage disposed of and location of that disposal.

(4m) SITE APPROVALS. (a) The department may require a soil test and shall require a site approval for any location where septage is disposed of on land.

(b) Notwithstanding par. (a), the department may not require a site approval for a location where septage is disposed of on land if the person who disposes of the septage is a farmer who owns or leases that location and if:

1. The septage is removed from a septic tank which is located on the same parcel where the septage is disposed of; and

3. The person complies with all applicable statutes and rules in removing and disposing of the septage.

(c) If a location is exempt from site approval under par. (b), the department may require the person who services the septic tank to provide the department with information to show that sufficient land area is available for disposal.

(d) A person seeking a site approval under par. (a) shall submit an application to the department at least 7 days prior to using the site. Upon receiving an application for site approval, the department may enter and inspect the site if the department determines that an inspection is necessary. Commencing 7 days after submitting the application, the applicant may use the site unless the department notifies the applicant that the site may not be used.

(4s) FEES. (a) The department shall collect the following fees:

1. For a license under sub. (3) (a) to a state resident, for each vehicle used for servicing, $25 if the license period begins before July 1, 1997, and $50 if the license period begins after June 30, 1997.

2. For a license under sub. (3) (a) to a nonresident, for each vehicle used for servicing, $50 if the license period begins before July 1, 1997, and $100 if the license period begins after June 30, 1997.

(d) In addition to the license fee under par. (a) 1. or 2., the department shall collect from each licensee a groundwater fee of $50 if the license period begins before July 1, 1997, and $100 if the license period begins after June 30, 1997. The moneys collected under this paragraph shall be credited to the environmental fund for environmental management.

(e) Notwithstanding pars. (a) and (d), an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a license fee or groundwater fee.

(5) AUTHORITY TO SUSPEND OR REVOKE LICENSES. (a) The department may and upon written complaint shall make investigations and conduct hearings and may suspend or revoke any license if the department finds that the licensee has:

2. Made a material misstatement in the application for license or any application for a renewal thereof.

3. Demonstrated incompetency in conducting servicing.

4. Violated any provisions of this section or any rule prescribed by the department or falsified information on inspection forms under s. 145.20 (5).

(b) The department may not reissue a license for a period of one year after revocation under par. (a).

(c) The department may promulgate by rule a procedure for the temporary suspension of a license.

(5m) COUNTY REGULATION. (a) A county may submit to the department an application to regulate the disposal of septage on land. The county shall include in its application a complete description of the proposed county program, including a proposed ordinance and forms and information on plans for personnel, budget and equipment. The department shall investigate the capability of the county to implement a regulatory program under this subsection and shall approve or deny the application based on the county's capability. If the department approves the county application, the county may adopt and enforce a septage disposal ordinance.

(b) The county septage disposal ordinance shall apply uniformly to the entire area of the county. No city, village or town may adopt or enforce a septage disposal ordinance if the county has adopted such an ordinance. If a city, village or town adopts a septage disposal ordinance, the ordinance shall conform with requirements applicable to a county septage disposal ordinance under this section.

(c) The site criteria and disposal procedures in a county ordinance shall be identical to the corresponding portions of rules promulgated by the department under this section. The county shall require the person engaged in septage disposal to submit the results of a soil test conducted by a soil tester certified under s. 145.045 and to obtain a site approval for each location where the person disposes of septage on land. The county shall maintain records of soil tests, site approvals, county inspections and enforcement actions under this subsection. A county may not require licensing or registration for any person or vehicle engaged in septage disposal. The county may establish a schedule of fees

for site approvals under this paragraph if the department determines that the fees are no more than is necessary to fund the county program under this paragraph. The county may require a bond or other method of demonstrating the financial ability to comply with the septage disposal ordinance. The county shall provide for the enforcement of the septage disposal ordinance by penalties identical to those in s. 281.98.

(d) The department shall monitor and evaluate the performance of any county adopting a septage disposal ordinance. If a county fails to comply with the requirements of this subsection or fails adequately to enforce the septage disposal ordinance, the department shall conduct a public hearing in the county seat upon 30 days' notice to the county clerk. As soon as practicable after the hearing, the department shall issue a written decision regarding compliance with this subsection. If the department determines that there is a violation of this subsection, the department shall by order revoke the authority of the county to adopt and enforce a septage disposal ordinance. At any time after the department issues an order under this paragraph, a county may submit a new application under par. (a). The department may enforce this section and rules adopted under this section in any county which has adopted a septage disposal ordinance.

(5p) LIMIT ON LOCAL REGULATION. No city, village, town, or county may prohibit or regulate, through zoning or any other means, the disposal of septage on land if that disposal complies with this section and rules promulgated under this section or with an ordinance adopted under sub. (5m) (a) or (b).

(5s) CITATIONS. (a) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of subs. (2) to (5).

(b) Notwithstanding s. 23.66 (4), the department shall promulgate rules establishing the basic amount of the deposit that may be made under s. 23.66 (1) by a person to whom a citation is issued under par. (a). The rules shall specify a different amount for each offense under subs. (2) to (5).

History: 1979 c. 34; 1981 c. 1 s. 47; 1983 a. 189, 410, 538; 1989 a. 31; 1991 a. 39; 1993 a. 344; 1995 a. 227 s. 841, 843; Stats. 1995 s. 281.48; 1997 a. 27, 191, 237; 2005 a. 347; 2007 a. 97; 2009 a. 180; 2011 a. 146, 209.

Cross-reference: See also ch. NR 113, Wis. adm. code.

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

281.49 Disposal of septage in municipal sewage systems.

(1) DEFINITIONS. In this section:

(b) "Licensed disposer" means a person engaged in servicing, as defined in s. 281.48 (2) (f), under a license issued under s. 281.48 (3) (a).

(m) "Septage" means the scum, liquid, sludge or other waste from a septic tank, soil absorption field, holding tank or privy. This term does not include the waste from a grease interceptor.

(2) REQUIREMENT TO TREAT SEPTAGE. A municipal sewage system shall accept and treat septage from a licensed disposer during the period of time commencing on November 15 and ending on April 15. The sewage system may, but is not required to, accept and treat septage at other times during the year.

(3) EXCEPTIONS. (a) Notwithstanding sub. (2), a municipal sewage system is not required to accept septage from a licensed disposer if:

1. Treatment of the septage would cause the sewage system to exceed its operating design capacity or to violate any applicable effluent limitations or standards, water quality standards or any other legally applicable requirements, including court orders or state or federal statutes, rules, regulations or orders;

2. The septage is not compatible with the sewage system;

3. The licensed disposer has not applied for and received approval under sub. (5) to dispose of septage in the sewage system or the licensed disposer fails to comply with the disposal plan; or

4. The licensed disposer fails to comply with septage disposal rules promulgated by the municipal sewage system.

(b) The municipal sewage system shall accept that part of the total amount of septage offered for disposal which is not within the exceptions in par. (a).

(4) PRIORITIES. If the municipal sewage system can accept some, but not all, of the septage offered for disposal, the municipal sewage system may accept septage which is generated within the sewage service area before accepting septage which is generated outside of the sewage service area.

(5) DISPOSAL PLAN. (a) Each year a licensed disposer may apply to the municipal sewage system, prior to September 1, for permission to dispose of septage in the sewage system.

(b) The municipal sewage system shall approve applications for septage disposal, or reject those applications which are within the exceptions in sub. (3), no later than October 1 of each year.

(c) The municipal sewage system may impose reasonable terms and conditions for septage disposal including:

1. Specific quantities, locations, times and methods for discharge of septage into the sewage system.

2. Requirements to report the source and amount of septage placed in the sewage system.

3. Requirements to analyze septage characteristics under sub. (6).

4. Reasonable disposal fees that meet the requirements in sub. (10).

(d) The municipal sewage system shall prepare a disposal plan for each licensed disposer whose application for septage disposal is approved. The disposal plan shall consist of the approved application and all terms and conditions imposed on the licensed disposer.

(6) ANALYSIS OF SEPTAGE. The municipal sewage system may require the licensed disposer to analyze representative samples of septage placed in the sewage system in order to determine the characteristics of the septage and the compatibility of the septage with the municipal sewage system. The municipal sewage system may not require the analysis of septage from exclusively residential sources.

(7) DISPOSAL FACILITIES. A municipal sewage system which is required to accept and treat septage shall provide adequate facilities for the introduction of septage into the sewage system.

(8) MODEL REGULATION. The department shall prepare a model septage disposal regulation which may be used by municipal sewage systems in the implementation of this section.

(9) LAND DISPOSAL NOT PROHIBITED. This section shall not be construed as a prohibition of the land disposal of septage. The land disposal of septage is governed by s. 281.48.

(10) SEPTAGE DISPOSAL FEES. (a) Disposal fees established by a municipal sewage system under sub. (5) (c) 4. for the disposal of septage introduced into the system by a licensed disposer may be based on only the following actual costs related to the disposal of the septage, as determined in accordance with a uniform cost accounting system applicable to all services provided by the system:

1. The cost of facilities at the system that receive and store septage.

2. The cost of any testing of septage conducted by the system.

3. The cost of treating septage by the system. This cost may vary based on the quantity and type of the septage.

4. The portion of the system's additional administrative and

personnel costs for accepting the septage not reflected in the costs identified in subds. 2. and 3.

(b) In determining its actual costs under par. (a) 1. to 4., a municipal sewage system may include any associated cost of capital, debt service, operation, and maintenance, and any other type of cost used by a municipal sewage system in establishing fees for the treatment and disposal of sewage by its customers connected to the system.

(11) REVIEW OF SEPTAGE DISPOSAL FEES. (a) Each municipal sewage system shall establish a procedure to review a septage disposal fee charged by the system that is disputed by a licensed disposer.

(b) Upon the request of a licensed disposer, a municipal sewage system shall use the procedure established by the system under par. (a) to review whether a septage disposal fee charged by the system for the quantity and type of septage specified by the licensed disposer conforms with sub. (5) (c) 4.

(c) After pursuing the review of a septage disposal fee under par. (b), a licensed disposer may request the staff of the public service commission to informally review the disputed septage disposal fee. If the staff determine that there is sufficient basis for a dispute regarding the fee and that use of the procedure under par. (b) is not likely to resolve the dispute, the staff may agree to review the disputed septage disposal fee. Based on its review, the staff may recommend a reasonable septage disposal fee that conforms with sub. (5) (c) 4.

(d) If the use of the procedure under par. (c) does not lead to resolution of the dispute, the licensed disposer requesting the review under par. (c) may make a written request to the public service commission for review of the disputed septage disposal fee under s. 66.0821 (5) or 200.59 (5).

(e) Upon the request of a licensed disposer, or the public service commission or its staff, a municipal sewage system shall provide information to the requester concerning the basis of its septage disposal fees. A municipal sewage system shall provide to the public service commission or its staff any other information that the commission or its staff requests related to a review under par. (c) or (d).

(12) NOTICE OF SEPTAGE DISPOSAL INCREASES. Each municipal sewage system shall notify each licensed disposer currently approved under sub. (5) (b) to dispose of septage in the system of any increase in a disposal fee applicable to the licensed disposer at least 60 days prior to imposing the increased disposal fee. The notice shall include a description of how the system calculated the new disposal fee.

History: 1983 a. 410; 1989 a. 31, 359; 1995 a. 227 s. 409; Stats. 1995 s. 281.49; 2005 a. 347; 2009 a. 180.

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

SUBCHAPTER V

FINANCIAL ASSISTANCE

281.51 Financial assistance program; local water quality planning.

(1) DEFINITIONS. As used in this section:

(a) "Designated local agency" means the designated local agency under section 208 of the federal act.

(b) "Federal act" means the federal water pollution control act amendments of 1972, P.L. 92-500, 86 Stat. 816.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(2) STATE WATER QUALITY PLANNING ASSISTANCE PROGRAM; DESIGNATED LOCAL AGENCIES. (a) The department shall administer a program to provide state assistance to designated local agencies for water quality planning activities.

(b) The department shall establish grant eligibility criteria for designated planning agencies seeking state assistance for water quality planning activities. The department shall consider the capacity of an agency to conduct areawide planning activities in establishing these eligibility criteria.

(c) A designated planning agency may receive state assistance to conduct water quality planning activities if:

1. The designated planning agency agrees to provide planning matching funds. At a minimum, the department shall require the designated planning agency to agree to provide planning matching funds in an amount equal to the state assistance. The department may require the designated planning agency to agree to provide local matching funds in a higher amount.

2. The designated planning agency meets all grant eligibility criteria.

(3) STATE WATER QUALITY PLANNING ASSISTANCE; OTHER LOCAL GOVERNMENTAL UNITS. The department may provide financial assistance for water quality planning activities to local governmental units that are not designated local agencies.

History: 1979 c. 221; 1985 a. 29; 1991 a. 39; 1995 a. 227 s. 423; Stats. 1995 s. 281.51.

281.53 Municipal clean drinking water grants.

(1) The department may award a municipal clean drinking water grant, from the appropriation under s. 20.866 (2) (tb), to a municipality for capital costs to achieve compliance with standards for contaminants established by the department by rule under the safe drinking water program under s. 281.17 (8), if the municipality is not in compliance with those standards on or after April 1, 1990, if the municipality incurs the capital costs after January 1, 1989, and if the violation of the standards for contaminants occurs in a public water system owned by the municipality.

(2) The department shall approve grants under this section equal to 90 percent of the amount by which the reasonable and necessary capital costs of achieving compliance with the standards for contaminants exceed an amount equal to $25 times the population that is served by the contaminated public water system for which a grant is sought if the reasonable and necessary capital costs of achieving compliance with those standards are an amount equal to an amount that is greater than $150 times the population that is served by the contaminated water system.

(3) The department shall rank applicants for grants under this section on the basis of the severity of risk to human health posed by each applicant's violation of the standards for contaminants. If insufficient funds are available for providing grants to eligible municipalities, the department shall allocate grants based on the severity of risk to human health.

(4) The department shall promulgate rules for the administration of the program under this section that include the establishment of which capital costs are eligible for reimbursement and the method for ranking applicants under sub. (3).

History: 1989 a. 366; 1991 a. 32; 1995 a. 227 s. 399; Stats. 1995 s. 281.53; 1995 a. 378 s. 44; 1997 a. 35.

281.55 Financial assistance program.

(1) The legislature finds that state financial assistance for the construction and financing of pollution prevention and abatement facilities is a public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters.

(2) In order that the construction of pollution prevention and abatement facilities necessary to the protection of state waters be

encouraged, a state program of assistance to municipalities and school districts for the financing of such facilities is established and a program of state advances in anticipation of federal aid reimbursement is established to meet the state's water quality standards. These state programs shall be administered by the department of natural resources and the department shall make such rules as are necessary for the proper execution of the state program.

(2m) In this section "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of pollution prevention and abatement facilities, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of pollution prevention and abatement facilities and the erection, building, acquisition, alteration, remodeling, improvement or extension of pollution prevention and abatement facilities and the inspection and supervision of the construction of pollution prevention and abatement facilities.

(3) (a) The department shall establish criteria to determine those municipalities and school districts and projects which are eligible for the state program and to determine appropriate priorities among the projects.

(c) All municipalities and school districts are eligible for agreements under sub. (6) (b) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the extent and nature of pollution, per capita costs of the project, property valuation of the municipalities or school districts as equalized by the state, income of the residents in the municipalities or school districts, the availability of federal funds for the project, soil conditions, the feasibility and practicality of the project, the borrowing capacity of the municipality or school district and any other factors which the department considers important. Municipalities or school districts commencing projects but not completed prior to January 18, 1970, shall be deemed eligible for agreements under sub. (6) (b). School district projects are not eligible if the project is located within the corporate limits of a city or of a village with an operating municipal sewage system.

(4) Municipalities or school districts which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3), and shall arrange the applications in appropriate priority order.

(6) The department may enter into agreement with municipalities and school districts to provide state assistance for the financing of those pollution prevention and abatement facilities projects it approves under sub. (5).

(b) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriations made by s. 20.866 (2) (tm).

1. These payments shall not exceed 50 percent of the approved project in conjunction with the state program of advancement in anticipation of federal reimbursement under sub. (2). To provide for the financing of pollution prevention and abatement facilities, the natural resources board, with the approval of the governor, subject to the limits of s. 20.866 (2) (tm) may direct that state debt be contracted as set forth in subd. 2. and subject to the limits set therein. Said debts shall be contracted for in the manner and form as the legislature hereafter prescribes.

2. It is the intent of the legislature that state debt not to exceed $150,850,000 in the 10-year period from 1969 to 1979 may be incurred for state water pollution and abatement assistance.

(e) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(7) This section shall be construed liberally in aid of the purposes declared in sub. (1).

(8) After June 30, 1979, the department may not enter into any agreements or contracts under sub. (6) (b), but the department shall continue to make payments on existing agreements and contracts until the terms of the agreements and contracts are fully satisfied.

History: 1971 c. 95; 1975 c. 39 s. 734; 1977 c. 29; 1979 c. 34 ss. 974 to 976, 2102 (39) (a); 1987 a. 399; 1989 a. 31; 1991 a. 269; 1995 a. 227 s. 421; Stats. 1995 s. 281.55.

Cross-reference: See also ch. NR 125, Wis. adm. code.

281.56 Financial assistance program; sewerage systems. (1) The financial assistance program established under this section is to be used only if the applicant is unable to receive assistance in a timely manner from the federal government and supplementary funding program established under s. 281.55. Receipt of aid under this section makes the applicant ineligible for aid under s. 281.55.

(2) There is established a state program of assistance to municipalities and unincorporated areas for the purpose of financing the construction of water pollution abatement and sewage collection systems. The program shall be administered by the department which shall make such rules as are necessary for the proper execution of the program.

(3) (a) The department shall establish criteria to determine those municipalities and projects which are eligible for the state program and to determine appropriate priorities by rule among the projects.

(b) All municipalities having a population of less than 10,000 are eligible for agreements under sub. (6) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the adequacy of the existing water pollution abatement system, per capita costs of the project, property valuation of the municipalities as equalized by the state, income of the residents in the municipalities, the availability of federal funds for the project and the borrowing capacity of the municipality. Highest priority shall initially be given to projects which have completed all necessary planning and engineering and any other factors which the department considers important. Municipalities commencing projects not completed prior to June 29, 1974 are eligible for agreements under sub. (6).

(4) Municipalities which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3) and shall arrange the applications in appropriate priority order.

(6) (a) Upon approval of an application, the department may enter into an agreement with the municipality to pay from the appropriation under s. 20.866 (2) (tm) an amount not to exceed 50 percent of the estimated reasonable costs of the approved project. The agreement shall be for such duration and subject to such terms as the department may prescribe. The department shall not grant any municipality more than 10 percent of the funds available under s. 20.866 (2) (tm) for a given year.

(b) In this subsection "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of a proposed sewerage system, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifica-

tions, procedures and other action necessary to the construction of the project and the erection, building, acquisition, alteration, remodeling, improvement or extension of system facilities and the inspection and supervision of the construction of such facilities.

(7) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(8) After June 30, 1978, the department may not enter into any agreements or contracts under this section, but the department shall continue to make payments on existing agreements and contracts until the terms of the agreements and contracts are fully satisfied.

History: 1973 c. 333; 1977 c. 418; 1995 a. 227 s. 422; Stats. 1995 s. 281.56.
Cross-reference: See also ch. NR 126, Wis. adm. code.

281.57 Financial assistance program; point source pollution abatement. (1) LEGISLATIVE INTENT. The legislature finds that state financial assistance for facility planning, engineering design and construction of point source pollution abatement facilities is a public purpose and a proper state government function in that the state is the trustee of the waters of the state and that this financial assistance is necessary to protect the purity of state waters. In order that facility planning, engineering design and construction of point source pollution abatement facilities necessary to the protection of state waters be encouraged, a state program of assistance to municipalities for the financing of these activities is established. The legislature further finds that in order for the construction of point source pollution abatement facilities to proceed in an expeditious manner it is appropriate to meet the costs through the issuance of public debt, extending the financial obligation incurred over a generation of beneficiaries of these facilities.

(2) ADMINISTRATION; RULES. The state's point source pollution abatement program shall be administered by the department. The department shall make such rules as are necessary for the proper execution of the program.

(3) DEFINITIONS. In this section:

(a) "Federal act" means the federal water pollution control act P.L. 92-500, as amended.

(b) "Point source pollution abatement facilities" means those facilities eligible for financial assistance under title II of the federal act.

(c) "State program" means the program of financial assistance for point source pollution abatement established under this section.

(4) ELIGIBILITY. (a) The department shall, by rule, specify criteria for determining eligible municipalities and projects for funding by grants under this section. Where a municipality is serviced by more than one sewerage district for wastewater pollution abatement, each service area of the municipality shall be considered as a separate municipality for purposes of obtaining financial assistance under the state program. Except as provided in this subsection, the department shall promulgate rules which specify criteria for determining eligible participants and projects which comply with the federal act and rules promulgated under the federal act.

(b) 1. Eligible projects relating to collection systems include only the following:

a. A collection system in an unsewered municipality which is constructing a new wastewater treatment plant and collection system rehabilitation which is necessary to maintain the total integrity of a sewerage system.

b. A collection system which the department orders under s. 281.43 (1) notwithstanding the outcome of the annexation referendum under s. 281.43 (1m). Notwithstanding sub. (7) (a) and any rules promulgated under this section, the department shall award funding under this subd. 1. b. in an amount that totals 60 percent of all costs of the project, rather than of eligible costs of the project.

c. A collection system in an unsewered community which is being connected to an existing wastewater treatment plant if the municipality applied to the department under sub. (5) for financial assistance on or after January 1, 1986, and the municipality received, before January 1, 1987, a notice under sub. (6) that the department was ready to allocate funds to the municipality.

2. Funding may not be provided for that portion of any project related to industrial capacity that is defined under 33 USC 1284 (b) (1), as amended on May 16, 1978, as subject to industrial cost recovery. Notwithstanding the federal act and regulations promulgated under that act, the state program does not require an industrial cost recovery system.

3. The amount of reserve capacity for treatment works eligible for grant assistance is limited to that future capacity required to serve the users of the treatment works expected to exist within the service area of the project 10 years from the time the treatment works are estimated to become operational or, in the case of interceptor sewers and associated appurtenances, the estimated date of operation. The department, in consultation with the demographic services center in the department of administration under s. 16.96, shall promulgate rules defining procedures for projecting population used in determining the amount of reserve capacity.

(c) 1. Every applicant seeking grants for construction purposes under this section shall complete a staged facility planning, engineering design and environmental analysis sequence developed by the department. The department shall model the required sequence after the staged planning, design and environmental analysis sequence under title II of the federal act.

2. If sources of funding for the facility planning prescribed under this paragraph are not available for these activities, grants provided under this section may pay 50 percent of the cost of facility planning.

2m. Amendments or applications for facility planning grants received after March 1, 1987, shall be funded at 50 percent of the cost of the facility planning.

3. If sources of funding for the engineering design prescribed under this paragraph are not available for these activities, grants provided under this section may pay 75 percent of the cost of engineering design activities.

4. Engineering design cost grants made from the appropriation under s. 20.866 (2) (tn) shall be awarded at the time a construction grant is awarded and may be awarded only if an advance commitment for reimbursement is made under sub. (9m).

(d) If a project funded under this section fails, the department may not require the recipient of the grant to reimburse the department for costs determined to be eligible under this section if all of the following apply:

1. The applicant initiates legal action and pursues the action to completion, unless the department agrees otherwise, to recover costs from parties potentially liable for the project's failure and the legal action is not resolved before May 11, 1990.

2. The applicant agrees in writing to pay to the department, for the state-funded portion of the project, funds recovered under the legal action in excess of the cost of the legal action.

(5) APPLICATION. Municipalities which desire to participate in the financial assistance program under this section shall submit an application for participation to the department. The application shall be in such form and include such information as the department prescribes. The department shall review applications

for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (4).

(6) PRIORITIES. (a) Each municipality shall notify the department of its intent to apply for a grant under this section by January 1 of each year. For those municipalities that notify the department by January 1, the department shall annually compile a funding list which ranks these municipalities in the same order as they appear on the federal priority list, prepared under the federal act, as of January 1 of each year. Except as provided in sub. (7) (c) 4., if there is not sufficient funding available under this section to fund all grant applications in one year, the department shall allocate available funding to projects in the order in which they appear on the funding list. The department shall not allocate funds to a municipality that is on the funding list in a particular year if the municipality is not ready to begin construction within 3 months of the time when the department is ready to allocate the funds, and the municipality can reasonably expect to receive funds under the federal program within 12 months of the time when the department is ready to allocate the funds.

(b) For those municipalities that notify the department after January 1 but before April 1 of each year of their intent to apply for a grant under this section, the department shall compile a funding list as of April 1 of each year. If funding remains from the allocation under par. (a), the department shall allocate available funding to projects in the order in which they appear on the funding list compiled under this paragraph. The department shall not allocate funds to a municipality under this paragraph that is on the funding list in a particular year if the municipality is not ready to begin construction within 3 months after the department is ready to allocate the funds and the municipality can reasonably expect to receive funds under the federal program within 12 months after the department is ready to allocate the funds.

(c) If a municipality receives a notice that the department is ready to allocate funds under par. (a) or (b) and, prior to the initiation of construction, the department determines that revisions to the proposed project based upon significant newly discovered information or recent technological innovation will reduce anticipated project costs without impeding the achievement of discharge and effluent standards, the department may reserve the funds previously committed under par. (a) or (b) for that municipality for a period not to exceed one priority year after the funding list is compiled under par. (a) or (b).

(7) PAYMENT. (a) 1. Upon the completion by an applicant of all application requirements, the department may enter into an agreement with a municipality for a grant of up to 60 percent of the eligible costs of a project, except as provided under sub. (4) (c), if the municipality is awarded a grant before July 1, 1989.

2. Upon the completion by an applicant of all application requirements, the department may enter into an agreement with a municipality for a grant of up to 55 percent of the eligible costs of the project, except as provided under sub. (4) (c), if the municipality is awarded a grant after June 30, 1989, but before July 1, 1990.

(b) No project funded under this section may receive state assistance that, combined with other nonlocal government assistance, exceeds 75 percent of the eligible cost of the project.

(c) 1. Metropolitan sewerage districts that serve 1st class cities are limited in each fiscal year to receiving total grant awards not to exceed 33 percent of the amount authorized under sub. (10) for that fiscal year plus the unencumbered balance at the end of the preceding fiscal year for the amount authorized under sub. (10). This subdivision is not applicable to grant awards provided during fiscal years 1985-86, 1986-87, 1988-89 and 1989-90.

2. Metropolitan sewerage districts that serve 1st class cities are limited to new project grant awards of not more than $29,900,000 in fiscal year 1985-86, of not more than $35,300,000 in fiscal year 1986-87, of not more than $70,000,000 in fiscal year 1988-89 and of not more than $45,600,000 in fiscal year 1989-90 from the amounts authorized under sub. (10), plus any unallocated balances from the previous fiscal year as listed in this subdivision which the department determines, in accordance with its rules establishing a priority funding list under sub. (6), will be available for obligation during the succeeding fiscal year.

3. Sewerage districts that do not serve 1st class cities are limited to new project grant awards that, in the aggregate for all those sewerage districts, are not more than $70,500,000 in fiscal year 1988-89 and not more than $48,338,400 in fiscal year 1989-90 from the amounts authorized under sub. (10), plus any unallocated balances from the previous fiscal year as listed in this subdivision which the department determines, in accordance with its rules establishing a priority funding list under sub. (6), will be available for obligation during the succeeding fiscal year.

4. Of the additional $11,938,400 authorized in subd. 3. by 1989 Wisconsin Act 366, for fiscal year 1989-90, the department shall allocate $5,969,200 to each of the first 2 municipalities, except a metropolitan sewerage district that serves a 1st class city, whose projects have the highest rankings on the funding list under sub. (6) (a). The department may not release the additional moneys authorized in subd. 3. to such municipalities until the secretary certifies in writing that each municipality has signed an agreement with the department under which the municipality agrees to waive any further challenge to the order of placement of any of its projects on a priority funding list established by the department under sub. (6).

(8) CONDITIONS OF PAYMENT. (a) *Water conservation.* Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a program of water conservation no less stringent than the federal requirements.

(b) *Operation and maintenance.* Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a program of systemwide operation and maintenance of the wastewater treatment plant, including the training of personnel, no less stringent than the federal requirements.

(c) *User charges; exception.* 1. Except as provided under subd. 2., each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a system of equitable user charges to ensure that each recipient of waste treatment services pays its proportionate share of the costs of the operation and maintenance of the point source pollution abatement facility. The user fee system shall be in compliance with title II of the federal act and the rules promulgated under the federal act.

2. The department may issue an exemption from the requirement imposed under subd. 1. if a city or village imposes a system of equitable dedicated charges based upon assessed property values, if the city or village does not operate a wastewater treatment plant but is served by a regional wastewater treatment plant operated by a metropolitan sewerage district created under ss. 200.21 to 200.65 and if the user charges imposed by that district are approved by the department and comply with the requirements of title II of the federal act.

(d) *Prior approval.* Payment in excess of two-thirds of the state assistance provided for the eligible costs of construction may not be made until the department approves the programs required under pars. (a) and (b) and any system required under par. (c).

(e) *Rules.* The department shall promulgate rules consistent with this subsection.

(8m) REPAYMENT. The department may not require a municipality that received a construction grant under this section for a wastewater treatment system that subsequently failed to repay any portion of the grant related to the costs of that failed system if all of the following apply:

(a) The municipality received the construction grant during fiscal year 1980-81.

(b) Prior to the construction of the wastewater treatment system funded by the grant under par. (a) the municipality was an unsewered municipality.

(c) The department directed the municipality to correct the failed wastewater treatment system and the municipality received construction grant funding during fiscal year 1987-88 to make the corrections.

(9) ADVANCE COMMITMENTS FOR REIMBURSEMENT FROM FUTURE APPROPRIATIONS. (a) The department shall, by rule, implement and administer reimbursement funding to municipalities as part of the financial assistance program under this section to encourage the participation of all municipalities.

(b) The department shall promulgate rules specifying reimbursement eligibility and procedures for commitments of financial assistance. The rules shall specify that reimbursement shall be made or committed:

1. To communities willing to apply for state assistance conditioned upon legislative appropriation of the amounts needed to reimburse municipalities.

2. To communities successfully completing all facility planning and engineering design requirements.

3. For all eligible costs consistent with sub. (4).

4. Prior to the start of construction of any reimbursable project if all required procedures have been complied with.

5. Subject to a priority determination system consistent with sub. (6) for reimbursable projects.

6. Subject to the same provisions of payment under sub. (7).

7. Subject to the same conditions of payment under sub. (8).

(c) The maximum state assistance the department may commit in each fiscal year before fiscal year 1989-90 for future reimbursement under this subsection is an amount equal to the amount authorized under sub. (7) (c) for the subsequent fiscal year.

(9m) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. The department may make an advance commitment to a municipality for the reimbursement of engineering design costs from funds appropriated under s. 20.866 (2) (tn) subject to all of the following requirements:

(a) For fiscal year 1989-90, the advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award or making of a construction grant under this section or a loan under ss. 281.58 and 281.59. If the financial assistance that the municipality receives for construction of a treatment work is a loan, the engineering design cost reimbursement shall be a loan. After June 30, 1990, and before September 1, 1990, the department may enter into an agreement with a municipality to provide engineering design costs under this subsection if the department makes an advance commitment for the reimbursement of those costs before July 1, 1990, and the municipality receives financial assistance under this section and s. 281.59 for construction.

(b) The advance commitment may be made only for engineering design activities commenced after the department makes the advance commitment.

(c) The advance commitment may be made only if the municipality has completed all facility planning requirements.

(d) The advance commitment may be made only for engineering design projects and costs which are eligible under sub. (4) (a), (b) and (c) 3.

(e) The advance commitment shall be subject to a priority determination system consistent with sub. (6).

(10) EXPENDITURE AUTHORIZATION. The department may expend, from the appropriation under s. 20.866 (2) (tn), the total amount which is authorized under that paragraph to be contracted for public debt and has not been expended, for new grants under this section for engineering design costs, construction costs and other costs which can be funded from bond revenue.

(10e) LOAN FOR WATER TOWER IN THE VILLAGE OF ATHENS. Notwithstanding subs. (2), (4) to (10), and (12), during the 2001-03 fiscal biennium, the department shall provide a loan of $320,000 to the village of Athens for construction of a water tower and related costs, if the village applies for a loan. The department may not charge any interest on the loan.

(10f) LOAN FOR WATER TOWER IN THE VILLAGE OF WESTON. Notwithstanding subs. (2), (4) to (10), and (12), during the 2001-03 fiscal biennium, the department shall provide a loan of $400,000 to the village of Weston for construction of a water tower and related costs, if the village applies for a loan. The department may not charge any interest on the loan.

(10m) LOAN FOR MODIFICATION OR REPLACEMENT OF AN INNOVATIVE OR ALTERNATIVE PROJECT. Notwithstanding subs. (2), (4) to (10) and (12), during the 1997-99 fiscal biennium, the department shall provide a loan of $1,300,000 to a municipality for all of the planning, design and construction costs incurred after June 30, 1995, for the modification or replacement of a failed innovative or alternative point source pollution abatement facility for which the department issued written approval of eligibility under 40 CFR 35.2032 before December 10, 1996, and which requires additional construction to eliminate discharge of effluent to groundwater and to establish a new surface water outfall. The department may not charge any interest on the loan and may not require the municipality to repay the loan until the municipality receives a grant from the federal environmental protection agency for the modification or replacement of the point source pollution abatement facility. If the federal environmental protection agency denies the grant, the department shall forgive the loan.

(10r) LOAN FOR REPLACEMENT OF A FAILED SEQUENTIAL BATCH REACTOR. Notwithstanding subs. (2), (4) to (10) and (12), during the 1999-2001 biennium, the department shall provide a loan of $770,000 to a municipality for all of the administrative, planning, design and construction costs incurred after January 1, 1997, for the replacement of a failed sequential batch reactor point source pollution abatement facility for which the department has issued written concurrence on or before March 26, 1999, that the construction of a new wastewater treatment plant is the most cost-effective option, and for which the municipality has on or before March 26, 1999, committed to work with the department towards securing reimbursement of the loan from the federal environmental protection agency under 40 CFR 35.2032. The department may not charge any interest on the loan.

(10t) LOAN FOR A DRINKING WATER TREATMENT PLANT. Notwithstanding subs. (2), (4) to (10) and (12), during the 1999-2001 biennium, the department shall provide a loan of $1,100,000 to the village of Marathon for the upgrading or replacement of a drinking water treatment plant. The department may not charge any interest on the loan. The department may not require the municipality to repay the loan until the municipality receives a grant from the federal environmental protection agency

for the upgrading or replacement of the drinking water treatment plant. If the federal environmental protection agency denies the grant or a portion of the grant, the village of Marathon shall repay the amount of the loan that exceeds the amount of the grant.

(11) CONSTRUCTION. This section shall be liberally construed in aid of the purposes declared in sub. (1).

(12) SUNSET. (a) Notwithstanding sub. (6), the department may not issue a grant award under the state program for a municipality that has not submitted to the department by January 2, 1989, a facility plan which meets the requirements of this section and is approvable by the department under this chapter.

(b) Notwithstanding sub. (6), the department may not issue a grant award under the state program for planning or construction work after June 30, 1990.

History: 1977 c. 418; 1979 c. 34 ss. 976g to 976wd, 2102 (39) (g); 1979 c. 221 ss. 626 to 626y, 2200 (20), 2202 (39); 1981 c. 1, 20, 174; 1983 a. 27; 1985 a. 29 ss. 1935 to 1938, 3202 (39); 1985 a. 120; 1987 a. 27, 399; 1989 a. 31, 336, 366; 1991 a. 39, 315; 1995 a. 27; 1995 a. 227 s. 424; Stats. 1995 s. 281.57; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2011 a. 32; 2015 a. 55; 2017 a. 59; 2021 a. 67 s. 2; 2023 a. 19 s. 472g.

281.58 Clean water fund program; financial assistance. (1) DEFINITIONS. In this section:

(ai) "Clean water fund program" means the program administered under this section with financial management provided under s. 281.59.

(am) "Effluent limitation" has the meaning designated in s. 283.01 (6).

(b) "Enforceable requirement" means any of the following:

1. Those conditions or limitations of a permit under ch. 283 which, if violated, could result in the initiation of a civil or criminal action under s. 283.89.

2. Those provisions of s. 281.19 (5) which, if violated could result in a departmental order under s. 281.19 (7).

3. If a permit under ch. 283 has not been issued, those conditions or limitations which, in the department's judgment, would be included in the permit when issued.

4. If no permit under ch. 283 applies, any requirement which the department determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(c) "Industrial user" means any of the following:

1. Any nongovernmental, nonresidential user of a publicly owned treatment work which discharges more than the equivalent of 25,000 gallons per day of sanitary wastes, other than domestic wastes or discharges from sanitary conveniences, or discharges a volume that has the weight of biochemical oxygen demand or suspended solids at least as great as the weight found in 25,000 gallons per day of sanitary waste from residential users, and which is identified in the standard industrial classification manual, 1972, federal office of management and budget, as amended and supplemented as of October 1, 1978, under one of the following divisions:

a. Division A: agriculture, forestry, and fishing.

b. Division B: mining.

c. Division D: manufacturing.

d. Division E: transportation, communications, electric, gas, and sanitary services.

e. Division I: services.

2. Any nongovernmental user of a publicly owned treatment work which discharges wastewater to the treatment work which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals, to create a public nuisance, or to create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

3. All commercial users of an individual system constructed with grant assistance under s. 281.57.

(cg) "Market interest rate" has the meaning given in s. 281.59 (1) (b).

(cm) "Median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(cs) "Residential user" means a structure or part of a structure, including a mobile home, that is used primarily as a home, residence or sleeping place by one person or 2 or more persons maintaining a common household and that uses a publicly owned treatment work. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

(cv) "Septage" has the meaning given in s. 281.48 (2) (d).

(d) "Treatment work" has the meaning designated in s. 283.01 (18).

(e) "Violator of an effluent limitation" means a person or municipality that after May 17, 1988, is not in substantial compliance with the enforceable requirements of its permit issued under ch. 283 for a reason that the department determines is or has been within the control of the person or municipality.

(2) RULES. The department shall promulgate rules that are necessary for the proper execution of its responsibilities under this section. Notwithstanding s. 227.10 (1), the department and the department of administration are not required to promulgate rules for the purposes of providing financial assistance for pilot projects under sub. (7) (b) 7.

(2m) GENERAL DUTIES. The department shall:

(a) Administer its responsibilities under the clean water fund program.

(b) Have the lead state role with the U.S. environmental protection agency.

(c) Cooperate with the department of administration in administering the clean water fund program.

(d) Have the lead state role with municipalities in providing clean water fund program information, and cooperate with the department of administration in providing such information to municipalities.

(e) Inspect periodically clean water fund project construction to determine project compliance with construction plans and specifications and the requirements of this section and s. 281.59 and, if applicable, of 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder.

(f) Submit a biennial budget request under s. 16.42 for the clean water fund program.

(3) ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS. The department may enter into an agreement under 33 USC 1382 with the U.S. environmental protection agency to receive a capitalization grant under 33 USC 1381 to 1387. The agreement may contain any provision required by 33 USC 1381 to 1387 and any regulation, guideline or policy adopted under 33 USC 1381 to 1387.

(3m) BIENNIAL NEEDS LIST. By May 1 of each even-numbered year, the department shall prepare and submit to the department of administration a biennial needs list that includes all of the following information:

(a) A list of wastewater treatment projects that the department estimates will apply for financial assistance under the clean water fund program during the next biennium.

(b) The estimated cost and estimated construction schedule of

each project on the list, and the total of the estimated costs of all projects on the list.

(c) The estimated rank of each project on the priority list under sub. (8e).

(6) METHODS OF PROVIDING FINANCIAL ASSISTANCE. (a) The department may determine whether a municipality is eligible for financial assistance under the clean water fund program for any of the following:

1. Planning, designing and constructing or replacing a treatment work.

1m. Activities other than those specified in subd. 1. associated with achieving and maintaining compliance with a permit issued under ch. 283.

2. Implementing a management program established under 33 USC 1329 (b).

3. Developing and implementing a conservation and management plan under 33 USC 1330.

(b) The following methods of providing financial assistance may be used under the clean water fund program:

1. Purchasing or refinancing the obligation of a municipality if the obligation was incurred to finance the cost of constructing a water pollution control project located in this state.

3. Guaranteeing, or purchasing insurance for, municipal obligations for the construction or replacement of a treatment work if the guarantee or insurance would improve credit market access or reduce interest rates.

4. Making loans at or below the market interest rate.

5. Providing state financial hardship assistance under sub. (13) from the account under s. 25.43 (2) (b).

7. Making grants under sub. (13m).

8. Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to municipalities under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the clean water fund program.

9. Using funds received as federal capitalization grants under sub. (3), any other method that is consistent with the federal program for state water pollution control revolving funds under 33 USC 1381 to 1387 or any other federal law providing funding for or otherwise relating to that program.

(7) ELIGIBILITY. (a) The department shall, by rule, establish criteria for determining which applicants and which projects are eligible to receive financial assistance under the clean water fund program. The primary criteria for eligibility shall be water quality and public health. The rules for clean water fund projects funded from the account under s. 25.43 (2) (a) shall be consistent with 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder. The rules for clean water fund projects funded from the account under s. 25.43 (2) (b) may be consistent with 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder.

(b) The department may determine whether a municipality is eligible for financial assistance under the clean water fund program for any of the following types of projects:

1. Projects that the department determines are necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, including projects or capacity for the receiving, storage, and treatment of septage.

2. Projects needed to provide treatment to achieve compliance with an enforceable requirement changed or established after May 17, 1988, if the project is for a municipality that is in substantial compliance with its permit, issued under ch. 283, in regard to the changed or established enforceable requirements.

4. Projects for unsewered municipalities.

5. Projects for the prevention or treatment of nonpoint source pollution or urban storm water runoff.

6. Projects for the planning, design, construction or replacement of treatment works that violate effluent limitations contained in a permit issued under ch. 283.

7. Pilot projects that are consistent with the federal program for state water pollution control revolving funds under 33 USC 1381 to 1387.

8. Projects for the reduction of infiltration and inflow in connecting laterals and sewer lines.

(8) INELIGIBILITY FOR AND LIMITATIONS ON FINANCIAL ASSISTANCE. (a) The following are not eligible for financial assistance from the clean water fund program:

1. A person or municipality that has failed to substantially comply, as specified by the rules promulgated under sub. (2), with the terms of a federal or state grant or loan used to pay the costs of studies, investigations, plans, designs or construction associated with wastewater collection, transportation, treatment or disposal or used to pay the cost of studies, investigations, plans, designs or construction associated with implementing a nonpoint source control management program.

2. Except as provided in sub. (7) (b) 8., connecting laterals and sewer lines that transport wastewater from structures to municipally owned or individually owned wastewater systems.

3. Public sanitary sewer mains, interceptors and individual systems which exclusively serve future development.

4. A planning, design or construction project which received financial assistance under 33 USC 1251 to 1376 or s. 281.57, except for any of the following:

a. The nonlocal share of a project which receives funding under s. 281.59 (13).

b. The portion of a project funded under s. 281.59 (13) relating to a collection system, even if the costs relating to the collection system were not eligible under s. 281.57.

5. During fiscal years 1989-90 to 1994-95, a person or municipality in violation of an effluent limitation contained in a permit issued under ch. 283, unless that person or municipality is eligible under s. 281.59 (13).

(b) 1. Except as provided in subd. 2. and par. (k), the amount of reserve capacity for a project eligible for financial assistance through a method specified under sub. (6) (b) is limited to that future capacity required to serve the users of the project expected to exist within the sewer service area of the project and that future capacity required to serve the need expected to exist outside of the sewer service area of the project for septage that is reasonably likely to be disposed of in the project 10 years after the project is estimated to become operational. The department, in consultation with the demographic services center in the department of administration under s. 16.96, shall promulgate rules defining procedures for projecting population used in determining the amount of reserve capacity.

2. Except as provided in par. (k), the department may not determine that a municipality is eligible for financial assistance through a method specified under sub. (6) (b) for reserve capacity for a collection system, interceptors or an individual system project in an unsewered municipality.

(c) Except as provided in par. (k), financial assistance may be provided for the design, planning and construction of a collection system, interceptor or individual system project in an unsewered municipality or an unsewered area of a municipality, only if the department finds that at least two-thirds of the initial flow will be for wastewater originating from residences in existence for at

least 20 years prior to the submission of the application under sub. (9) (a).

(d) An unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality is not eligible for financial assistance under the clean water fund program until it executes an agreement under s. 66.0301 with another municipality to receive, treat and dispose of the wastewater of the unsewered municipality.

(e) Financial assistance may be provided to a municipality for a project only if the financial assistance is used for a project that is the most cost-effective alternative for the municipality without regard to financial assistance from the federal government and this state.

(f) Except as provided in par. (k), the department may not determine that a municipality is eligible for financial assistance through a method specified under sub. (6) (b) for the portion of a project that treats wastes from industrial users.

(g) The sum of all of the financial assistance to a municipality approved under the clean water fund program for a project may not result in the municipality paying less than 30 percent of the cost of the project.

(h) Except as provided in par. (k), a municipality that is a violator of an effluent limitation at the time that the application for a treatment work project is approved under sub. (9m) may not receive financial assistance of a method specified under sub. (6) (b) 1., 3., 4. or 5. for that part of the treatment work project that is needed to correct the violation. This paragraph does not apply to a municipality that after May 17, 1988, is in compliance with a court or department order to correct a violation of the enforceable requirements of its ch. 283 permit, and that is applying for financial assistance under s. 281.59 (13) to correct that violation.

(i) After June 30, 1991, no municipality may receive for projects in a biennium an amount that exceeds 35.2 percent of the amount that the department of administration projects will be available to provide financial assistance for projects under this section for that biennium.

(j) The amount of a payment under sub. (6) (b) 8. may not exceed the amount necessary to reduce the interest rate on the loan from market rate to the interest rate that would have been charged on a loan to the municipality under sub. (6) (b) 4.

(k) The restrictions specified under par. (b) 1. and 2., (c), (f) or (h) do not apply to any of the following methods of financial assistance:

1. A loan at the market interest rate.

2. A purchase or refinancing of an obligation at fair market value and at the market interest rate.

3. A guarantee or a purchase of insurance for a municipal obligation which will permit the municipality credit market access not otherwise available or which will reduce the interest rate on the obligation to not less than the market rate.

(8e) PRIORITY. The department shall establish a priority list in accordance with 33 USC 1381 to 1387 which ranks each project. The ranking on the priority list shall be based on all of the following:

(a) The type of project and the order in which it is listed under sub. (7) (b) 1. to 6.

(b) The impact of the project on groundwater and surface water quality.

(c) The impact of the project on public health.

(cm) A factor that gives higher priority than would otherwise be given to a project to serve more than one municipality if all of the following apply:

1. Each municipality to be served by the project has a population of 2,500 or less.

2. At least one of the municipalities to be served by the project has a wastewater treatment system that is unusable because of failures of the system.

3. The municipalities to be served by the project are submitting an application for a new joint treatment work.

4. At least one of the municipalities to be served by the treatment work has been ordered to upgrade a current system.

(d) Any other factor determined by the department.

(8s) FACILITY PLAN. A municipality seeking financial assistance for a project under this section shall complete a facility plan as required by the department by rule.

(9) APPLICATION. (a) After the department approves a municipality's facility plan submitted under sub. (8s), the municipality shall submit an application for participation to the department. The application shall be in such form and include such information as the department and the department of administration prescribe and shall include design plans and specifications. The department shall review applications for participation in the clean water fund program. The department shall determine which applications meet the eligibility requirements and criteria under subs. (6), (7), (8), and (13).

(ae) A municipality that submits an application under par. (a) without design plans and specifications may obtain an initial determination of financial eligibility from the department of administration. The department of natural resources may not approve a municipality's application until the municipality submits design plans and specifications.

(b) A municipality seeking financial assistance for a project under the clean water fund program shall complete an environmental analysis sequence as required by the department by rule.

(c) If a municipality is serviced by more than one sewerage district for wastewater pollution abatement, each service area of the municipality shall be considered a separate municipality for purposes of obtaining financial assistance under the clean water fund program.

(d) The department of administration and the department jointly may charge and collect service fees, established by rule, which shall cover the estimated costs of reviewing and acting upon the application and servicing the financial assistance agreement. No service fee established by rule under this paragraph may be charged to or collected from an applicant for financial assistance under s. 281.59 (13).

(e) If the department of natural resources and the department of administration determine that the total amount that the department of administration projects will be available to provide financial assistance for projects under this section for a biennium, as set forth in the biennial finance plan under s. 281.59 (3) (a) 2. and as updated under s. 281.59 (3) (bm) 2., is insufficient to provide funding for all projects for which applications will be approved during that biennium, the department shall inform municipalities that, if the governor's recommendations are approved, clean water fund program assistance during a fiscal year of that biennium will be available only to municipalities that submit financial assistance applications by September 30 of that fiscal year.

(f) The fees collected under par. (d) shall be credited to the environmental improvement fund.

(9m) ACCEPTANCE OF APPLICATION; ALLOCATION OF FUNDING. (a) Subject to par. (d), the department shall approve an application after all of the following occur:

1. The department determines that the project meets the eligibility requirements and criteria under subs. (7), (8), and (8s).

2. The department of administration initially determines that the municipality will meet the requirements of s. 281.59 (9) (b).

(d) The department may not approve an application under par. (a) for a project that is not on the priority list under sub. (8e).

(e) 1. Except as provided under par. (f) and sub. (13), if a sufficient amount of financial assistance under this section is available for the municipality's project when the department approves the application under par. (a), the department of administration shall allocate that amount to the project.

2. If a sufficient amount of financial assistance under this section is not available for the municipality's project when the department approves the application under par. (a), the department shall place the project on a list for allocation when additional financial assistance becomes available.

(f) If the department of natural resources and the department of administration determine that the amount available to provide financial assistance for projects under this section for a biennium is insufficient to provide funding for all projects for which applications will be approved during that biennium, all of the following apply:

1. The department shall establish a funding list for each fiscal year of the biennium that ranks projects of municipalities that submit financial assistance applications under sub. (9) (a) no later than September 30 of the fiscal year in the same order that they appear on the priority list under sub. (8e).

2. The department of administration shall allocate funding to projects in the order in which they appear on the funding list under subd. 1.

(fm) The department, in consultation with the department of administration, shall promulgate, by rule, methods to establish deadlines for actions that must be taken by a municipality to which financial assistance has been allocated. The methods may provide for extending deadlines under specified circumstances. If a municipality fails to meet a deadline, including any extension, the department of administration shall rescind the allocation of financial assistance for the municipality's project.

(11) TYPE OF FINANCIAL ASSISTANCE. (a) Except as provided in par. (b), the department of administration shall specify the method by which financial assistance is to be provided for each approved application.

(b) For municipalities meeting the financial hardship assistance requirements under sub. (13), the department of natural resources may approve financial hardship assistance.

(12) LOAN INTEREST RATES. (a) 1. Except as modified under par. (f) and except as restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub. (7) (b) 1. to 5. is one of the following:

a. For a municipality that has a population of less than 1,000, and in which the median household income is 65 percent or less of the median household income in this state, zero percent of market interest rate.

b. For a municipality that has a population of less than 10,000, and in which the median household income is 80 percent or less of the median household income in this state, 33 percent of market interest rate.

c. For a municipality that does not meet the requirements specified in subd. 1. a. or b., 75 percent of market interest rate for projects for which the subsidy was allocated from the amount under s. 281.59 (3e) (b), 2013 stats., for a biennium before the 2015-17 biennium and 70 percent of market interest rate for projects for which the financial assistance is allocated under this section for the 2015-17 biennium, and 55 percent of market interest rate for projects for which the financial assistance is allocated under this section for the 2017-19 biennium or later.

4. The interest rate for projects specified in sub. (7) (b) 6. and for those portions of projects under subd. 1. that are restricted by sub. (8) (b), (c), (f) or (h) is market interest rate.

5. Notwithstanding subd. 1., the interest rate for the portion of a project that provides facilities for receiving and storing septage and capacity for treating septage is zero percent.

(c) The department and the department of administration shall attempt to ensure all of the following:

1. That increases in all state water pollution abatement general obligation debt service costs do not exceed 4 percent annually.

2. That state water pollution abatement general obligation debt service costs are not greater than 50 percent of all general obligation debt service costs in any fiscal year.

(f) The department and the department of administration jointly may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rate established in par. (a) 1.

(13) FINANCIAL HARDSHIP ASSISTANCE. (b) A municipality with an application that is approved under sub. (9m) is eligible for state financial hardship assistance for the project costs that are eligible under the clean water fund program, except for costs to which sub. (8) (b), (c), (f) or (h) applies, if the initial application was submitted on or before June 30, 2017, the application, including the facility plan and the design plans and specifications, was completed on or before June 30, 2018, and the municipality meets all of the following criteria:

1. The median household income in the municipality is 80 percent or less of the median household income in this state.

2. The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2 percent of the median household income in the municipality without assistance under this subsection.

(c) The department shall provide assistance so that estimated total annual charges per residential user in the municipality that relate to wastewater treatment do not exceed 2 percent of the median household income in the municipality, if possible. The department may not reduce the amount of financial hardship assistance for a municipality's project due to the municipality receiving assistance for the project from another source unless the combination of financial hardship assistance plus the assistance from the other source would reduce the estimated total annual charges per residential user in the municipality that relate to wastewater treatment to less than 2 percent of the median household income in the municipality.

(cm) The amount and type of assistance to be provided to a municipality that receives state financial hardship assistance shall be determined under rules promulgated by the department.

(d) The department shall establish a financial hardship assistance funding list for each fiscal year that ranks projects of municipalities that are eligible under par. (b), and that submit complete financial assistance applications under sub. (9) (a) no later than June 30 of the preceding fiscal year, in the same order that they appear on the priority list under sub. (8e).

(e) In each fiscal year, the department shall allocate financial hardship assistance under this subsection in the following order:

2. Assistance under par. (b) for projects that were on a funding list under par. (d) for a prior fiscal year, that have not previously received funding and that were in the top 20 percent of projects on the priority list under sub. (8e) for the prior fiscal year, starting with projects on the funding list for the earliest fiscal year.

3. Assistance under par. (b) for projects on the current fiscal

year's funding list under par. (d) in the order that they appear on the funding list.

(f) The department shall promulgate, by rule, a formula for estimating operating, maintenance and replacement costs for determining estimated wastewater treatment user charges under this subsection.

(13m) MINORITY BUSINESS DEVELOPMENT AND TRAINING PROGRAM. (a) The department shall make grants to projects that are eligible for financial assistance under the clean water fund program and that are identified as being part of the minority business development and training program under s. 200.49 (2) (b).

(b) Grants provided under this subsection are not included for the purposes of determining under sub. (8) (i) the amount that a municipality may receive for projects under the clean water fund program.

(14) CONDITIONS OF FINANCIAL ASSISTANCE. (b) As a condition of receiving financial assistance under the clean water fund program, a municipality shall do all of the following:

1. Establish a dedicated source of revenue, that is acceptable to the department of administration under s. 281.59 (9) (am) and (b), for the repayment of any financial assistance.

4. Comply with those provisions of 33 USC 1381 to 1387, this chapter and chs. 283, 285 and 289 to 299 and the regulations and rules promulgated thereunder that the department specifies.

5. Develop and adopt a program of water conservation as required by the department.

6. Develop and adopt a program of systemwide operation and maintenance of the treatment work, including the training of personnel, as required by the department.

7. Develop and adopt a system of equitable user charges to ensure that each recipient of treatment work services pays its proportionate share of the costs of the operation and maintenance of the treatment work. The user fee system shall be in compliance with 33 USC 1284 (b) and the regulations promulgated thereunder. The department may issue an exemption from the requirement imposed under this subdivision if a city or village imposes a system of equitable dedicated charges based upon assessed property values, if the city or village does not operate a treatment work but is served by a regional wastewater treatment plant operated by a metropolitan sewerage district created under ss. 200.21 to 200.65 and if the user charges imposed by that district are approved by the department and comply with 33 USC 1284 (b). The department may provide that the system of user charges for a project with estimated construction costs of $750,000 or less need only cover the costs of debt service and equipment replacement funds.

(15) FINANCIAL ASSISTANCE COMMITMENTS. (a) The department and the department of administration may, at the request of a municipality, issue a notice of financial assistance commitment to the municipality after the department approves the municipality's application under sub. (9m) (a) and the department of administration has allocated financial assistance for the municipality's project.

(am) The notice of financial assistance commitment shall include the conditions that the municipality must meet to secure the financial assistance and shall include the estimated repayment schedules and other terms of the financial assistance.

(21) CONSTRUCTION. This section shall be liberally construed in aid of the purposes of this section.

History: 1987 a. 399; 1989 a. 31, 336, 366; 1991 a. 32, 39, 189; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 425; Stats. 1995 s. 281.58; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 104; 2005 a. 25, 347; 2009 a. 28; 2011 a. 32, 261; 2013 a. 7; 2015 a. 55; 2017 a. 59; 2017 a. 365 s. 111; 2021 a. 112; 2023 a. 106.

Cross-reference: See also ch. NR 162, Wis. adm. code.

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

281.59 Environmental improvement fund; financial management.

(1) DEFINITIONS. In this section:

(ag) "Clean water fund program" means the program administered under s. 281.58, with financial management provided under this section.

(am) "Effluent limitation" has the meaning given in s. 283.01 (6).

(b) "Market interest rate" means the effective interest rate on a fixed-rate revenue obligation issued by the state to fund a loan made under this section or, if the department of administration determines that there has been a significant change in interest rates after the fixed-rate revenue obligation has been issued or if a fixed-rate revenue obligation has not been issued by the state to fund a loan made under this section, the effective interest rate that the department of administration determines would have been paid if a fixed-rate revenue obligation had been issued on the date financial assistance is allotted.

(c) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, joint local water authority created under s. 66.0823, or federally recognized American Indian tribe or band in this state.

(cm) "Safe drinking water loan program" means the program administered under s. 281.61, with financial management provided under this section.

(e) "Treatment work" has the meaning given in s. 283.01 (18).

(f) "Violator of an effluent limitation" means a person or municipality that after May 17, 1988, is not in substantial compliance with the enforceable requirements of its permit issued under ch. 283 for a reason that the department determines is or has been within the control of the person or municipality.

(1m) ESTABLISHMENT OF PROGRAMS. (a) There is established a clean water fund program, administered under s. 281.58, with financial management provided under this section.

(b) There is established a safe drinking water loan program, administered under s. 281.61, with financial management provided under this section.

(2) GENERAL DUTIES. The department of administration shall:

(a) Administer its responsibilities under this section and ss. 281.58 and 281.61 and s. 281.60, 2021 stats.

(b) Cooperate with the department in administering the clean water fund program and the safe drinking water loan program and in servicing any outstanding loans made under s. 281.60, 2021 stats.

(c) Accept and hold any letter of credit from the federal government through which the state receives federal capitalization grant payments and disbursements to the environmental improvement fund.

(2m) INVESTMENT MANAGEMENT; ENVIRONMENTAL IMPROVEMENT FUND. (a) The department of administration may:

1. Subject to par. (b), direct the investment board under s. 25.17 (2) (d) to make any investment of the environmental improvement fund, or in the collection of the principal and interest of all moneys loaned or invested from that fund.

2. Subject to par. (b), purchase or acquire, commit on a standby basis to purchase or acquire, sell, discount, assign, negotiate, or otherwise dispose of, or pledge, hypothecate or otherwise create a security interest in, loans as the department of administration may determine, or portions or portfolios of participations in loans, made or purchased under this section. The disposition may be at the price and under the terms that the department of administration determines to be reasonable and may be at public or private sale.

(b) The department of administration shall take an action under par. (a) only if all of the following conditions occur:

1. The action provides a financial benefit to the environmental improvement fund.

2. The action does not contradict or weaken the purposes of the environmental improvement fund.

3. The building commission approves the action before the department of administration acts.

(3) FINANCIAL MANAGEMENT; BIENNIAL FINANCE PLAN. (a) By October 1 of each even-numbered year, the department of administration and the department jointly shall prepare a biennial finance plan that includes all of the following information:

1. An estimate of the wastewater treatment and safe drinking water project needs of the state for the 4 fiscal years of the next 2 biennia.

2. The total amount that the department of administration projects will be available to provide financial assistance for projects under subd. 1. during the next biennium.

4. The extent to which the funding for the clean water fund program and the safe drinking water loan program, in the environmental improvement fund, will be maintained in perpetuity.

4m. A chart showing detailed projected sources and uses of funds for projects under subd. 1. during the next biennium.

5. The most recent available audited financial statements of the past operations and activities of the clean water fund program and the safe drinking water loan program, the estimated environmental improvement fund capital available in each of the next 4 fiscal years for the clean water fund program and the safe drinking water loan program, and the projected environmental improvement fund balance for the clean water fund program and the safe drinking water loan program for each of the next 20 years given existing obligations and financial conditions.

5m. The percentage of market interest rate for the projects under subd. 1.

8. The amount and description of any fee expected to be charged during the next biennium under this section.

9. The impact of the biennial finance plan on the guideline under par. (b).

(b) The department of administration and the department shall consider as a guideline in preparing the portion of the biennial finance plan for the clean water fund program that all state water pollution abatement general obligation debt service costs should not exceed 50 percent of all general obligation debt service costs to the state.

(bm) The department and the department of administration jointly shall prepare and submit copies of all of the following to the building commission under s. 13.48 (26), to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the appropriate legislative standing committees generally responsible for legislation related to environmental issues:

1. By October 1 of each even-numbered year, the version of the biennial finance plan initially prepared as part of the budget process.

2. No later than 30 days after the day on which the biennial budget is submitted to the legislature under s. 16.45, amendments to the biennial finance plan that update the plan to reflect material approved by the governor for inclusion in the budget.

3. No later than 30 days after the day on which the governor signs the biennial budget, a version of the biennial finance plan, updated to reflect the adopted biennial budget act.

(br) The joint committee on finance and each standing committee may submit to the building commission its recommendations and comments regarding each version of the biennial finance plan and amendments to the biennial finance plan, and whether the version of the biennial finance plan updated to reflect the adopted biennial budget act should be approved or disapproved as specified under s. 13.48 (26). If the building commission disapproves the version of the biennial finance plan that is updated to reflect the adopted biennial budget act, the department and the department of administration shall submit a revised biennial finance plan to the building commission.

(j) No later than November 1 of each odd-numbered year, the department of administration and the department jointly shall submit a report, to the building commission and committees as required under par. (bm), on the operations and activities of the clean water fund program and the safe drinking water loan program for the previous biennium.

(3e) CLEAN WATER FUND PROGRAM EXPENDITURES. (d) The department may expend, for financial assistance in a biennium other than financial hardship assistance under s. 281.58 (13) (e), an amount up to 95 percent of the amount available to provide financial assistance for projects under this section for that biennium. The department may expend such amount only from the percentage of the amount that is not available under par. (e) for financial hardship assistance.

(e) The department may expend, for financial hardship assistance in a biennium under s. 281.58 (13) (e), an amount up to 5 percent of the amount available to provide financial assistance for projects under this section for that biennium. The department may expend such amount only from the percentage of the amount that is not available under par. (d) for financial assistance.

(4) REVENUE OBLIGATIONS. (a) The clean water fund program and the safe drinking water loan program are revenue-producing enterprises or programs, as defined in s. 18.52 (6).

(am) Deposits, appropriations or transfers to the environmental improvement fund for the purposes of the clean water fund program or the safe drinking water loan program may be funded with the proceeds of revenue obligations issued subject to and in accordance with subch. II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education bond.

(b) The department of administration may, under s. 18.561 or 18.562, deposit in a separate and distinct fund in the state treasury or in an account maintained by a trustee outside the state treasury, any portion of the revenues derived under s. 25.43 (1). The revenues deposited with a trustee outside the state treasury are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this subsection and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection.

(c) The building commission may pledge any portion of revenues received or to be received in the fund established in par. (b) or the environmental improvement fund to secure revenue obligations issued under this subsection. The pledge shall provide for the transfer to the environmental improvement fund of all pledged revenues, including any interest earned on the revenues, which are in excess of the amounts required to be paid under s. 20.320 (1) (c) and (u) and (2) (c) and (u) for the purposes of the clean water fund program and the safe drinking water loan program. The pledge shall provide that the transfers be made at least twice yearly, that the transferred amounts be deposited in the environmental improvement fund and that the transferred amounts are free of any prior pledge.

(d) The department of administration shall have all other powers necessary and convenient to distribute the pledged revenues and to distribute the proceeds of the revenue obligations in

accordance with subch. II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education bond.

(e) The department of administration may enter into agreements with the federal government or its agencies, political subdivisions of this state, individuals or private entities to insure or in any other manner provide additional security for the revenue obligations issued under this subsection.

(f) Revenue obligations may be contracted by the building commission when it reasonably appears to the building commission that all obligations incurred under this subsection, and all payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection, can be fully paid on a timely basis from moneys received or anticipated to be received. Revenue obligations issued under this subsection for the clean water fund program and safe drinking water loan program shall not exceed $2,526,700,000 in principal amount, excluding obligations issued to refund outstanding revenue obligation notes. The building commission may contract additional revenue obligations in an amount up to $24,700,000. The building commission may contract additional revenue obligations in an amount up to $46,000,000. The building commission may contract additional revenue obligations in an amount up to $732,250,100.

(g) Unless otherwise expressly provided in resolutions authorizing the issuance of revenue obligations or in other agreements with the holders of revenue obligations, each issue of revenue obligations under this subsection shall be on a parity with every other revenue obligation issued under this subsection and in accordance with subch. II of ch. 18 or with subch. IV of ch. 18 if designated a higher education bond.

(9) CONDITIONS OF FINANCIAL ASSISTANCE. (ad) A loan approved under the safe drinking water loan program shall be fully amortized not later than 30 years after the expected date of completion of the project that it funds, as determined by the department of administration, and require the repayment of principal and interest, if any, to begin not later than 18 months after the expected date of completion of the project that it funds, as determined by the department of administration.

(ag) A loan approved under the clean water fund program shall be for no longer than 30 years or the useful life of the project, whichever is less, as determined by the department of administration. The loan shall be fully amortized not later than 30 years after the original date of the financial assistance agreement or the end of the useful life of the project, whichever is less, as determined by the department of administration. Repayment of principal and interest, if any, shall begin not later than 12 months after the expected date of completion of the project that the loan funds, as determined by the department of administration.

(am) The department of administration, in consultation with the department, may establish those terms and conditions of a financial assistance agreement that relate to its financial management, including what type of municipal obligation, as set forth under sub. (13f), if applicable, is required for the repayment of the financial assistance. Any terms and conditions established under this paragraph by the department of administration shall comply with the requirements of this section and s. 281.58 or 281.61. In setting the terms and conditions, the department of administration may consider factors that the department of administration finds are relevant, including the type of obligation evidencing the loan, the pledge of security for the obligation and the applicant's creditworthiness.

(b) As a condition of receiving financial assistance under the clean water fund program or the safe drinking water loan program, an applicant shall do all of the following:

1. Pledge the security, if any, required by the rules promulgated by the department of administration under this section and s. 281.58 or 281.61.

2. Demonstrate to the satisfaction of the department of administration the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations that it issues for the project.

(11) FINANCIAL ASSISTANCE PAYMENTS. (a) The department of natural resources and the department of administration may enter into a financial assistance agreement with an applicant for which the department of administration has allocated financial assistance under s. 281.58 (9m) or 281.61 (8) if the applicant meets the conditions under sub. (9) and the other requirements under this section and s. 281.58 or 281.61.

(am) The department of administration shall make the financial assistance payments to an applicant that has entered into a financial assistance agreement under par. (a) or to the applicant's designated agent.

(b) If a municipality fails to make a principal repayment or interest payment after its due date, the department of administration shall place on file a certified statement of all amounts due under this section and s. 281.58 or 281.61 or s. 281.60, 2021 stats. After consulting the department, the department of administration may collect all amounts due by deducting those amounts from any state payments due the municipality or may add a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60. If the department of administration collects amounts due, it shall remit those amounts to the fund to which they are due and notify the department of that action.

(c) The department of administration may retain the last payment under a financial assistance agreement until the department of natural resources and the department of administration determine that the project is completed and meets the applicable requirements of this section and s. 281.58 or 281.61 or s. 281.60, 2021 stats., and that the conditions of the financial assistance agreement are met.

(12) MUNICIPAL OBLIGATIONS. The department of administration may purchase or refinance obligations specified in s. 281.58 (6) (b) 1. and guarantee or purchase insurance for municipal obligations specified in s. 281.58 (6) (b) 3. if the department of administration and the department of natural resources approve the financial assistance under this section and s. 281.58.

(13) LOANS FOR TRANSITION PROJECTS. (a) 1. Notwithstanding any other provision of this section and s. 281.58, a municipality that submits to the department by January 2, 1989, a facility plan meeting the requirements of s. 281.57 which is approvable under this chapter and that does not receive a grant award before July 1, 1990, only because the municipality is following a schedule contained in the facility plan and approved by the department and the municipality is in compliance with all applicable schedules contained in a permit issued under ch. 283 or because there are insufficient grant funds under s. 281.57, is eligible to receive financial assistance under this paragraph. The form of the financial assistance is a loan with an interest rate of 2.5 percent per year except that s. 281.58 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

2. Notwithstanding any other provision of this section or s. 281.58, the department shall make all loans under subd. 1. to municipalities ready to construct treatment works before the department provides or approves any other financial assistance under this section except for loans under par. (b).

(b) 1. Notwithstanding any other provision of this section or s. 281.58, an unsewered municipality is eligible to receive financial assistance under this paragraph, in the form of a loan with an interest rate of 2.5 percent per year, which may be for original financing or refinancing for a collection system that is ineligible for

financial assistance under s. 281.57 because of s. 281.57 (4) (b) 1. and that is being connected to an existing wastewater treatment plant if all of the following apply:

a. The municipality applies to the department for financial assistance under s. 281.57 (5) for a construction project during 1988.

b. Before January 1, 1989, the department issues a notice under s. 281.57 (6) that the department is ready to allocate funds to the municipality for the project.

c. The municipality invites bids for the project in 1989.

d. The municipality receives a grant under s. 281.57 for the construction of the project from the list developed by the department under s. 281.57 (6) (a) for applications received in 1988.

1m. Notwithstanding any other provision of this section or s. 281.58, a town sanitary district is eligible to receive financial assistance under this paragraph, in the form of a loan with an interest rate of 2.5 percent per year, for the extension of a collection system into an unsewered area that is added to the sanitary district if all of the following apply:

a. The department has awarded a grant to the town sanitary district under s. 281.57 (4) (b) 1. c. for a collection system.

b. The department determines that extension of the collection system into the unsewered area is necessary and cost-effective.

c. The sanitary district invites bids for and begins construction of the extension of the collection system before January 1, 1990.

2. Section 281.58 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

3. Notwithstanding any provision of this section or s. 281.58, the department shall annually allocate funds for loans under subds. 1. and 1m. before the department provides or approves any other financial assistance under this section or s. 281.58.

(e) The department of administration and the department may not make loans under s. 144.241 (20), 1987 stats., as affected by 1989 Wisconsin Acts 31, 336 and 366, or under this subsection to a metropolitan sewerage district that serves a 1st class city that total more than $230,900,000.

(13f) MUNICIPAL FUNDING OF FINANCIAL ASSISTANCE. Subject to the terms and conditions of its financial assistance agreement, a municipality may repay financial assistance costs received from the clean water fund program under s. 281.58 and under this section by any lawful method, including any one of the following methods or any combination of the methods:

(a) Payment out of its general funds.

(b) Payment out of the proceeds of the sale of obligations issued by it under ch. 67.

(c) Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.0619.

(d) Payment out of the proceeds of revenue obligations issued by it under s. 66.0621.

(e) Payment as provided under s. 66.0709.

(f) Payment as provided under s. 66.0821 (2) (a) 1.

(13m) LEGISLATIVE MORAL OBLIGATION. The building commission may, at the time the loan is made, by resolution designate a loan made under the clean water fund program as one to which this subsection applies. If at any time the payments received or expected to be received from a municipality on any loan so designated are pledged to secure revenue obligations of the state issued pursuant to subch. II of ch. 18 and are insufficient to pay when due principal of and interest on such loan, the department of administration shall certify the amount of such insufficiency to the secretary of administration, the governor and the joint committee on finance. If the certification is received by the secretary of administration in an even-numbered year before the completion of the budget under s. 16.43, the secretary of administration shall include the certified amount in the budget compilation. In any event, the joint committee on finance shall introduce in either house, in bill form, an appropriation of the amount so requested for the purpose of payment of the revenue obligation secured thereby. Recognizing its moral obligation to do so, the legislature hereby expresses its expectation and aspiration that, if ever called upon to do so, it shall make the appropriation.

(13s) POWERS. The department of administration may audit, or contract for audits of, projects receiving financial assistance under the clean water fund program or the safe drinking water loan program or projects that received loans under s. 281.60, 2021 stats.

(14) RULES. The department of administration shall promulgate rules that are necessary for the proper execution of this section and of its responsibilities under ss. 281.58 and 281.61 and s. 281.60, 2021 stats.

(15) CONSTRUCTION. This section shall be liberally construed in aid of the purposes of this section.

History: 1989 a. 366 ss. 40, 63, 65, 66, 97, 99, 106, 108 to 110, 115; 1991 a. 32, 39, 189, 315; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 426; Stats. 1995 s. 281.59; 1995 a. 452; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 374, 672; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32, 146, 261; 2013 a. 12, 20; 2015 a. 55; 2017 a. 59; 2019 a. 9; 2021 a. 58; 2023 a. 6, 19; 2025 a. 15.

Cross-reference: See also ch. NR 166, Wis. adm. code.

281.605 Outstanding loans under the former land recycling loan program. Section 281.60 (8m), 2021 stats., s. 281.60 (11), 2021 stats., s. 281.60 (11m), 2021 stats., s. 281.60 (13) (c), 2021 stats., s. 281.60 (13) (d), 2021 stats., s. 281.60 (13) (f), 2021 stats., and s. 281.60 (13) (h), 2021 stats., shall continue to apply to any outstanding loans made under the former land recycling loan program under s. 281.60, 2021 stats.

History: 2023 a. 6.

281.61 Safe drinking water loan program. (1) DEFINITIONS. In this section:

(ag) "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(am) "Local governmental unit" means a city, village, town, county, town sanitary district, public inland lake protection and rehabilitation district, joint local water authority created under s. 66.0823, or municipal water district.

(b) "Market interest rate" has the meaning given in s. 281.59 (1) (b).

(c) "Public water system" means a water system providing piped water to the public for human consumption if the water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days each year.

(d) "Safe drinking water loan program" means the program administered under this section, with financial management provided under s. 281.59.

(2) GENERAL. The department and the department of administration shall administer a program to provide financial assistance to local governmental units and to the private owners of community water systems that serve local governmental units for projects for the planning, designing, construction or modification of public water systems, if the projects will facilitate compliance with national primary drinking water regulations under 42 USC 300g-1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j-26.

(2g) INELIGIBLE PROJECTS. A local governmental unit or the private owner of a community water system that serves a local governmental unit is not eligible for financial assistance under

this section if the local governmental unit or the private owner of the community water system that serves a local governmental unit does not have the technical, managerial or financial capacity to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to 300j-26, or the public water system operated by the local governmental unit or private owner of the community water system that serves a local governmental unit is in significant noncompliance with any requirement of a primary drinking water regulation or variance under 42 USC 300g-1 unless the financial assistance will ensure compliance with the Safe Drinking Water Act.

(2r) METHODS OF PROVIDING FINANCIAL ASSISTANCE. The following methods of providing financial assistance may be used under the safe drinking water loan program:

(a) Making loans below the market interest rate for projects described in sub. (2).

(b) Purchasing or refinancing the obligation of a local governmental unit or private owner of a community water system that serves a local governmental unit if the obligation was incurred to finance the cost of a project described in sub. (2) and the obligation was initially incurred after July 1, 1993.

(c) Guaranteeing, or purchasing insurance for, obligations incurred to finance the cost of projects described in sub. (2) if the guarantee or insurance will provide credit market access or reduce interest rates.

(d) Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to local governmental units under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the safe drinking water loan program.

(e) Using funds received as federal capitalization grants under 42 USC 300j-12, any other method that is consistent with the federal program for safe drinking water state loan funds under 42 USC 300j-12 or any other federal law providing funding for or otherwise relating to that program, except that funds received as federal capitalization grants may not be used to provide principal forgiveness, other than forgiveness of loans for the replacement of lead service lines, to a private owner of a community water system.

(4) ENGINEERING REPORT. The department may require a local governmental unit or private owner of a community water system that serves a local governmental unit seeking financial assistance for a project under this section to submit an engineering report. If an engineering report is required by the department, the local governmental unit or private owner of a community water system shall submit the engineering report prior to or concurrent with the submission of the application for financial assistance.

(5) APPLICATION. (a) A local governmental unit or private owner of a community water system that serves a local governmental unit shall submit an application for safe drinking water financial assistance and an engineering report, if required, to the department. The t department shall at least annually provide application submittal instructions to applicants, including a deadline for submitting applications, if any. The application shall be in the form and include the information required by the department and the department of administration and shall include plans and specifications that are approvable by the department under this section.

(b) The department of administration and the department jointly may charge and collect service fees, established by rule, which shall cover the estimated costs of reviewing and acting upon the application and servicing the financial assistance agreement. No service fee established by rule under this paragraph may be charged to or collected from an applicant for financial assistance under s. 281.59 (13). The fees collected under this paragraph shall be credited to the environmental improvement fund.

(6) PRIORITY LIST. The department shall establish a priority list that ranks each safe drinking water loan program project. The department shall promulgate rules for determining project rankings that, to the extent possible, give priority to projects that address the most serious risks to human health, that are necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to 300j-26, and that assist applicants that are most in need on a per household basis, according to affordability criteria specified in the rules. For the purpose of ranking projects under this subsection, the department shall treat a project to upgrade a public water system to provide continuous disinfection of the water that it distributes as if the public water system were a surface water system that federal law requires to provide continuous disinfection.

(7) APPROVAL OF APPLICATION. The department shall approve an application received under sub. (5) after all of the following occur:

(a) The project is ranked on the priority list under sub. (6).

(b) The department determines that the project meets the eligibility requirements under this section.

(c) The department of administration determines that the applicant will meet the requirements of s. 281.59 (9) (b).

(8) FUNDING LIST; ALLOCATION OF FUNDING. The department shall establish a funding list for each fiscal year that ranks projects of applicants that submit approvable applications under sub. (5) in the same order that they appear on the priority list under sub. (6). If sufficient funds are not available to fund all approved applications for financial assistance, the department of administration shall allocate funding to projects that are approved under sub. (7) in the order that they appear on the funding list, except as follows:

(a) The department of administration shall allocate to projects for public water systems that regularly serve fewer than 10,000 persons 15 percent of the available funds in each fiscal year or such lesser amount that fully funds the eligible projects for those public water systems.

(bL) In any biennium, no applicant may receive more than 25 percent of the amount of financial assistance planned to be provided or committed for projects under this section for that biennium.

(8m) CONDITIONS OF FINANCIAL ASSISTANCE FOR LOCAL GOVERNMENTAL UNITS. As a condition of receiving financial assistance under the safe drinking water loan program, a local governmental unit shall do all of the following:

(a) Establish a dedicated source of revenue for the repayment of the financial assistance.

(b) Comply with those provisions of 42 USC 300f to 300j-26 and this chapter and the regulations and rules promulgated under those provisions that the department specifies.

(c) Develop and adopt a program of water conservation as required by the department.

(d) Develop and adopt a program of systemwide operation and maintenance of the public water system, including the training of personnel, as required by the department.

(e) Develop and adopt a user fee system.

(8p) CONDITIONS OF FINANCIAL ASSISTANCE FOR PRIVATE OWNERS. As a condition of receiving financial assistance under the safe drinking water loan program, a private owner of a community water system that serves a local governmental unit shall do all of the following:

(a) Demonstrate that there is adequate security for the repayment of the financial assistance.

(b) Comply with those provisions of 42 USC 300f to 300j-26 and this chapter and the regulations and rules promulgated under those provisions that the department specifies.

(8s) LIMITATION ON FINANCIAL ASSISTANCE. The amount of a payment under sub. (2r) (d) may not exceed the amount necessary to reduce the interest rate on the loan from market rate to the interest rate that would have been charged on a loan to the local governmental unit under sub. (2r) (a).

(9) FINANCIAL ASSISTANCE COMMITMENTS. The department and the department of administration may, at the request of a local governmental unit, issue a notice of financial assistance commitment after the local governmental unit's application for safe drinking water financial assistance has been approved under sub. (7) and funding has been allocated under sub. (8) for the local governmental unit's project. The notice of financial assistance commitment shall specify the conditions that the local governmental unit must meet to secure financial assistance and shall include the estimated repayment schedules and other terms of the financial assistance.

(11) LOAN INTEREST RATES. (a) Except as provided under par. (b), the interest rate on a safe drinking water loan program loan shall be as follows:

1. For an applicant that does not meet financial eligibility criteria established by the department by rule, 55 percent of market interest rate.

2. For an applicant that meets financial eligibility criteria established by the department by rule, 33 percent of market interest rate.

(b) The department and the department of administration jointly may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rate under par. (a) 1. or 2.

(12) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Promulgate rules establishing eligibility criteria for applicants and projects under this section.

(b) Promulgate rules that are necessary for the execution of its responsibilities under the safe drinking water loan program.

(c) Cooperate with the department of administration in administering the safe drinking water loan program.

(d) By May 1 of each even-numbered year, prepare and submit to the department of administration a biennial needs list that includes all of the following information:

1. A list of drinking water projects that the department estimates will apply for financial assistance under the safe drinking water loan program during the next biennium.

2. The estimated cost and estimated construction schedule of each project on the list, and the total of the estimated costs of all projects on the list.

3. The estimated rank of each project on the priority list under sub. (6).

(e) Submit a biennial budget request under s. 16.42 for the safe drinking water loan program.

(f) Have the lead state role with the federal environmental protection agency concerning the safe drinking water loan program.

(g) Have the lead state role with local governmental units and private owners of community water systems that serve a local governmental unit in providing safe drinking water loan program information, and cooperate with the department of administration in providing that information.

(h) Inspect periodically safe drinking water loan program project construction to determine project compliance with construction plans and specifications approved by the department and the requirements of the safe drinking water loan program.

(13) CAPITALIZATION GRANT. The department may enter into an agreement under 42 USC 300j-12 (a), with the federal environmental protection agency to receive a capitalization grant for the safe drinking water loan program.

History: 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 159; 2009 a. 217; 2011 a. 19, 32; 2013 a. 7, 12; 2015 a. 55; 2021 a. 112; 2025 a. 8.

Cross-reference: See also ch. NR 166, Wis. adm. code.

281.62 Other drinking water quality activities. (1) In this section:

(a) "Community water system" means a public water system that serves at least 15 service connections used by year-round residents of the area served by the public water system or that regularly serves at least 25 year-round residents.

(b) "Noncommunity water system" means a public water system that is not a community water system.

(c) "Public water system" has the meaning given in s. 281.61 (1) (c).

(2) (a) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) for any of the following:

1. Providing a loan to the owner of a community water system or a nonprofit noncommunity water system to acquire land or a conservation easement from a willing seller or grantor to protect the source water of the water system from contamination and to ensure compliance with national primary drinking water regulations under 42 USC 300g-1.

2. Providing a loan to the owner of a community water system to do any of the following:

a. Implement voluntary source water protection measures in areas delineated as provided in 42 USC 300j-13 in order to facilitate compliance with national primary drinking water regulations under 42 USC 300g-1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j-26.

b. Implement a program for source water quality protection partnerships as provided in 42 USC 300j-14.

3. Assisting the owner of a public water system to develop the technical, managerial and financial capacity to comply with national primary drinking water regulations under 42 USC 300g-1.

4. Delineating or assessing source water protection areas as provided under 42 USC 300j-13.

5. Protecting wellhead areas from contamination as provided in 42 USC 300h-7.

(b) In any fiscal year, the department may not expend under par. (a) more than 15 percent of the funds provided under 42 USC 300j-12 in that fiscal year. In any fiscal year, the department may not expend under par. (a) 1., 2., 3., 4. or 5. more than 10 percent of the funds provided under 42 USC 300j-12 in that fiscal year.

(3) (a) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) for any of the following:

1. Public water system supervision as provided in 42 USC 300j-2 (a).

2. Technical assistance concerning source water protection.

3. Developing and implementing a capacity development strategy required under 42 USC 300g-9 (c).

4. Operator certification required under 42 USC 300g-8.

(b) In any fiscal year, the department may not expend under par. (a) more than 10 percent of the funds provided under 42 USC 300j-12 in that fiscal year.

(4) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) to provide technical assistance to public water systems serving 10,000 or fewer persons. In any fiscal year, the department may not expend under this subsection more than 2 percent of the funds provided under 42 USC 300j-12 in that fiscal year.

History: 1997 a. 27.

281.625 Drinking water loan guarantee program. (1) In this section:

(a) "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(b) "Local governmental unit" has the meaning given in s. 281.61 (1) (am), except that the term does not include a joint local water authority created under s. 66.0823.

(c) "Noncommunity water system" means a public water system that is not a community water system.

(d) "Public water system" has the meaning given in s. 281.61 (1) (c).

(2) The department, in consultation with the department of administration, shall promulgate rules for determining whether a loan is an eligible loan under s. 234.86 (3) for a loan guarantee under s. 234.86. The rules shall be consistent with 42 USC 300j-12.

(3) The department shall determine whether a loan to the owner of a community water system or the nonprofit owner of a noncommunity water system is an eligible loan under s. 234.86 (3) for the purposes of the loan guarantee program under s. 234.86.

(4) With the approval of the department of administration, the department of natural resources may transfer funds from the appropriation accounts under s. 20.320 (2) (s) and (x) to the Wisconsin drinking water reserve fund under s. 234.933 to guarantee loans under s. 234.86.

(5) The department may contract with the Wisconsin Housing and Economic Development Authority for the administration of the program under this section and s. 234.86.

History: 1997 a. 27; 2013 a. 12; 2015 a. 55.

281.63 Financial assistance program; combined sewer overflow abatement. (1) LEGISLATIVE FINDINGS. The legislature finds that state financial assistance for the elimination of combined sewer overflow to the waters of the state is a public purpose and a proper function of state government.

(2) DEFINITIONS. As used in this section:

(a) "Combined sewer" means a sewer intended to serve as a sanitary sewer and a storm sewer or as an industrial sewer and a storm sewer.

(b) "Combined sewer overflow" means a discharge of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly to the waters of the state when the volume of wastewater flow exceeds the transport, storage or treatment capacity of a combined sewer system.

(c) "Facilities plan" means that plan or study which demonstrates the need for the proposed sewerage system or sewerage system component and which demonstrates through a systematic evaluation of alternatives that the selected alternative is the most cost-effective means of correcting combined sewer overflows.

(d) "Federal act" means the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(3) ADMINISTRATION. The department shall administer the combined sewer overflow abatement financial assistance program. The department shall promulgate rules necessary for the proper execution of this program.

(4) ELIGIBILITY. (a) *Eligible municipalities.* Only a municipality with a sewerage system which is violating ch. 283 or title III of the federal act because of combined sewer overflow is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(b) *Eligible projects.* Only a project for construction necessary to abate combined sewer overflows identified in department-approved facilities plans as cost-effective and reasonably necessary for water quality improvements is eligible for financial assistance under the combined sewer overflow abatement financial assistance program, except that the department need not determine the cost-effectiveness of projects performed under a contract awarded under s. 200.49.

(c) *Facility planning; engineering design.* Only a municipality which has completed facility planning and engineering design requirements for a combined sewer overflow abatement project is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(5) APPLICATION. A municipality which seeks financial assistance under the combined sewer overflow abatement financial assistance program shall submit an application to the department. The application shall be in the form and include the information the department prescribes by rule. The department shall review all applications for financial assistance under this program. The department shall determine those applications which meet the eligibility requirements of this section.

(6) PRIORITY. Each municipality shall notify the department of its intent to apply for financial assistance under the combined sewer overflow abatement financial assistance program. For those municipalities that notify the department of their intention to apply for financial assistance under this program by December 31, the department shall establish annually a priority list which ranks these projects in the same order as they appear on the list prepared under s. 281.57 (6) (a).

(7) PAYMENT. Upon the completion by the municipality of all application requirements, the department may enter into an agreement with the municipality for a grant of up to 50 percent of the eligible construction costs of a combined sewer overflow abatement project if the municipality can begin construction within 3 months after the department is ready to allocate funds.

(8) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. The department may make an advance commitment to a municipality for the reimbursement of engineering design costs from funds appropriated under s. 20.866 (2) (to) subject to all of the following requirements:

(a) The advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award of a construction grant.

(b) The advance commitment may be made only for engineering design activities commenced after the department makes the advance commitment.

(c) The advance commitment may be made only if the municipality has completed all facility planning requirements.

(d) The advance commitment may be made only for engineering design costs related to a project that is eligible for assistance under sub. (4).

(e) The advance commitment shall be subject to a priority determination system consistent with sub. (6).

History: 1981 c. 20, 317; 1983 a. 27; 1985 a. 29; 1995 a. 227 s. 427; Stats. 1995 s. 281.63; 1999 a. 150 s. 672.

281.65 Financial assistance; nonpoint source water pollution abatement. (1) The purposes of the nonpoint

source pollution abatement financial assistance program under this section are to:

(a) Provide the necessary administrative framework and financial assistance for the implementation of measures to meet nonpoint source water pollution abatement needs identified in areawide water quality management plans.

(b) Provide coordination with all elements of the state's water quality program in order to ensure that all activities and limited resources are optimally allocated in the achievement of this state's water quality goals.

(c) Provide technical and financial assistance for the application of necessary nonpoint source water pollution abatement measures.

(d) Focus limited technical and financial resources in critical geographic locations where nonpoint source related water quality problems and threats are the most severe and control is most feasible.

(e) Provide for program evaluation, subsequent modifications and recommendations.

(2) In this section:

(a) "Best management practices" means practices, techniques or measures, except for dredging, identified in areawide water quality management plans, which are determined to be effective means of preventing or reducing pollutants generated from nonpoint sources, or from the sediments of inland lakes polluted by nonpoint sources, to a level compatible with water quality objectives established under this section and which do not have an adverse impact on fish and wildlife habitat. The practices, techniques or measures include land acquisition, storm sewer rerouting and the removal of structures necessary to install structural urban best management practices, facilities for the handling and treatment of milkhouse wastewater, repair of fences built using grants under this section and measures to prevent or reduce pollutants generated from mine tailings disposal sites for which the department has not approved a plan of operation under s. 289.30 or s. 295.51.

(am) "Governmental unit" means any governmental unit including, but not limited to, a county, city, village, town, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, town sanitary district, public inland lake protection and rehabilitation district, regional planning commission or drainage district operating under ch. 89, 1961 stats., or ch. 88. "Governmental unit" does not include the state or any state agency.

(b) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source as defined under s. 283.01 (12).

(be) "Priority lake" means any lake or group of lakes that are identified under sub. (3) (am).

(bs) "Priority lake area" means a priority lake and the area surrounding the priority lake designated by the department for the implementation of the nonpoint source pollution abatement project for the priority lake.

(c) "Priority watershed" means any watershed that is identified under sub. (3) (am) or (4) (cm) or (co).

(d) "Structural urban best management practices" means detention basins, wet basins, infiltration basins and trenches and wetland basins.

(3) The land and water conservation board shall do all of the following:

(a) Review the lists submitted under sub. (4) (c) and (cd) and reports submitted under sub. (4) (c) and (cg).

(am) Identify priority watersheds and priority lakes as provided in sub. (3m).

(ap) Review and approve priority lake and priority watershed plans prepared under sub. (5m) and modifications to those plans prepared under sub. (5s). The board may exempt minor plan modifications from the requirement of board approval.

(at) Review rules drafted under this section and make recommendations regarding the rules before final approval of the rules by the natural resources board.

(b) Before September 1 of each even-numbered year, submit to the governor and the department a report that includes all of the following:

1. Recommendations for the amount to be appropriated for the program under this section for the following fiscal biennium.

5. Any changes that the board determines would improve the efficiency or effectiveness of the program under this section.

(bm) Whenever the board determines necessary, submit to the governor and the department recommendations concerning changes to the amounts appropriated for the program under this section or recommendations concerning any changes that would improve the efficiency or effectiveness of the program under this section.

(c) Assist counties and the department to resolve concerns about the program under this section.

(d) Establish priorities for the allocation of funds in the event that program needs exceed available funding in any fiscal biennium.

(e) After reviewing a plan submitted under sub. (4) (k), request the building commission to authorize public debt to be contracted in the amount that the board determines to be necessary for the purposes of the program under this section.

(f) Require the department and the department of agriculture, trade and consumer protection to conduct or contract for another person to conduct any evaluation or audit of the program under this section and of individual priority watershed or priority lake projects that the board determines is necessary.

(3m) (a) 1. No later than July 1, 1998, the board shall identify priority watersheds based on the list submitted under sub. (4) (c) and recommendations by the department and the department of agriculture, trade and consumer protection without regard to any priority watershed designations made before the board acts under this subdivision, except for priority watershed designations under sub. (4) (cm) or (co). The department and the department of agriculture, trade and consumer protection shall limit the number of watersheds that they recommend to the board to the number that they determine will enable the department to comply with sub. (4) (g) 9., assuming that the level of funding for the program under this section remains the same as on October 14, 1997.

2. If a watershed is designated as a priority watershed before the board acts under subd. 1. and the board does not identify the watershed as a priority watershed under subd. 1., the board shall terminate the watershed's designation as a priority watershed. This subdivision does not apply to priority watershed designations made under sub. (4) (cm) or (co).

(b) 1. No later than July 1, 1998, the board shall identify priority lakes based on the list submitted under sub. (4) (cd) and recommendations by the department and the department of agriculture, trade and consumer protection without regard to any priority lake designations made before the board acts under this subdivision.

2. If a lake is designated as a priority lake before the board acts under subd. 1. and the board does not identify the lake as a

priority lake under subd. 1., the board shall terminate the lake's designation as a priority lake.

(c) If the board terminates a priority watershed or priority lake designation under this subsection, the board shall direct the department to eliminate funding for the project in the former priority watershed or priority lake area.

(d) 1. If a watershed is designated as a priority watershed before the board acts under par. (a) 1. and the board identifies the watershed as a priority watershed under par. (a) 1., the board shall direct the department to continue funding for the project in the priority watershed.

2. If a lake is designated as a priority lake before the board acts under par. (b) 1. and the board identifies the lake as a priority lake under par. (b) 1., the board shall direct the department to continue funding for the project in the priority lake area.

(4) The department shall:

(a) Administer the nonpoint source water pollution program under this section.

(am) Be responsible for the integration of the nonpoint source water pollution abatement program into the state's overall water quality management program.

(ar) Serve as the designated state agency with the federal environmental protection agency on all aspects related to the nonpoint source program management requirements of P.L. 100-4, including the development and submittal of the nonpoint source assessment report and management program required under P.L. 100-4, section 316 and preparation of the annual grant application for federal funding from the environmental protection agency to implement that program.

(as) Consult with the department of agriculture, trade and consumer protection in developing any federal grant application under par. (ar). Every application is subject to s. 16.54 and shall include the proposed expenditures of federal nonpoint source water pollution abatement grant moneys and the allocation of such moneys between the department and the department of agriculture, trade and consumer protection.

(b) Identify through the areawide water quality management plans provided for under section 208 of the federal water pollution control act, P.L. 92-500, as amended, the designated local management agencies.

(c) Prepare a list of the watersheds in this state in order of the level of impairment of the waters in each watershed caused by nonpoint source pollution, taking into consideration the location of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A), and submit the list to the board no later than January 1, 1998.

(cd) Prepare a list of the lakes in this state in order of the level of impairment of the waters in the lakes caused by nonpoint source pollution, taking into consideration the location of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A), and submit the list to the board no later than January 1, 1998.

(cg) Before July 1 of each even-numbered year, submit its recommendations on the matters under sub. (3) (b) 1. and 5. to the land and water conservation board.

(cm) Identify watershed areas in the Milwaukee River basin as priority watershed areas, notwithstanding par. (c), and identify the best management practices necessary to meet water quality objectives in those watershed areas. For the purposes of this paragraph, the Kinnickinnic River shall be treated as being within a watershed area in the Milwaukee River basin. The department shall appoint an advisory committee which represents appropriate local interests to assist it in the planning and implementation of projects and best management practices in these watershed areas. The advisory committee shall include a member of the county board from each county with any area in the Milwaukee River basin.

(co) Identify the Root River watershed as a priority watershed.

(d) Review and approve the detailed program for implementation prepared by the designated local management agencies identified under par. (b).

(dm) Establish water quality objectives for each water basin and for each priority watershed and priority lake and identify the best management practices to achieve the water quality objectives.

(dr) Appoint a committee for each priority watershed and priority lake, to advise the department, the department of agriculture, trade and consumer protection and the counties, cities and villages concerning all aspects of the nonpoint source pollution abatement financial assistance program. Each committee shall include at least 2 farmers as members if the priority watershed or priority lake area includes property in agricultural use. Each committee shall include at least 2 representatives of a public inland lake protection and rehabilitation district that is within the priority watershed or priority lake area or, if one does not exist, of riparian property owners. Each committee for a priority watershed or priority lake area with any area in the Milwaukee River basin shall include a member of the county board from each county with any area in that priority watershed or priority lake area.

(e) Promulgate rules, in consultation with the department of agriculture, trade and consumer protection, as are necessary for the proper execution and administration of the program under this section. Before promulgating rules under this paragraph, the department shall submit the rules to the land and water conservation board for review under sub. (3) (at). The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost-sharing grants under this section. The standards and specifications shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16. The department may waive the standards and specifications in exceptional cases. The rules shall specify which best management practices are cost-effective best management practices. Only persons involved in the administration of the program under this section, persons who are grant recipients or applicants and persons who receive notices of intent to issue orders under s. 281.20 (1) (b) are subject to the rules promulgated under this paragraph. Any rule promulgated under this paragraph which relates or pertains to agricultural practices relating to animal waste handling and treatment is subject to s. 13.565.

(em) In identifying best management practices under pars. (dm) and (g) 4., identify cost-effective best management practices, as specified under par. (e), except in situations in which the use of a cost-effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(f) Administer the distribution of grants and aids to governmental units for local administration and implementation of the program under this section. A grant awarded under this section may be used for cost-sharing for management practices and capital improvements, easements, or other activities determined by the department to satisfy the requirements of this section. A grant under this section to a lake district for a priority lake identified under sub. (3m) (b) 1. may be used for plan preparation, technical assistance, educational and training assistance, and ordinance development and administration. A grant may not be

used for promotional items, except for promotional items that are used for informational purposes, such as brochures or videos.

(g) In cooperation with the department of agriculture, trade and consumer protection and the appropriate governmental unit, prepare priority watershed and priority lakes plans to implement nonpoint source water pollution abatement projects in priority watersheds and priority lake areas. In preparing the plans, the department shall:

1. Conduct the planning process in a cost-effective and timely manner and scale the planning process in accordance with the scale and nature of the pollution problem addressed in the plan.

2. Promote significant participation from the department of agriculture, trade and consumer protection and other state agencies, governmental units and other persons located in any priority watershed or in any priority lake area that is the subject of the plan.

3. Prepare a water resource assessment, set water quality goals and analyze alternative management practices for the area which is the subject of the plan.

4. In cooperation with the department of agriculture, trade and consumer protection, incorporate the appropriate best management practices into the plan.

5. Determine whether any county, city, village or town within the area which is the subject of the plan, as a condition of a grant under this section, should be required to develop a construction site erosion control ordinance under s. 59.693, 60.627, 61.354 or 62.234 or a manure storage ordinance under s. 92.16 in order to meet the water quality goals established in the plan.

6. Determine the specific plan components to be prepared by any appropriate governmental units in the watershed or in the area of the project affecting the priority lake, after determining the technical, financial and staffing capability of that governmental unit.

7. Prepare a project funding list.

8. Establish an implementation plan for each priority watershed and priority lake, including all of the following:

a. A list of the best management practices identified under par. (dm) that are most critically needed to achieve water quality objectives in the priority watershed or priority lake.

am. Designation as critical sites those sites that are significant sources of nonpoint source pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives established under par. (dm) can be achieved.

b. A procedure for establishing implementation priorities to meet the needs identified in subd. 8. a. with the highest priority given to significant sources of nonpoint pollution that substantially inhibit the achievement of water quality objectives.

c. Consultation with the committee appointed under par. (dr) concerning the implementation plan.

d. A requirement to review the implementation plan periodically and to modify the implementation plan to reflect the agreements entered into by landowners and operators to implement best management practices.

e. Provisions for public notice and education concerning the implementation plan in the period during which grants are available to governmental units and landowners and operators, in order to achieve the greatest level of voluntary participation.

9. Complete the planning process in all priority watersheds by December 31, 2015.

(h) Designate a governmental unit to perform the inventory required under sub. (4m) (a).

(i) Cooperate with the department of agriculture, trade and consumer protection under s. 92.14 (6).

(k) Before public debt is contracted for projects under this section, prepare a plan for the expenditure of the proceeds of that debt and submit the plan to the land and water conservation board.

(L) Before September 1 of each year, in consultation with the department of agriculture, trade and consumer protection, submit a budget report to the board that includes anticipated expenditures for projects under this section during the next year, criteria for ending projects under this section and, if anticipated expenditures exceed anticipated funding, a plan for reducing expenditures.

(o) Annually, in cooperation with the department of agriculture, trade and consumer protection, submit a report on the progress of the program under this section to the land and water conservation board.

(p) Jointly with the department of agriculture, trade and consumer protection, prepare the plan required under s. 92.14 (13). The department shall review and approve or disapprove the plan and shall notify the land and water conservation board of its final action on the plan. The department shall implement any part of the plan for which the plan gives it responsibility.

(pm) Jointly with the department of agriculture, trade and consumer protection, develop the forms required and implement the process under s. 92.14 (14).

(q) Include the report submitted under sub. (3) (b), along with a request for all resources and any changes necessary to implement each recommendation in the report, in the information that it submits to the department of administration under s. 16.42 for the program under this section.

(s) Provide staff services to the land and water conservation board.

(4c) (a) A governmental unit may request funding under this subsection for a project that is in a priority watershed or priority lake area or a project that is not in a priority watershed or a priority lake area by submitting an application to the department. An application shall be submitted before July 15 to be considered for initial funding in the following year.

(ae) The department shall administer this subsection in a manner that promotes the accelerated implementation of nonpoint source water pollution control that cannot be conducted with funding under s. 92.14 in target areas described in par. (am) 1. that are of the highest priority.

(am) The department may select a project for funding under this subsection only if all of the following apply:

1. The project will implement nonpoint source pollution control in an area that is a target area based on any of the following:

a. The need for compliance with performance standards established by the department under s. 281.16 (2) and (3).

b. The existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

c. The existence of outstanding or exceptional resource waters, as designated by the department under s. 281.15.

d. The existence of threats to public health.

e. The existence of an animal feeding operation that has received a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge.

f. Other water quality concerns of national or statewide importance.

2. The department, in consultation with the department of agriculture, trade and consumer protection, determines that funding provided under s. 92.14 is insufficient to fund the project.

3. The project is consistent with priorities identified by the department on a watershed or other geographic basis.

4. The project is consistent with approved land and water resource management plans under s. 92.10.

5. The application for the project specifies the watershed, subwatershed or specific site that will be served by the project.

(b) The department shall use the system under par. (d) to determine the score of each project for which it receives an application under par. (a) and shall inform the land and water conservation board of the scores no later than September 1 of each year.

(c) After determining project scores under par. (b), the department shall notify the land and water conservation board of the projects that the department proposes to select for funding in the following year. The board shall review the proposal and make recommendations to the department. Before November 1 of each year, the department shall select projects for funding under this subsection in the following year. To the extent practicable, within the requirements of this section, the department shall select projects so that projects are distributed evenly around this state.

(d) The department shall adopt a scoring system for ranking nonpoint source water pollution abatement projects for which applications are submitted under par. (a). The criteria on which the scoring system is based shall include all of the following:

1. The extent to which the application proposes to use the cost-effective and appropriate best management practices to achieve water quality goals.

2. The existence in the project area of an impaired water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

3. The extent to which the project will result in the attainment of established water quality objectives.

4. The local interest in and commitment to the project.

5. The inclusion of a strategy to evaluate the progress toward reaching project goals, including the monitoring of water quality improvements resulting from project activities.

6. The extent to which the application proposes to use available federal funding.

7. The extent to which the project is necessary to enable the city of Racine to control storm water discharges as required under 33 USC 1342 (p).

(f) A project funded under this subsection may be conducted over a period of one to 3 years, except that the department may approve an extension for one year.

Cross-reference: See also ch. NR 153, Wis. adm. code.

(4e) (a) A governmental unit may request funding under this subsection for a project to implement best management practices for animal waste management at an animal feeding operation for which the department has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge.

(b) The department may grant a request under par. (a) if it determines that providing funding under this subsection is necessary to protect the waters of the state.

(bm) The department may provide a cost-sharing grant under this subsection directly to a landowner, or to an operator of an animal feeding operation, for a project to implement best management practices for animal waste management at an animal feeding operation for which the department has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge if the department determines that providing funding under this subsection is necessary to protect the waters of the state.

(c) Subsection (8) (d) does not apply to a grant under this subsection.

(4g) The department may contract with any person from the appropriation account under s. 20.370 (9) (at) for services to administer or implement this section, including information and education and training services.

(4m) (a) Any governmental unit or regional planning commission designated by the department under sub. (4) (h) shall prepare an inventory of nonpoint source water pollution in the watershed which is the subject of the plan under sub. (4) (g) and submit the inventory to the department for incorporation into the plan.

(b) Every plan prepared for an area under sub. (4) (g) shall include all of the following:

1. The inventory for that area prepared under par. (a).

2. A water resource assessment of that area.

3. The identification of critical surface water and groundwater protection management areas within that area and the agricultural and nonagricultural best management practices to be applied to that area.

4. A plan implementation schedule developed in cooperation with the appropriate governmental unit or designated local management agency identified under sub. (4) (b).

5. A grant disbursement and project management schedule.

6. An integrated resource management strategy to protect or enhance fish and wildlife habitat, aesthetics and other natural resources.

7. A comprehensive management strategy to manage agricultural and nonagricultural nonpoint source water pollution affecting surface water or groundwater, including animal waste, fertilizer, pesticides, storm water, construction site erosion and other nonpoint sources of water pollution.

(c) The department shall submit a copy of any plan it completes under this subsection to any county located in or containing any watershed which is a subject of the plan and to the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall review the plan and notify the department of natural resources of its comments on the plan. A county receiving a plan under this subsection shall review the plan, approve or disapprove the plan and notify the department of natural resources of its action on the plan.

(d) After the department considers the comments of the department of agriculture, trade and consumer protection on a plan under par. (c) and receives approval of the plan by every county to which it was sent and by the land and water conservation board, the department shall designate the plan to be an element of the appropriate areawide water quality management plan under P.L. 92-500, section 208.

(5) The department of agriculture, trade and consumer protection shall:

(b) Prepare sections of the priority watershed or priority lake plan relating to farm-specific implementation schedules, requirements under s. 281.16 (3), animal waste management and selection of agriculturally related best management practices and submit those sections to the department for inclusion under sub. (4m) (b). The best management practices shall be cost-effective best management practices, as specified under sub. (4) (e), except in situations in which the use of a cost-effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(d) Develop a grant disbursement and project management schedule for agriculturally related best management practices to be included in a plan established under sub. (4) (g) and identify recommendations for implementing activities or projects under ss. 92.10 and 281.16 (3).

(e) Identify areas within a priority watershed or priority lake area that are subject to activities required under s. 281.16 (3).

(f) Provide implementation assistance as identified and approved in the priority watershed or priority lake plan under sub. (4) (g).

(5m) Upon completion of plans by the department under sub. (4) (g), the governmental unit or regional planning commission under sub. (4m) and the department of agriculture, trade and consumer protection under sub. (5), and upon receiving the approval of the land and water conservation board, the department shall prepare and approve the final plan for a priority watershed or priority lake.

(5q) (a) Notwithstanding sub. (5s), neither the department nor the land and water conservation board may extend funding under this section for a priority watershed or priority lake project beyond the funding termination date that was in effect for the priority watershed or priority lake project on January 1, 2001, except as provided in par. (b).

(b) The department may authorize funding to be provided to a landowner under a priority watershed or priority lake project for up to one year after the funding termination date under par. (a) for that project if the department determines that a delay in implementation of best management practices by the landowner was caused by conditions beyond the control of the landowner.

(5s) The department may make modifications, including designating additional sites as critical sites, in a priority watershed or priority lake plan with the approval of every county to which the department sent the original plan under sub. (4m) (c) and of the land and water conservation board. If the owner or operator of a site prevails in a final review under sub. (7) or the site is not designated as a critical site in the original plan under sub. (5m) and the pollution is from an agricultural source and is not caused by animal waste, the department may not make a modification designating the site as a critical site unless the designation is based on a substantial increase in pollution from the site, on information about pollution from the site that was not available when the plan was prepared or on a substantial change to the criteria for designating a site as a critical site. This subsection applies to a priority watershed or priority lake plan completed before, on or after August 12, 1993.

(5w) After the land and water conservation board approves a priority watershed or priority lake plan or a modification to such a plan that designates a site to be a critical site, the department shall notify the owner or operator of that site of the designation and of the provisions in sub. (7) and either s. 281.20 or, if the pollution is caused primarily by animal waste, ss. NR 243.21 to 243.26, Wis. adm. code.

(5y) If the owner or operator of a critical site installs and maintains best management practices as provided under the priority watershed or priority lake plan, the site is no longer a critical site. The owner or operator may discontinue maintenance of a best management practice for a period during which the owner or operator changes the use of the site if the best management practice is not needed for the changed use.

(6) The appropriate governmental unit is responsible for local administration and implementation of priority watershed and priority lakes projects and shall:

(a) Be responsible for coordination and implementation of activities necessary to achieve water quality objectives including the development of a detailed program for implementation.

(b) Utilize, whenever possible, existing staff or contract with existing governmental agencies to utilize that agency's existing staff to provide various field, administrative, planning and other services.

(d) Participate in the plan preparation under contract with the department. The department shall determine the specific plan components which will be prepared depending upon the technical, financial and staffing capability of the appropriate governmental unit.

(7) (a) 1. The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a review of that designation by filing a written request within 60 days after receiving notice under sub. (5w) with the land conservation committee of the county in which the site is located or, if the site is located in more than one county, with the land conservation committee of the county in which the largest portion of the site is located.

2. A county land conservation committee receiving a request under subd. 1. shall provide the owner or operator with a hearing and shall provide reasonable notice of the hearing to the owner or operator, the department and the department of agriculture, trade and consumer protection. The county land conservation committee shall conduct the hearing under this subdivision as an informal hearing. Section 68.11 (2) does not apply to the hearing. The land conservation committee shall hold the hearing in a place convenient to the owner or operator. Within 60 days after the hearing, the department shall, and the department of agriculture, trade and consumer protection may, submit a report and recommendation to the land conservation committee concerning the issues at the hearing. The land conservation committee may affirm or reverse the designation of the site as a critical site.

(b) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) or the department of natural resources may obtain a review of the decision of a county land conservation committee under par. (a) 2. by filing a written request with the land and water conservation board within 60 days after receiving the decision of the county land conservation committee.

(c) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (b) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(7m) The state share of a grant for local administration under this section may not exceed 70 percent of the cost of the activities for which the grant is provided if the department first provides a grant to fund those activities after June 30, 1998.

(8) Eligibility for cost-sharing grants under this section shall be determined based on the following:

(a) Governmental units and individual landowners or operators are eligible for cost-sharing grants.

(b) Grants may be provided to applicants in priority watershed areas for projects in conformance with approved areawide water quality management plans.

(c) Grants may be provided to applicants in nonpriority watersheds for projects which are in conformance with areawide water quality management plans and which conform to the purposes specified under sub. (1).

(cm) Grants may be provided to applicants for projects affecting priority lakes if the projects are in conformance with areawide water quality management plans and the purposes specified under sub. (1).

(d) Each cost-sharing grant shall be approved by the designated management agency.

(e) Grants may only be used for implementing best management practices. Grants for implementing best management prac-

tices may only be used for implementing cost-effective best management practices specified under sub. (4) (e) unless an applicant demonstrates that the use of a cost-effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(f) A cost-sharing grant shall equal the percentage of the cost of implementing the best management practice that is determined by the department in providing a cost-sharing grant under sub. (4e) (a) or by the governmental unit submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board, except that a cost-sharing grant may not exceed 70 percent of the cost of implementing the best management practice unless par. (gm) applies.

(gm) The department in providing a cost-sharing grant under sub. (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a) may exceed the limit under par. (f) in case of economic hardship, as defined by the department by rule. In providing a grant for a project to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost-sharing of 70 percent of the cost of compliance or 70 percent to 90 percent of the cost of compliance in case of economic hardship.

(L) A grant may not be made to an individual whose name appears on the statewide support lien docket under s. 49.854 (2) (b), unless the individual provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(m) The department may recognize the value of a conservation easement created under s. 700.40 (2) and donated to the department, or to any person approved by the department, as constituting all or a portion of the landowner's or operator's share of a cost-sharing grant as determined under par. (f).

(n) The department shall identify by rule the types of cost-shared practices and the minimum grant amounts for cost-sharing grants that require any subsequent owner of the property to maintain the cost-shared practice for the life of the cost-shared practice, as determined by the department.

(o) The department shall provide grants for animal waste storage facilities in amounts not to exceed an amount specified by the department by rule.

(p) The department may provide a cost-sharing grant to replace a structure or facility at a new location, rather than to repair or reconstruct the structure or facility, if the relocation reduces water pollution and replacement is cost-effective compared to repairing or reconstructing the structure or facility.

(8b) Beginning in 1999, if the department establishes an anticipated cost-share reimbursement amount for a year for a county that receives funding under this section and the county enters into cost-share agreements with landowners or operators that result in reimbursable amounts for the year that exceed the amount established by the department, the county shall provide reimbursement to the landowners or operators in the amount by which the reimbursable amounts exceed the amount established by the department.

(8e) The department may not require a person who received a cost-sharing grant to repay the cost-sharing grant on the basis of a violation of this section, rules promulgated under this section or the grant agreement, if, at the time of the violation, the person who received the grant no longer owns or operates the land for which the department provided the grant. This subsection applies without regard to whether the person received the grant before, on or after May 16, 1992.

(8m) If the department determines under sub. (4) (g) 5. that a county, city, village or town should be required to develop a construction site erosion control ordinance under s. 59.693, 60.627, 61.354 or 62.234 or a manure storage ordinance under s. 92.16, that county, city, village or town shall make a commitment to develop and adopt the ordinance as a condition of receiving a grant under this section.

(9) The department may distribute grants and aids to state agencies, including itself, for administration and implementation of the nonpoint source water pollution abatement program on land under state ownership or control for projects affecting priority lakes or in priority watershed areas. The department may distribute grants and aids to itself for the purchase of easements in priority watershed areas.

(11) Notwithstanding subs. (3) (am) and (3m), the South Fork of the Hay River is a priority watershed for the period ending on June 30, 2005. Notwithstanding subs. (2) (a), (4) (dm), (e), (em) and (g) 4., (4m) (b) 3. and (8) (b) and (e), the department, in consultation with the local units of government involved with the priority watershed project, shall establish guidelines for the types of nonpoint source water pollution abatement practices to be eligible for cost-sharing grants in the watershed. Notwithstanding sub. (8) (f), the amount of a cost-sharing grant in the watershed may be based on the amount of pollution reduction achieved rather than on the cost of the practices installed, using guidelines developed by the department, in consultation with the local units of government involved with the priority watershed project. In providing funding under s. 92.14 (3), the department of agriculture, trade and consumer protection shall determine the amount of matching funds required for staff for the priority watershed project as though the funding termination date of June 30, 2005, had been in effect on October 6, 1998. The department and the local governmental staff involved with the priority watershed project shall evaluate the cost effectiveness of the project and the reduction in nonpoint source water pollution associated with the project.

(12) Notwithstanding sub. (8), during fiscal year 2002-03, the department shall make a payment under this section to a landowner who received a notice of discharge under ch. 283, who entered into a cost-share agreement with the department of agriculture, trade and consumer protection for a grant under s. 92.14 (4) (c), 1997 stats., and who complied with the cost-share agreement but who did not receive the grant under s. 92.14 (4) (c), 1997 stats. The department shall make a payment under this subsection in the amount to which the landowner would have been entitled under the cost-share agreement with the department of agriculture, trade and consumer protection. The department may not require a landowner to file an application to receive payment under this subsection.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20; 2009 a. 28; 2013 a. 1; 2017 a. 59.

Cross-reference: See also chs. NR 120 and 151, Wis. adm. code.

281.66 Urban nonpoint source water pollution abatement and storm water management program.

(1) DEFINITIONS. In this section:

(a) "Governmental unit" has the meaning given in s. 281.65 (2) (am).

(b) "Nonpoint source" has the meaning given in s. 281.65 (2) (b).

(c) "Population" means population shown by the last federal census or by any subsequent population estimate under s. 16.96.

(d) "Structural urban best management practices" has the meaning given in s. 281.65 (2) (d).

(e) "Urban area" means any of the following:

1. An area with a population of 1,000 or more per square mile.

2. An area in which the land is used for industrial or commercial land uses.

3. An area that is surrounded by an area described in subd. 1. or 2.

(2) ADMINISTRATION. The department shall administer the program under this section in a manner that promotes all of the following:

(a) Management of urban storm water and runoff from existing and developing urban areas to achieve water quality standards, to minimize flooding and to protect groundwater.

(b) Coordination of urban nonpoint source management activities and the municipal storm sewer discharge permit program under s. 283.33.

(c) Implementation of nonpoint source performance standards under s. 281.16 (2).

(3) ELIGIBILITY. (a) The department may provide a cost-sharing grant for a project under this section only if all of the following apply:

1. The project is in an urban area.

2. The governmental unit with jurisdiction over the project area ensures adequate implementation of construction site pollution control, and of storm water management after development, for development and redevelopment of sites of one or more acres.

3. The project is consistent with nonpoint source performance standards under s. 281.16 (2).

4. The project is consistent with priorities identified by the department on a watershed or other geographic basis.

5. The application for the project specifies the watershed, subwatershed or specific site that will be served by the project.

(b) The department may provide financial assistance under this section for a project in a governmental unit either to that governmental unit or to another governmental unit that is required to control storm water discharges under s. 283.33.

(4) FINANCIAL ASSISTANCE. (a) The department may provide local assistance grants and cost-sharing grants under this section. A local assistance grant or cost-sharing grant may not exceed 50 percent of eligible costs.

(b) The department may award a local assistance grant for any of the following:

1. Storm water management for urban areas and for areas that are expected to become urban areas within 20 years.

2. Informational and educational activities related to nonpoint source water pollution control, construction site erosion control or storm water management.

3. Development, administration and enforcement of a construction site erosion control or storm water management ordinance.

4. Training of staff concerning nonpoint source water pollution control, construction site erosion control or storm water management.

5. Other activities identified by the department by rule.

(c) The department may award a cost-sharing grant for any of the following types of projects:

1. Structural urban best management practices, including necessary land acquisition, storm sewer rerouting and removal of structures, and associated flood management, except that the department may not award a grant for structural urban best management practices associated with new construction or new development.

2. Stream bank or shoreland stabilization necessary to control pollution.

3. Other nonpoint source water pollution abatement or storm water management practices identified by the department by rule.

(5) SCORING SYSTEM. The department shall use a scoring system for ranking nonpoint source water pollution abatement and storm water management projects for which applications are submitted under this section. The criteria on which the scoring system is based shall include all of the following:

(a) The extent to which the application proposes to use the cost-effective and appropriate practices to achieve water quality goals.

(b) The existence in the project area of an impaired water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(c) The extent to which the project will result in the attainment of established water quality objectives.

(d) The local interest in and commitment to the project.

(e) The inclusion of a strategy to evaluate the progress toward reaching project goals, including the monitoring of water quality improvements resulting from project activities.

(f) The extent to which the application proposes to use available federal funding.

(g) The extent to which the project is necessary to enable the city of Racine to control storm water discharges as required under 33 USC 1342 (p).

(6) GRANTS FOR CAMPUSES. Notwithstanding subs. (3) and (4), the department may distribute a grant to the board of regents of the University of Wisconsin System for practices, techniques or measures to control storm water discharges on a University of Wisconsin System campus that is located in a municipality that is required to obtain a permit under s. 283.33 and that is located in a priority watershed, as defined in s. 281.65 (2) (c), a priority lake area, as defined in s. 281.65 (2) (bs), or an area that is identified as an area of concern by the International Joint Commission, as defined in s. 281.35 (1) (h), under the Great Lakes Water Quality Agreement.

History: 1999 a. 9 ss. 2525f, 2525g; 2015 a. 55.

281.665 Municipal flood control and riparian restoration program.

(1) DEFINITIONS. In this section:

(a) "Conservation easement" has the meaning given in s. 700.40 (1) (a).

(b) "Local governmental unit" means a city, village, town or metropolitan sewerage district.

(2) ADMINISTRATION. The department shall administer the program under this section to provide financial assistance to local governmental units for facilities and structures for the collection and transmission of storm water and groundwater, including the purchase of perpetual flowage and conservation easement rights on land within floodways, and for the floodproofing of public and private structures that remain in the 100-year floodplain.

(3) ELIGIBLE APPLICANTS. (a) The department may provide a cost-sharing grant for a project that affects 2 or more local governmental units to one of the following:

1. One of the affected local governmental units upon application by all of the affected local governmental units.

2. A local governmental unit that has jurisdiction over the provision of storm water collection facilities for all of the affected local governmental units.

(c) The department may provide a cost-sharing grant for a

project that affects one local governmental unit to that local governmental unit.

(4) FINANCIAL ASSISTANCE. (a) The department may provide local assistance grants and cost-sharing grants under this section. A local assistance grant may not exceed 50 percent of eligible costs, including planning and design costs. A cost-sharing grant may not exceed 50 percent of eligible costs for construction and real estate acquisition.

(b) In any fiscal year, the department may not provide to any applicant more than 20 percent of the funding available under this section in the fiscal year.

(c) 1. Notwithstanding pars. (a) and (b) and subject to subd. 2., the department shall provide a cost-sharing grant under this section for a project described under sub. (5) (d) in an amount sufficient to accomplish the flood-control goals of the project as proposed in the application, but not to exceed $14,600,000.

2. The department may not provide a cost-sharing grant under subd. 1. unless the department first notifies the cochairpersons of the joint committee on finance, in writing, that it intends to award the grant. The notice shall contain a description of the purposes proposed for expenditure of the moneys received as a part of the grant. If the cochairpersons of the committee do not notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed grant within 14 working days after the date of the department's notification, the moneys may be awarded as proposed by the department. If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed grant, no moneys may be awarded without the approval of the committee.

(5) ELIGIBILITY AND SCORING CRITERIA. (a) The department shall promulgate rules specifying eligibility criteria for projects under this section and for determining which eligible projects will receive financial assistance under this section.

(b) The department may not provide a cost-sharing grant for a project under this section if any of the following applies:

1. The project would transfer flooding downstream.

2. The project provides for the channelization of a stream or for lining a natural stream bed with concrete.

3. The project would accelerate upstream runoff.

(c) The department shall include all of the following in the criteria for determining which eligible projects will receive cost-sharing grants under this section:

1. The extent to which a project minimizes harm to existing beneficial functions of water bodies and wetlands.

2. The extent to which a project maintains aquatic and riparian environments.

3. The extent to which a project uses storm water retention and detention structures and natural storage.

4. The extent to which a project provides opportunity for public access to water bodies and to the floodway.

(d) Notwithstanding pars. (a) to (c), during the 2017-19, 2019-21, and 2023-25 fiscal bienniums, the department shall consider an applicant to be eligible for a cost-sharing grant for a project under this section if the project is funded, executed, designed, authorized, approved, or supervised in whole or in part by the U.S. army corps of engineers under 33 USC 701s.

History: 1999 a. 9; 2015 a. 55; 2017 a. 59, 369; 2023 a. 19.

Cross-reference: See also ch. NR 199, Wis. adm. code.

281.67 Watershed projects. The department shall assist and advise the department of agriculture, trade and consumer protection regarding watershed projects under 16 USC 1001 to 1008.

History: 1981 c. 346; 1995 a. 227 s. 429; Stats. 1995 s. 281.67.

281.68 Lake management planning grants and lake monitoring and protection contracts. (1) DEFINITIONS. In this section:

(ag) "Lake" includes a flowage.

(ar) "Producer-led group" means any group that meets the criteria under s. 93.59 (2).

(b) "Qualified lake association" means an association that meets the qualifications under sub. (3m) (a).

(c) "Qualified school district" is a school district that meets the qualifications under sub. (3m) (c).

(1m) PURPOSES OF GRANTS AND CONTRACTS. The department shall develop and administer a financial assistance program to provide lake management planning grants and to award contracts under sub. (1t) for projects to provide information and education on the use of lakes and natural lake ecosystems and on the quality of water in lakes and the quality of natural lake ecosystems.

(1r) USES OF GRANTS. Lake management planning grants shall be used to improve water quality assessment and planning and to aid in the selection of activities to do any of the following:

(a) Prevent pollution from entering into lakes or into natural lake ecosystems.

(b) Protect or improve the quality of water in lakes or the quality of natural lake ecosystems.

(1t) LAKE MONITORING AND PROTECTION CONTRACTS. The department may award contracts to groups or persons for the creation and support of a statewide lake monitoring network. The contracts may include payments for the costs of all of the following:

(a) Training, equipment, and supplies necessary for water quality sample collection, lake surveys, and watercraft inspection.

(b) Handling, shipping, and laboratory analysis of water samples.

(c) Developing, maintaining, and managing a statewide database system for entering, tracking, evaluating, and reporting water quality and lake survey results.

(d) Producing and distributing water quality and lake survey results and reports.

(2) AMOUNT OF GRANTS AND CONTRACTS. (a) The department may provide a grant of 67 percent of the cost of a lake management planning project up to a total of $25,000 per grant. In each fiscal year, the total amount of moneys awarded as grants for lake management planning projects may not exceed $50,000 for any one lake.

(b) The total amount of lake monitoring and protection contracts for each fiscal year may not exceed 25 percent of the total amount appropriated under s. 20.370 (6) (ar), (as), and (av).

(3) RULES FOR GRANTS AND CONTRACTS. (a) The department shall promulgate rules for the administration of the lake management planning grant program which shall include all of the following:

1. Eligible recipients to consist of nonprofit conservation organizations, as defined in s. 23.0955 (1), producer-led groups conducting producer-led group projects, counties, cities, towns, villages, qualified lake associations, town sanitary districts, qualified school districts, public inland lake protection and rehabilitation districts, and other local governmental units, as defined in s. 66.0131 (1) (a), that are established for the purpose of lake management. If a producer-led group is not a legal entity, the eligible

recipient shall be a legal entity on behalf of the producer-led group.

2. Eligible activities, which shall include all of the following for lakes and natural lake ecosystems:

a. Data collection.

b. Assessments of water quality and of fish and aquatic life and their habitat.

c. Assessments of the uses of a lake and the uses of the land surrounding the lake.

d. Nonpoint source pollution evaluation.

e. Informational or educational programs and materials.

f. Providing programs and materials that promote the monitoring of private on-site wastewater treatment systems, the reduction in the use of environmentally harmful chemicals, water safety, and the protection of natural lake ecosystems.

(bg) The department shall promulgate rules for the administration of the lake monitoring and protection contracts program, which shall specify the eligible activities and qualifications for participation in the statewide lake monitoring and protection network. Eligible activities shall include providing technical assistance to public or private entities that apply for, or have received, a grant under s. 23.22 (2) (c). Qualified participants shall include counties and public or private entities that manage aquatic invasive species under a management plan approved by the department.

(3m) QUALIFIED ENTITIES. (a) To be a qualified lake association, an association shall do all of the following:

1. Demonstrate that it is incorporated under ch. 181.

2. Specify in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more inland lakes for the benefit of the general public.

3. Demonstrate that the substantial purpose of its past actions was to support the protection or improvement of one or more inland lakes for the benefit of the general public.

4. Allow to be a member any individual who for at least one month each year resides on or within one mile of an inland lake for which the association was incorporated.

5. Allow to be a member any individual who owns real estate on or within one mile of an inland lake for which the association was incorporated.

6. Not have articles of incorporation or bylaws which limit or deny the right of any member or any class of members to vote as permitted under s. 181.0721 (1).

7. Demonstrate that it has been in existence for at least one year.

8. Demonstrate that it has at least 25 members.

9. Require payment of an annual membership fee as set by the department by rule under par. (b).

(b) For purposes of par. (a) 9., the department shall set by rule the maximum amount and the minimum amount that may be charged as an annual membership fee.

(c) To be a qualified school district, the board of the school district shall adopt a resolution to conduct a lake management planning project that will do all of the following:

1. Provide information or education on the use of lakes or natural lake ecosystems, on the quality of water in lakes, or on the quality of natural lake ecosystems.

2. Allow another eligible recipient of grants under this section to cooperate with the school district in the project.

(4) ELIGIBILITY FOR LAKE MANAGEMENT PLANNING GRANTS. At the completion of a lake management planning project, upon request of the recipient of a grant under this section, the department may approve recommendations made as a result of the project as eligible activities for a lake management grant under s. 281.69.

History: 1989 a. 31; 1989 a. 160 ss. 1, 3, 4; 1989 a. 359; 1991 a. 39, 269; 1995 a. 27; 1995 a. 227 s. 430; Stats. 1995 s. 281.68; 1997 a. 79; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16; 2003 a. 275; 2009 a. 28; 2011 a. 32, 146; 2015 a. 250; 2023 a. 5.

Cross-reference: See also ch. NR 193, Wis. adm. code.

281.69 Lake management and classification grants and contracts.

(1b) DEFINITIONS. In this section:

(ae) "Floating treatment wetland" means an artificial, buoyant platform for keeping plants afloat that mimics the function of natural wetlands and allows plants to grow in water that is typically too deep for them and that is placed below the ordinary high-water mark in a navigable water.

(ag) "Lake" includes a flowage.

(bn) "Nonprofit conservation organization" has the meaning given in s. 23.0955 (1).

(br) "Producer-led group" means any group that meets the criteria under s. 93.59 (2).

(c) "Qualified lake association" is an association that meets the qualifications under s. 281.68 (3m) (a).

(d) "Wetland" has the meaning given in s. 23.32 (1).

(1m) TYPES OF PROJECTS. The department shall develop and administer a financial assistance program to provide grants for the following 2 types of projects:

(a) Lake management projects that will improve or protect the quality of water in lakes or the quality of natural lake ecosystems.

(b) Lake classification projects that will classify lakes by use and implement protection activities for the lakes based on their classification.

(1r) CONTRACTS. The department may award contracts for lake classification technical assistance projects to be conducted by nonprofit corporations that will provide educational and technical assistance.

(2) AMOUNTS OF GRANTS AND CONTRACTS. (a) A grant for a lake management project may be made for up to 75 percent of the cost of the project but may not provide more than $200,000 per grant.

(b) A grant for a lake classification project may be made for up to 75 percent of the cost of the project but may not exceed $50,000 per grant.

(c) A contract for a lake classification technical assistance project may not exceed $200,000.

(3) RULES FOR LAKE MANAGEMENT PROJECT GRANTS. The department shall promulgate rules to administer and to determine eligibility for grants for lake management projects. The rules shall include all of the following:

(a) A designation of eligible recipients, which shall include nonprofit conservation organizations, producer-led groups conducting producer-led group projects, counties, cities, towns, villages, qualified lake associations, town sanitary districts, public inland lake protection and rehabilitation districts, and other local governmental units, as defined in s. 66.0131 (1) (a), that are established for the purpose of lake management. If a producer-led group is not a legal entity, the eligible recipient shall be a legal entity on behalf of the producer-led group.

(b) A designation of eligible activities, which shall include all of the following:

1. The purchase of land or of a conservation easement, as defined in s. 700.40 (1) (a), if the eligible recipient enters into a contract under s. 281.71 and if the purchase will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

2. The restoration of a wetland if the restoration will protect or improve a lake's water quality or its natural ecosystem.

2m. The restoration of habitat in a littoral area of a lake or along its shoreline if the restoration will protect or improve the lake's water quality or its natural ecosystem.

3. The development of local regulations or ordinances that will protect or improve a lake's water quality or its natural ecosystem.

4. An activity that is approved by the department and that is needed to implement a recommendation made as a result of a plan to improve or protect the quality of water in a lake or the natural ecosystem of a lake.

5. A wetland enhancement or restoration project under sub. (3m).

6. The placement of a floating treatment wetland in a lake.

(3m) GRANTS FOR WETLANDS. (a) The department shall provide grants of $10,000 each from the appropriation under s. 20.370 (6) (ar) for lake management projects to eligible recipients, other than nonprofit conservation organizations, that have completed a comprehensive land use plan that includes a wetland enhancement or restoration project. The grant shall be used for the implementation of the wetland enhancement or restoration project. The 75 percent limitation under sub. (2) (a) does not apply to these grants.

(b) The department shall provide up to 25 grants per fiscal year during fiscal years 2001-02 and 2002-03. The department shall award the grants to eligible recipients who qualify for the grants in the order in which the grant applications are received by the department.

(5) LAKE CLASSIFICATION PROJECT GRANTS. (a) The department shall promulgate rules to administer and to determine eligibility for grants for lake classification projects.

(b) The rules under par. (a) shall include guidelines to be used for lake classification. The guidelines shall require that certain factors be used in classifying each lake by use. The factors shall include all of the following:

1. The size, depth and shape of the lake.

2. The size of the lake's watershed.

3. The quality of the water in the lake.

4. The potential of the lake to be overused for recreational purposes.

5. The potential for the development of land surrounding the lake.

6. The potential of the lake to suffer from nonpoint source water pollution.

7. The type and size of the fish and wildlife population in and around the lake.

(c) The rules under par. (a) shall designate which classification and protection activities are eligible for lake classification grants.

(d) The department may award lake classification grants only to counties.

(6) LAKE CLASSIFICATION TECHNICAL ASSISTANCE CONTRACTS. A nonprofit corporation receiving a lake classification technical assistance contract shall use the money provided under the contract to provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.

(7) PROHIBITED ACTIVITIES. The department may not promulgate a rule designating dam maintenance and repair as an eligible activity for grants under this section.

History: 1991 a. 39; 1993 a. 343; 1995 a. 27; 1995 a. 227 s. 431; Stats. 1995 s. 281.69; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 6, 16; 2009 a. 180; 2019 a. 177; 2023 a. 5.

Cross-reference: See also ch. NR 193, Wis. adm. code.

281.695 Aids to municipalities for prevention and abatement of water pollution. (1) As used in this section "municipality" means any city, town, village, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewerage district.

(2) Any municipality is authorized to apply for and accept grants or any other aid which the United States Government or any agency thereof has authorized or may hereafter authorize to be given or made to the several states of the United States or to any political subdivisions or agencies thereof within the states for the construction of public improvements, including all necessary action preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution.

(3) Any municipality is further authorized to accept contributions and other aid from commercial, industrial and other establishments for the purpose of aiding in the prevention or abatement of water pollution and in furtherance of such purpose to enter into contracts and agreements with such commercial, industrial and other establishments covering the following:

(a) The collection, treatment and disposal of sewage and industrial wastes from commercial, industrial and other establishments;

(b) The use and operation by such municipality of sewage collection, treatment or disposal facilities owned by any such commercial, industrial and other establishment;

(c) The coordination of the sewage collection, treatment or disposal facilities of the municipality with the sewage collection, treatment or disposal facilities of any commercial, industrial and other establishment.

(4) When determined by its governing body to be in the public interest any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment or establishments providing for sewage or other facilities, including the operation thereof, to abate or reduce the pollution of waters caused in whole or in part by discharges of industrial wastes by the industrial establishment or establishments on such terms as may be reasonable and proper.

(5) Any municipality may participate in the state financial assistance program for soil and water resources protection established under s. 281.55, 281.57 or 281.65 and may enter into agreements with the department of natural resources for that purpose. Any municipality may participate in the clean water fund program under ss. 281.58 and 281.59 and may enter into agreements with the department of administration and the department of natural resources for that purpose. Any county may participate in the state financial assistance program for soil and water resources protection established under s. 92.14 and may enter into agreements with the department of agriculture, trade and consumer protection for that purpose.

(6) Any municipality is authorized to enter into contracts with a nonprofit-sharing corporation for the municipality to design and construct the projects it will sublease from the department of natural resources pursuant to s. 281.55 (6) (b).

(7) The provisions of this section shall not be construed by way of limitation or restriction of the powers otherwise granted municipalities but shall be deemed as an addition to and a complete alternative to such powers.

History: 1975 c. 197; 1979 c. 34 s. 2102 (39) (d); 1983 a. 532 s. 36; 1987 a. 27, 197, 399, 403; 1989 a. 56, 366; 1995 a. 227; 1999 a. 150 s. 370; Stats. 1999 s. 281.695.

281.70 River protection grants. (1) DEFINITIONS. In this section:

(a) "Floating treatment wetland" means an artificial, buoyant platform for keeping plants afloat that mimics the function of natural wetlands and allows plants to grow in water that is typically too deep for them and that is placed below the ordinary high-water mark in a navigable water.

(am) "Producer-led group" means any group that meets the criteria under s. 93.59 (2).

(b) "River" includes a stream or a flowage.

(2) TYPES OF PROJECTS. The department shall develop and administer a financial assistance program to provide grants for planning projects and management projects.

(3) AMOUNTS OF GRANTS. (a) A grant for a planning project may be made for up to 75 percent of the cost of the project but may not exceed $10,000 per grant.

(b) A grant for a management project may be made for up to 75 percent of the cost of the project but may not exceed $50,000 per grant.

(4) ELIGIBLE RECIPIENTS. (a) All of the following shall be eligible for grants under this section:

1. Local governmental units, as defined in s. 66.0131 (1) (a).

2. River management organizations that meet the qualifications under par. (b).

3. Nonprofit conservation organizations, as defined in s. 23.0955 (1).

4. Producer-led groups conducting producer-led group projects. If a producer-led group is not a legal entity, the eligible recipient shall be a legal entity on behalf of the producer-led group.

(b) The department shall promulgate rules to establish the qualifications that a river management organization must meet to qualify for a grant under this section.

(5) ELIGIBLE ACTIVITIES. The department shall promulgate rules to do all of the following:

(a) Designate activities that are eligible for grants for planning projects. Eligible activities under the rules for these grants shall include all of the following:

1. Data collection.

2. Assessments of water quality and of fish and aquatic life and their habitat.

3. Assessments of the uses of a river and the uses of the land surrounding the river.

4. Nonpoint source pollution evaluation.

5. Informational or educational programs and materials as specified in par. (b).

6. Programs and materials to assist persons in forming river management organizations or other groups to protect or improve rivers and natural riverine ecosystems.

(b) For purposes of par. (a) 5., specify informational or educational materials that may be provided on any of the following:

1. Protecting or improving the ways in which rivers are used.

2. Protecting or improving the quality of water in rivers.

3. Protecting or improving the quality of natural riverine ecosystems.

4. Protecting or improving fish populations, aquatic life or fish habitat in rivers.

(c) Designate activities that are eligible for grants for management projects. Eligible activities under the rules for these grants shall include all of the following:

1. The purchase of land or of a conservation easement, as defined in s. 700.40 (1) (a) if the recipient enters into a contract under s. 281.71 and if the purchase will substantially contribute to the protection or improvement of the river's water quality or its natural ecosystem.

2. The restoration of in-stream or shoreline habitat.

3. The development of local regulations or ordinances that will protect or improve the river's water quality or its natural ecosystem.

4. An activity that is approved by the department and that is needed to implement a recommendation made as a result of a plan to protect or improve the river's water quality or its natural ecosystem.

5. Installation of pollution control practices.

6. The placement of a floating treatment wetland in a river.

(6) ELIGIBILITY; TYPES OF RIVERS. The department shall promulgate rules establishing the types of natural riverine ecosystems that are eligible for grants under this section.

(7) ELIGIBILITY; OTHER. At the completion of a planning project, upon request of the recipient of the grant for the planning project, the department may approve as eligible activities for a management project grant the recommendations that were made as a result of the project.

History: 1999 a. 9; 2001 a. 30; 2019 a. 177; 2021 a. 240 s. 30; 2023 a. 5.
Cross-reference: See also ch. NR 193, Wis. adm. code.

281.71 Lake management project grants; river protection grants; purchases. (1) In order to receive a grant for a purchase under s. 281.69 (3) (b) 1. or 281.70 (5) (c) 1., the recipient shall enter into a contract with the department that contains all of the following provisions:

(a) Standards for the management of the property to be acquired.

(b) A prohibition against using the property to be acquired as security for any debt unless the department approves the incurring of the debt.

(c) A prohibition against the property being closed to the public unless the department determines it is necessary to protect wild animals, plants or other natural features.

(d) A clause that any subsequent sale or transfer of the property to be acquired is subject to subs. (2) and (3).

(2) The recipient of the grant used for a purchase under s. 281.69 (3) (b) 1. or 281.70 (5) (c) 1. may subsequently sell or transfer the acquired property to a 3rd party other than a creditor of the recipient if all of the following apply:

(a) The department approves the subsequent sale or transfer.

(b) The party to whom the property is sold or transferred enters into a new contract with the department that contains the provisions under sub. (1).

(3) The recipient of the grant used for a purchase under s. 281.69 (3) (b) 1. or 281.70 (5) (c) 1. may subsequently sell or transfer the acquired property to satisfy a debt or other obligation if the department approves the sale or transfer.

(4) If the recipient violates any essential provision of the contract, title to the acquired property shall vest in the state.

(5) The instrument conveying the property to the recipient shall state the interest of the state under sub. (4). The contract entered into under sub. (1) and the instrument of conveyance shall be recorded in the office of the register of deeds of each county in which the property is located.

History: 1999 a. 9 s. 2548.

281.72 River protection; contracts with nonprofit organizations. (1) DEFINITION. In this section, "nonprofit conservation organization" means a river management organization that meets the qualifications under s. 281.70 (4) (b) or a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the protection of rivers and that is described in section 501 (c) (3) of the Internal Revenue Code and is

exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) REQUIREMENTS TO RECEIVE CONTRACTS. The department shall provide contracts to nonstock, nonprofit corporations that are described under section 501 (c) (3) or (4) of the Internal Revenue Code and that are organized in this state. For a nonstock, profit corporation to qualify for a contract, the corporation shall meet all of the following requirements:

(a) The corporation is exempt from taxation under section 501 (a) of the Internal Revenue Code.

(b) The corporation provides support to nonprofit conservation organizations.

(c) The corporation has a board of directors that has a majority of members who are representatives of nonprofit conservation organizations.

(d) The corporation contributes, to be used with the contract, $1 for every $3 it receives under the contract.

(3) REQUIREMENTS UNDER CONTRACTS. A corporation receiving a contract under this subsection shall do all of the following:

(a) Assist in the establishment of nonprofit conservation organizations.

(b) Provide technical assistance to nonprofit conservation organizations.

(c) Conduct conferences on topics for which technical assistance is provided under par. (b).

History: 1999 a. 9.

SUBCHAPTER VI

COMPENSATION

281.75 Compensation for well contamination and abandonment. (1) DEFINITIONS. In this section:

(a) "Alternate water supply" means a supply of potable water obtained in bottles, by tank truck or by other similar means.

(b) "Contaminated well" or "contaminated private water supply" means a well or private water supply which:

1. Produces water containing one or more substances of public health concern in excess of a primary maximum contaminant level promulgated in the national drinking water standards in 40 CFR 141 and 143;

2. Produces water containing one or more substances of public health concern in excess of an enforcement standard under ch. 160; or

3. Is subject to a written advisory opinion, issued by the department, containing a specific descriptive reference to the well or private water supply and recommending that the well or private water supply not be used because of potential human health risks.

(c) "Groundwater" means any of the waters of the state occurring in a saturated subsurface geological formation of permeable rock or soil.

(d) "Livestock" has the meaning specified under s. 95.80 (1) (b) and includes poultry.

(e) "Livestock water supply" means a well which is used as a source of potable water only for livestock and which is:

1. Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24; or

2. Constructed by boring or drilling.

(f) "Private water supply" means a residential water supply or a livestock water supply.

(g) "Residential water supply" means a well which is used as a source of potable water for humans or humans and livestock and is connected to 14 or less dwelling units.

(h) "Well," if not followed by the words, "subject to abandonment," means an excavation or opening in the ground made by boring, drilling or driving for the purpose of obtaining a supply of groundwater. "Well" does not include dug wells.

(i) "Well subject to abandonment" means a well that is required to be filled and sealed under s. NR 812.26 (4) (a), Wis. Adm. Code, or that the department may require to be filled and sealed under s. NR 812.26 (4) (b), Wis. Adm. Code.

(2) DUTIES OF THE DEPARTMENT. The department shall:

(a) Establish by rule procedures for the submission, review and determination of claims under this section.

(b) Assist claimants in submitting applications for compensation under this section.

(c) Issue awards under this section.

(d) Establish casing depth and other construction requirements for a new or reconstructed private water supply.

(e) Declare an area of special eligibility for compensation for well contamination, based on contamination reported after December 31, 2005, if all of the following criteria are satisfied:

1. Results of tests performed by a laboratory certified under s. 299.11 establish that wells in the area are contaminated by fecal bacteria.

2. Evidence demonstrates that the bacterial contamination is caused by livestock.

(f) Establish requirements for the filling and sealing of wells subject to abandonment.

(3) WELLS FOR WHICH A CLAIM MAY BE SUBMITTED. A claim may be submitted for a private water supply which, at the time of submitting the claim, is contaminated or for a well subject to abandonment.

(4) WHO MAY SUBMIT A CLAIM. (a) Except as provided under par. (b), a landowner or lessee of property on which is located a contaminated private water supply or a well subject to abandonment, or the spouse, dependent, heir, assign or legal representative of the landowner or lessee, may submit a claim under this section.

(b) The following entities may not submit a claim:

1. The state.

2. An office, department, independent agency, institution of higher education, association, society or other body in state government.

3. An authority created under subch. II of ch. 114 or ch. 231, 233, 234, 237, or 238.

4. A city, village, town, county or special purpose district.

5. A federal agency, department or instrumentality.

6. An interstate agency.

(4m) INCOME LIMITATION. (a) In order to be eligible for an award under this section, the annual family income of the landowner or lessee of property on which is located a contaminated water supply or a well subject to abandonment may not exceed $65,000.

(b) Except as provided under par. (d), annual family income shall be based upon the adjusted gross income of the landowner or lessee and the landowner's or lessee's spouse, if any, as computed for Wisconsin income or franchise tax purposes for the taxable year prior to the year in which the claim is made. The county median income shall be determined based upon the most recent statistics published by the federal department of housing and urban development for the year prior to the year of the enforcement order.

(c) In order to be eligible for an award under this section, the

claimant shall submit a copy of the designated income or franchise tax returns for the taxable year prior to the year in which the claim is made together with the application under sub. (5). The claimant shall submit a copy of the landowner's or lessee's Wisconsin franchise tax return, joint Wisconsin income tax return or, if filing separately, the landowner's or lessee's separate Wisconsin income tax return and the separate Wisconsin income tax return of his or her spouse, if any.

(d) The department may disregard the Wisconsin income tax return for the taxable year prior to the year in which the claim is made and may determine annual family income based upon satisfactory evidence of adjusted gross income or projected taxable income of the landowner or lessee and the landowner's or lessee's spouse in the current year.

(5) APPLICATION. (a) A claimant shall submit a claim on forms provided by the department. The claimant shall verify the claim by affidavit.

(b) The claim shall contain:

1. Test results which show that the private water supply is contaminated, as defined under sub. (1) (b) 1. or 2., information to show that the private water supply is contaminated as defined under sub. (1) (b) 3., or information to show that the well is a well subject to abandonment;

2. If the claim is based on a contaminated private water supply, any information available to the claimant regarding possible sources of contamination of the private water supply; and

3. Any other information requested by the department.

(c) The department shall notify the claimant if the claim is complete or specify the additional information which is required to be submitted. If the claimant does not submit a complete claim, as determined by the department, the department may not proceed under this section until it receives a complete claim.

(d) A claim constitutes consent by the claimant to:

1. Enter the property where the private water supply or well subject to abandonment is located during normal business hours and conduct any investigations or tests necessary to verify the claim; and

2. If the claim is based on a contaminated private water supply, cooperate with the state in any administrative, civil or criminal action involving a person or activity alleged to have caused the private water supply to become contaminated.

(e) The department shall consolidate claims if more than one claimant submits a claim for the same private water supply or for the same well subject to abandonment.

(f) The department shall allocate money for the payment of claims according to the order in which completed claims are received. The department may conditionally approve a completed claim even if the appropriation under s. 20.370 (6) (cr) is insufficient to pay the claim. The department shall allocate money for the payment of a claim which is conditionally approved as soon as funds become available.

(6) DETERMINING CONTAMINATION. (a) Contamination of a private water supply, as defined under sub. (1) (b) 1. or 2., is required to be established by analysis of at least 2 samples of water, taken at least 2 weeks apart, in a manner which assures the validity of the test results. The samples shall be tested by a laboratory certified under s. 299.11.

(b) The department may reject test results which are not sufficiently recent.

(c) The department, at its own expense, may test additional samples from any private water supply for which a claim is submitted.

(7) PURPOSE AND AMOUNT OF AWARD. (a) If the department finds that the claimant meets all the requirements of this section and rules promulgated under this section and that the private water supply is contaminated or that the well is a well subject to abandonment, the department shall issue an award. The award may not pay more than 75 percent of the eligible costs. The award may not pay any portion of eligible costs in excess of $16,000.

(b) If the annual family income of the claimant exceeds $45,000, the amount of the award is the amount determined under par. (a) less 30 percent of the amount by which the claimant's income exceeds $45,000.

(c) Eligible costs under this subsection include the following items only:

1. If the claim is based on a contaminated private water supply, the cost of obtaining an alternate water supply;

2. If the claim is based on a contaminated private water supply, the cost of any one of the following:

a. Equipment used for treating the water;

b. Reconstructing the private water supply;

c. Constructing a new private water supply;

d. Providing for a public water supply to replace the private water supply including costs related to connection to the public water supply and costs related to special assessments and one-time municipal charges for capital improvements and services involved in providing the public water supply; or

e. Providing a connection to an existing private water supply;

3. The cost of abandoning a contaminated private water supply, if a new private water supply is constructed, if connection to a public or private water supply is provided, or if the claim is based on a well subject to abandonment;

4. The cost of obtaining 2 tests to show that the private water supply was contaminated if the claim is based on a contaminated private water supply and the cost of those tests was originally paid by the claimant;

5. The cost of purchasing and installing a pump, if the claim is based on a contaminated private water supply and a new pump is necessary for the new or reconstructed private water supply; and

6. If the claim is based on a contaminated private water supply, the cost of relocating pipes, as necessary, to connect the replacement water supply to the buildings served by it.

7. If the claim is based on a contaminated water supply that is eligible under sub. (11) (ae), the cost of properly abandoning any improperly abandoned private water supply located on the property owned or leased by the claimant.

(8) COPAYMENT. The department shall require a copayment of $250 unless the claim is solely for well abandonment.

(9) CONTAMINATION STANDARD; NITRATES. (a) This subsection applies to a private water supply which:

1. Is a livestock water supply or is a residential water supply which is used as a source of potable water for livestock as well as for a residence; and

2. Is used at least 3 months each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock.

(b) Notwithstanding the requirement of contamination under sub. (7), if a private water supply meets the criteria under par. (a) and the claim is based upon contamination by nitrates and not by any other substance, the department may make an award only if the private water supply produces water containing nitrates in excess of 40 parts per million expressed as nitrate-nitrogen.

(10) ISSUANCE OF AWARD. (a) The department shall issue awards without regard to fault.

(b) Contributory negligence is not a bar to recovery and no

award may be diminished as the result of negligence attributable to the claimant or to any person who is entitled to submit a claim.

(c) The department shall pay each claim within 30 days after a completed payment request is submitted. The department shall pay eligible costs under sub. (7) based upon cost tables and rules promulgated under sub. (11) (c).

(11) DENIAL OF CLAIM; LIMITS ON AWARDS. (a) *Denial of claim.* The department shall deny a claim if:

1. The claim is not within the scope of this section.

2. The claimant submits a fraudulent claim.

3. The claim is for reimbursement of costs incurred before the department determined that the claim was complete under sub. (5) (c).

4. If the claim is based on a contaminated private water supply, one or more of the contaminants upon which the claim is based was introduced into the well through the plumbing connected to the well.

5. If the claim is based on a contaminated private water supply, one or more of the contaminants upon which the claim is based was introduced into the well intentionally by a claimant or a person who would be directly benefited by payment of the claim.

6. If the claim is based on a contaminated private water supply, all of the contaminants upon which the claim is based are naturally occurring substances and the concentration of the contaminants in water produced by the well does not significantly exceed the background concentration of the contaminants in groundwater at that location.

7. Except as provided in sub. (14), an award has been made under this section within the previous 10 years for the parcel of land where the private water supply is located and the claim is based on a contaminated private water supply.

8. If the claim is based on a contaminated private water supply, the contaminated private water supply is a residential water supply, is contaminated by bacteria or nitrates or both, and is not contaminated by any other substance, except as provided in par. (ae).

9. If the claim is based on a contaminated private water supply, the contaminated private water supply is a livestock water supply, is contaminated by bacteria, and is not contaminated by any other substance.

10. The amount of the award determined under sub. (7) would be less than $100.

(ae) *Bacterial contamination.* Paragraph (a) 8. does not apply to a residential well that is contaminated by bacteria and is in an area of special eligibility for compensation for well contamination as declared by the department under sub. (2) (e).

(am) *Emergency.* Notwithstanding par. (a) 3., the department may authorize expenditures before a claim is submitted if the department determines that an emergency situation exists. The department shall establish standards and procedures for the payment of claims in emergency situations.

(b) *Limits on awards for contaminated wells; purposes.* 1. An award may be issued for purchasing and installing a pump if a pump is necessary for the new or reconstructed private water supply.

2. An award may be issued for water treatment only if the contamination cannot be remedied by reconstruction or replacement of the private water supply, or connection to another water supply is not feasible.

3. An award may not be issued for the replacement of a sand point well with a drilled well unless:

a. The department determines that replacement with another sand point well is not feasible; and

b. The department determines that the person had no knowledge or reason to believe the sand point well would become contaminated at the time it was constructed.

4. An award may not be issued for the reimbursement of costs of an alternative water supply incurred before the department confirmed that contamination existed.

(c) *Limits on awards; costs determined by rule.* The department shall determine by rule the usual and customary costs of each item for which an award may be issued under sub. (7). The rule shall reflect the range of costs resulting from differences in costs of construction, labor, equipment and supplies throughout the state, various soil and bedrock conditions, sizes and depths of wells, types of well construction and other factors which may affect the costs. The department shall determine the amount of all awards according to the rules promulgated under this paragraph.

(d) *Limits on awards for contaminated wells; amount.* Awards shall be issued subject to the following limitations on amount:

1. If the contamination can be remedied by reconstruction of the private water supply, construction of a new private water supply or connection to an existing public or private water supply, the department shall issue an award for the least expensive means of remedying the contamination.

2. If the contamination cannot be remedied by a new or reconstructed private water supply, the maximum award for connection to an existing public or private water supply is 150 percent of the cost of constructing a new private water supply.

3. An award for an alternate water supply is limited to the amount necessary to obtain water for a one-year period, except as provided under sub. (13).

(11m) ABANDONMENT OF CERTAIN PRIVATE WATER SUPPLIES. If the department determines that there is an improperly abandoned private water supply located on property owned or leased by a claimant with a contaminated private water supply that is eligible under sub. (11) (ae), the department may issue an award only if the claimant properly abandons the improperly abandoned private water supply.

(12) RECONSTRUCTION OR REPLACEMENT OF WELLS. If the department determines that the claimant is entitled to compensation for reconstruction of a private water supply or construction of a new private water supply, the department may issue the award only if all of the following conditions are satisfied:

(a) The well complies with casing depth and other construction requirements established by the department.

(b) If the well is a drilled well, it is constructed by a well driller licensed under ch. 280 or, if the well is a sandpoint well, it is constructed by a well driller or pump installer licensed under ch. 280.

(13) COORDINATION OF COMPENSATION AND REMEDIAL ACTION. If the secretary determines that the implementation of a response to groundwater contamination by a regulatory agency under s. 160.25 can be expected to remedy the contamination in a private water supply in 2 years or less, the secretary may order a delay in the issuance of an award for up to a 2-year period. If the secretary issues an order under this subsection, the department shall issue an award for an alternate water supply while the order is in effect or until the well is no longer contaminated, whichever is earlier. If, upon expiration of the order, the department determines that the private water supply is not contaminated, the department may not issue an award under this section.

(14) NEW CLAIMS. (a) *New contamination.* A claimant who receives an award for the purpose of constructing or reconstructing a private water supply or connection to a private water supply may submit a new claim if the contamination is from a new

source and, if the previous award was for a new or reconstructed private water supply, the well was constructed properly.

(b) *Failure to eliminate contamination.* 1. A claimant who receives an award for the purpose of constructing or reconstructing a private water supply or connection to a private water supply may submit a new claim if the contamination is not eliminated and, if the award was for a new or reconstructed private water supply, the well was constructed properly.

2. Only one additional claim may be submitted under this paragraph within 10 years after an award is made.

(15) TOLLING OF STATUTE OF LIMITATIONS. Any law limiting the time for commencement of an action is tolled by the filing of a claim. The law limiting the time for commencement of the action is tolled for the period from the first filing of a claim until the department issues an award under this section. If a period of limitation is tolled by the filing of a claim, and the time remaining after issuance of the final award in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of issuance of the final award.

(16) RELATION TO OTHER ACTIONS. (a) The existence of the relief under this section is not a bar to any other statutory or common law remedy.

(b) A person is not required to exhaust the remedy available under this section before commencing an action seeking any other statutory or common law remedy.

(c) The findings and conclusions under this section are not admissible in any civil action.

(d) The state is subrogated to the rights of a claimant who obtains an award under this section in an amount equal to the award. All moneys recovered under this paragraph shall be credited to the environmental fund for environmental management.

(17) APPLICABILITY. (a) A claim based on a contaminated private water supply may be submitted irrespective of the time when the contamination is or could have been discovered in the private water supply. A claim may be submitted for contamination which commenced before May 11, 1984, and continues at the time a claim is submitted under this section.

(b) This section does not apply to contamination which is compensable under subch. II of ch. 107 or s. 293.65 (4) or 295.61 (8).

(18) SUSPENSION OR REVOCATION OF LICENSES. The department may suspend or revoke a license issued under ch. 280 if the department finds that the licensee falsified information submitted under this section. The department of safety and professional services may suspend or revoke the license of a plumber licensed under ch. 145 if the department of safety and professional services finds that the plumber falsified information submitted under this section.

(19) PENALTIES. Whoever does any of the following shall forfeit not less than $100 nor more than $1,000 and shall be required to repay an award issued to that person under this section:

(a) Causes or exacerbates the contamination of a private water supply for the purpose of submitting a claim under this section; or

(b) Submits a fraudulent claim under this section.

History: 1983 a. 410; 1985 a. 22, 29; 1989 a. 31; 1991 a. 39; 1993 a. 413; 1995 a. 27 ss. 4208 to 4210, 9116 (5); 1995 a. 227 s. 401; Stats. 1995 s. 281.75; 1997 a. 27; 2001 a. 16; 2005 a. 123, 335; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10, 32; 2013 a. 1; 2017 a. 69; 2021 a. 240.

Cross-reference: See also ch. NR 123, Wis. adm. code.

281.77 Damage to water supplies. (1) In this section:

(a) "Private water supply" means a well that is used as a water supply for humans or a well that is constructed by drilling and is used as a water supply for livestock, as defined in s. 95.80 (1) (b), or poultry.

(b) "Regulated activity" means an activity for which the department may issue an order under chs. 285 or 289 to 299 or this chapter, if the activity is conducted in violation of chs. 285 or 289 to 299 or this chapter or in violation of licenses, permits or special orders issued or rules promulgated under chs. 285 or 289 to 299 or this chapter.

(2) (a) Except as provided under par. (b), if the department finds that a regulated activity has caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the department may conduct a hearing on the matter. The department shall conduct a hearing on the matter upon request of the owner or operator of the regulated activity. At the close of the hearing, or at any time if no hearing is held, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(b) If the department finds that a regulated activity caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, and if the regulated activity is an approved facility, as defined in s. 289.01 (3), the department may conduct a hearing under s. 292.31 (3) (f). If the damage to the private water supply is caused by an occurrence not anticipated in the plan of operation which poses a substantial hazard to public health or welfare, the department may expend moneys in the environmental fund that are available for environmental repair to treat the water to render it drinkable, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4). If the damage to the private water supply is not caused by an occurrence not anticipated in the plan of operation, if the damage does not pose a substantial hazard to public health or welfare, or if moneys in the environmental fund that may be used for environmental repair are insufficient, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4).

(3) In any action brought by the department of justice under s. 299.95, if the court finds that a regulated activity owned or operated by the defendant has caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the court may order the defendant to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(4) (a) The owner of land where the private water supply is located may submit the following information to the town, village or city where the private water supply is located:

1. Documentation from an action under sub. (2) or (3) showing that the department or the department of justice is seeking to obtain treatment, repair or replacement of the damaged private water supply.

2. A declaration of the need for an immediate alternative source of water.

(b) A person who submits information under par. (a) may file a claim with the town, village or city where the private water supply is located. The town, village or city shall supply necessary amounts of water to replace that water formerly obtained from the damaged private water supply. Responsibility to supply water commences at the time the claim is filed. Responsibility to supply water ends upon notification to the town, village or city that

an order under sub. (2) or (3) has been complied with or upon a finding that the regulated activity is not the cause of the damage.

(c) If the department or the court does not find that the regulated activity is the cause of the damage to a private water supply, reimbursement to the town, village or city for the costs of supplying water under par. (b), if any, is the responsibility of the person who filed the claim. The town, city or village may assess the owner of the property where the private water supply is located for the costs of supplying water under this subsection by a special assessment under s. 66.0703.

History: 1981 c. 374; 1983 a. 27 s. 2202 (38); 1983 a. 410 ss. 75g to 77g; Stats. 1983 s. 144.265; 1989 a. 31; 1995 a. 227 s. 433; Stats. 1995 s. 281.77; 1999 a. 150 s. 672; 2005 a. 347.

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

SUBCHAPTER VII

GREAT LAKES REMEDIAL ACTION

281.81 Definitions. In this subchapter:

(1) "International joint commission" has the meaning given in s. 281.35 (1) (h).

(2) "Remedial action plan" means a comprehensive plan to clean up and restore the environment in a contaminated area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior and that is identified as an area of concern by the international joint commission under the Great Lakes water quality agreement.

History: 1995 a. 227 s. 412.

281.83 Remedial action in the Great Lakes and their tributaries. (1) The department may perform activities to clean up or to restore the environment in an area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if the activities are included in a remedial action plan that is approved by the department.

(2) In selecting projects to perform under this section, the department shall consider the amount of state funds available, the availability of matching funds from federal, private or other sources, the willingness and ability of a responsible person to fund a project, the willingness and ability of a local governmental unit, as defined in s. 281.51 (1) (c), to undertake or assist in a project, the severity of the environmental contamination that a project will address and the size of the population affected by the contamination.

(3) (a) If a person provides funding for an activity that is part of a remedial action plan, that provision of funding is not evidence of liability or an admission of liability for any environmental contamination.

(b) The acceptance by the department of funding from a person for an activity that is part of a remedial action plan does not limit the ability of the department to take action against that person if the department determines that the person is responsible, in whole or in part, for environmental contamination.

History: 1995 a. 227 ss. 411, 413.

281.85 Great Lakes protection fund share. The department may use moneys from the appropriation under s. 20.370 (4) (ah) for any of the following purposes:

(1) To implement activities included in a remedial action plan.

(2) To restore or protect fish or wildlife habitats in or adjacent to Lake Michigan or Lake Superior.

(3) For planning or providing information related to cleaning up or protecting the Great Lakes.

History: 1995 a. 227 ss. 414, 416; 1997 a. 27.

281.87 Great Lakes contaminated sediment removal. The department may expend funds from the appropriation under s. 20.866 (2) (ti) to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if the project is in an impaired water body that the department has identified under 33 USC 1313 (d) (1) (A) and the source of the impairment is contaminated sediment.

History: 2007 a. 20; 2009 a. 28.

SUBCHAPTER VIII

GENERAL PROVISIONS; ENFORCEMENT

281.91 State agency personnel to report water pollution. Personnel of all state agencies shall report any evidence of water pollution found by them to the department.

History: 1995 a. 227 ss. 396, 987.

281.92 Limitation. Nothing in this chapter affects ss. 196.01 to 196.79 or ch. 31.

History: 1979 c. 221 s. 624; Stats. 1979 s. 144.27; 1995 a. 227 s. 435; Stats. 1995 s. 281.92.

The Department of Natural Resources may consider wetland water quality standards in ch. NR 103, Wis. Adm. Code, when making a water level determination under former s. 31.02 (1), 2011 stats. Former s. 281.92, 2011 stats., does not preclude the department from applying the wetland water quality standards in ch. NR 103 or other parts of this chapter, when appropriate, after weighing factors under s. 31.02 (1). Rock-Koshkonong Lake District v. DNR, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, 08-1523.

281.93 Hearings on certain water use actions. (1) PERMIT OR APPROVAL HOLDER OR APPLICANT; ORDER RECIPIENT. Any permit or approval, part of a permit or approval, condition or requirement in a permit or approval, order, decision or determination by the department under s. 281.344, 281.346, or 281.35 shall become effective unless the permit or approval holder or applicant or the order recipient seeks a hearing challenging the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted, and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified, or withdrawn.

(1m) EFFECT OF A CHALLENGE. If a permit or approval holder or applicant seeks a hearing challenging part of a permit or approval or a condition or requirement in a permit or approval under sub. (1), the remainder of the permit or approval shall become effective and the permit or approval holder or applicant may, at its discretion, begin the activity for which the application was submitted or for which the permit or approval was issued.

(2) OTHER PERSONS. Except as provided in ss. 281.344 (4e) (g) and 281.346 (4e) (g), any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.42 (1) or who submitted comments in the public comment process under s. 281.344, 281.346, or 281.35 may seek review under sub. (1) of any permit or approval, part of a permit or approval, order, decision, or determination by the department under s. 281.344, 281.346, or 281.35.

(3) MINING HEARING. Subsections (1) and (2) do not apply if

a hearing on the matter is conducted as a part of a hearing under s. 293.43.

History: 2007 a. 227.

281.94 Investigation of alleged water withdrawal violations. (1) Any 6 or more residents of this state may petition for an investigation of a withdrawal alleged to be in violation of s. 281.35, 281.344 (3) (a), or 281.346 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (4) to (6), 281.344 (3) (a), or 281.346 (3) (a) by submitting to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person in this state authorized to receive service of answer and other papers on behalf of the petitioners and the name and address of a person authorized to appear at a hearing on behalf of the petitioners.

(2) Upon receipt of a petition, the department shall do one of the following:

(a) If the department determines that the allegations are true, order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(b) Conduct a contested case hearing on the allegations of the petition. Within 60 days after the hearing, the department shall either dismiss the petition or notify the alleged violator of its finding that the allegations are true and order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(d) If the department determines that the allegations are untrue or that the petition was filed maliciously or in bad faith, dismiss the petition without holding a hearing.

(3) Any person who maliciously or in bad faith files a petition under sub. (1) is liable for attorney fees and damages or other appropriate relief to the person that is the subject of the petition.

History: 1985 a. 60; 1995 a. 227 s. 827; Stats. 1995 s. 281.94; 2007 a. 227.

281.95 Remedies; water withdrawal violations. Any person who makes a withdrawal in violation of s. 281.35, 281.344 (3) (a), or 281.346 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (4) to (6), 281.344 (3) (a), or 281.346 (3) (a) is liable to any person who is adversely affected by the withdrawal for damages or other appropriate relief. Any person who is or may be adversely affected by an existing or proposed withdrawal which is in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (4) to (6) may bring an action in the circuit court to restrain or enjoin the withdrawal.

History: 1985 a. 60; 1995 a. 227 s. 828; Stats. 1995 s. 281.95; 2007 a. 227.

281.96 Visitorial powers of department. Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under subch. II, except s. 281.17 (6) and (7). Any member of the natural resources board or any employee of the department may enter any industrial establishment for the purpose of collecting such information, and no owner of an industrial establishment shall refuse to admit such member or employee. The department shall make such inspections at frequent intervals. The secretary and all members of the board shall have power for all purposes falling within the department's jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

History: 1995 a. 227 ss. 402, 403.

281.97 Records; inspection. Records required by the department shall be kept by the owners and the department supplied with certified copies and such other information as it may require. Agents of the department may enter buildings, structures and premises of owners supplying the public or industrial plants with water, ice, sewerage systems, sewage or refuse disposal service and private properties to collect samples, records and information, and to ascertain if the rules and orders of the department are complied with.

History: 1995 a. 227 s. 410; Stats. 1995 s. 281.97.

281.98 Penalties. (1) Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a), 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any rule promulgated or any plan approval, license, special order, or water quality certification issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed, or enjoined, this penalty does not accrue.

(2) In addition to the penalties provided under sub. (1) or s. 281.99 (2), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of this chapter, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

(3) In addition to the penalties under sub. (1), the court may order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

History: 1995 a. 227; 1997 a. 27; 1999 a. 147; 2001 a. 6, 109; 2003 a. 309; 2007 a. 227; 2011 a. 118.

281.99 Administrative forfeitures for safe drinking water violations. (1) (a) The department may directly assess forfeitures in the amounts provided under sub. (2) for violations of safe drinking water program rules promulgated under s. 281.17 (8) or (9).

(b) 1. Subject to subd. 2., if the department proposes to assess a forfeiture for a particular violation, it shall first provide written notice of the alleged violation to the water system owner or operator. The notice shall state the amount of the proposed forfeiture, an explanation of how the amount of the proposed forfeiture was determined under sub. (2) (b) and a proposed order under par. (c). After providing the notice, the department shall attempt to negotiate with the water system owner or operator to remedy the alleged violation. If the water system owner or operator corrects the alleged violation, or if the department and the water system owner or operator reach a compliance agreement, before an order is issued under par. (c), the department may not assess a forfeiture for the alleged violation.

2. The department may directly assess a forfeiture by issuing an order under par. (c) without first providing notice if the alleged violation either creates an acute risk to public health or safety or is part of a documented pattern of noncompliance with one or more rules promulgated under s. 281.17 (8) or (9).

(c) If the department determines that a forfeiture should be assessed for a particular violation, it shall issue an order under s. 281.19 (2) (a) to the water system owner or operator alleged to

have committed the violation. Except as provided in par. (b) 2., the department may not issue the order until at least 60 days after the day on which it provided notice under par. (b) 1. The order shall specify the amount of the forfeiture assessed, the violation and the rule alleged to have been violated and shall inform the licensee of the right to contest the order under sub. (3).

(2) (a) The amount of forfeitures that the department may assess under this section are as follows:

1. For water systems that serve a population of more than 10,000 persons, not less than $10 nor more than $1,000 for each day of each violation, but not more than $25,000 per violation in one order.

2. For water systems that serve a population of 10,000 persons or less, not less than $10 and not more than $500 for each day of violation, but not more than $25,000 in one order.

(b) The department, in determining the amount of forfeiture that it assesses under this section, shall consider the following factors, as appropriate:

1. The gravity of the violation, including the probability of harm to persons served by the water system.

2. Good faith exercised by the water system owner or operator, including past or ongoing efforts to correct problems or achieve compliance with the safe drinking water program.

3. Any previous violations committed by the water system owner or operator at the same water system.

4. The financial benefit to the water system owner or operator of continuing the violation.

5. Any other relevant factors.

(c) While an order issued under this section is contested, suspended, stayed or enjoined, any forfeiture under this section does not accrue.

(3) A water system owner or operator may contest the issuance of an order and the assessment of a forfeiture under this section using the procedure under ch. 227 or s. 281.19 (8). A water system owner or operator that timely requests a hearing under ch. 227 is entitled to a contested case hearing.

(4) All forfeitures shall be paid to the department within 60 days after receipt of the order or according to a schedule agreed to by the department and the water system owner or operator or, if the forfeiture is contested under sub. (3), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(5) The attorney general may bring an action as provided in s. 281.19 (2) (a) in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews.

(6) Section 893.80 does not apply to actions commenced under this section.

History: 1997 a. 27, 237; 2003 a. 33.

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

Chapter NR 216

STORM WATER DISCHARGE PERMITS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A single pipe with an inside diameter of 36 inches or more, or from an equivalent conveyance (cross sectional area of 1,018 inch^2) which is associated with a drainage area of more than 50 acres.

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

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

(a) Owned or operated by a municipality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) LIMITED COVERAGE OF GENERAL PERMITS. Under s. 283.35, Stats., the department may issue a general permit that applies only to certain classes or categories of storm water discharges, or only to storm water discharges located in a designated area of the state, or both. Any limitation of the coverage of a general storm water discharge permit shall be stated in the permit. When the department receives a notice of intent or application for general permit coverage, it shall determine whether the discharge is for a class or category of storm water discharge that is covered by a general permit and is located within an area of the state to which the general permit applies. If the discharge is for a class or category that requires permit coverage but is not covered by a general permit or is for a discharge located outside of the area to which a general permit applies, the department shall treat the notice of intent or application as an application for an individual WPDES permit, and the landowner shall obtain an individual WPDES permit under this chapter for the discharge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Name and contact information for the person requesting the waiver.

2. Facility or site name.

3. WPDES permit number, if applicable or the type of submittal the applicant is requesting a waiver for.

4. Facility or site address.

5. Brief statement regarding the basis for claiming a waiver.

6. Any other information required by the department.

7. Signature of the landowner, operator, or authorized representative.

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

1. For temporary waivers effective for up to 5 years, whether mandatory electronic reporting is technically infeasible due to lack of sufficient broadband availability or will otherwise be unduly burdensome or costly.

2. For permanent waivers, whether mandatory electronic reporting is an infringement of religious practices, such as for a facility owned or operated by members of religious communities that choose not to use computers, electricity, or internet services.

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

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

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

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

Subchapter I — Municipal Storm Water Discharge Permits

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

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

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

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

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

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

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

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

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

NR 216.023 Urbanized area exemption. The department may waive the requirement to obtain permit coverage under this subchapter for a municipal separate storm sewer system

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within an urbanized area listed under s. NR 216.02 (3) that meets all of the following:

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

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

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

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

Note: The department has a list of impaired waters with pollutants of concern available on its website. If an MS4 is exempted from permit coverage under this section, the owner or operator does not need to satisfy the exemption requirements of s. NR 216.024.

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

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

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

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

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

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

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

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

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

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

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

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

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

NR 216.025 Designation criteria. The department may require the owner or operator of any municipal separate storm sewer system to obtain permit coverage under this subchapter if the system meets any of the following:

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

(a) Commercial.

(b) Industrial.

(c) Institutional.

(d) Residential with greater than 4.0 homes per acre.

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

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

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

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

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

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

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

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

(a) Under a general permit. Applications for coverage under a

general permit shall be submitted in accordance with s. NR 216.031.

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

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

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

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

(d) One application may be submitted by multiple owners or operators of municipal separate storm sewer systems when requesting to be covered as co-applicants under an individual permit.

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

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

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

(b) Status as a government entity.

(c) Type of facility or discharges.

(d) The receiving waterbodies.

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

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

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

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

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

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

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

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

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

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

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

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

NR 216.032 Individual permit application requirements. Municipalities subject to the requirements of this subchapter seeking coverage under a storm water discharge individual permit shall apply by submitting the necessary application information to the department. The individual permit application shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NR 216.07 Permit requirements. The department shall establish permit conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to achieve and implement the water quality standards contained in chs. NR 102 to 105, 140, and 207. The department shall issue permits using the information provided by the applicant and other pertinent information when developing permit conditions. Permit conditions shall be expressed in clear, specific, and measurable terms. Permits shall, at a minimum, require development and implementation of written storm water management programs that address all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Field screening points shall be located where practicable

at the farthest manhole or other accessible location downstream in the system. Safety of personnel and accessibility of the location shall be considered in making this determination.

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

(4) CONSTRUCTION SITE POLLUTANT CONTROL. Except for construction sites that are exempted under s. NR 216.42 (2) to (11), a program to implement and maintain erosion and sediment control best management practices to reduce pollutants in storm water runoff from construction sites with one acre or more of land disturbance, and sites of less than one acre if they are part of a larger common plan of development or sale. This program shall encompass any adjacent developing areas that are planned to have a minimum density of 500 people per square mile, the urbanized area and developing areas whose runoff will connect to the MS4. The program shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Other potential sources of pollutants.

(i) If the permittee is subject to a US EPA-approved TMDL,

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boundaries of applicable watersheds associated with a TMDL wasteload allocation.

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

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

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

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

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

(e) Identification of water quality improvements or degradation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(intro.), (b), cr. (8) (f) to (j), (10), (11) Register March 2022 No. 795, eff. 4-1-22; correction in (5) (a), (6) (a) (intro.), (10) (a) made under s. 35.17, Stats., Register March 2022 No. 795.

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

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

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

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

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

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

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

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

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

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

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

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

Table 1

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

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

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

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

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

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

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

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

(3) AUTHORIZED LOCAL PROGRAM APPLICATION AND APPROVAL PROCESS. (a) A municipality seeking approval from the department for an authorized local program shall submit an application on forms available from the department. Applications

shall be submitted by October 1 of the year prior to anticipated operation of an authorized local program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Wetland water quality standards provisions in ch. NR 103.

2. Endangered and threatened resource protection requirements of s. 29.604, Stats., and ch. NR 27.

3. Rules pertaining to any historic property that is a listed property, on the inventory or on the list of locally designated historic places under s. 44.45, Stats.

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

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

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

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

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

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

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

1. Name, address and phone number of person responsible for administering the municipality's authorized local program.

2. Construction project names and legal address of projects that have been approved under this section in the previous calendar year.

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

3. The number of construction site inspections performed and a summary of enforcement actions taken.

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

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

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

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

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

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

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

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

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

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

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

Subchapter II — Industrial Storm Water Discharge Permits

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

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

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

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

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

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

Table 1
Tier 1 Heavy Manufacturers

SIC	Description
2400-2499	Lumber & Wood Products
2600-2699	Paper & Allied Products
2800-2899	Chemicals & Allied Products
2900-2999	Petroleum Refining & Related Industries
3110-3119	Leather Tanning & Finishing
3200-3299	Stone, Clay, Glass & Concrete Products
3300-3399	Primary Metal Industries
3441	Fabricated Structural Metal
3730-3739	Ship & Boat Bldg. & Repair

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

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

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

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

1. Manufacturing facilities defined by Table 2:

Table 2
Tier 2 Light Manufacturers

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

SIC	Description
4222	Refrigerated Warehousing & Storage
4225	General Warehousing & Storage

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

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

Table 3
Tier 2 Transportation Facilities

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

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

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

Table 4
Tier 2 Mining, Oil and Gas Operations

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

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

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

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

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

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

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

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

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

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

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

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

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to storm water.

2. Complete and sign, in accordance with s. NR 216.22 (7), a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in par. (c).

3. Submit an initial "no exposure" certification to the department at least 14 working days prior to the start of industrial operations on a form available from the department as specified under s. NR 216.006.

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

4. Submit the signed certification to the department once every 5 years.

5. Allow the department to inspect the facility to determine compliance with the "no exposure" conditions.

6. Allow the department to make any "no exposure" inspection reports available to the public upon request.

7. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

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

1. Drums, barrels, tanks and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves.

2. Adequately maintained vehicles used in material handling.

3. Final products, other than products that would be mobilized in storm water such as rock salt.

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

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

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

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

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

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

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

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

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

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

c. Materials or products from past industrial activity.

d. Material handling equipment, except adequately maintained vehicles.

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

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

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

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

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

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

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

4. All "no exposure" certifications shall include the following certification statement, and be signed in accordance with the signatory requirements of s. NR 216.22 (7): "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from permitting requirements under subch. II of ch. NR 216; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document, except as allowed under s. NR 216.21 (3) (c). I understand that I am obligated to submit a "no exposure" certification form once every five years to the department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain permit coverage under subch. II of ch. NR 216, prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) SIGNATURE. The notice of intent shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice-president, or by the officer's authorized representative having overall responsibility for the operation of the site for which permit coverage is sought.

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

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

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

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

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

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

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

NR 216.23 Permit coverage. (1) TIER 1 GENERAL PERMIT. The department may issue a statewide general permit to cover all tier 1 type storm water discharges where the discharges are not covered by an industry-specific general permit issued pursuant to s. NR 216.24, or by an individual permit issued pursuant to s. 283.31 or 283.33, Stats.

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

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

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

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

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

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

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

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

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

(2) REQUIREMENTS. Industry-specific general industrial

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

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

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

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

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

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

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

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

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

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

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

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

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

NR 216.27 Storm water pollution prevention plan. (1) APPLICABILITY. Any person who owns or operates an industrial activity with a storm water discharge subject to the applicability requirements of s. NR 216.21 (2) that does not qualify for a no exposure certification under s. NR 216.21 (3) shall prepare and implement an SWPPP under this section.

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

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

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

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

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

1. How storm water drains on, through and from the facility to groundwater, surface water or wetlands.

2. The facility property.

3. A depiction of the storm drainage collection and disposal system including all surface and subsurface conveyances.

4. Any secondary containment structures.

5. The location of all outfalls that discharge channelized flow to surface water, ground water or wetlands, including outfalls recognized as permitted outfalls under another WPDES permit, numbered for reference.

6. The drainage area boundary for each outfall.

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

8. Existing structural storm water controls.

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

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

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

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

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

1. Outdoor manufacturing areas.

2. Rooftops contaminated by industrial activity.

3. Industrial plant yards.

4. Storage and maintenance areas for material handling equipment.

5. Immediate access roads and rail lines.

6. Material handling sites including storage, loading, unloading, transportation, or conveyance of any raw material, finished product, intermediate product and by-product or waste areas.

7. Storage areas for raw materials, finished and intermediate products including tank farms.

8. Disposal or application of wastewater.

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

9. Areas containing residual pollutants from past industrial activity.

10. Areas of significant soil erosion.

11. Refuse sites.

12. Vehicle maintenance and cleaning areas.

13. Washing areas for equipment, vehicles, containers or other material.

14. Shipping and receiving areas.

15. Manufacturing buildings.

16. Residual treatment, storage and disposal sites.

17. Any other areas capable of contaminating storm water runoff.

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

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

(h) The SWPPP shall rely to the maximum extent practicable, and to the extent it is cost effective, on the use of source area control best management practices that are designed to prevent storm water from becoming contaminated at the site. Source area control best management practices that are either proposed or in place at the facility shall be indicated on the facility drainage base map. The SWPPP shall provide for the use of the following applicable source area control best management practices:

1. Practices to control significant soil erosion.

2. Good housekeeping measures, preventive maintenance measures, visual inspections, spill prevention and response measures and employee training and awareness.

3. Covering or enclosing salt storage piles so that neither precipitation nor storm water runoff can come into contact with the stored salt; or, for facilities that use brine and have salt storage piles on impervious curbed surfaces, a means of diverting contaminated storm water to a brine treatment system for process use.

4. Use of a combination of precipitation control, containment, drainage controls or diversions to control section 313 water priority chemicals potentially discharged through the action of storm water runoff, leaching or wind.

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

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

1. Any pollutant for which an effluent limitation is contained in any WPDES permit issued to the facility by the department.

2. Any pollutant contained in a categorical effluent limitation or pre-treatment standard to which the facility is subject.

3. Any section 313 water priority chemical for which the facility has reporting requirements and which has the potential for contaminating storm water.

4. Any other toxic or hazardous pollutants from present or past activity at the site that remain in contact with precipitation or storm water and which could be discharged to the waters of the state and which are not regulated by another environmental program.

5. Any of the following parameters that might be present in significant concentrations: oil and grease; acids or bases; total suspended solids; 5-day biological oxygen demand; chemical oxygen demand.

6. Any pollutant identified as contributing to the impairment if the facility discharges to an impaired water.

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

1. Storm water significantly contaminated with petroleum products shall be treated for oil and grease removal by an adequately sized, designed and functioning wastewater treatment device. Coverage under an individual or general WPDES permit is required for discharges of storm water from oil/water treatment devices.

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

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

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

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

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

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

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

(a) When expansion, production increases, process modifications, changes in material handling or storage or other activities are planned which will result in significant increases in the exposure of pollutants to storm water discharged either to waters of the state or to storm water treatment devices. The amendment

shall contain a description of the new activities that contribute to the increased pollutant loading, planned source control activities that will be used to control pollutant loads, an estimate of the new or increased discharge of pollutants following treatment and, when appropriate, a description of the effect of the new or increased discharge on existing storm water treatment facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The list of pollutants to be tested in the discharge at the outfall shall be identified in the facility monitoring plan portion of the SWPPP.

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

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

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

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

1. Composite sample shall be collected during the first 30 minutes of runoff. At least 3 separate samples shall be collected

for compositing, and the collection of samples shall be evenly spaced throughout the sampling period. Composite samples are required for all pollutants except those for which analytic techniques require grab samples.

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

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

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

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

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

2. The individual who performed the sampling or measurements.

3. The date the analysis was performed.

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

5. The analytical techniques or methods used.

6. The results of the analysis.

7. The estimated duration of the rainfall event, in hours, and the estimated total amount of precipitation falling during the rainfall event, in inches.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) ANNUAL SITE INSPECTION. The first annual facility site compliance inspection shall be conducted by the permittee within 12 months of the effective date of coverage under the general permit. Facilities covered under a tier 1 permit shall submit their first inspection report to the department within 18 months of the effective date of coverage under the permit and the second inspection report within 30 months of the effective date of permit coverage. The report shall be written on department forms, and shall contain information from the inspection, the quarterly visual inspection and the annual chemical monitoring. Facilities covered under the tier 2 permit shall keep the results of their annual facility site compliance inspection and quarterly visual inspections on site for department inspection. Facilities covered under a tier 1 permit are not required to submit inspection reports after submittal of the second inspection report, unless so directed by the department. However, these inspections and quarterly visual inspections shall still be conducted; and results shall be kept on site for department inspection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter III — Construction Site Storm Water Discharge Permits

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

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

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

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

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

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

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

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

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

(7) MILL AND CRUSH OPERATION. If construction activity

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does not result in land disturbing construction activity including a mill and crush operation that does not have soil disturbance, filling or road shoulder grading, the activity is not regulated under this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

Table 5

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

(3) SIGNATURE REQUIREMENTS. The notice of intent form shall be signed by the landowner as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by the officer's authorized representative having overall responsibility for the operation of the site for which a permit is sought.

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

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

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

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

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

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

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

NR 216.44 Notice of intent deadline. (1) Except as provided under sub. (3), a landowner required to obtain WPDES permit coverage for storm water discharges from a construction site shall submit a completed notice of intent, in accordance with the requirements of this subchapter and as specified under s. NR 216.006. The notice of intent shall be submitted so that it is received by the department at least 14 working days prior to the commencement of any land disturbing construction activities. Unless notified by the department to the contrary, a landowner who has submitted a notice of intent in accordance with the provisions of this subchapter is authorized to discharge storm water from a construction site under the terms and conditions of the general construction site storm water discharge permit 14 working days after the date that the department receives the notice of intent or upon receipt of notification from the department that the construction site is covered under the general construction site discharge permit. The landowner becomes the permittee once the construction site is authorized permit coverage.

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

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

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

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

NR 216.45 Incomplete notice of intent and time limit for department decision. (1) Within 14 working days after the date the department receives the notice of intent, the de-

partment may require an applicant to submit data that the department has identified as being necessary to complete any deficient notice of intent or may require the applicant to submit a complete new notice of intent when the deficiencies are extensive or the appropriate form has not been used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Existing topography and drainage patterns, roads and surface waters.

(b) Boundaries of the construction site.

(c) Drainage patterns and approximate slopes anticipated after major grading activities.

(d) Areas of soil disturbance.

(e) Location of major structural and non-structural controls identified in the erosion control plan.

(f) Location of areas where stabilization practices will be employed.

(g) Areas that will be vegetated following land disturbing construction activities.

(h) Area and location of wetland acreage on the construction site and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.

(i) Areas used for infiltration of post-construction storm water runoff.

(j) An alphanumeric or equivalent grid overlying the entire construction site.

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

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mented. The description of erosion and sediment control best management practices shall include the following requirements:

(a) Description of any interim and permanent stabilization practices, including a schedule for implementing the practices. The erosion control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the construction site are stabilized.

(b) Description of any structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the construction site. Unless otherwise specifically approved in writing, structural measures shall be installed on upland soils.

(c) Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.

(d) Trapping of sediment in channelized flow.

(e) Staging land disturbing construction activities to limit exposed soil areas subject to erosion.

(f) Protection of downslope drainage inlets where they occur.

(g) Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.

(h) Clean up of off-site sediment deposits.

(i) Proper disposal of building and waste material.

(j) Stabilization of drainage ways.

(k) Installation of permanent stabilization practices as soon as possible after final grading.

(L) Minimization of dust to the maximum extent practicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The erosion control and storm water management plans and amendments to the erosion control and storm water manage-

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ment plans shall be retained at the construction site until permit coverage is terminated in accordance with s. NR 216.55.

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

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

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

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

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

(a) Conduct the following construction site inspections:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NR 216.50 Amendments. (1) LANDOWNER INITIATED. The permittee or landowner required to submit a notice of intent under this subchapter shall amend the erosion control and storm water management plans if either of the following occurs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) PETITION. Any person may submit a written request to the department that it take action under sub. (5).

Note: The department will evaluate a request submitted pursuant to this subsection to determine if an individual permit is warranted.

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

NR 216.52 Use of information. All information contained in the notice of intent other than that specified as confidential shall be available to the public for inspection and copying. All confidential information, so identified, shall be in separate documents. Effluent data is not confidential information. Confidential treatment will be considered only for that information identified as confidential in documents separate from non-confidential information and which meets the requirements of s. 283.55 (2) (c), Stats., and for which written application for confidentiality has been made pursuant to s. NR 2.19.

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

NR 216.54 Transfers. A landowner who has submitted a completed notice of intent and does not intend to control the permitted activities on the construction site may transfer authorization of construction site storm water discharge permit coverage to the person who will control the permitted activities. The transfer request shall be completed on forms provided by the department as specified under s. NR 216.006 and signed by both the current permittee and the proposed permittee. Coverage is not transferred until the department sends notification of transfer approval to the new permittee. The department may require additional information to be filed prior to granting coverage under the general WPDES permit. The department may, if appropriate, require an application for an individual WPDES storm water permit.

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

NR 216.55 Notice of termination. **(1)** WHEN TO FILE. When a construction site has undergone final stabilization, temporary erosion control best management practices have been removed and all storm water discharges associated with the construction site activities that were required to have WPDES permit coverage under this subchapter have ceased, the permittee shall submit a signed notice of termination to the department.

(2) FORMS. A notice of termination shall be submitted to the department on forms available from the department as specified under s. NR 216.006. Data submitted in the notice of termination forms shall be used as a basis for terminating coverage of a storm water discharge permit.

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

(3) SIGNATURE REQUIREMENTS. The notice of termination form shall be signed as required under s. NR 216.43 (3).

(4) REQUIRED INFORMATION. The notice of termination shall include the following information:

(a) The mailing address and location of the construction site for which the notice of termination is submitted.

(b) The name, mailing address and telephone number of the current permittee, as well as any transferee.

(c) The name, mailing address and telephone number of the general contractor.

(d) The following signed certification:

"I certify under penalty of law that disturbed soils at the identified site have undergone final stabilization and temporary erosion and sediment control measures have been removed or that all storm water discharges associated with construction activity that are authorized by a general WPDES permit have otherwise been eliminated. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water asso-

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ciated with construction activity by the general WPDES permit, and that discharging pollutants in storm water associated with construction activity to waters of Wisconsin is unlawful where the discharge is not authorized by a general WPDES permit."

(5) EFFECTIVE DATE. Termination of coverage under the permit shall be effective upon written confirmation of permit termination by the department to the permittee.

(6) ADMINISTRATIVE TERMINATION. If an applicant fails to reapply under s. NR 216.43 (5) or submit a notice of termination under this section, the department may administratively terminate permit coverage 3 years after the date the department conveyed coverage.

History: CR 03-028: cr. Register July 2004 No. 583, eff. 8-1-04; CR 21-027: am. (2), cr. (6) Register March 2022 No. 795, eff. 4-1-22.

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Policy 2.13 (revised)

2.~~13~~5) All counties shall adopt shoreland ordinances for all unincorporated lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet of a lake, pond or flowage and 300 feet of a river or stream or to the landward side of the floodplain, whichever distance is greater. Each County shall, within 6 months after receipt of final Wisconsin wetland inventory maps of the county from the Wisconsin department of natural resources, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district. Any use not permitted by rule is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance. ~~At a minimum, shoreland ordinances shall include the following provisions:~~

(a) Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

(b) Building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. Unless an existing development pattern exists, a setback of 75 feet from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boathouses.

(c) The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area. In the strip of land 35 feet wide in land from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.

(d) Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with state regulations where applicable, and only if done in a manner to designed to~~n~~ minimize erosion, sedimentation and impairment of fish and wildlife habitat. (See Wis. Stats. §§ 59.692 and 281.31 and Wis. Admin. Code NR 115. See also managed uses #26 and 27)

authority to bring an enforcement action under sub. (11). Carlin Lake Ass'n v. Carlin Club Properties, LLC, 2019 WI App 24, 387 Wis. 2d 640, 929 N.W.2d 228, 17-2439.

A party pursuing an enforcement action under sub. (11) need not wait until a county zoning violation has actually occurred before seeking an injunction. Instead, the party must show a "sufficient probability" that a county zoning ordinance violation will occur. Carlin Lake Ass'n v. Carlin Club Properties, LLC, 2019 WI App 24, 387 Wis. 2d 640, 929 N.W.2d 228, 17-2439.

The following factors are relevant to a court's determination of whether it is equitable to enjoin a violation of a county zoning ordinance: 1) the interest of the citizens of the jurisdiction that has established the zoning requirements in enforcing the requirements; 2) the extent of the zoning violation; 3) whether the parties to the action have acted in good faith; 4) whether the violator of the zoning requirements has available any other equitable defenses, such as laches, estoppel, or unclean hands; 5) the degree of hardship compliance with the zoning requirements will create; and 6) what role, if any, the government played in contributing to the violation. Carlin Lake Ass'n v. Carlin Club Properties, LLC, 2019 WI App 24, 387 Wis. 2d 640, 929 N.W.2d 228, 17-2439.

Nothing in sub. (11) reanimates void conditions. Landowners therefore enjoy no better footing than a county in an attempt to enforce unlawful conditions. Enbridge Energy Co. v. Dane County, 2019 WI 78, 387 Wis. 2d 687, 929 N.W.2d 572, 16-2503.

Wisconsin law requires two elements for abandonment of a legal nonconforming use: 1) actual cessation of the nonconforming use; and 2) an intent to abandon the nonconforming use. In this case, the property owner sought and obtained rezoning from agricultural to residential; entered into a subdivision development agreement restricting the property to residential use; recorded a declaration of covenants, conditions, and restrictions that explicitly stated that the property owner intended to develop a subdivision for residences; installed residential infrastructure; and built two homes on the property. Although the property owner's specific acts may have signified an intent to abandon the nonconforming use, the undisputed fact that the property owner continued farming on the property after the rezoning confirmed that there was no actual cessation of the nonconforming use. Village of Slinger v. Polk Properties, LLC, 2021 WI 29, 396 Wis. 2d 342, 957 N.W.2d 229, 17-2244.

The statutory razing requirements under s. 66.0413 do not limit or otherwise affect a circuit court's authority to grant injunctive relief requested by a county under sub. (11). Waupaca County v. Golla, 2022 WI App 40, 404 Wis. 2d 141, 978 N.W.2d 558, 21-1076.

In this case, the circuit court did not improperly consider deterrence as a factor to support an injunction under sub. (11). Waupaca County v. Golla, 2022 WI App 40, 404 Wis. 2d 141, 978 N.W.2d 558, 21-1076.

A county board of supervisors may deny a rezone petition based on significant differences in conditional uses that may be allowed in the applicable zoning districts, even if the permitted uses in the zoning districts are similar. Dyersville Ready Mix Inc. v. Iowa County Board of Supervisors, 2025 WI App 33, 416 Wis. 2d 476, 21 N.W.3d 803, 24-1091.

The fact that a county is within a regional planning commission does not affect county zoning power. 61 Atty. Gen. 220.

Discussing the authority of a county to regulate mobile homes under this section and other zoning questions. 62 Atty. Gen. 292.

Zoning ordinances utilizing definitions of "family" to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality. 63 Atty. Gen. 34.

Under s. 59.97 (5) (c) [now sub. (5) (c)], town board approval of a comprehensive county zoning ordinance must extend to the ordinance in its entirety and may not extend only to parts of the ordinance. 63 Atty. Gen. 199.

The office of county planning and zoning commission member is incompatible with the position of executive director of the county housing authority. 81 Atty. Gen. 90.

An amendment to a county zoning ordinance adding a new zoning district does not necessarily constitute a comprehensive revision requiring town board approval of the entire ordinance under s. 59.97 (5) (d) [now sub. (5) (d)]. 81 Atty. Gen. 98.

A county's power under sub. (4) is broad enough to encompass regulation of the storage of junked, unused, unlicensed, or abandoned motor vehicles on private property. Because sub. (10) protects "trade or industry," a county zoning ordinance could prohibit an existing non-commercial, nonconforming use or a use that is "casual and occasional." OAG 2-00.

A county's minimum lot size zoning ordinance applies to parcels created by a court through division in a partition or probate action, even if such division would be exempted from a municipality's subdivision authority under s. 236.45 (2) (am) 1. OAG 1-14.

A county is not prohibited from imposing elements of its general zoning ordinance in the shorelands in a town even if the town has not adopted the county's general zoning ordinance under sub. (5) (c), so long as those elements are consistent with s. 59.692. OAG 1-19.

A county's application of its comprehensive zoning ordinance to fee simple land held by tribal members within a reservation violates federal Indian law. Red Cliff Band of Lake Superior Chippewa Indians v. Bayfield County, 432 F. Supp. 3d 889 (2020).

Zoning Law: Architectural Appearance Ordinances and the First Amendment. Rice. 76 MLR 439 (1993).

59.691 Required notice on certain approvals.

(1) In this section, "wetland" has the meaning given in s. 23.32 (1).

(2) (a) Except as provided in par. (b), a county that issues a building permit or other approval for construction activity, shall give the applicant a written notice as specified in subs. (3) and (4) at the time the building permit is issued.

(b) 1. A county is not required to give the notice under par. (a) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of safety and professional services.

2. A county is not required to give the notice under par. (a) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land.

(3) Each notice shall contain the following language: "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER."

(4) The notice required in sub. (2) (a) shall contain the electronic website address that gives the recipient of the notice direct contact with that website.

(5) A county in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

History: 2009 a. 373; 2011 a. 32; 2017 a. 365 s. 112.

59.692 Zoning of shorelands on navigable waters.

(1) In this section:

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

(ar) "Roadway" has the meaning given in s. 340.01 (54).

(b) "Shorelands" means the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2) (d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(bn) "Shoreland setback area" means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under this section.

(c) "Shoreland zoning standard" means a standard for ordinances enacted under this section that is promulgated as a rule by the department.

(d) "Special zoning permission" has the meaning given in s. 59.69 (15) (g).

(e) "Structure" means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch, or fire pit.

(1c) To effect the purposes of s. 281.31 and to promote the public health, safety and general welfare, each county shall zone by ordinance all shorelands in its unincorporated area. The requirements in this ordinance shall relate to the purposes in s. 281.31 (1). This ordinance may be enacted separately from ordinances enacted under s. 59.69.

(1d) (a) An ordinance enacted under this section may not regulate a matter more restrictively than the matter is regulated by a shoreland zoning standard.

(b) Paragraph (a) does not prohibit a county from enacting a shoreland zoning ordinance that regulates a matter that is not regulated by a shoreland zoning standard.

(1f) (a) A county shoreland zoning ordinance may not require a person to do any of the following:

1. Establish a vegetative buffer zone on previously developed land.

2. Expand an existing vegetative buffer zone.

(b) A county shoreland zoning ordinance may require a person to maintain a vegetative buffer zone that exists on July 14, 2015, if the ordinance also does all of the following:

1. Allows the buffer zone to contain an access and viewing corridor. A county shoreland zoning ordinance may not establish a maximum width along the shoreline for an access and viewing corridor that is less than 10 feet or 35 percent of the shoreline frontage, whichever is greater, except that the ordinance may not permit the width of an access and viewing corridor to exceed 200 feet.

2. Allows a viewing corridor to run contiguously for the entire maximum width established under subd. 1.

(1h) If a professional land surveyor licensed under ch. 443, in measuring a setback from an ordinary high-water mark of a navigable water as required by an ordinance enacted under this section, relies on a map, plat, or survey that incorporates or approximates the ordinary high-water mark in accordance with s. 236.025, the setback measured is the setback with respect to a structure constructed on that property if all of the following apply:

(a) The map, plat, or survey is prepared by a professional land surveyor, licensed under ch. 443, after April 28, 2016. The same professional land surveyor may prepare the map, plat, or survey and measure the setback.

(b) The department has not identified the ordinary high-water mark on its Internet site as is required under s. 30.102 at the time the setback is measured.

(1k) (a) The department may not impair the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and a county may not impair the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that does any of the following:

1. Requires any approval to install or maintain outdoor lighting in shorelands, imposes any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.

2. Except as provided in par. (b), requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of any of the following if the activity does not expand the footprint of the structure:

a. A nonconforming structure.

b. A structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015.

c. A building or structure in violation of a county shoreland zoning ordinance that, under sub. (1t), may not be enforced.

2m. Except as provided in pars. (b) and (bm), requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of a structure listed under sub. (1n) (d) that was legally constructed wholly or partially within the shoreland setback area if the activity does not expand the footprint of the existing structure.

3. Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.

4. Requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the vertical expansion of a nonconforming structure or a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015, unless the vertical expansion would extend more than 35 feet above grade level.

6. Prohibits placement in a shoreland setback area of a device or system authorized under par. (am) 1.

(am) The department may not impair the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and a county may not impair the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that establishes standards for impervious surfaces unless all of the following apply:

1. The standards provide that a surface is considered pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area, that retains the runoff on or off the parcel to allow infiltration into the soil.

2. If the standards allow a greater amount of impervious surface on areas with highly developed shorelines than areas with shorelines that are not highly developed, as determined by the department, the standards also require an area with highly developed shorelines to include at least 500 feet of shoreline and require that one of the following applies:

a. The area is composed of a majority of lots with more than 30 percent impervious surface area, as calculated by the county and approved by the department.

b. The area is composed of a majority of lots that are less than 20,000 square feet in area.

c. The area is located on a lake and served by a sewerage system, as defined in s. 281.01 (14).

3. The standards prohibit considering a roadway or a sidewalk, as defined in s. 340.01 (58), as impervious surfaces.

(b) A county shoreland zoning ordinance shall allow an activity specified under par. (a) 2. and 2m. to expand the footprint of a nonconforming structure, a structure listed under sub. (1n) (d), or a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015, if the expansion is necessary for the structure to comply with applicable state or federal requirements.

(bm) A county shoreland zoning ordinance may prohibit an activity specified under par. (a) 2m. from expanding a structure listed under sub. (1n) (d) beyond the 3-dimensional building envelope of the existing structure.

(c) 1. Nothing in this section prohibits the department from establishing a shoreland zoning standard that allows the vertical or lateral expansion of a nonconforming structure.

2. Nothing in this section prohibits a county from enacting a shoreland zoning ordinance that allows the vertical or lateral expansion of a nonconforming structure if the ordinance does not conflict with shoreland zoning standards established by the department.

(1n) (a) In this subsection, "setback" means the distance that a shoreland setback area extends from the ordinary high-water mark.

(am) Except as provided under pars. (b), (bm), (c), and (d), a county shoreland zoning ordinance shall establish a setback of 75 feet.

(b) Except as provided in pars. (bm) and (c), if the closest principal structure in each direction along the shoreline to a proposed principal structure exists on an adjacent lot and within 250

feet of the proposed principal structure and both of the existing principal structures are set back less than 75 feet from the ordinary high-water mark, a county shoreland zoning ordinance shall establish a setback equal to the average of the distances that those structures are set back from the ordinary high-water mark but no less than 35 feet.

(bm) If a principal structure exists on an adjacent lot and within 250 feet of a proposed principal structure in only one direction along the shoreline, is the closest principal structure to the proposed principal structure, and is set back less than 75 feet from the ordinary high-water mark, a county shoreland zoning ordinance may establish a setback equal to the average of 75 feet and the distance that the existing structure is set back from the ordinary high-water mark but no less than 35 feet.

(c) 1. Except as provided in subd. 2., if the closest principal structure in each direction along the shoreline to a proposed principal structure exists on an adjacent lot and within 200 feet of the proposed principal structure and both of the existing principal structures are set back more than 75 feet from the ordinary high-water mark at or farther landward from the setback that was required at the time each structure was built, a county shoreland zoning ordinance may establish a setback equal to the average of the setbacks required for those structures at the time they were built.

2. Subdivision 1. does not apply if the resulting setback limits the placement of the proposed principal structure to an area on which the structure cannot be built.

(d) A county shoreland zoning ordinance may not prohibit the construction of any of the following structures within the 75-foot setback requirement under par. (am):

1. A boathouse, as defined in s. 30.01 (1d), that is located entirely above the ordinary high-water mark.

2. A structure that satisfies the requirements in sub. (1v).

3. A fishing raft for which the department has issued a permit under s. 30.126.

4. A broadcast signal receiver, including a satellite dish, or an antenna that is no more than one meter in diameter and a satellite earth station antenna that is no more than 2 meters in diameter.

5. A utility transmission line, utility distribution line, pole, tower, water tower, pumping station, well pumphouse cover, private on-site wastewater treatment system that complies with ch. 145, and any other utility structure for which no feasible alternative location outside of the setback exists and which is constructed and placed using best management practices to infiltrate or otherwise control storm water runoff from the structure.

6. A walkway, stairway, or rail system that is necessary to provide pedestrian access to the shoreline and is no more than 60 inches in width.

7. A fence that is all of the following:

a. No taller than 15 feet.

b. Located no less than 2 feet landward of the ordinary high-water mark.

c. Located entirely outside of a highway right-of-way, no less than 10 feet from the edge of a roadway, and no more than 40 feet from the edge of a roadway or highway right-of-way, whichever is greater.

d. Generally perpendicular to the shoreline.

8. A bridge for which the department has issued a permit under s. 30.123.

(1o) The department may not promulgate a standard and a county may not enact an ordinance under this section that prohibits the owner of a boathouse in the shoreland setback area that has a flat roof from using the roof as a deck if the roof has no side walls or screens or from having or installing a railing around that roof if the railing is not inconsistent with standards promulgated by the department of safety and professional services under ch. 101.

(1p) This section does not authorize a county to impose a requirement, condition, or restriction on land that is not shoreland within the county.

(1r) An ordinance enacted under this section may not prohibit the maintenance of stairs, platforms or decks that were constructed before August 15, 1991, and that are located in any of the following shorelands:

(a) The shoreland of Lake Wissota in Chippewa County.

(b) The shorelands of Lake Holcombe in Chippewa and Rusk counties.

(1t) A county or the department may not commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning standard or an ordinance enacted under this section if the building or structure has been in place for more than 10 years.

(1v) A county shall grant special zoning permission for the construction or placement of a structure on property in a shoreland setback area if all of the following apply:

(a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high-water mark.

(b) The total floor area of all of the structures in the shoreland setback area of the property will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded.

(c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.

(d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70 percent of the half of the shoreland setback area that is nearest to the water.

(2) (a) Except as otherwise specified, all provisions of s. 59.69 apply to ordinances and their amendments enacted under this section whether or not enacted separately from ordinances enacted under s. 59.69, but the ordinances and amendments shall not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(bg) A town may enact a zoning ordinance affecting the same shorelands as an ordinance enacted under this section, subject to the restrictions in ss. 60.61 (3r) and 60.62 (5).

(bm) If a town ordinance enacted by a town that is located entirely on an island in Lake Superior and authorized to exercise village powers under s. 60.22 (3) is more restrictive than an ordinance enacted under this section affecting the same shorelands, regardless of the order of enactment, the town ordinance applies in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(2m) A county shoreland zoning ordinance may not regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards for substandard lots.

(3) All powers granted to a county under s. 236.45 may be ex-

ercised by it with respect to shorelands, but the county must have or provide a planning agency as defined in s. 236.02 (3).

(4) (a) Section 66.0301 applies to this section, except that for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance. If the municipalities as defined in s. 281.31 are served by a regional planning commission under s. 66.0309, the commission may, with its consent, be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.694, and the procedures of that section apply. Notwithstanding s. 59.694 (4), the department may not appeal a decision of the county to grant or deny a variance under this section but may, upon the request of a county board of adjustment, issue an opinion on whether a variance should be granted or denied.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to shorelands.

(5m) If a county has in effect on or after July 14, 2015, a provision in an ordinance that is inconsistent with sub. (1d), (1f), (1k), or (2m), the provision does not apply and may not be enforced.

(6) If a county does not enact an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county. As far as possible, s. 87.30 shall apply to this subsection.

(6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed under sub. (6), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

(7) (a) In this subsection, "facility" means any property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

(b) The construction and maintenance of a facility is considered to satisfy the requirements of this section and any county ordinance enacted under this section if any of the following applies:

1. The department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283.

2. No department permit or approval under subd. 1. is required for the construction or maintenance and the construction or maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from the facility.

History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112; 2011 a. 6, 170; 2013 a. 80; 2015 a. 55, 146, 167, 178, 391; 2017 a. 68; 2017 a. 365 ss. 28, 29, 110; 2017 a. 366 s. 99; 2019 a. 145; 2021 a. 105, 200.

Cross-reference: See also ch. NR 115, Wis. adm. code.

The Department of Natural Resources, as trustee of navigable waters in the state, has standing to appeal shoreline zoning decisions. State ex rel. DNR v. Walworth County Board of Adjustment, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The private right to fill lakebeds granted under s. 30.11 does not preempt the zoning power of a county over shorelands under s.59.971 [now this section]. State v. Land Concepts, Ltd., 177 Wis. 2d 24, 501 N.W.2d 817 (Ct. App. 1993).

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96-1235. See also State v. Outagamie County Board of Adjustment, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98-1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance the applicant is prevented from enjoying any reasonable use of the property. State ex rel. Spinner v. Kenosha County Board of Adjustment, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97-2094.

The state, in administering the Wisconsin Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. County of Sawyer Zoning Board v. DWD, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. State v. Waushara County Board of Adjustment, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02-2400.

The term "floor area" in sub. (1v) (b) unambiguously encompasses only the surface portion of a deck's floorboards and, therefore, does not include portions of the deck's support system that extend beyond the floorboards. If a portion of a structure is outside the setback area, that part is not in the setback area and it is not the portion "extending into" that area for purposes of calculating the 200 square foot restriction in sub. (1v) (b). Propp v. Sauk County Board of Adjustment, 2010 WI App 25, 323 Wis. 2d 495, 779 N.W.2d 705, 09-0209.

Appellants appropriately relied on the county's zoning map to identify the ordinary high water mark of a nearby lake and determine that the sign's proposed location was outside the county's 1,000 foot zone of shoreland authority. It was reasonable for the appellant to rely on the map rather than conduct on-site measurements. Oneida County v. Collins Outdoor Advertising, Inc., 2011 WI App 60, 333 Wis. 2d 216, 798 N.W.2d 724, 10-0084.

By enactment of this section and s. 281.31, the legislature intended that towns would not have authority to regulate shorelands except when such regulation fell within the language of sub. (2) (b) [now sub. (2) (b), (bg), and (bm)]. That statutory scheme does not distinguish between towns with village powers and those without. Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12-2058.

Although they often work together, zoning and subdivision regulations provide separate and distinct means of regulating the development of land. There are areas of overlap between the two powers, but there are also key differences. Subdivision control is concerned with the initial division of undeveloped land, while zoning more specifically regulates the further use of this land. State ex rel. Anderson v. Town of Newbold, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18-0547.

In this case, the town's ordinance set minimum lot frontage requirements for each lake within its borders. Pursuant to the *Zwiefelhofer*, 2012 WI 7, factors, the town's ordinance was not a zoning ordinance. It did not concern land use, and it did not separate compatible and incompatible land uses, which is a key purpose of a zoning ordinance. Because it was not a zoning ordinance, the restrictions on town enactment of zoning ordinances set by this section did not apply, and the ordinance was a permissible exercise of the town's subdivision authority pursuant to s. 236.45. State ex rel. Anderson v. Town of Newbold, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18-0547.

The "relate to shorelands" language in sub. (5) does not prohibit counties from enacting and enforcing provisions in general zoning ordinances under s. 59.69 applicable to all property in the counties, including shorelands. The only reasonable meaning of that phrase is general ordinance provisions that address issues that are specific to shoreland property and that serve the purpose of protecting shorelands and navigable waters. In other words, provisions that "relate to shorelands" means the subset of general ordinance provisions that "specifically" relate to shorelands. In this case, the county's general zoning ordinance side yard setback and land use permit provisions, which applied to all property in the county, were by their terms not connected specifically with shorelands or the purposes of and interests protected by shoreland zoning. Waupaca County v. Golla, 2022 WI App 40, 404 Wis. 2d 141, 978 N.W.2d 558, 21-1076.

The reasonable interpretation of the phrase "a provision in an ordinance" in sub. (5m) is a provision in a shoreland zoning ordinance enacted under this section or a provision in a general zoning ordinance enacted under s. 59.69 that relates to shorelands. Waupaca County v. Golla, 2022 WI App 40, 404 Wis. 2d 141, 978 N.W.2d 558, 21-1076.

The term "utility" as used in sub. (1n) (d) 5. encompasses municipal sanitary districts and is not limited to the definition of "public utility" in s. 196.01 (5). Delavan Lake Sanitary District v. Walworth County Board of Adjustment, 2023 WI App 22, 407 Wis. 2d 628, 990 N.W.2d 783, 22-0289.

County floodplain zoning ordinances may be adopted under s. 59.971 [now this section] and do not require the approval of town boards in order to become effective within the unincorporated areas of the county. 62 Atty. Gen. 264.

Counties may zone lands located within 300 feet of an artificial ditch that is navigable in fact. 63 Atty. Gen. 57.

County shoreland zoning of unincorporated areas adopted under s. 59.971 [now this section] is not superseded by municipal extraterritorial zoning under s. 62.23 (7a). Discussing ss. 59.971 [now this section], 62.23 (7) and (7a), and 144.26 [now s. 281.31]. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations. 63 Atty. Gen. 69.

A county may not enact a shoreland zoning ordinance without a provision regulating nonconforming uses that have been discontinued for 12 months or longer. A county may enact an ordinance without the 50 percent provision under s. 59.69 (10) (a) [now s. 59.69 (10) (am)], in which case common law controls. OAG 2-97.

A county is not prohibited from imposing elements of its general zoning ordi-

nance in the shorelands in a town even if the town has not adopted the county's general zoning ordinance under s. 59.69 (5) (c), so long as those elements are consistent with this section. OAG 1-19.

The Necessity of Zoning Variance or Amendments Notice to the Wisconsin Department of Natural Resources Under the Shoreland Zoning and Navigable Waters Protection Acts. Whipple. 57 MLR 25 (1973).

Wisconsin's Shoreland Management Program: An Assessment with Implications for Effective Natural Resources Management and Protection. Kuczenski. 1999 WLR 273.

On the Waterfront: New Shoreland Zoning Laws. Kent. Wis. Law. Jan. 2017.

59.693 Construction site erosion control and storm water management zoning. (1) DEFINITION. In this section, "department" means the department of natural resources.

(2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a county may enact a zoning ordinance, that is applicable to all of its unincorporated area, except as provided in s. 60.627 (2) (b), for construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 59.69. An ordinance enacted under this subsection is subject to the strict conformity requirements under s. 281.33 (3m).

(4) APPLICABILITY OF COUNTY ZONING PROVISIONS; TOWN APPROVAL. (a) Except as otherwise specified in this section, s. 59.69 applies to any ordinance or amendment to an ordinance enacted under this section, but an ordinance or amendment to an ordinance enacted under this section does not require approval and is not subject to disapproval by any town or town board.

(b) Variances and appeals regarding construction site erosion control and storm water management regulations under this section are to be determined by the board of adjustment for that county. Procedures under s. 59.694 apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to construction site erosion control or storm water management regulation.

(6) APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE. Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a county under s. 236.45 may be exercised by the county with respect to construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the county has or provides a county planning agency as defined in s. 236.02 (3).

(8) APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES. An ordinance that is enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance that is enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1) but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2).

(9) INTERGOVERNMENTAL COOPERATION. (a) Except as provided in par. (c), s. 66.0301 applies to this section, but for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance.

(b) If a county is served by a regional planning commission under s. 66.0309 and if the commission consents, the county may empower the commission by ordinance to administer an ordinance that is enacted under this section throughout the county, whether or not the area otherwise served by the commission includes all of that county.

(c) If the board of commissioners of the Dane County Lakes and Watershed Commission consents, Dane County may empower the commission by ordinance to administer an ordinance that is enacted under this section whether or not the area otherwise served by the commission includes all of Dane County. Section 66.0301 does not apply to this paragraph.

(10) VALIDITY UPON ANNEXATION. An ordinance that is enacted under this section by a county that is in effect in an area immediately before the area is annexed by a city or village continues in effect in the area after annexation unless the city or village enacts, maintains and enforces a city or village ordinance which complies with minimum standards established by the department and which is at least as restrictive as the county ordinance enacted under this section. If, after providing notice and conducting a hearing on the matter, the department determines that an ordinance that is enacted by a city or village which is applicable to the annexed area does not meet these standards or is not as restrictive as the county ordinance, the department shall issue an order declaring the city or village ordinance void and reinstating the applicability of the county ordinance to the annexed area.

(11) UTILITY FACILITIES. (a) In this subsection, "facility" means any property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

(b) The construction and maintenance of a facility is considered to satisfy the requirements of this section and any county ordinance enacted under this section if any of the following applies:

1. The department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283.

2. No department permit or approval under subd. 1. is required for the construction or maintenance and the construction or maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from the facility.

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16, 246; 1995 a. 201 s. 478; Stats. 1995 s. 59.693.; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672; 2013 a. 20; 2017 a. 136.

59.694 County zoning, adjustment board. (1) APPOINTMENT, POWER. The county board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted under s. 59.69 may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subsection precludes the granting of special exceptions by the county zoning agency designated under s. 59.69 (2) (a) or the county board in accordance with regulations and restrictions adopted under s. 59.69 which were in effect on July 7, 1973, or adopted after that date.

(2) PERSONNEL. (a) In counties with a population of less than 750,000, the board of adjustment shall consist of not more than 5 members as determined by resolution of the county board. The chairperson of the county board shall appoint the members with the approval of the county board for terms of 3 years beginning July 1. The incumbent members shall continue to serve until their terms expire. The county board resolution increasing the size of the board of adjustment shall indicate how many members shall be appointed for 1, 2 and 3 years prior to July 1 of the year in which the change takes effect in making the first appointments. If the county board, by resolution, determines to reduce the membership of the board of adjustment below 5 but not less than 3,

2. The abatement action required by the order does not involve a capital expenditure.

3. If the nonpoint source is agricultural, the department provides a copy of the temporary emergency order to the department of agriculture, trade and consumer protection and to the land conservation committee created under s. 92.06 in every county in which the nonpoint source is located.

4. As soon as practicable after issuing the temporary emergency order, the department issues a written notice of intent to issue an order under pars. (a) and (b) or rescinds the temporary emergency order.

(5) (a) Except as provided in par. (c), if the department issues a notice under sub. (3) (a) 2., the source is agricultural and no land conservation committee disapproves the proposed order under sub. (3) (b), the owner or operator of the critical site may obtain a review of the proposed order by filing a written request with the land and water conservation board within 60 days after the expiration of the time limit under sub. (3) (b). If the land conservation committee of any county in which a source is located disapproves of a proposed order under sub. (3) (b), the department may obtain a review of that disapproval by filing a written request with the land and water conservation board within 60 days after receiving the decision of the land conservation committee.

(b) The owner or operator of a critical site may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (a) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(c) The owner or operator of a critical site who obtains review of the critical site determination under any or all of the review procedures in s. 281.65 (7) may not obtain review of a proposed order under this subsection.

History: 1995 a. 227 ss. 393, 394, 395.
Cross-reference: See also ch. NR 120, Wis. adm. code.

SUBCHAPTER III

WATER QUALITY AND QUANTITY; GENERAL REGULATIONS

281.31 Navigable waters protection law. (1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

(e) "Regulation" means ordinances enacted under ss. 59.692, 61.351, 61.353, 62.23 (7), 62.231, and 62.233 and refers to subdivision and zoning regulations which include control of uses of lands under, abutting, or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages, and counties.

(f) "Shorelands" means the lands specified under par. (e) and s. 59.692 (1) (b).

(g) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(2m) Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.693, 60.627, 61.354, or 62.234, or a wetland zoning ordinance required under s. 61.351 or 62.231 does not apply to any of the following:

(a) Lands adjacent to farm drainage ditches if all of the following apply:

1. The lands are not adjacent to a natural navigable stream or river.

2. Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching.

(bg) Lands adjacent to artificially constructed drainage ditches, ponds, or storm water retention basins that are not hydrologically connected to a natural navigable water body.

(c) Lands adjacent to an impoundment described under s. 30.10 (2) (b) that does not discharge directly into a natural navigable waterway.

(3) (a) The department shall coordinate the activities of the several state agencies in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the University of Wisconsin, local units of government and other sources.

3. Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(5) (a) The department shall prepare a comprehensive plan as a guide for the application of municipal ordinances regulating navigable waters and their shorelands as defined in this section for the preventive control of pollution. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state or within counties and shall be governed by the following general standards:

1. Domestic uses shall be generally preferred.

2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

4. Use locations within an area tending to minimize the pos-

sibility of pollution shall be preferred over use locations tending to increase that possibility.

5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(b) The department shall apply to the plan the standards and criteria set forth in sub. (6).

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and ss. 59.692, 61.351, 61.353, 62.231, and 62.233 shall be construed together to accomplish the purposes and objective of this section.

(9) Sections 30.50 to 30.80 are not affected or superseded by this section.

(10) A person aggrieved by an order or decision of the department under this section may cause its review under ch. 227.

History: 1975 c. 232; 1977 c. 29; 1981 c. 330, 339; 1983 a. 189, 416; 1993 a. 246; 1995 a. 201; 1995 a. 227 s. 432; Stats. 1995 s. 281.31; 2013 a. 80; 2013 a. 151 s. 28; 2015 a. 55; 2017 a. 164.

Cross-reference: See also chs. NR 115 and 117, Wis. adm. code.

A prohibition against filling in wetlands pursuant to an ordinance adopted under ss. 59.971 and 144.26 [now this section and s. 59.692] does not amount to an unconstitutional taking of property. Discussing police powers and eminent domain. Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972).

The concept that an owner of real property can, in all cases, do as the owner pleases with the owner's property is no longer in harmony with the realities of society. The "reasonable use" rule codified in the second Restatement of the Law of Torts is adopted. State v. Deetz, 66 Wis. 2d 1, 224 N.W.2d 407 (1974).

By enactment of this section and s. 59.692, the legislature intended that towns would not have authority to regulate shorelands except where such regulation fell within the language of s. 59.692 (2) (b) [now s. 59.692 (2) (b), (bg), and (bm)]. That statutory scheme does not distinguish between towns with village powers and those without. Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12-2058.

A drainage board is subject to shoreland zoning ordinances, as is any other person. Navigable drainage ditches are within the jurisdiction of the Department of Natural Resources under s. 144.26 (2) (d) [now sub. (2) (d)]. 63 Atty. Gen. 355.

The Necessity of Zoning Variance or Amendments Notice to the Wisconsin Department of Natural Resources Under the Shoreland Zoning and Navigable Waters Protection Acts. Whipple. 57 MLR 25 (1973).

The Public Trust Doctrine. Dumphy. 59 MLR 787 (1976).

Water Quality Protection for Inland Lakes in Wisconsin: A Comprehensive Approach to Water Pollution. Kusler. 1970 WLR 35.

This Land Is Whose Land? Changing Concepts of Land as Property. Large. 1973 WLR 1039.

Wisconsin's Shoreland Management Program: An Assessment with Implications for Effective Natural Resources Management and Protection. Kuczenski. 1999 WLR 273.

281.33 Construction site erosion control and storm water management. (1) OBJECTIVES. To aid in the fulfillment of the state's role as trustee of its navigable waters, to promote public health, safety and general welfare and to protect natural resources, it is declared to be in the public interest to make studies, establish policies, make plans, authorize municipal construction site erosion control and storm water management zoning ordinances for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources and establish a state storm water management plan for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources while at the same time encouraging sound economic growth in this state. The purposes of the municipal ordinances and state plan shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; prevent and control the adverse effects of storm water; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(2) STATE STORM WATER MANAGEMENT PLAN. The department, in consultation with the department of safety and professional services, shall promulgate by rule a state storm water management plan. This state plan is applicable to activities contracted for or conducted by any agency, as defined under s. 227.01 (1) but also including the office of district attorney, unless that agency enters into a memorandum of understanding with the department of natural resources in which that agency agrees to regulate activities related to storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in storm water management and make recommendations to these agencies concerning activities related to storm water management.

(3) STANDARDS RELATED TO STORM WATER AND CERTAIN CONSTRUCTION ACTIVITIES. (a) 1. Except as restricted under subd. 2., the department shall establish by rule uniform statewide standards for all of the following:

a. Activities related to construction site erosion control at sites that have a land disturbance that is one acre or more in area.

b. Activities related to construction site erosion control at sites that have a land disturbance that is less than one acre and to which ss. 101.1206 and 101.653 do not apply.

c. Storm water management.

2. The department, in cooperation with the department of transportation, shall establish by rule uniform statewide standards for activities related to construction site erosion control and storm water management if those activities concern street, highway, road or bridge construction, enlargement, relocation or reconstruction.

3. Uniform statewide standards for storm water management established under this paragraph are applicable to the state plan under sub. (2). The department shall require a city, village, town, or county to comply with uniform statewide standards established under this paragraph for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354 or 62.234.

4. The department shall identify low-cost practices which would enable a person to comply with these uniform statewide standards.

(b) The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that:

1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

2. Involves the excavation or filling or a combination of excavation and filling which affects 400 cubic yards or more of dirt, sand or other excavation or fill material.

3. Involves street, highway, road or bridge construction, enlargement, relocation or reconstruction.

4. Involves the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more.

Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

NR 115.01 Purpose.
NR 115.02 Applicability.
NR 115.03 Definitions.
NR 115.04 Shoreland-wetlands.
NR 115.05 Minimum zoning standards for shorelands.
NR 115.06 Department duties.

Note: Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

NR 115.01 Purpose. Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats., for the purposes specified in s. 281.31 (1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty. Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a nonconforming building if the provision is more restrictive than the standards for nonconforming buildings under ch. NR 115; or the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

2011 Wisconsin Act 170 also created other provisions that affect how a county regulates nonconforming uses and buildings, premises, structures, or fixtures under its general zoning ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: r. and recr. Register January 2010 No. 649, eff. 2-1-10.

NR 115.02 Applicability. The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas except as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats., applies.

Note: Under section 59.692 (7), Stats., areas annexed after May 7, 1982 and areas incorporated after April 30, 1994 were generally subject to the county shoreland zoning ordinances in effect on the date of annexation or incorporation. Effective December 14, 2013, 2013 Wis. Act 80 repealed s. 59.692 (2m) (c) and (7), amended s. 59.692 (6m), and created ss. 61.353 and 62.233. 2013 WI Act 80 is retroactive as well as prospective, and applies to all shorelands areas annexed since May 7, 1982 or incorporated since April 30, 1994.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; CR 05-058: am. Register January 2010 No. 649, eff. 2-1-10; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2010 No. 649; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.; CR 23-060: am. Register July 2024 No. 823, eff. 8-1-24.

NR 115.03 Definitions. For the purpose of this chapter:

(1d) "Access and viewing corridor" means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(1h) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(1p) "Building envelope" means the three dimensional space within which a structure is built.

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.69 (2) (a), Stats., to act in all matters pertaining to county planning and zoning.

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

(3m) "Existing development pattern" means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(4) "Flood plain" means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(4g) "Impervious surface" means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

(4r) "Mitigation" means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(5) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In DeGayner and Co., v. Department of Natural Resources, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to con-

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sider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(7) "Regional flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(7m) "Routine maintenance of vegetation" means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(8) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

(9) "Shoreland-wetland zoning district" means a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(10) "Special exception (conditional use)" means a use which is permitted by a shoreland zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(11) "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

(13) "Wetlands" means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (intro.), renum. (1) to be (1h), cr. (1d), (1p), (3m), (4g), (4r) and (7m), r. (12) Register January 2010 No. 649, eff. 2-1-10.

NR 115.04 Shoreland-wetlands. (1) ESTABLISHMENT OF SHORELAND-WETLAND ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include zoning regulations for shoreland-wetland zoning districts.

(2) AMENDMENT OF SHORELAND-WETLAND MAPS AND ZONING DISTRICTS. (a) *County review of wetland inventory map amendments.* After the department amends final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.69 (2) (a), Stats., digital files or paper copies of amended wetland inventory maps for that county.

2. If the county believes that the amended maps are inaccurate, within 30 days of receiving the amended maps the county shall note discrepancies on the maps with an accompanying narrative explaining the amended problem areas and return a copy of the notated map and narrative to the department.

3. The department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare final amended Wisconsin wetland inventory maps for that county.

Note: As of 1985 all counties adopted official wetland zoning maps and amendments occur as accuracy increases.

(b) *County amendment of shoreland-wetland maps and zoning districts.* 1. Within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county from the department, a county shall zone all shorelands designated as wetlands on the amended Wisconsin wetland inventory maps in a shoreland-wetland zoning district. If a county fails to zone all shoreland-wetlands within this 6 month period, s. NR 115.06 (3) (b) shall apply.

2. Ordinance text and map amendments creating or amending shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (e) 2., Stats.

Note: Where an apparent discrepancy exists between a shoreland-wetland district shown on an amended map and actual field conditions, the county shall contact the department to determine if the amended map is in error. If the department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

3. At least 10 days prior to the public hearing, the county shall provide the appropriate regional office of the department with a copy of the proposed text and map amendments and with written notice of the public hearing.

(c) *Amendment of shoreland-wetland zoning districts.* 1. Official ordinance amendments are required for any proposed change in shoreland-wetland zoning. Such amendments shall be made in accordance with provisions of s. 59.69 (5) (e), Stats. Official amendments to the ordinance text shall be made promptly. Provided the ordinance text is promptly amended, a county may amend its official map within a reasonable period of time not to exceed one year following the change in shoreland-wetland zoning.

2. The county clerk shall submit a copy of every proposed amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such proposed amendment with the clerk.

3. All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning agency for a public notice and hearing as required by s. 59.69 (5) (e) 2., Stats. The appropriate regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning

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may result in a significant adverse impact upon any of the following:

a. Storm and flood water storage capacity;

b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;

c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

d. Shoreline protection against soil erosion;

e. Fish spawning, breeding, nursery or feeding grounds;

f. Wildlife habitat; or

g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

5. If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in subd. 4., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

6. As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

7. The appropriate regional office of the department shall be provided with all of the following:

a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board;

b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

8. If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of s. NR 115.05, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and managed forest land programs.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if the structure cannot as a practical matter be located outside the wetland, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light,

power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for the construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(L) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in sub. (2) (c).

History: CR 05-058: cr. Register January 2010 No. 649, eff. 2-1-10.

NR 115.05 Minimum zoning standards for shorelands. (1) ESTABLISHMENT OF SHORELAND ZONING STANDARDS. The shoreland zoning ordinance adopted by each county shall control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned unit development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694 (7) (c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 1.:

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

Note: This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark.

b. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) *Vegetation.* To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

Note: In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692 (2) (a) and 59.69 (4) (a), Stats.

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35

feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

a. The county may allow routine maintenance of vegetation.

b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.

c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.

d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.

e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. County impervious surface standards shall require all of the following:

1. 'Application.' Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

a. A riparian lot or parcel.

b. A nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway

1m. 'Calculation.' Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the lot or parcel by the total surface area of that lot or parcel, and multiplying by 100. For the purposes of this subdivision counties may exclude impervious surfaces described in subd. 3m. If an outlot lies between the ordinary high water mark and the developable lot or parcel described in subd. 1. and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surfaces.

2. 'General standard.' Except as allowed in subds. 2m. to 4., a county may allow up to 15% impervious surface as calculated under subd. 1m on a lot or parcel described in subd. 1.

2m. 'Standard for highly developed shorelines.' At its discretion, a county may adopt an ordinance for highly developed shorelines that allows impervious surface as calculated under subd. 1m on lots or parcels described in subd. 1 as follows: up to 30% for residential land uses or up to 40% for commercial, industrial or business land uses.

a. A "highly developed shoreline" means a shoreline within an area identified as an Urbanized Area or Urban Cluster in the 2010 US Census or a shoreline that has a commercial, industrial or business land use as of January 31, 2013.

b. A county may establish, after conducting a hearing and receiving approval by the department, a map of additional areas of highly developed shorelines not included in subd. 2m. a.

c. An additional area of highly developed shoreline under subd. 2m. b., shall include at least 500 feet of shoreline and as of February 1, 2010, have either a majority of its lots developed with more than 30% impervious surface area as calculated under subd. 1m. or be located on a lake and served by a sewerage system as defined in s. NR 110.03 (30). To obtain approval from the department for an additional area, the county shall provide data to the department that establishes that the additional area meets the criteria under this subd. 2m. c.

3. 'Maximum impervious surface.' A county may allow a property owner to exceed the impervious surface standard under subds. 2. and 2m. provided that all of the following requirements are met:

a. For lots or parcels described under subd. 1. that exceed the impervious surface standard under subd. 2. and are not located within a highly developed shoreline as defined in subd. 2m., a county may allow more than 15% impervious surface but not more than 30% impervious surface as calculated under subd. 1m on the lot or parcel.

b. For lots or parcels described under subd. 1. and located within an area defined by county ordinance as a highly developed shoreline under subd. 2m., a county may allow more than 30% impervious surface but not more than 40% impervious surface as calculated under subd. 1m on the lot or parcel for properties that have a residential land use, or more than 40% impervious surface but not more than 60% impervious surface as calculated under subd. 1m. for properties that have a commercial, industrial or business land use.

c. For lots or parcels described under subd. 1 that exceed the impervious surface standard under subds. 2. and 2m., but do not exceed the maximum impervious surface standard under subd. 3. a. or b., the county shall issue a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

3m. 'Treated impervious surfaces.' A county may exclude from the calculation under subdivision 1m., any impervious surface where the property owner can show that runoff from the impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bioswales or other engineered systems, or that the runoff discharges to internally drained pervious area that retains the runoff on the parcel to allow infiltration into the soil.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance, for areas that exceed the maximum impervious surface standard in subd. 3. and do not meet the provisions in subd. 3m. A county board of adjustment must review the request pursuant to s. 59.694 (7) (c), Stats., and applicable case law.

Note: Nothing in this paragraph shall be construed to supersede the setback provisions in par. (b). New structures must meet all setback provisions in the county shoreland ordinance unless the property owner obtains a variance from the County Board of Adjustment.

4. 'Existing impervious surfaces.' For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in subds. 2. and 3., the property owner may do any of the following as long as the property owner does not increase the percentage of impervious surface that existed on the effective date of the county shoreland ordinance:

a. Maintain and repair all impervious surfaces.

b. Replace existing impervious surfaces with similar surfaces within the existing building envelope.

c. Relocate or modify existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification meets the applicable setback requirements in par. (b).

Note: For example this provision would allow an existing at-grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

Note: Nothing in this paragraph shall be construed to supersede other provisions in county shoreland ordinances.

(f) *Height.* To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(g) *Nonconforming structures and uses.* 1. 'General rule for nonconforming uses.' Pursuant to ss. 59.69 (10) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be maintained and repaired within its existing building envelope. Maintenance and repair also includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

5. 'Expansion of nonconforming principal structure within the setback.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be expanded laterally or vertically, provided that all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. Vertical expansion is limited to the height allowed in s. NR 115.05 (1) (f) and lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

e. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as impervious surface limitations.

5m. 'Expansion of nonconforming principal structure beyond setback.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1., may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in par. (b) 1., and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required under par. (e) 3.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be replaced or relocated on the property provided all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b) 1.

e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

g. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as height and impervious surface limitations.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a non-

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conforming building if the provision is more restrictive than the standards for nonconforming buildings under ch. NR 115.

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

(a) Hazards to the health, safety or welfare of future residents.

(b) Proper relationship to adjoining areas.

(c) Public access to navigable waters, as required by law.

(d) Adequate storm drainage facilities.

(e) Conformity to state law and administrative code provisions.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. SPS 383, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall require all of the following:

(a) The appointment of an administrator and such additional staff as the workload may require.

(b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(c) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all applications shall be required to be filed in the office of the county zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(f) A special exception (conditional use) procedure for uses presenting special problems.

(g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(h) Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under sub. (2).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, copies of any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (title), r. (1) and (2), renum. (3) to (6) to be (1) to (4) and am. (1), (2) (intro.), (4) (intro.) and (h), cr. (4) (hm) Register January 2010 No. 649, eff. 2-1-10; corrections in (1) (b) 1m. e., (5) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; correction in (1) (g) 1. made under s. 13.92 (4) (b) 7., Stats., Register January 2014 No. 697; CR 13-051: am. (1) (c) 2. d., r. and recr. (1) (e), am. (1) (g) 4., 5. (intro.), a., c., 6. a., r. (1) (g) 6. f., 7., am. (4) (h), (hm) Register September 2014 No. 705, eff. 10-1-14; corrections in (1) (e) made under s. 13.92 (4) (b) 7., Stats., Register September 2014 No. 705.

NR 115.06 Department duties. (1) ASSISTANCE TO COUNTIES. To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES. When determining whether a shoreland zoning or subdivision ordinance or any subsequent amendment enacted by a county complies with s. 59.692, Stats., the department shall compare the ordinance and amendments with the minimum standards and requirements for shoreland regulation in this chapter.

(a) *Initial ordinance.* The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) *Amendments to ordinance.* The department and each county shall assure that the county shoreland ordinance continues to comply with this chapter by doing the following:

1. 'County duties.' A county shall keep its shoreland zoning and subdivision ordinances in compliance with s. 59.692, Stats., and this chapter by doing all of the following:

a. A county shall amend its shoreland and subdivision ordinances to meet the minimum standards in this chapter within two years after October 1, 2014.

Note: On September 12, 2010, the Secretary of the Department of Natural Resources signed an executive order extending the date by which a county must adopt or amend shoreland and subdivision ordinances to meet the revised standards in ch. NR 115. The date was extended to February 1, 2014.

b. Pursuant to s. NR 115.05 (4) (h) and (hm), a county shall provide the department notice of hearing on any proposed ordinance amendment and a copy of any decision denying or enacting an amendment.

2. 'Department duties.' a. The department may periodically reevaluate county shoreland zoning and subdivision ordinances for continuing compliance with s. 59.692, Stats., and this chapter.

b. The department shall review any ordinance amendment enacted pursuant to subd. 1. a. and shall issue a certificate of

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compliance when the amended ordinance, in the opinion of the department, complies with s. 59.692, Stats., and this chapter.

(c) *Proposed amendments to shoreland-wetland districts.* The department shall review all proposed amendments to shoreland-wetland zoning districts pursuant to s. NR 115.04 (2) to determine whether an ordinance which is amended as proposed will comply with s. 59.692, Stats., and this chapter.

(3) DETERMINATION OF NONCOMPLIANCE. (a) *Failure to enact initial ordinance or amendments.* A county that does not have a shoreland zoning ordinance and subdivision ordinance in effect or that fails to amend its ordinance as required by sub. (2) (b) 1. shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. Pursuant to s. 59.692 (6), Stats., and after notice and hearing, the department shall adopt an ordinance if a county fails to do one of the following:

1. Draft and enact shoreland and subdivision ordinances or required amendments within a time period specified by the department.

2. Contract with a consultant to draft the shoreland and subdivision ordinances or required amendments and enact the ordinances within a time period specified by the department.

3. Cooperate with department staff to draft shoreland and subdivision ordinances or required amendments to be enacted by the county within a time period specified by the department not to exceed 180 days.

(b) *Failure to meet minimum standards in initial ordinance or amendments.* Counties which have shoreland zoning and subdivision ordinances or amendments that the department has reviewed under sub. (2) and found do not meet the minimum standards in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats., and this chapter, and the procedures in par. (a) shall apply. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county as required by s. NR 115.04 (2) (b), the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(c) *Extension of time.* The department may extend the time periods specified in pars. (a) and (b) if it determines an extension is in the public interest.

(d) *Costs.* Pursuant to ss. 59.692 (6) and 87.30 (1) (c), Stats., the costs of any actions by the department under this subsection to adopt an ordinance or amendments shall be assessed against the county concerned and collected in substantially the same manner as other taxes levied by the state.

(4) MONITORING. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. (3) (b), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (1), (2) (a) and (c), (3) (a) (intro.) and (b), (4) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (2) and (3) Register January 2010 No. 649, eff. 2-1-10; CR 13-051: am. (2) (b) 1. a. Register September 2014 No. 705, eff. 10-1-14.

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Policy 2.22 (revised)

2.~~22~~12) No person may discharge dredged material or fill material into a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality certification~~ wetland general permit or individual permit issued by the Wisconsin department of natural resources or the discharge is exempt. No person may violate any condition ~~imposed by the department in a water quality certification~~ contained in a wetland general permit or individual permit issued by the department. The department may not issue a ~~water quality certification~~ wetland general or individual permit ~~for a nonfederal wetland~~ unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards. (See Wis. Stats. § 281.36(~~2)(a~~3b))

1. That no public water rights in navigable waters will be adversely affected.

2. That the proposed withdrawal does not conflict with any applicable plan for future uses of the waters of the state, including plans developed under ss. 281.12 (1) and 283.83.

3. That both the applicant's current water use, if any, and the applicant's proposed plans for withdrawal, transportation, development and use of water resources incorporate reasonable conservation practices.

4. That the proposed withdrawal and uses will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the upper Mississippi River basin.

5. That the proposed withdrawal and uses are consistent with the protection of public health, safety and welfare and will not be detrimental to the public interest.

6. That the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state.

7. If the proposed withdrawal will result in an interbasin diversion, all of the following:

a. That each state or province to which the water will be diverted has developed and is implementing a plan to manage and conserve its own water quantity resources, and that further development of its water resources is impracticable or would have a substantial adverse economic, social or environmental impact.

b. That granting the application will not impair the ability of the Great Lakes basin or upper Mississippi River basin to meet its own water needs.

c. That the interbasin diversion alone, or in combination with other water losses, will not have a significant adverse impact on lake levels, water use, the environment or the ecosystem of the Great Lakes basin or upper Mississippi River basin.

d. That the proposed withdrawal is consistent with all applicable federal, regional and interstate water resources plans.

(e) *Right to hearing.* Any person who receives notice of a denial or modification requirement under par. (c) is entitled to a contested case hearing under ch. 227 if the person requests the hearing within 30 days after receiving the notice.

(f) The department shall charge each applicant for an approval under this subsection the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(6) APPROVAL. (a) *Issuance; contents.* Subject to par. (am), if an application is approved under sub. (5), the department shall modify the applicant's existing approval or shall issue a new approval that specifies all of the following:

1. The location of the withdrawal.

2. The authorized base level of water loss from the withdrawal.

3. The dates on which or seasons during which water may be withdrawn.

4. The uses for which water may be withdrawn.

5. The amount and quality of return flow required and the place of discharge.

6. The requirements for reporting volumes and rates of withdrawal and any other date specified by the department.

7. Any other conditions, limitations and restrictions that the department determines are necessary to protect the environment and the public health, safety and welfare and to ensure the conservation and proper management of the waters of the state.

8. Any requirements for metering, surveillance and reporting that the department determines are necessary to ensure compliance with other conditions, limitations or restrictions of the approval.

9. If the department determines that a time limit is necessary, the date on which approval for the withdrawal expires.

(am) *Water loss permit.* If the department approves an application under sub. (5) for a withdrawal that is covered by a permit under s. 281.344 (5) or s. 281.346 (5) and another approval, the department shall modify the permit under s. 281.344 (5) or 281.346 (5), rather than the other approval, to specify the matters under par. (a).

(b) *Review.* The department shall review each approval prior to the expiration date specified under par. (a) 9., if any, or within 5 years from the date of issuance and at least every 5 years thereafter.

(c) *Modification by department.* The department may at any time propose modifications of the approval or additional conditions, limitations or restrictions determined to be necessary to ensure continued compliance with this section or with any other applicable statute or rule.

(d) *Revocation.* If the department determines that a person to whom an approval has been issued would be unable under any conditions, limitations or restrictions to comply with this section or another applicable statute or rule, it shall revoke the approval.

(e) *Request for modification.* A person to whom an approval has been issued or any person adversely affected by a condition, limitation or restriction of an approval may request that the department modify a condition, limitation or restriction of an approval.

(f) *Notice; right to hearing.* The department shall notify the person to whom the approval has been issued and any other person who has in writing requested notice of the receipt of a request to modify an approval or of the department's intent to modify or revoke an approval. The person to whom the approval is issued is entitled to a contested case hearing under ch. 227 before a revocation or modification takes effect. Any other person who may be adversely affected by a proposed modification is entitled to a contested case hearing under ch. 227.

(g) *Fees.* The department shall periodically collect from each person whose application under this subsection is approved the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(7) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom an approval is issued to immediately stop a withdrawal if the department determines that there is a danger of imminent harm to the public health, safety or welfare, to the environment or to the water resources or related land resources of this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a hearing. An emergency order remains in effect pending the result of the hearing.

(9) AMENDMENT OF COASTAL MANAGEMENT PROGRAM. (a) The Wisconsin coastal management council, established under executive order number 62, dated August 2, 1984, shall amend this state's coastal management program submitted to the U.S. secretary of commerce under 16 USC 1455, to incorporate the requirements of this section and, before the compact's effective date, s. 281.344 and the findings and purposes specified in 1985 Wisconsin Act 60, section 1, as they apply to the water resources of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S. secretary of commerce.

(b) After approval of the amendments submitted to the U.S. secretary of commerce under par. (a), the Wisconsin coastal man-

agement council shall, when conducting federal consistency reviews under 16 USC 1456 (c), consider the requirements, findings and purposes specified under par. (a), if applicable.

(c) If the department issues an approval for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(d) This subsection does not apply after the compact's effective date.

(10) RULE MAKING; FEES. (a) The department shall promulgate rules establishing all of the following:

1. The procedures for reviewing and acting on applications under subs. (4) and (5).

2. Requirements for reporting volumes and rates of withdrawals.

3. The method for determining what portion of a withdrawal constitutes a consumptive use.

5. A graduated schedule for the fees required under subs. (5) (f) and (6) (g) and a schedule for collecting the fees under sub. (6) (g) periodically.

(b) The department may promulgate any other rule necessary to implement this section.

(11) COOPERATION WITH OTHER STATES AND PROVINCES. Before the compact's effective date, the department shall do all of the following:

(a) Cooperate with the other Great Lakes states and provinces to develop and maintain a common base of information on the use and management of the water resources of the Great Lakes basin and to establish systematic arrangements for the exchange of such information.

(b) Collect and maintain information regarding the locations, types and quantities of water use, including water losses, in a form that is comparable to the form used by the other Great Lakes states and provinces.

(c) Collect, maintain and exchange information on current and projected future water needs with the other Great Lakes states and provinces.

(d) Cooperate with the other Great Lakes states and provinces in developing a long-term plan for developing, conserving and managing the water resources of the Great Lakes basin.

(e) As provided in the Great Lakes charter, participate in the development of a regional consultation procedure for use in exchanging information on effects of proposed interbasin diversions and consumptive uses.

(11m) UPPER MISSISSIPPI RIVER BASIN CONSULTATION. The department shall participate in the development of an upper Mississippi River basin regional consultation procedure for use in exchanging information on the effects of proposed water losses from that basin.

(12) MISCELLANEOUS PROVISIONS. (a) The enumeration of any remedy under this section does not limit the right to any other remedy available in an action under the statutory or common law of this state or any other state or province, federal law or Canadian law.

(b) Proof of compliance with this section is not a defense in any action not founded on this section.

(c) This state reserves the right to seek, in any state, federal or provincial forum, an adjudication of the equitable apportionment of the water resources of the upper Mississippi River basin and, before the compact's effective date, of the Great Lakes basin, and the protection and determination of its rights and interests in those water resources, in any manner provided by law.

History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672; 2003 a. 310; 2007 a. 96, 227; 2009 a. 180; 2017 a. 134.

NOTE: Section 1 of 1985 Wis. Act 60, which created this section, is entitled "Legislative findings; purpose."

Cross-reference: See also ch. NR 142, Wis. adm. code.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

There is nothing in either this section or s. 281.34 that limits the Department of Natural Resources' (DNR) authority to consider the environmental impacts of a proposed high capacity well, nor is there any language in subch. II of this chapter that requires DNR to issue a permit for a well if the statutory requirements are met and no formal review or findings are required. There being no language expressly revoking or limiting DNR's authority and general duty to protect and manage waters of the state, DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

The Department of Natural Resources (DNR) is required to consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state. Upon what evidence, and under what circumstances, that duty is triggered is a highly fact-specific matter that depends upon the information submitted by the well owner in the well permit application and any other information submitted to DNR decision makers. DNR should use both its expertise in water resources management and its discretion to determine whether its duty as trustee of public trust resources is implicated by a proposed high capacity well permit application such that it has an obligation to consider environmental concerns. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08-3170.

281.36 Permits for discharges into wetlands; mitigation.

(1) DEFINITIONS. In this section:

(a) "Additional federal law or interpretation" means any of the following:

1. An amendment to 33 USC 1344 (f) that becomes effective after January 9, 2001.

2. Any other federal statutory provision that affects the exemptions under 33 USC 1344 (f) and that becomes effective after January 9, 2001.

3. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that becomes effective after January 9, 2001.

4. A decision issued by a federal district or federal appellate court that affects the application of a federal amendment or provision described in subds. 1. to 3., that applies to wetlands located in this state, and that is issued after January 9, 2001.

(ad) "Bank service area" means the geographic area corresponding to the HUC 6 within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between the department and the U.S. army corps of engineers and referenced in a mitigation banking instrument under sub. (3w).

(ae) "Basin" means the Lake Michigan, Lake Superior, or Mississippi River basin.

(am) "Demonstrable economic public benefit" means an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

(b) "Existing federal law or interpretation" means any of the following:

1. 33 USC 1344 (f), as amended to January 8, 2001.

2. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344

(f), that applies to wetlands located in this state, and that is in effect on January 8, 2001.

3. A decision issued by a federal district or federal appellate court that affects the application of a federal statute or provision described in subd. 1. or 2., that applies to wetlands located in this state, and that is issued on or before January 8, 2001.

(bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning exists on July 1, 2012.

(bf) "HUC 6" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 6-digit basin scale (the hydrologic unit code 6).

(bg) "HUC 8" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 8-digit subbasin scale (the hydrologic unit code 8).

(bj) "Mitigation" means the restoration, enhancement, creation, or preservation of wetlands to compensate for adverse impacts to other wetlands.

(bL) "Mitigation bank" means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands.

(bn) "Mitigation project" means mitigation of the type specified in sub. (3r) (a) 3.

(br) "Nonfederal wetland" means a wetland that is not subject to federal jurisdiction under 33 USC 1344.

(cp) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

(ct) "Small business" has the meaning given in s. 227.114 (1).

(d) "Water quality standards" means water quality standards set under rules promulgated by the department under s. 281.15.

(2m) DELINEATION PROCEDURES. For purposes of delineating the boundary of a wetland under this section, the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers shall be used. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department designates that edition as the one to be used under this subsection.

(3b) PERMIT REQUIRED. (a) For purposes of this section, a wetland general or individual permit issued by the department constitutes water quality certification as required by 33 USC 1341 (a).

(b) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition contained in a wetland general or individual permit issued by the department under this section. The department may not issue a wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

(3g) WETLAND GENERAL PERMITS. (a) *Required permits.* The department shall issue a wetland general permit for each of the following types of discharges:

1. A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than 2 acres of wetland.

2. A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than 2 acres of wetland.

3. A temporary or permanent discharge for routine utility construction and maintenance projects and activities.

4. A discharge that is part of a development for industrial purposes, if the discharge does not affect more than 10,000 square feet of wetland. For purposes of this subdivision, the development of a waste disposal site is considered to be a development for industrial purposes.

5. A discharge that is part of a development for commercial purposes, if the discharge does not affect more than 10,000 square feet of wetland.

6. A discharge that is part of a development for residential purposes, if the discharge does not affect more than 10,000 square feet of wetland.

7. A discharge that is part of a development for agricultural or aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.

8. A discharge that is part of a development for municipal purposes, if the discharge does not affect more than 10,000 square feet of wetland.

9. A discharge that is part of a development for recreational purposes, if the discharge does not affect more than 10,000 square feet of wetland.

10. A discharge that is necessary for the construction, reconstruction, or maintenance of a bridge or culvert that is part of a transportation project that is being carried out under the direction and supervision of a city, village, town, or county.

(b) *Additional required permits.* In addition to the wetland general permits required under par. (a), the department shall issue wetland general permits that are consistent with, and correspond to, any general permits that are issued under 33 USC 1344 (e) and that regulate discharges other than those regulated under the required wetland general permits issued under par. (a).

(c) *Additional permits.* The department may issue wetland general permits, in addition to those required under pars. (a) and (b), to regulate other discharges that affect wetlands located in this state.

(d) *Requirements; conditions; restrictions.* In issuing wetland general permits under this subsection, the department shall establish requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects, and a general permit may apply only to a single and complete project. As part of a general permit, the department may prohibit discharges into wetlands that are identified by the department as being one of the following:

1. Great Lakes ridge and swale complexes.

2. Interdunal wetlands.

3. Coastal plain marshes.

4. Emergent marshes containing wild rice.

5m. Sphagnum bogs that are located in the area located south of a horizontal line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago.

6. Boreal rich fens.

7. Calcareous fens.

(e) *Period of validity; subsequent actions.* A wetland general permit issued under this subsection is valid for a period of 5 years. Upon compliance with the requirements under pars. (f) to

(g), the department may renew, modify, or revoke a wetland general permit issued under this subsection.

(f) *Public notice.* The department shall provide to interested members of the public notices of its intention to issue, renew, modify, or revoke a wetland general permit under this subsection. Procedures for providing public notices shall include all of the following:

1. Publication of a class 1 notice under ch. 985.

2. Providing a copy of the notice to any person or group upon request of the person or group.

3. Publication of the notice on the department's Internet website.

(fg) *Date of notice.* For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(fm) *Written comments.* The department shall provide a period of not less than 30 days after the date of the public notice during which time interested persons may submit their written comments on the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. All written comments submitted during the period for comment shall be retained by the department and considered by the department in acting on the general permit.

(fr) *Description in notice.* Every public notice provided by the department under par. (f) shall include a description of the discharges to be authorized under the wetland general permit.

(g) *Public informational hearing.* 1. The department shall provide an opportunity for any interested state agency or federal agency or person or group of persons to request a public informational hearing with respect to the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. The request for the hearing shall be filed with the department within 30 days after the provision of the public notice under par. (f) and shall indicate the interest of the party filing the request and the reasons why the hearing is warranted.

2. The department shall hold a public informational hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this subsection are not contested cases under s. 227.01 (3).

3. Public notice of any hearing held under this subsection shall be circulated in accordance with the requirements under par. (f). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the wetland general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

(h) *Authorizations for discharges under wetland general permits.* 1. A person wishing to proceed with a discharge that may be authorized under a wetland general permit shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the discharge authorized by the general permit unless subd. 4. applies. The application shall provide information describing the discharge in order to allow the department to determine whether the discharge is authorized by the wetland general permit and shall give the department consent to enter and inspect the site, subject to sub. (9). The application shall identify all activities affecting wetlands that will be conducted as part of the single and complete project. The application shall include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable. The application shall be accompanied by the fee specified in sub. (12) (a). If the application is for authorization to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as calculated under sub. (11). The department may make a request for additional information one time during this 30-day period.

2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice, hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit, except as provided in s. 295.60 (3) (b).

2m. If adverse weather conditions prevent the department from conducting an accurate on-site inspection during this 30-day period specified in subd. 1., the department shall give notice to the person wishing to proceed with the discharge that adverse weather conditions will prevent the department from complying with the 30-day deadline and shall complete the inspection as soon as weather conditions permit.

3. If the department requests additional information under subd. 1., the 30-day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives all of the additional information.

4. As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

5. Authorization to proceed under a wetland general permit is valid for 5 years after the date on which the discharge is considered to be authorized or until the discharge is completed, whichever occurs first.

(i) *Wetland individual permit in lieu of wetland general permit.* For a proposed discharge for which an application has been received by the department under par. (h), the department may decide to require that a person who submitted the application apply for a wetland individual permit if the department has inspected the site as provided in par. (h) and has determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

(3m) WETLAND INDIVIDUAL PERMITS. (a) *When permit required.* Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4), (4m) (a), (4n), or (4r). Before submitting the application, the department shall hold a meeting with the applicant to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating the wetland. An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a).

(b) *Analysis of practicable alternatives.* An applicant shall include in an application submitted under par. (a) an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, subject to the limitations in sub. (3n) (a).

(c) *Review; no additional information required.* In issuing

wetland individual permits under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30-day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure for purposes of par. (g) 1.

(d) *Additional information requested.* If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30-day period specified in par. (c). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) *Specificity of notice; limits on information.* Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed.

(f) *Failure to meet time limits.* If the department fails to meet the 30-day time limit under par. (c) or 10-day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30-day or 10-day time period for purposes of par. (g) 1.

(g) *Notice of application.* 1. Within 15 days after the date of closure, as determined under par. (c) or (d), the department shall provide notice of pending application to interested members of the public. If the applicant has requested a public informational hearing as part of the submitted application, a notice of the public hearing shall be part of the notice of pending application.

2. If the notice of pending application does not contain a notice of public informational hearing, any person may request a public informational hearing in writing or the department may decide to hold a public informational hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(h) *Request for hearing.* A request for a public informational hearing under par. (g) 2. must be submitted to the department or the department's decision to hold a public informational hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public informational hearing within 15 days after the request for the public hearing is submitted or the department makes its decision to hold a public informational hearing.

(i) *Decision.* Within 20 days after the period for public comment under par. (j) has ended or if no public informational hearing is held, within 30 days after the 30-day comment period under par. (j) has ended, the department shall render a decision issuing or denying the wetland individual permit that is the subject of the application submitted under par. (a). If the decision issued by the department under this paragraph is a denial, the department shall include in the decision the specific grounds and reasons as to how the applicable provisions of this section were not met. If the denial is based on an incomplete application, the department shall inform the applicant of the areas of the application that were incomplete.

(j) *Public comment.* 1. The department shall provide a period for public comment after the department has provided a notice of pending application under par. (g) during which time any person may submit written comments with respect to the application for a wetland individual permit. The department shall retain all of the written comments submitted during this period and shall consider all of the comments in rendering a decision on the application. The period for public comment shall end on the 30th day following the date on which the department provides the notice of pending application except as provided in subd. 2.

2. If a public informational hearing is held, the period for public comment shall end on the 10th day following the date on which the hearing is completed.

(3n) REVIEW BY DEPARTMENT. (a) *Review limits.* For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the analysis of practicable alternatives presented in the application under sub. (3m) (b). The department shall limit its review of practicable alternatives as follows:

1. The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated any of the following:

a. That the proposed project causing the discharge will result in a demonstrable economic public benefit.

b. That the proposed project is necessary for the expansion of an existing industrial, commercial, agricultural, or aquacultural facility that is in existence at the time the application is submitted.

c. That the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

2. Except as provided in par. (am), the department shall limit its review to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:

a. The construction or expansion of a single-family home and attendant features.

b. The construction or expansion of a barn or farm buildings.

c. The expansion of a small business project.

3. The department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department.

(am) *Exception to review limit.* A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review under par. (a) 2.

(b) *Factors used in review.* In its review under par. (a), the department shall consider all of the following factors when it assesses the impacts to wetland functional values:

1. The direct impacts of the proposed project to wetland functional values.

2. The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.

3. Potential secondary impacts of the proposed project to wetland functional values.

4. The impact on functional values resulting from the mitigation that is required under sub. (3r).

5. The net positive or negative environmental impact of the proposed project.

(c) *Standards for issuing permits.* The department shall make a finding that a proposed project causing a discharge is in compliance with water quality standards and that a wetland individual permit may be issued if the department determines that all of the following apply:

1. The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.

2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.

3. The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

(d) *Mitigation required.* 1. Except as provided in subd. 2., the department shall require mitigation under the program established under sub. (3r) for wetland individual permits it issues under this subsection and for a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland. This subsection does not entitle an applicant to a wetland individual permit or any other approval in exchange for conducting mitigation.

2. If the department issues a wetland individual permit under sub. (3m) to a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, water, or power to its members only, the department may not require mitigation under the program established under sub. (3r) unless the discharge authorized by the wetland individual permit will result in a permanent fill of more than 10,000 square feet of wetland.

(3p) NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS. (a) The department shall establish procedures for providing notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). The procedures shall require all of the following:

1. That the notice be published as a class 1 notice under ch. 985.

2. That the notice be provided to any person or group upon request of the person or group.

3. That the notice be published on the department's Internet website.

(b) The department shall prescribe the form and content of notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). Each notice shall include all of the following information:

1. The name and address of the applicant.

2. A brief description of the discharge that requires the permit and the project that includes the discharge.

3. For a notice of a public informational hearing, the time, date, and location of the hearing.

4. For a notice of pending application and a notice of a public informational hearing, a brief, precise, easily understandable, plain-language description of the discharge and information indicating where the pending application may be viewed on the department's Internet website.

5. For a notice of complete application and a notice of a public informational hearing, a statement of the tentative determination of the department on the permit.

6. For a notice of complete application and a notice of public informational hearing, a brief description of the procedures for the formulation of final determinations, including a description of the comment period required under sub. (3m) (j).

(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet website.

(d) 1m. The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

a. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices.

b. Requiring that the applicant for the permit pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.

2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3m) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing under this chapter class 1 notices under ch. 985.

(3q) ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this subsection, "applicant" means any person applying for a wetland individual permit under this section or any person who has been issued such a permit under this section.

(b) *Request for administrative review.* Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any wetland individual permit issued under this section.

2. The imposition of, or failure to impose, a condition on any wetland individual permit issued under this section.

(c) *Content of the petition.* If the petitioner is not the applicant, the petition shall describe the petitioner's objection to the wetland individual permit and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed discharge under the wetland individual permit is allowed to proceed.

2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

(d) *Stays.* 1. The discharge shall be stayed pending an administrative hearing under this subsection if the petition contains a request for the stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

2. If a stay is requested under subd. 1., the stay shall be in effect until either the department denies the request for an administrative hearing or the hearing examiner determines that the stay is not necessary.

(e) *Filings.* The petitioner shall file a copy of the petition with the department. If the petitioner is not the applicant, the petitioner shall simultaneously provide a copy of the petition to the

applicant. The applicant may file a response to the petition with the department. If the applicant files a response under this paragraph, it shall be filed within 15 days after the petition is filed.

(f) *Action on petition.* 1m. The department shall grant or deny the petition within 30 days after the petition is filed. The failure of the department to dispose of the petition within this 30-day period is a denial. The department shall deny the petition if any of the following applies:

a. The petitioner is not the applicant, and the petition does not comply with the requirements of par. (c).

b. The objection contained in the petition is not substantive. The department shall determine that an objection is substantive if the supporting facts contained in the objection appear to be substantially true and raise reasonable grounds to believe that the provisions of this section may be violated if the activity or project is undertaken.

3. If the department denies the petition, the department shall send the petitioner the denial in writing, stating the reasons for the denial.

4. If the department grants a petition under this subsection, the department shall refer the matter to the division of hearings and appeals in the department of administration within 15 days after granting the petition unless the petitioner and the applicant agree to an extension.

(g) *Administrative hearing.* 1. An administrative hearing under this subsection shall be treated as a contested case under ch. 227.

2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30 days after receipt of the referral under par. (f) 4., determine whether continuation of the stay is necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the administrative hearing. The hearing examiner shall make the determination based on the request under par. (d) 1., any response from the applicant under par. (e), and any testimony at a public hearing or any public comments. The determination shall be made without a hearing.

3. An administrative hearing under this subsection shall be completed within 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties agree to an extension of that period. In addition, a hearing examiner may grant a one-time extension for the completion of the hearing of up to 60 days on the motion of any party and a showing of good cause demonstrating extraordinary circumstances justifying an extension.

4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the administrative hearing at least 30 days before the date of the hearing to all of the following:

a. The applicant.

b. Each petitioner, if other than the applicant.

c. Any other persons required to receive notice as provided under sub. (3p).

5. In an administrative hearing under this subsection, the petitioner shall proceed first with the presentation of evidence and shall have the burden of proof.

(h) *Judicial review.* 1. Any person whose substantial interest is affected by a decision of the department under par. (b) 1. or 2. may commence an action in circuit court to review that decision.

2. Any party aggrieved by a decision of the hearing examiner under par. (g) may commence an action in circuit court to review that decision.

(3r) MITIGATION; IN LIEU FEE SUBPROGRAM. (a) The department shall establish a mitigation program that applies only to the issuance of wetland individual permits and, with respect to a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland, the portion of the affected wetland that exceeds 10,000 square feet or 1.5 acres, respectively. Under the mitigation program, subject to par. (am), the department shall allow mitigation to be accomplished by any of the following methods:

1. a. Except as provided in subd. 1. b. and par. (ag), purchasing credits from a mitigation bank located in the same HUC 8 as the wetland impacted by the discharge.

b. Except as provided in subd. 1. c. and par. (ag), if credits are not available to be purchased as provided under subd. 1. a., credits may be purchased from a mitigation bank within the same bank service area as the wetland impacted by the discharge.

c. Except as provided in par. (ag), if credits are not available to be purchased as provided under subd. 1. b., credits may be purchased from a mitigation bank in the same basin as the wetland impacted by the discharge.

2. Participating in the in lieu fee subprogram under par. (e).

3. Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

(ag) The department may, in consultation with the U.S. army corps of engineers, allow credits to be purchased from a different mitigation bank than the one prescribed under par. (a) 1. or allow mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank if the department determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching the impacted wetland type. The department may also consider economic factors when making this determination only if the HUC 8 has one approved mitigation bank and that bank is charging a price for credits in that watershed that is in excess of 150 percent of the price of a credit in that watershed under the in lieu fee subprogram.

(am) For a discharge that is exempt from permitting requirements under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted by a mitigation bank or under the in lieu fee subprogram, shall be completed within the same compensation search area, as defined by the department by rule, as the discharge.

(b) Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram shall be the preferred types of mitigation.

(c) The department shall establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state. The system shall be consistent with federal regulations.

(cm) Before entering into an agreement with a sponsor of a mitigation bank to establish such a bank or before otherwise approving a mitigation bank, the department shall provide written notice that a mitigation bank may be established. The notice shall be given to each city, village, town, and county in which each proposed mitigation bank site will be located. Each city, village, town, and county receiving the notice shall be given an opportunity to submit comments regarding the establishment of the mitigation bank. The notice shall contain all of the following information:

1. The name of the sponsor of the proposed mitigation bank.

2. A brief description of the mitigation bank and all of its bank sites.

3. A date after which the department will not accept comments from the affected cities, villages, towns, or counties.

4. An address to which any comments shall be submitted.

(d) 1. The department shall establish under the mitigation program mitigation ratios that are consistent, to the greatest extent possible, with the federal regulations that apply to mitigation

and mitigation banks but, unless subd. 2. applies, the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

2. For mitigation that occurs within the same watershed in which the discharge is located or within one-half mile of the site of the discharge, the ratio established by the department shall equal 90 percent of the ratio that would apply if the mitigation were to occur outside the watershed or were to occur one-half mile or more from the site of the discharge, but the ratio established under this subdivision may be no less than 1.2 acres for each acre affected by the discharge.

(e) As part of the mitigation program established under par. (a), the department shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The subprogram must be approved by the U.S. army corps of engineers. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the subprogram may be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof. In determining approved mitigation projects that benefit from the subprogram, the department shall, to the extent practicable, ensure that there is no net loss of public access to wetlands. If the wetlands that benefit from the subprogram are open to the public, the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

(3t) RULES FOR MITIGATION. The department shall promulgate rules to establish a process for the mitigation program under sub. (3r). The rules shall address all of the following:

(a) Requirements for the analysis of practicable alternatives that is included in an application for a wetland individual permit under sub. (3m) (b).

(b) The conditions under which credits may be purchased from a mitigation bank to comply with the mitigation program under sub. (3r).

(c) Enforcement of requirements under the mitigation program under sub. (3r) that apply to mitigation projects and mitigation banks.

(d) Baseline studies of wetlands that will be affected by the discharges and of sites for mitigation projects.

(e) Plan and design requirements for mitigation projects and mitigation bank sites, which shall include requirements for relating the design of a mitigation project or a mitigation bank site to the hydrology of the watershed in which a mitigation project or mitigation bank site is located.

(f) Standards for comparing wetlands that will be restored, enhanced, created, or preserved as a mitigation project or at a mitigation bank site to the wetlands that will be adversely affected by discharges, including all of the following:

1. Consideration of the size, location, type and quality of the wetlands.

2. Consideration of the functional values performed by the wetlands.

(g) Financial assurance requirements for the construction of mitigation projects by mitigation banks.

(h) Standards for measuring the short-term and long-term success of mitigation projects and mitigation bank sites and requirements for the short-term and long-term monitoring of mitigation projects and mitigation bank sites.

(i) Remedial actions to be taken by holders of wetland individual permits for mitigation projects that are not successful and actions to be taken by mitigation banks for mitigation projects performed by the mitigation banks that are not successful.

(3w) RELEASE OF CREDITS. (a) In this subsection:

1. "Applicant" means the applicant for a wetland individual permit for which wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland mitigation project required under sub. (3n) (d).

2. "Bank sponsor" means any public or private entity financially responsible for establishing or operating a mitigation bank.

3. "Compensation site plan" means a comprehensive document prepared by an applicant or bank sponsor that provides a thorough description of a proposed wetland mitigation project.

4. "Developing mitigation bank" means a mitigation bank that has not completed its mitigation project and that has not yet been established under an agreement between the bank sponsor and the department or otherwise approved by the department.

5. "Estimated credits" means the total number of credits that a developing mitigation bank estimates it will have once its mitigation project is constructed.

6. "Mitigation banking instrument" means the legal document that governs the establishment, operation, and use of a mitigation bank.

(b) A developing mitigation bank may sell its estimated credits under the mitigation program under sub. (3r) only if the mitigation bank has met the financial assurance requirements established by the department under sub. (3t) (g) and, except as provided under par. (c), only in accordance with the following schedule:

1. No more than 20 percent of the estimated credits after the department approves and executes the mitigation banking instrument.

2. No more than 65 percent of the estimated credits after the department issues a letter of compliance stating that construction and all corrective actions are complete.

3. No more than 85 percent of the estimated credits after the department approves a monitoring report for the mitigation bank or after 2 years have passed after construction of the mitigation project is completed, whichever is later.

4. One hundred percent of the estimated credits after the department approves the final monitoring report for the mitigation bank and determines that all performance standards identified in the compensation site plan are met.

(c) The department may authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule under par. (b) allows if the bank provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.

(d) After the department approves and executes a mitigation banking instrument establishing the specifications for a developing mitigation bank, the sponsor of the bank may not change the mitigation banking instrument without the approval of the department. After the sponsor of a developing mitigation bank submits to the department a proposed change to the mitigation banking instrument for review, the mitigation bank may not sell any estimated credits under par. (b) until one of the following occurs:

1. The department approves the change to the mitigation banking instrument, and the mitigation bank sponsor and the department adjust the estimated credits and make any necessary adjustments to the credit release schedule under par. (b), if the department believes these adjustments are necessary based on the change to the mitigation banking instrument.

2. The department rejects the changes submitted by the mitigation bank sponsor, in which case the existing mitigation banking instrument remains effective.

(4) EXEMPTIONS; CERTAIN ACTIVITIES. Except as provided in sub. (5), the permitting requirement under sub. (3b) does not apply to any discharge that is the result of any of the following activities:

(a) Normal farming, silviculture, or ranching activities.

(am) Normal aquaculture activities, if the discharge is to a wetland created for aquacultural purposes in an area without any prior wetland history. In this paragraph, "normal aquaculture activities" includes all of the following:

1. Construction, maintenance, or repair of ponds, raceways, or other similar retention structures used in fish farms.

2. The filling in or drawing down of ponds, raceways, or other similar retention structures used in fish farms.

3. Maintenance or improvement of swales or other drainage areas into or out of ponds used in fish farms.

4. Maintenance, repair, or replacement of drains, pipes, or other flowage controls used in fish farms.

(b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a wetland.

(c) Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.

(d) Maintenance of drainage ditches.

(e) Construction or maintenance of farm roads, roads used in fish farms, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

1. That the flow and circulation patterns and chemical and biological characteristics of the affected wetland are not impaired.

2. That the reach of the affected wetland is not reduced.

3. That any adverse effect on the aquatic environment of the affected wetland is minimized to the degree required by the department.

(f) Maintenance, operation, or abandonment of a sedimentation or stormwater detention basin and associated conveyance features that were not originally constructed in a wetland.

(4m) EXEMPTION AND WAIVER; ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE. (a) The permitting requirement under sub. (3b) does not apply to any discharge into a wetland located in an electronics and information technology manufacturing zone designated under s. 238.396 (1m) if the discharge is related to the construction, access, or operation of a new manufacturing facility in the zone and all adverse impacts to functional values of wetlands are compensated at a ratio of 2 acres per each acre impacted through any of the following methods, consistent with the rules promulgated under this section:

1. Purchasing credits from a mitigation bank located in this state.

2. Participating in the in lieu fee subprogram under sub. (3r), under which the department shall identify and consider mitigation that could be conducted within the same watershed and may locate mitigation outside the watershed only upon agreement of the department and the person exempt from permitting under this subsection.

3. Completing mitigation within this state.

(b) The department shall waive water quality certification under 33 USC 1341 (a) (1) for a discharge under par. (a).

(4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS. (a) In this subsection:

1. "Artificial wetland" means a landscape feature where hydrophitic vegetation may be present as a result of human modification to the landscape or hydrology and for which the department has no definitive evidence showing a prior wetland or stream history that existed before August 1, 1991, but does not include any of the following:

a. A wetland that serves as a fish spawning area or a passage to a fish spawning area.

b. A wetland created as a result of a mitigation requirement under sub. (3r).

2. "Definitive evidence" means documentary evidence such as any of the following:

a. Maps.

b. Aerial photographs.

c. Surveys that use a scale of not more than 100 feet per inch.

d. Wetland delineations.

3. "Rare and high quality wetland" means a wetland that is directly adjacent or contiguous to a class I or class II trout stream or that consists of 75 percent or more of any of the following wetland types:

a. Alder thicket.

b. Calcareous fen.

c. Coniferous swamp.

d. Coniferous bog.

e. Floodplain forest.

f. Hardwood swamp.

g. Interdunal wetland.

h. Open bog.

i. Ridge and swail complex.

j. Deep marsh.

k. Sedge meadow.

4. "Sewerage system" has the meaning given in s. 281.01 (14).

5. "Urban area" means any of the following:

a. An incorporated area.

b. An area within one-half mile of an incorporated area.

c. An area in a town that is served by a sewerage system.

(b) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs in an urban area and to which all of the following apply:

1. The discharge does not affect more than one acre of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is carried out in compliance with any applicable storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354, or 62.234 or storm water discharge permit issued under s. 283.33.

(c) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs outside an urban area and to which all of the following apply:

1. The discharge does not affect more than 3 acres of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is a structure, such as a building, driveway, or road, with an agricultural purpose.

(d) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into an artificial wetland.

(e) 1. A person who proposes a project that may affect a wetland or landscape feature under par. (b), (c), or (d) shall notify the department no fewer than 15 working days before initiating the project. The notice shall include one of the following to show

that the wetland or landscape feature is eligible for the relevant exemption:

a. A statement issued by a professional who has investigated the wetland and who is qualified to give such an opinion.

b. A wetland delineation prepared by a qualified professional showing the exact location and boundaries of the wetland.

2. Except as provided in subd. 3., if the department receives the notice and information required under subd. 1., the department shall presume that the wetland or landscape feature is eligible for the exemption unless the department, within 15 working days after receiving notification of the proposed project under subd. 1., notifies the person that one of the following conditions applies:

a. The eligibility requirements are not met.

b. The location and boundaries of the wetland identified in a wetland delineation included with the notification under subd. 1. are not accurate.

c. With respect to an exemption under par. (d) only, the department determines that the landscape feature is providing significant functions that either protect adjacent or downstream property or infrastructure from flooding or significantly improve the water quality of an adjacent or downstream water body.

3. If the department receives the notice and information required under subd. 1. but is unable to determine based on that information whether the eligibility requirements are met, the department may, within 15 working days after the notification under subd. 1., notify the person one time to request additional information about the parcel of land. The person shall cooperate with the department's efforts to obtain information about the relevant parcel of land and may proceed with the project only upon notification that the department has determined the landscape feature to be eligible for the exemption based on the definitive evidence.

4. If, within 15 working days after the notification is delivered to the department, the department notifies the person that subd. 2. a., b., or c. applies, the person may not proceed with the project unless authorized by, or otherwise exempted from, a wetland general or individual permit under this section.

(4r) DRAINAGE DISTRICT ACTIVITY EXEMPTION. (a) The permitting requirement under sub. (3b) does not apply to any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the department of agriculture, trade and consumer protection.

(b) The department shall waive any water quality certification requested under 33 USC 1341 (a) for a discharge described under par. (a).

(5) INAPPLICABILITY OF EXEMPTIONS. Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the permitting requirement under sub. (3b) if the discharge is incidental to an activity that has as its purpose bringing a wetland, or part of a wetland, into a use for which it was not previously subject and if the activity may do any of the following:

(a) Impair the flow or circulation of any wetland.

(b) Reduce the reach of any wetland.

(6) RULES FOR EXEMPTIONS. (a) The department shall promulgate rules to interpret and implement the provisions under subs. (4), (4n), (4r), and (5). In promulgating these rules, the department shall do all of the following:

1. Make the rules consistent with existing federal law or interpretation.

2. Incorporate any applicable additional federal law or interpretation into the rules.

(b) Whenever an additional federal law or interpretation is initially incorporated into the rules, the department may modify the additional federal law or interpretation as it determines is necessary, but the department may not otherwise amend or modify any of the rules promulgated under this subsection.

(8m) SUBSEQUENT PROTECTION FOR WETLANDS. (a) 1. A person who is the holder of a wetland individual permit that authorizes a mitigation project shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that a wetland that is being restored, enhanced, created, or preserved will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall revoke the wetland individual permit if the holder of the individual permit fails to take these measures.

2. A person who is restoring, enhancing, creating, or preserving a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that the wetland will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located.

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a) or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

1. The department determines that part or all of the restored, enhanced or created wetland ceases to be a wetland.

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.

3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

(9) INSPECTION AUTHORITY. (a) For purposes of determining whether to issue a wetland individual permit, whether authorization to proceed as authorized under a wetland general permit is appropriate, or whether an exemption under sub. (4), (4n), or (4r) is appropriate, and for purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

1. Enter and inspect any property on which is located a wetland or part of a wetland, for which an application has been submitted under sub. (3g) or (3m).

2. Enter and inspect any property on which is located a wetland to investigate a discharge that the department has reason to believe is in violation of this section.

3. Gain access to and inspect any records that a holder of a wetland individual permit or a person acting under the authority of a wetland general permit is required by the department to keep.

(d) The department shall provide reasonable advance notice to the property owner before entering and inspecting property as authorized under par. (a).

(e) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

2. Deny an application for a wetland individual permit or deny authorization to proceed under a wetland general permit.

(10) ADDITIONAL REQUIREMENTS. The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland.

This section governs the determination of whether a discharge is in compliance with water quality standards but does not affect the authority of the department to otherwise regulate the discharge of dredged or fill material in a wetland under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

(11) RESTORATION; SURCHARGE FEE. (a) The department shall set a surcharge fee to be charged for each application to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by the department and may not exceed more than 50 percent of the market price, as determined by the department, for the equivalent purchase of credits from a mitigation bank. These fees shall be credited to the appropriation account under s. 20.370 (9) (bm) for the restoration and creation of wetlands. The department may enter into agreements with other entities for the restoration and creation of such wetlands.

(b) Any wetland that is restored or created using funding from the appropriation under s. 20.370 (9) (bm) shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

(12) APPLICATION FEES AND TIME LIMITS. (a) *Fees required.* The department shall charge a fee for reviewing, investigating, and making decisions on applications to proceed under wetland general permits under sub. (3g) and on applications for wetland individual permits under sub. (3m). For an authorization to proceed under a wetland general permit, the application fee shall be $500. For a wetland individual permit, the application fee shall be $800.

(b) *Additional fee.* The department may set and charge a fee in the amount necessary to meet the costs incurred by the department in reviewing mitigation that is conducted by mitigation banks.

(c) *Adjustments in fees.* 1. The department shall refund an application fee charged for a wetland individual permit under par. (a) if the applicant requests a refund before the department determines that the application is complete. The department may not refund a fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.

2. If the applicant submits an application for authorization to proceed under a wetland general or a wetland individual permit after the discharge is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

3. The department may increase the fee specified in par. (a) only if the increase is necessary to meet the costs of the department in performing the activities for which the fee is charged.

(d) *Fee for expedited service.* 1. The department, by rule, may charge a supplemental fee that is in addition to a fee charged under this subsection if all of the following apply:

a. The applicant requests in writing that the decision on the application be issued within a time period that is shorter than the time limit promulgated under subd. 2. for the decision.

b. The department verifies that it will be able to comply with the request.

2. If the department promulgates a rule under subd. 1., the rule shall contain a time limit for making decisions on the application.

(e) *Exemptions from fees.* Paragraphs (a), (b), (c), and (d) do not apply to any federal agency or state agency.

(12m) LOCAL REGULATION OF NONFEDERAL OR ARTIFICIAL WETLANDS. A local government may not enact an ordinance or adopt a resolution regulating a matter regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated under sub. (4n). If a local government has in effect on March 30, 2018, an ordinance or resolution regulating nonfederal wetlands or artificial wetlands, the ordinance or resolution does not apply and may not be enforced.

(13) PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission of a violation of this section for which a forfeiture is imposed is a principal and may be charged and found in violation although he or she did not directly commit the violation and although the person who directly committed it has not been found in violation.

(b) A person is concerned in the commission of the violation if the person does any of the following:

1. Directly commits the violation.

2. Aids and abets the commission of the violation.

3. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

(13m) REPORT TO LEGISLATURE. No later than January 31, 2003, and no later than January 31 of each subsequent odd-numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that provides an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. The department shall include in its report a discussion of proposals and projects under the property development grant program under s. 23.099.

(14) PENALTIES. (a) Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than $100 nor more than $10,000 for the first offense and shall forfeit not less than $500 nor more than $10,000 upon being found in violation of the same offense a 2nd or subsequent time.

(b) Any person who violates a wetland general permit issued under sub. (3g) shall forfeit not less than $10 nor more than $500 for the first offense and shall forfeit not less than $50 nor more than $500 upon being found in violation of the same offense a 2nd or subsequent time.

(c) A violation of any condition contained in a wetland general permit issued under sub. (3g) is a violation of the statute under which the general permit was issued.

(d) In addition to the forfeitures specified under pars. (a) and (b), a court may order a defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

(e) Each day of a continuing violation is a separate offense.

(f) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

History: 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112; 2019 a. 59; 2023 a. 111.

Cross-reference: See also chs. NR 300, 351, 352, and 353, Wis. adm. code.

Once a violation of sub. (2) (a) [now sub. (3b) (b)] is proven, *Goode*, 219 Wis. 2d 654 (1998), sets forth a rebuttable presumption that the court should grant an injunction. The state is not required to prove particular instances of environmental harm to obtain an injunction. Once a violation is proven, it is the defendant who must establish compelling equitable reasons not to grant injunctive relief. State v. CGIP Lake Partners, LLP, 2013 WI App 122, 351 Wis. 2d 100, 839 N.W.2d 136, 12-2346.

Sub. (3n) (b) 5. requires that the Department of Natural Resources (DNR) consider the net positive or negative environmental impact of a proposed project before

deciding to issue a wetland-fill permit. This consideration is necessary for DNR to meet the mandate in sub. (3n) (c) 3. that it may issue a wetland-fill permit only if it determines that the proposed project will not result in significant adverse environmental impacts. In this case, the permit stated that DNR lacked sufficient information to enable it to assess the proposed project's net positive or negative environmental impact. Accordingly, DNR improperly issued the permit without being able to consider the proposed project's net positive or negative environmental impact, contrary to sub. (3n) (b) 5. Meteor Timber, LLC v. Division of Hearings & Appeals, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.

The legislature has set a tight timeline for the Department of Natural Resources (DNR) to process a wetland-fill permit application, and the legislature has mandated that at the end of that timeline DNR must decide to issue or deny the permit and explain in the case of a denial why the permit does not meet statutory standards or is incomplete. The applicant in this case pointed to no statutory language authorizing DNR to issue a permit if it had not received sufficient information within that timeline. In that situation, the legislature has provided that DNR must deny the permit as incomplete, and the applicant may seek administrative and judicial review of that denial or submit a new application with all necessary information. Meteor Timber, LLC v. Division of Hearings & Appeals, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.

Sub. (3n) (b) and (c) requires the Department of Natural Resources (DNR) to consider the entirety of a proposed project when addressing a wetland individual permit, not just the wetlands within the proposed project. By its plain meaning, sub. (3n) (c) instructs DNR to determine whether a proposed project will result in significant adverse impacts to wetland functional values and water quality and whether the proposed project will result in other significant adverse environmental consequences. That review necessarily requires DNR to consider impacts beyond the physical footprint of directly impacted wetlands. For example, DNR must consider potential secondary impacts to wetland functional values and the net positive or negative environmental impact of the proposed project. Kohler Co. v. DNR, 2024 WI App 2, 410 Wis. 2d 433, 3 N.W.3d 172, 21-1187.

Wisconsin's Wetland Reform Act. Kent & Lamb. Wis. Law. Feb. 2013.

281.37 Wetland mitigation grant program. (1) In this subsection:

(a) "Department land" means land owned by or under easement to the state that is under the jurisdiction of the department and used for one of the purposes specified in s. 23.09 (2) (d).

(b) "Mitigation program" means the wetland mitigation grant program established under sub. (2).

(c) "Nonprofit organization" means an organization that is described in section 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) The department shall establish a wetland mitigation grant program under which it awards grants to nonprofit organizations to conduct projects to create, restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e) on department land as provided in this subsection.

(3) No later than 6 months after March 30, 2018, the department shall identify department land that is appropriate to include in the mitigation program. The department shall identify no less than 25 percent of department land for this purpose. The land identified shall include land in every watershed in the state.

(4) (a) No later than 3 months after completion of the land identification stage under sub. (3) or at the beginning of the following fiscal year, whichever is earlier, and no later than July 1 of each subsequent year, the department shall issue a request for proposals from nonprofit organizations for grants to conduct wetland mitigation projects on department land identified under sub. (3). The issuance of each new request for proposal begins a new grant cycle.

(b) The department shall require applications for grants under this section to include all of the following:

1. The scope of the proposed project.

2. A project timeline.

3. If possible, a specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely provides.

4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the proposed project would create, restore, or enhance.

5. All information required to be submitted for approval to the U.S. army corps of engineers under 33 CFR part 332 and the Wisconsin Wetland Conservation Trust program instrument.

(c) After issuing the request for proposals under par. (a), the department shall accept grant applications on a rolling basis over the course of a fiscal year. The department shall select and announce grant recipients under this subsection at the end of each quarter as funds are available.

(5) (a) If an application under sub. (4) is approved, the grantee and the department, in consultation, shall identify all department permits required for the grantee to conduct the project. The department shall waive all permit fees for the grantee in relation to department permits required to conduct the project.

(b) Notwithstanding timelines otherwise established for individual permits, within 60 days of receiving the grantee's application for an individual permit that is required to conduct the project, the department shall render a decision issuing, denying, or modifying the permit, and the department shall adjust all other deadlines relating to the review of the application accordingly.

(7) (a) The department shall pay out a grant under the mitigation program quarterly unless the department determines that more frequent payments are necessary to fulfill the objectives of the grant program. The department shall withhold the final payment until the grantee certifies that the project is complete.

(b) If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the department shall use the remaining unpaid grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project. An organization that fails to certify completion of a project by the date indicated in its application for completion is not eligible for a new grant under the mitigation program for 2 grant cycles.

(c) The department may agree to a modified deadline for the project if unusual or unforeseen circumstances cause a delay. If the department agrees to a modified deadline, the consequences under par. (b) apply only if the grantee fails to certify that a project is complete by the date indicated in that agreement.

(8) Before 6 months have elapsed after the 5th anniversary of the department's first issuance of a request for proposals under sub. (4), the department shall submit to the legislature under s. 13.172 (2) a report analyzing the effectiveness of the first 5 years of the mitigation program and making recommendations for changes to the program.

History: 2017 a. 183.

SUBCHAPTER IV

WATER AND SEWAGE FACILITIES; SEPTAGE DISPOSAL

281.41 Approval of plans. (1) (a) Except as provided under sub. (2), every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and any other information concerning maintenance, operation and other details that the department requires, including the information specified under s. 281.35 (5) (a), if applicable. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn, a statement concerning the improvement may be made to the department and the department may, if requested, outline generally what it will require. Upon receipt of the plans for approval, the department or its authorized representative shall notify the owner of the date of receipt.

(b) Within 90 days from the time of receipt of complete plans or within the time specified in s. 281.35 (5) (c), if applicable, the

Policy 4.2 (revised)

4.2) All subdivisions creating five or more lots of one and one-half acres or less within a five-year period that are abutting a lake or navigable stream shall ~~meet state standards on surveying, lot size and street width connections, and~~ provide public access at least 60 feet wide providing access to the water's edge so that there will be public access, which is connected to existing public roads, at not more than one-half intervals as measured along the lake or navigable stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department of administration, and excluding shore areas where public park or open-space streets or roads on either side of the navigable stream are provided (See Wis. Stats. ch. 236, and Wis. Admin. Code NR 1.93(3). See also managed use #~~26~~25)

CHAPTER 236

PLATTING LANDS AND RECORDING AND VACATING PLATS

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SUBCHAPTER I

PRELIMINARY PROVISIONS

236.01 Purpose of chapter. The purpose of this chapter is to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes.

This chapter authorizes a municipality to reject a preliminary plat under its extraterritorial jurisdictional authority based upon a subdivision ordinance that considers the plat's proposed use. Wood v. City of Madison, 2003 WI 24, 260 Wis. 2d 71, 659 N.W.2d 31, 01-1206.

236.015 Applicability of chapter. This chapter does not apply to transportation project plats that conform to s. 84.095.

History: 1997 a. 282.

236.02 Definitions. In this chapter, unless the context or subject matter clearly requires otherwise:

(1) "Alley" means a public or private right-of-way shown on a plat, which provides secondary access to a lot, block or parcel of land.

(2) "Copy" means a true and accurate copy of all sheets of the original subdivision plat. Such copy shall be on durable white matte finished paper with legible dark lines and lettering.

(2m) "Correction instrument" means an instrument drafted by a professional land surveyor that complies with the requirements of s. 236.295 and that, upon recording, corrects a subdivision plat or a certified survey map.

(3) "County planning agency" means a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03 (2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use.

(4) "Department" means the department of administration.

(5) "Extraterritorial plat approval jurisdiction" means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.

(6) "Municipality" means an incorporated city or village.

(7) An "outlot" is a parcel of land, other than a lot or block, so designated on the plat.

(8) "Plat" is a map of a subdivision.

(9) "Preliminary plat" is a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

(9b) "Professional land surveyor" means a professional land surveyor licensed under ch. 443.

(9c) "Record" means, with respect to a final plat or a certified survey map, to record and file the document with the register of deeds.

(9m) "Recorded private claim" means a claim of title to land based on a conveyance from a foreign government made before the land was acquired by the United States.

(11) "Replat" is the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or

part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat without changing exterior boundaries of said block, lot or outlot is not a replat.

(12) (am) Except as provided in par. (bm), "subdivision" means a division of a lot, parcel, or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development and to which any of the following applies:

1. The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area.

2. Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

(bm) "Subdivision" does not include a division of land into 5 or more parcels or building sites by a certified survey map in accordance with an ordinance enacted or a resolution adopted under s. 236.34 (1) (ar) 1.

(13) "Town planning agency" means a town zoning committee appointed under s. 60.61 (4) (a) or any agency created by the town board and authorized by statute to plan land use.

History: 1979 c. 221; 1979 c. 233 s. 8; 1979 c. 248 ss. 2, 25 (4); 1979 c. 361; 1983 a. 189, 473, 532, 538; 1985 a. 29; 1987 a. 399; 1993 a. 490; 1995 a. 27 ss. 6307m, 6308, 9116 (5); 1995 a. 201; 1997 a. 27; 1999 a. 96; 2001 a. 16; 2013 a. 272, 358.

This chapter does not authorize the Department of Transportation to regulate land divisions that are not subdivisions within the meaning of sub. (12). Wisconsin Builders Ass'n v. DOT, 2005 WI App 160, 285 Wis. 2d 472, 702 N.W.2d 433, 04-2388.

Sub. (12) was not applicable to determining whether a condominium parcel met the minimum lakeshore frontage requirement of a zoning ordinance as: 1) the declaration of condominium was not a subdivision of land, as defined in this chapter; and 2) even if this chapter were used by analogy, the determination of lot sizes under sub. (12) refers to lot area and not lot width or lakeshore frontage. A subdivision under this chapter requires a division of land. A condominium declaration changes the form of ownership and is not a division of land. FAS, LLC v. Town of Bass Lake, 2007 WI 73, 301 Wis. 2d 321, 733 N.W.2d 287, 05-1689.

In determining lot sizes under sub. (8) [now sub. (12)], the lots may not extend across navigable waters or public easements of passage, nor include any land whose servitude is inconsistent with its integrated functional use and unified ownership. 66 Atty. Gen. 2. But see FAS, LLC v. Town of Bass Lake, 2007 WI 73, 301 Wis. 2d 321, 733 N.W.2d 287, 05-1689.

This chapter does not require a replat when the division of a lot or redivision of more than one lot does not meet the definition of a "subdivision" under this section. 67 Atty. Gen. 121.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under sub. (8) [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.025 Ordinary high water marks. (1) For purposes of ss. 236.15 (1) (ag) and (d) and 236.20 (2) (g), a professional land surveyor may do any of the following:

(a) Incorporate into a map, plat, or survey an ordinary high water mark that has been determined by the department of natural resources or otherwise determined pursuant to law.

(b) Approximate the ordinary high water mark and incorporate that mark into a map, plat, or survey.

(2) For purposes of sub. (1) (b), the location of the approximate ordinary high water mark shall be the point on the bank of a navigable stream or on the shore of a lake up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics. If the approximate location of the ordinary high water mark is difficult to determine, a professional land surveyor may consider other points on the bank or shore for purposes of approximating the location of the ordinary high water mark.

(3) For purposes of this section, a map, plat, or survey that shows an approximate ordinary high water mark shall state on its face that the mark is shown for reference only.

History: 2013 a. 358.

236.03 Survey and plat; when required. (1) Any division of land that results in a subdivision as defined in s. 236.02 (12) (am) 1. shall be, and any other division may be, surveyed and a plat thereof approved and recorded as required by this chapter. No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by this chapter.

(2) This chapter does not apply to cemetery plats made under s. 157.07 and assessors' plats made under s. 70.27, but such assessors' plats shall, except in counties having a population of 750,000 or more, comply with ss. 236.15 (1) (ac) to (g) and 236.20 (1) and (2) (a) to (e), unless waived under s. 236.20 (2) (L).

(3) Subsection (1) shall not apply to the sale or exchange of parcels of public utility or railroad right-of-way to adjoining property owners if the governing body of the municipality or town in which the property is located and the county planning agency, where such agency exists, approves such sale or exchange on the basis of applicable local ordinances or the provisions of this chapter.

History: 1983 a. 189 s. 329 (23); 1983 a. 473; 1993 a. 490; 2013 a. 272, 358; 2017 a. 207 s. 5.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors' plats under s. 70.27. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in sub. (2) apply to assessors' plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998), 98-0841.

A replat of a recorded subdivision must comply with the formal platting requirements of this chapter relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

SUBCHAPTER II

APPROVAL OF PLAT

236.10 Approvals necessary. (1) To entitle a final plat of a subdivision to be recorded, it shall have the approval of the following in accordance with the provisions of s. 236.12:

(a) If within a municipality, the governing body, but if the plat is within an area, the annexation of which is being legally contested, the governing bodies of both the annexing municipality and the town from which the area has been annexed shall approve.

(b) Except as provided under s. 62.23 (7a) (am), if within the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and

2. The governing body of the municipality if, by July 1, 1958, or thereafter it adopts a subdivision ordinance or an official map under s. 62.23; and

3. Subject to sub. (1m), the county planning agency if such agency employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation.

(c) If outside the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and

2. Subject to sub. (1m), the county planning agency, if there is one.

(1m) (a) Except as provided in par. (b), a county planning agency under sub. (1) (b) 3. or (c) 2. has no authority to approve or object to the preliminary or final plat of a subdivision that is located in a town that has, before the preliminary plat is submitted for approval, or before the final plat is submitted for approval if no preliminary plat is submitted, enacted an ordinance under s. 60.23 (34) or (35) withdrawing the town from county zoning and the county development plan.

(b) A county planning agency under sub. (1) (b) 3. or (c) 2. may object to any of the following portions of a subdivision that is located in a town described in par. (a):

1. Any portion of the subdivision that is shoreland, as defined in s. 59.692 (1) (b), in the county.

2. Any portion of the subdivision that is in a 100-year floodplain in the county.

(2) Except as provided under s. 62.23 (7a) (am), if a subdivision lies within the extraterritorial plat approval jurisdiction of more than one municipality, the provisions of s. 66.0105 shall apply.

(3) The authority to approve or object to preliminary or final plats under this chapter may be delegated to a planning committee or commission of the approving governing body. Final plats dedicating streets, highways or other lands shall be approved by the governing body of the town or municipality in which such are located.

(4) Any municipality, town or county may under s. 66.0301 agree with any other municipality, town or county for the cooperative exercise of the authority to approve or review plats. A municipality, town or county may, under s. 66.0301, agree to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval. A municipality, town or county may agree with a regional planning commission for the cooperative exercise of the authority to approve or review plats only as provided under s. 66.0309 (11).

(5) Any municipality may waive its right to approve plats within any portion of its extraterritorial plat approval jurisdiction by a resolution of the governing body recorded with the register of deeds incorporating a map or metes and bounds description of the area outside its corporate boundaries within which it shall approve plats. The municipality may rescind this waiver at any time by resolution of the governing body recorded with the register of deeds.

History: 1979 c. 248; 1993 a. 301; 1999 a. 150 s. 672; 2015 a. 178; 2021 a. 198; 2023 a. 264.

In this case, the city improperly included lots not within its extraterritorial plat approval jurisdiction in the city's calculation of fees assessed to a developer. Brookhill Development, Ltd. v. City of Waukesha, 103 Wis. 2d 27, 307 N.W.2d 242 (1981).

Section 236.13 (2) (a) [now s. 236.13 (2) (am) 1. a.] does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation, sub. (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. KW Holdings, LLC v. Town of Windsor, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

Artificial Lakes and Land Subdivisions. Kusler. 1971 WLR 369.

236.11 Submission of plats for approval. (1) (a) Before submitting a final plat for approval, the subdivider may submit, or the approving authority may require that the subdivider submit, a preliminary plat. It shall be clearly marked "preliminary plat" and shall be in sufficient detail to determine whether the final plat will meet layout requirements. Within 90 days the approving authority, or its agent authorized to approve preliminary plats, shall take action to approve, approve conditionally, or reject the preliminary plat and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or extension thereof, constitutes an approval of the preliminary plat.

(b) If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 36 months after the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat or may extend the time for submission of the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat that the subdivider proposes to record at that time.

(c) A professional engineer, a planner, or another person charged with the responsibility to review plats shall provide the approving authority with his or her conclusions as to whether the final plat conforms substantially to the preliminary plat and with his or her recommendation on approval of the final plat. The conclusions and recommendation shall be made a part of the record of the proceeding at which the final plat is being considered and are not required to be submitted in writing.

(2) (a) The subdivider or subdivider's agent shall submit to the body or bodies having authority to approve plats an electronic copy of the final plat or a copy of the final plat that is capable of legible reproduction. The approving authority or authorities shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider or subdivider's agent. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons shall be supplied to the subdivider or subdivider's agent. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority that has failed to act.

(b) The approval of the approving authority or authorities may be based on the copy submitted under par. (a) but the approval must be inscribed on the recordable plat document. Before inscribing its approval, the approving authority shall require the subdivider or subdivider's agent to certify the respects in which the recordable plat document differs from the copy, if any. An approving authority must approve all modifications in the final plat before it gives final approval to the plat. No approving authority may inscribe its final approval on a plat before the affixing of the certificate by the department under s. 236.12 (3).

History: 1979 c. 248; 1997 a. 332; 2009 a. 376; 2013 a. 358.

Under sub. (1) (a), a village must act within the stated time limit as to a preliminary plat, even though the plat allegedly violates the official city map. Tabling consideration of the plat within the stated time is not sufficient. State ex rel. Lozoff v. Board of Trustees, 55 Wis. 2d 64, 197 N.W.2d 798 (1972).

236.12 Procedure for approval of plats. (1) This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 750,000 or more.

(2) (ac) The subdivider or subdivider's agent shall submit an electronic copy of the preliminary or final plat, or a copy of the preliminary or final plat that is capable of clearly legible reproduction, to the department, which shall examine the plat for compliance with ss. 236.15, 236.16, 236.20, and 236.21 (1) and (2).

(ap) Within 2 days after a preliminary or final plat is submitted under par. (ac), the department shall transmit an electronic copy of the plat, or, if the department prefers, 2 legible hard copies of the plat, to each state agency authorized to object to the plat under this paragraph. If the subdivision abuts or adjoins a state trunk highway or connecting highway, the department shall transmit a copy or copies of the plat to the department of transportation so that the agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. If the subdivision is not served by a public sewer and provision for that service has not been made, the department shall transmit a copy or copies of the plat to the department of safety and professional services so that the agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. In lieu of this procedure the agencies may designate local officials to act as their agents in examining the plats for

compliance with the statutes or their rules by filing a written delegation of authority with the approving body.

(b) Within 2 days after a preliminary or final plat is submitted under par. (ac), the department shall transmit an electronic copy of the plat, or, if the department prefers, 4 legible hard copies of the plat, to the county planning agency, if the agency employs on a full-time basis a professional engineer, a planner, or other person charged with the duty of administering planning legislation and adopts a policy requiring submission so that the body may determine if it has any objection to the plat on the basis of a conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments. If no county planning agency exists, then 2 copies to the county park commission except that in a county with a county executive or county administrator, 2 copies to the county park manager, if the subdivision abuts a county park or parkway so that the body may determine if it has any objection to the plat on the basis of a conflict with the park or parkway development.

(3) Within 20 days after the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider or subdivider's agent and all other agencies having the authority to object of any objection based upon failure of the plat to comply with the statutes or rules that its examination under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the department. After each agency and the department have certified that they have no objection or that their objections have been satisfied, the department shall so certify on the face of the plat. If an agency fails to act within 20 days from the date on which it received the copy or copies of the plat, and the department fails to act within 30 days from the date on which it received the copy of the plat, it shall be deemed that there are no objections to the plat and, upon demand, the department shall so certify on the face of the plat.

(4m) In order to facilitate approval of the final plat whenever more than one approval is required, the subdivider or subdivider's agent shall file with each approving authority a true copy of the plat that the subdivider or subdivider's agent submitted to the department.

(7) The department and the state agencies referred to in s. 236.13 (1) may charge reasonable service fees for all or part of the costs of activities and services provided by the department under this section and s. 70.27. A schedule of such fees shall be established by rule by each such agency.

History: 1973 c. 90; 1977 c. 29 s. 1654 (3), (8) (c); 1979 c. 221; 1979 c. 248 ss. 5, 25 (6); 1979 c. 355; 1985 a. 29; 1995 a. 27; 1997 a. 27; 2011 a. 32; 2013 a. 358; 2017 a. 207 s. 5; 2017 a. 364 s. 49.

A "planned public development" under sub. (2) (b) is one that a county board has adopted by ordinance. Reynolds v. Waukesha County Park & Planning Commission, 109 Wis. 2d 56, 324 N.W.2d 897 (Ct. App. 1982).

236.13 Basis for approval. (1) Approval of the preliminary or final plat shall be conditioned upon compliance with:

(a) The provisions of this chapter.

(b) Any municipal, town, or county ordinance that is in effect when the subdivider submits a preliminary plat, or a final plat if no preliminary plat is submitted.

(d) The rules of the department of safety and professional services relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made.

(e) The rules of the department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

(2) (ad) In this subsection:

1. "Binder course" means the non-surface-level course that is attached to the packed-level gravel course.

2. "Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

3. "Total cost to complete a public improvement" includes the cost to make and install storm water facilities. "Total cost to complete a public improvement" does not include any of the following:

a. Any fees charged by the governing body of the town or municipality.

b. Land disturbing activities that are necessary to achieve the desired subgrade for public improvements.

(am) 1. a. As a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider provide security to ensure that the subdivider will make those improvements within a reasonable time. The governing body may not require the subdivider to provide security at the commencement of a project in an amount that is more than 120 percent of the estimated total cost to complete the required public improvements, as determined under subd. 1d.

b. The subdivider may construct the project in such phases as the governing body of the town or municipality approves, which approval may not be unreasonably withheld. If the subdivider's project will be constructed in phases, the amount of security required by the governing body under subd. 1. a. is limited to the phase of the project that is currently being constructed. The governing body may not require that the subdivider provide any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements.

c. If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body may not require the subdivider to provide the security for more than 14 months after the date the public improvements for which the security is provided are substantially completed and upon substantial completion of the public improvements, the amount of the security the subdivider is required to provide may be no more than an amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements.

d. This paragraph applies to all preliminary and final plats, regardless of whether submitted for approval before, on, or after August 1, 2014.

1d. The estimated total cost to complete the required public improvements under subd. 1. shall be determined as follows:

a. A governing body of the town or municipality may provide an initial estimate to the subdivider of the estimated total cost to complete the required public improvements. If the subdivider accepts the initial estimate, then the initial estimate is the estimated total cost to complete the required public improvements.

b. If the governing body of the town or municipality does not provide an initial estimate to the subdivider or the subdivider rejects the initial estimate, the subdivider shall provide the governing body with a bona fide bid from the subdivider's contractor to complete the required public improvements in the event of a default. If the governing body accepts the subdivider's bona fide bid, the bona fide bid is the estimated total cost to complete the required public improvements.

c. If the governing body of the town or municipality rejects

the subdivider's bona fide bid, the governing body shall provide the subdivider with an estimate for the cost to complete the public improvements in the event of a default. If the governing body's estimate does not exceed the subdivider's bona fide bid by more than 10 percent, the governing body's estimate is the estimated total cost to complete the required public improvements. If the governing body's estimate exceeds the subdivider's bona fide bid by 10 percent or more, the estimated total cost to complete the required public improvements is the amount agreed upon by the subdivider's engineer and the governing body's engineer.

1m. a. If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body shall accept a performance bond or a letter of credit, or any combination thereof, at the subdivider's option, to satisfy the requirement.

b. The subdivider and the governing body of the town or municipality may agree that all or part of the requirement to provide security under subd. 1. a. may be satisfied by a performance bond provided by the subdivider's contractor that names the town or municipality as an additional obligee provided that the form of the contractor's performance bond is acceptable to the governing body of the town or municipality.

c. Unless the governing body of a town or municipality demonstrates that a bond form does not sufficiently ensure performance in the event of default, the governing body of the town or municipality shall accept a performance bond under this subdivision if the person submitting the performance bond demonstrates that the performance bond is consistent with a standard surety bond form used by a company that, on the date the bond is obtained, is listed as an acceptable surety on federal bonds in the most recent circular 570 published by the federal department of the treasury, as required under 31 CFR 223.16, and the performance bond is issued by a surety company licensed to do business in this state.

2. For purposes of subd. 1., public improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed upon the installation of the asphalt or concrete binder course on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90 percent of the public improvements by cost are completed.

3. a. With regard to public improvements to which subd. 1. applies, no town or municipality may enact an ordinance relating to the substantial completion of such a public improvement that is inconsistent with subd. 2.

b. Upon such substantial completion, any outstanding local building permits that are related to, and dependent upon, substantial completion shall be released.

c. The governing body of a town or municipality shall, upon a subdivider's request, issue a permit to commence construction of a foundation or any other noncombustible structure before substantial completion of a public improvement if all public improvements related to public safety are complete and the security requirement under subd. 1. a. has been met. The subdivider may not commence work on a building until the governing body of the town or municipality approves or issues a permit for the construction of the building.

(b) Any city or village may require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that designated facilities shall have been previously provided without cost to the municipality, but which are constructed according to municipal specifications and under municipal inspection, such as, without limitation because of enumeration, sewerage, water mains and laterals, storm water management or treatment facilities, grading and improvement of streets, alleys, sidewalks and other public ways, street lighting or other facilities designated by the governing body, or that a specified portion of such costs shall be paid in advance as provided in s. 66.0709.

(c) Any county, town, city or village may require as a condition of approval that the subdivider be responsible for the cost of any necessary alterations of any existing utilities which, by virtue of the platting or certified survey map, fall within the public right-of-way.

(d) As a further condition of approval, any county, town, city or village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar or wind energy across adjacent lots in the subdivision.

(2m) As a further condition of approval when lands included in the plat lie within 500 feet of the ordinary high-water mark of any lake, any navigable stream, or any other body of navigable water or if land in the proposed plat involves lake or navigable stream shorelands referred to in s. 236.16, the department of natural resources, to prevent pollution of navigable waters, or the department of safety and professional services, to protect the public health and safety, may require assurance of adequate drainage areas for private on-site wastewater treatment systems and building setback restrictions, or provisions by the owner for public sewage disposal facilities for waters of the state, as defined in s. 281.01 (18), industrial wastes, as defined in s. 281.01 (5), and other wastes, as defined in s. 281.01 (7). The public sewage disposal facilities may consist of one or more systems as the department of natural resources or the department of safety and professional services determines on the basis of need for prevention of pollution of the waters of the state or protection of public health and safety.

(3) No approving authority or agency having the power to approve or object to plats shall condition approval upon compliance with, or base an objection upon, any requirement other than those specified in this section.

(4) Where more than one governing body or other agency has authority to approve or to object to a plat and the requirements of such bodies or agencies are conflicting, the plat shall comply with the most restrictive requirements.

(5) (a) Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23 (7) (e) 10. a., 14. and 15., within 30 days of notification of the rejection of the plat. For the purpose of an appeal under this paragraph, the term "board of appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable, or discriminatory.

(b) Notwithstanding par. (a), a decision of an approving authority on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

(6) An outlot may not be used as a building site unless it is in compliance with restrictions imposed by or under this section with respect to building sites. An outlot may be conveyed regardless of whether it may be used as a building site.

History: 1977 c. 29 ss. 1384, 1654 (8) (c); 1977 c. 162; 1979 c. 221, 248; 1981 c. 289 s. 19; 1981 c. 354; 1993 a. 414; 1995 a. 27 ss. 6310, 6311, 9116 (5); 1995 a. 227; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 30; 2007 a. 44; 2009 a. 372, 376; 2011 a. 32, 146; 2013 a. 280, 358; 2015 a. 195; 2017 a. 243; 2017 a. 364 s. 49; 2021 a. 238 s. 45; 2023 a. 16.

Local units of government may not reject a proposed plat under this section unless the plat conflicts with an existing statutory requirement or an existing written ordinance, master plan, official map, or rule under sub. (1). State ex rel. Columbia Corp. v. Town Board, 92 Wis. 2d 767, 286 N.W.2d 130 (Ct. App. 1979).

Under sub. (2) (a) [now sub. (2) (am) 1. a.], authority to condition plat approval

on public improvements is granted solely to the governing body of the town or municipality in which the subdivision is located. Rice v. City of Oshkosh, 148 Wis. 2d 78, 435 N.W.2d 252 (1989).

Municipalities have no authority to impose conditions upon a subdivision that extends beyond the municipality's borders. Pederson v. Town Board, 191 Wis. 2d 663, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (2) (a) [now sub. (2) (am) 1. a.] does not grant a municipality the power to establish public improvement requirements without an ordinance. Pederson v. Town Board, 191 Wis. 2d 663, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (1) (d) does not prevent municipalities from enacting more restrictive sewer regulations than the rules cited in that paragraph. Manthe v. Town Board, 204 Wis. 2d 546, 555 N.W.2d 167 (Ct. App. 1996), 95-1312.

So long as any issues addressed in both a master plan and an official map are not contradictory, for purposes of sub. (1) (c), the master plan is consistent with the official map. A master plan is not inconsistent with an official map if the plan contains elements the map does not. Lake City Corp. v. City of Mequon, 207 Wis. 2d 155, 558 N.W.2d 100 (1997), 94-3240.

In the area of minimum lot size regulation, the power of a plan commission authorized to review plats is not limited or detracted by zoning regulations. Lake City Corp. v. City of Mequon, 207 Wis. 2d 155, 558 N.W.2d 100 (1997), 94-3240.

As sub. (5) [now sub. (5) (a)] does not expressly designate the "appealing authority" to whom appeal papers should be directed, the appellant's service of an appeal on the county planning and development department rather than on the planning and development committee, which had made the disputed decision, was not grounds for dismissal when there had been pervasive use of department personnel and stationery in the process. Weber v. Dodge County Planning & Development Department, 231 Wis. 2d 222, 604 N.W.2d 297 (Ct. App. 1999), 99-1116.

Sub. (2) (a) [now sub. (2) (am) 1. a.] does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation, s. 236.10 (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. KW Holdings, LLC v. Town of Windsor, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

Because sub. (2) (a) [now sub. (2) (am) 1. a.] grants only to a "town or municipality" within which a plat lies the authority to require public improvements as a condition of plat approval, and a county is not a municipality for purposes of this chapter, a county may not regulate the size of cul-de-sacs, the length of street blocks, and the location of town roads when the plat is located within a town. Rogers Development, Inc. v. Rock County Planning & Development Committee, 2003 WI App 113, 265 Wis. 2d 214, 666 N.W.2d 504, 02-0017.

This chapter does not authorize the Department of Transportation to regulate land divisions that are not subdivisions within the meaning of s. 236.02 (12). Wisconsin Builders Ass'n v. DOT, 2005 WI App 160, 285 Wis. 2d 472, 702 N.W.2d 433, 04-2388.

A city's extraterritorial plat condition that allowed lots of less than 20 acres only when attached to the public sanitary sewer system had the effect of requiring a public sanitary sewer system for lot sizes smaller than 20 acres, violating the ruling of *Rice*, 148 Wis. 2d 78 (1989), that authority to condition plat approval on public improvements is granted solely to the governing body of the town or municipality in which the subdivision is located. Town of Delton v. Liston, 2007 WI App 120, 301 Wis. 2d 720, 731 N.W.2d 308, 06-1288.

SUBCHAPTER III

LAYOUT REQUIREMENTS

236.15 Surveying requirements. For every subdivision of land there shall be a survey meeting the following requirements:

(1) MONUMENTS. (ac) All of the monuments required in pars. (ag) to (h) shall be placed flush with the ground if practicable. Whenever placement of a monument under this subsection is required at a corner or point that falls within a street or proposed future street, the monument shall be placed in the side line of the street if practicable.

(ag) The external boundaries of a subdivision shall be monumented in the field by monuments of concrete containing a ferrous rod one-fourth inch in diameter or greater imbedded its full length, not less than 18 inches in length, not less than 4 inches square or 5 inches in diameter, and marked on the top with a cross, brass plug, iron rod, or other durable material securely embedded; or by iron rods or pipes at least 18 inches long and 2 inches in diameter weighing not less than 3.65 pounds per lineal foot. Solid round or square iron bars of equal or greater length or weight per foot may be used in lieu of pipes wherever pipes are specified in this section. These monuments shall be placed at all corners, at each end of all curves, at the point where a curve changes its radius, at all angle points in any line and at all angle points along the meander line, said points to be not less than 20 feet back from the determined or approximated ordinary high water mark.

(b) All internal boundaries and those corners and points not required to be marked by par. (ag) shall be monumented in the field by like monuments as defined in par. (ag). These monuments shall be placed at all block corners, at each end of all curves, at the point where a curve changes its radius, and at all angle points in any line.

(c) All lot, outlot, park and public access corners and the corners of land dedicated to the public shall be monumented in the field by iron pipes at least 18 inches long and one inch in diameter, weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 18 inches long and weighing not less than 1.13 pounds per lineal foot.

(d) The lines of lots, outlots, parks and public access and land dedicated to the public that extend to lakes or to navigable streams shall be monumented in the field by iron pipes at least 18 inches long and one inch in diameter weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 18 inches long and weighing not less than 1.13 pounds per lineal foot. These monuments shall be placed at the point of intersection of the lake or navigable stream lot line with a meander line established not less than 20 feet back from the determined or approximated ordinary high water mark.

(f) Any durable metal or concrete monuments may be used in lieu of iron pipes provided that they are uniform within the platted area and have a permanent magnet embedded near the top or bottom or both.

(g) In cases where strict compliance with this subsection would be unduly difficult or would not provide adequate monuments, the department may make other reasonable requirements.

(h) The governing body of the city, village or town which is required to approve the subdivision under s. 236.10 may waive the placing of monuments under pars. (b), (c) and (d) for a reasonable time on condition that the subdivider executes a surety bond to ensure that he or she will place the monuments within the time required.

(2) ACCURACY OF SURVEY. The survey shall be performed by a professional land surveyor and if the error in the latitude and departure closure of the survey or any part thereof is greater than the ratio of one in 3,000, the plat may be rejected.

History: 1979 c. 221, 248; 1979 c. 355 s. 240; 1981 c. 390; 2001 a. 16; 2013 a. 358.

All permanent survey monuments required by sub. (1) (a), (b), (c), and (d) [now sub. (1) (ag), (b), (c), and (d)] must be placed in the field prior to submission of a final subdivision plat for state level review; provided, however, that in the event of a waiver under sub. (1) (h), the placement of all permanent monuments other than those required by sub. (1) (a) [now sub. (1) (ag)] may be temporarily deferred. 59 Atty. Gen. 262.

236.16 Layout requirements. (1) MINIMUM LOT WIDTH AND AREA. In counties having a population of 40,000 or more, each lot in a residential area shall have a minimum average width of 50 feet and a minimum area of 6,000 square feet; in counties of less than 40,000, each lot in a residential area shall have a minimum average width of 60 feet and a minimum area of 7,200 square feet. In municipalities, towns and counties adopting subdivision control ordinances under s. 236.45, minimum lot width and area may be reduced to dimensions authorized under such ordinances if the lots are served by public sewers.

(2) MINIMUM STREET WIDTH. All streets shall be of the width specified on the master plan or official map or of a width at least as great as that of the existing streets if there is no master plan or official map, but no full street shall be less than 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads platted after January 1, 1966, shall, however, comply with minimum standards for town roads prescribed by s. 82.50. Streets or frontage roads auxiliary to and located on the side of a

full street for service to the abutting property may not after January 1, 1966, be less than 49.5 feet wide.

(3) LAKE AND NAVIGABLE STREAM SHORE PLATS; PUBLIC ACCESS. (a) All subdivisions abutting on a lake or a navigable stream shall provide public access at least 60 feet wide providing access to the water's edge so that there will be public access, which is connected to existing public roads, at not more than one-half mile intervals as measured along the lake or the navigable stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department, and excluding shore areas where public parks or open-space streets or roads on either side of the navigable stream are provided.

(b) No public access established under this chapter may be vacated except by circuit court action as provided in s. 236.43, except that such public access may be discontinued under s. 66.1003, subject to s. 66.1006.

(c) Except as provided in par. (d), this subsection does not require any local unit of government to improve land provided for public access.

(d) All of the owners of all of the land adjacent to a public access established under par. (a) to an inland lake, as defined in s. 30.92 (1) (bk), may petition the city, village, town or county that owns the public access to construct shoreline erosion control measures. Subject to par. (e), the city, village, town or county shall construct the requested shoreline erosion control measures or request the department of natural resources to determine the need for shoreline erosion control measures. Upon receipt of a request under this paragraph from a city, village, town or county, the department of natural resources shall follow the notice and hearing procedures in s. 30.208 (3) to (5). Subject to par. (e), the city, village, town or county shall construct shoreline erosion control measures as required by the department of natural resources if the department of natural resources determines all of the following:

1. Erosion is evident along the shoreline in the vicinity of the public access.

2. The shoreline erosion control measures proposed by the owners of the property adjacent to the public access are designed according to accepted engineering practices.

3. Sufficient property owners, in addition to the owners of all property adjacent to the public access, have agreed to construct shoreline erosion control measures so that the shoreline erosion control project is likely to be effective in controlling erosion at the location of the public access and its vicinity.

4. The shoreline erosion control project is not likely to be effective in controlling erosion at the location of the public access and its vicinity if the city, village, town or county does not construct shoreline erosion control measures on the land provided for public access.

(e) A city, village, town or county may not be required to construct shoreline erosion control measures under par. (d) on land other than land provided for public access.

(f) Paragraphs (b) to (e) apply to public access that exists on, or that is established after, May 7, 1998.

(4) LAKE AND NAVIGABLE STREAM SHORE PLATS; LAND BETWEEN MEANDER LINE AND WATER'S EDGE. The lands lying between the meander line, established in accordance with s. 236.20 (2) (g), and the water's edge, and any otherwise unplattable lands which lie between a proposed subdivision and the water's edge shall be included as part of lots, outlots or public dedications in any plat abutting a lake or a navigable stream. This subsection applies not only to lands proposed to be subdivided but also to all lands under option to the subdivider or in which the subdivider holds any interest and which are contiguous to the lands proposed to be subdivided and which abut a lake or a navigable stream.

History: 1971 c. 164; 1979 c. 221; 1979 c. 248 ss. 9, 25 (2); 1997 a. 172; 2003 a. 118, 214; 2013 a. 358.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Cross-reference: See also ss. NR 1.91 and 1.93, Wis. adm. code.

When a strip of land was labeled on a plat "Public Access" that abutted a lake and connected to a public highway, the plat substantially met the statutory requirement of a "clear dedication to the public." While the dedication did not contain the exact formula found in s. 236.20 (4), under *Hunt*, 19 Wis. 2d 113 (1963), that was not necessary. Vande Zande v. Town of Marquette, 2008 WI App 144, 314 Wis. 2d 143, 758 N.W.2d 187, 07-2354.

Discussing the circumstances under which the statutory platting standards set forth in subs. (1), (2), and (3) and s. 236.20 (4) (d) may be waived or varied, with specific reference to the approval of island subdivision plats. 62 Atty. Gen. 315.

Each of two adjacent platted lots may not be divided for the purpose of sale or building development if the division will result in lots or parcels that do not comply with minimum lot width and area requirements established under sub. (1). Section 236.335 clearly limits the division of a lot in a recorded plat if the resulting lots or parcels do not conform to this chapter. 63 Atty. Gen. 122.

Sub. (3) does not apply to a navigable lake created by artificially enlarging a previously nonnavigable watercourse. 64 Atty. Gen. 146.

Discussing the extent to which local governments may vary the terms of subs. (1) and (2) and s. 236.20 (4) (d) by ordinance. 64 Atty. Gen. 175.

Sub. (4) aims at preventing subdividers from creating narrow, unplatted buffer zones between platted lands and water's edge, thus avoiding public access requirements. 66 Atty. Gen. 85.

236.18 Wisconsin coordinate system.

(1) REQUIREMENT FOR RECORDING. (a) No plat that is referenced to a Wisconsin coordinate system under sub. (2) may be recorded unless it is based on a datum that the approving authority under s. 236.10 of the jurisdiction in which the land is located has selected by ordinance.

(b) An approving authority under s. 236.10 may select a Wisconsin coordinate system under sub. (2). If it does so, it shall notify the department, on a form provided by the department, of the selection.

(c) An approving authority may, by ordinance, select a different Wisconsin coordinate system under sub. (2) than the one previously selected under par. (b). If it does so, the approving authority shall notify the department on a form provided by the department.

(2) ALLOWABLE SYSTEMS. An approving authority under s. 236.10 may select any one of the following systems:

(a) The Wisconsin coordinate system of 1927, which is based on the North American datum of 1927.

(b) The Wisconsin coordinate system of 1983 (1986), which is based on the North American datum of 1983 (adjustment of 1986).

(c) The Wisconsin coordinate system of 1983 (1991), which is based on the North American datum of 1983 (adjustment of 1991).

(d) A county coordinate system as approved by the department of transportation or a coordinate system that is mathematically relatable to a Wisconsin coordinate system.

(3) ZONES. Each of the systems under sub. (2) includes the following zones:

(a) A north zone composed of the following counties: Ashland, Bayfield, Burnett, Douglas, Florence, Forest, Iron, Oneida, Price, Sawyer, Vilas and Washburn.

(b) A central zone composed of the following counties: Barron, Brown, Buffalo, Chippewa, Clark, Door, Dunn, Eau Claire, Jackson, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Outagamie, Pepin, Pierce, Polk, Portage, Rusk, St. Croix, Shawano, Taylor, Trempealeau, Waupaca and Wood.

(c) A south zone composed of the following counties: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Milwau-

kee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waushara and Winnebago.

(4) APPLICABLE DEFINITIONS AND SURVEY CONNECTIONS. (a) The following definitions apply to the systems under sub. (2):

1. For the Wisconsin coordinate system of 1927, the definitions provided by the national geodetic survey in U.S. coastal and geodetic survey special publication 235 (1974 edition).

2. For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the definitions provided by the national geodetic survey in the national oceanic and atmospheric administration manual national ocean service, national geodetic survey 5 (1989 edition).

(b) Existing positions of the systems under sub. (2) that are marked on the ground by monuments established in conformity with standards adopted by the national geodetic survey for 3rd-order work and above and the geodetic positions of which have been rigidly adjusted on the North American datum of 1927, the North American datum of 1983 (adjustment of 1986), the North American datum of 1983 (adjustment of 1991) or any later adjustment of the North American datum of 1983 may be used to establish a survey connection to the systems under sub. (2).

(5) OVERLAPPING LAND. If portions of any tract of land that is to be defined by one description in a plat are in different zones under sub. (3), the positions of all of the points on its boundaries may be referred to either of the zones but the zone to which those positions are referred and the system under sub. (2) that is used shall be named in the description and noted on the face of all maps and plats of the land.

(6) COORDINATES. (a) The plane coordinates of a point that are to be used to express the position or location of a point shall consist of 2 distances that are expressed in U.S. survey feet or meters and decimals of those feet or meters. The definitions of survey foot and meter in letter circular 1071 July 1976 national institute of standards and technology shall be used for conversion between feet and meters.

(b) For the Wisconsin coordinate system of 1927, the distances under par. (a) are the x-coordinate, which shall give the position in an east-and-west direction, and the y-coordinate, which shall give the position in a north-and-south direction.

(c) For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the distances are the northing, which shall give the position in a north-and-south direction and the easting, which shall give the position in an east-and-west direction.

(d) Coordinates in all of the systems under sub. (2) shall depend upon and conform to the plane rectangular coordinate values for the monumented points of the national geodetic reference system horizontal control network that are published by the national geodetic survey or by that agency's successor if those values have been computed on the basis of a system under sub. (2).

(7) USE OF TERM RESTRICTED. No person may use the term "Wisconsin coordinate system" on any map, report of a survey or other document unless the coordinates on the document are based on a system under sub. (2).

(8) DESIGNATION. Any person who prepares a plat under this section shall designate on that plat which of the systems under sub. (2) and which of the zones under sub. (3) that person has referenced.

(9) MULTIPLE DESCRIPTIONS. If a document describes a tract of land by means of the coordinates of a system under sub. (2) and by means of a reference to a subdivision, line or corner of the U.S. public land surveys, the description by means of coordinates supplements and is subordinate to the other description.

(10) RIGHT OF LENDERS AND PURCHASERS. A lender or purchaser may require a borrower or seller to provide the description required under s. 236.20.

History: 1979 c. 248 ss. 10, 25 (1); 1993 a. 16, 490; 2001 a. 16.

SUBCHAPTER IV

FINAL PLAT AND DATA

236.20 Final plat. A final plat of subdivided land shall comply with all of the following requirements:

(1) GENERAL REQUIREMENTS. All plats shall be legibly prepared and meet all of the following requirements:

(a) The plat shall have a one-inch margin on all sides. A graphic scale of not more than 100 feet to one inch shall be shown on each sheet showing layout features. When more than one sheet is used for any plat, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the plat and showing the relation of that sheet to the other sheets and each sheet shall bear the subdivision and county name.

(c) For processing under s. 236.12 (2), the original copy of the final plat shall be 22 inches wide by 30 inches long and on any material that is capable of clearly legible reproduction.

(2) MAP AND ENGINEERING INFORMATION. The final plat shall show correctly on its face all of the following:

(a) The exterior boundaries of the land surveyed and divided.

(b) All monuments erected, corners, and other points established in the field in their proper places. The material of which the monuments, corners, or other points are made shall be noted at the representation thereof or by legend, except lot, outlot, and meander corners need not be shown. The legend for metal monuments shall indicate the kind of metal, the outside diameter, length, and weight per lineal foot of the monuments.

(c) The length and bearing of the exterior boundaries, the boundary lines of all blocks, public grounds, streets, and alleys, and all lot lines, except that when the lines in any tier of lots are parallel it shall be sufficient to mark the bearings of the outer lines on one tier. Easements not parallel to a boundary or lot line shall be shown by center line distance, bearing, and width or by easement boundary bearings and distances. Where easement lines are parallel to boundary or lot lines, the boundary or lot line distances and bearings are controlling. Where the exterior boundary lines show bearings or lengths that vary from those recorded in abutting plats or certified surveys there shall be the following note placed along the lines, "recorded as (show recorded bearing or length or both)."

(d) Blocks, if designated, shall be consecutively numbered, or lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively through the several additions.

(e) All lots and outlots in each block consecutively numbered within blocks and the subdivision and throughout numbered additions to the subdivision.

(f) The exact width of all easements, streets and alleys.

(g) All shore meander lines for all lakes or navigable streams that are established by the professional land surveyor in accordance with s. 236.15 (1) (d), the distances and bearings thereof, and the distance between the point of intersection of such meander lines with lot lines and the determined or approximated ordinary high water mark.

(h) The center line of all streets.

(i) A north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and re-

lated to a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located.

(j) The area in square feet of each lot and outlot.

(k) When a street is on a circular curve, the main chords of the right-of-way lines shall be drawn as dotted or dashed lines in their proper places. All curved lines shall show, either on the lines or in an adjoining table, the radius of the circle, the central angle subtended, the chord bearing, the chord length, and the arc length for each segment. The tangent bearing shall be shown for each end of the main chord for all nontangent circular lines. When a circular curve of 30-foot radius or less is used to round off the intersection between 2 straight lines, it shall be tangent to both straight lines. It is sufficient to show on the plat the radius of the curve and the tangent distances from the points of curvature to the point of intersection of the straight lines.

(L) When strict compliance with a provision of this section will entail undue or unnecessary difficulty or tend to render the plat or certified survey map more difficult to read, and when the information on the plat or certified survey map is sufficient for the exact retracement of the measurements and bearings or other necessary dimensions, the department or, in 1st class cities, the city engineer may waive such strict compliance.

(3) NAME, LOCATION AND POSITION. The name of the plat shall be printed thereon in prominent letters, and shall not be a duplicate of the name of any plat previously recorded in the same county or municipality. All of the following information relating to the position and location of the subdivision shall be shown on the plat:

(a) The location of the subdivision by government lot, recorded private claim, quarter-quarter section, section, township, range, and county noted immediately under the name given to the subdivision.

(b) The location of the subdivision shall be indicated by bearing and distance from a boundary line of a government lot monumented in the original survey or resurvey of Wisconsin, quarter section, recorded private claim, or federal reservation in which the subdivision is located. The monumentation at the ends of the boundary line shall be described and the bearing and distance between them shown.

(c) A small drawing of the section or governmental subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon or, if approved by the department, a location sketch showing the relationship of the subdivision to existing streets. The drawing or sketch shall be oriented on the sheet in the same direction as the main drawing.

(d) The names of adjoining streets, state highways and subdivisions shown in their proper location underscored by a dotted or dashed line.

(e) Abutting street and state highway lines of adjoining plats shown in their proper location by dotted or dashed lines. The width of these streets and highways shall be given also.

(4) ROADS AND PUBLIC SPACES. (a) The name of each road or street in the plat shall be printed on the plat.

(b) All lands dedicated to public use shall be clearly marked "Dedicated to the Public".

(c) All roads or streets shown on the plat which are not dedicated to public use shall be clearly marked "Private Road" or "Private Street" or "Private Way".

(d) Each lot within the plat must have access to a public street unless otherwise provided by local ordinance.

(5) SITE CONDITIONS AND TOPOGRAPHY. The final plat shall show all of the following:

(a) All existing buildings.

(b) All watercourses, drainage ditches and other existing features pertinent to proper subdivision.

(c) The water elevations of adjoining lakes or navigable streams at the date of the survey and the approximate high water elevations of those lakes or streams. All elevations shall be referred to some permanent established datum plane.

(6) PUBLIC TRUST INFORMATION. A final plat of a subdivision, or a certified survey map of land, to which s. 236.16 (4) applies shall show on its face the following statement:

"Any land below the ordinary high water mark of a lake or a navigable stream is subject to the public trust in navigable waters that is established under article IX, section 1, of the state constitution."

History: 1979 c. 221, 248; 1983 a. 473; 1999 a. 85; 2001 a. 16, 103, 104; 2013 a. 358.

When a strip of land was labeled on a plat "Public Access" that abutted a lake and connected to a public highway, the plat substantially met the statutory requirement of a "clear dedication to the public." While the dedication did not contain the exact formula found in sub. (4), under *Hunt*, 19 Wis. 2d 113 (1963), that was not necessary. Vande Zande v. Town of Marquette, 2008 WI App 144, 314 Wis. 2d 143, 758 N.W.2d 187, 07-2354.

Discussing the circumstances under which the statutory platting standards set forth in sub. (4) (d) and s. 236.16 (1), (2), and (3) may be waived or varied, with specific reference to the approval of island subdivision plats. 62 Atty. Gen. 315.

Discussing the extent to which local governments may vary the terms of sub. (4) (d) and s. 236.16 (1) and (2) by ordinance. 64 Atty. Gen. 175.

A proposed plat may not consist solely of outlots. 66 Atty. Gen. 238.

236.21 Certificates to accompany plat. To entitle a final plat to be recorded, the following certificates lettered or printed legibly with a black durable image or typed legibly with black ribbon shall appear on it:

(1) PROFESSIONAL LAND SURVEYOR'S CERTIFICATE OF COMPLIANCE WITH STATUTE. The certificate of the professional land surveyor who surveyed, divided, and mapped the land giving all of the following information, which shall have the same force and effect as an affidavit:

(a) By whose direction the professional land surveyor made the survey, subdivision, and plat of the land described on the plat.

(b) 1. Except as provided in subd. 2., a clear and concise description of the land surveyed, divided, and mapped by government lot, recorded private claim, quarter-quarter section, section, township, range, and county and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section that is not the center of the section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the subdivision is located.

2. If the land is shown in a recorded subdivision plat, recorded addition to a recorded subdivision plat, or recorded certified survey map that has previously been tied to the monumented line of a quarter section, government lot, recorded private claim, or federal reservation in which the land is located, the land shall be described by the subdivision name or certified survey map number and the description of the lot and block thereof.

(c) A statement that the plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it.

(d) A statement that the professional land surveyor has fully complied with the provisions of this chapter in surveying, dividing, and mapping the land.

(2) OWNER'S CERTIFICATE. (a) A certificate by the owner of the land in substantially the following form: "As owner I hereby certify that I caused the land described on this plat to be surveyed, divided, mapped and dedicated as represented on the plat. I also certify that this plat is required by s. 236.10 or 236.12 to be submitted to the following for approval or objection: (list of governing bodies required to approve or allowed to object to the plat)." This certificate shall be signed by the owner, the owner's

spouse, and all persons holding an interest in the fee of record or by being in possession and, if the land is mortgaged, by the mortgagee of record. These signatures shall be acknowledged in accordance with ch. 140.

(b) As a condition to approval of the plat, the municipal, town or county body required by s. 236.12 to approve the plat may require that the owner furnish an abstract of title certified to date of submission for approval or, at the option of the owner, a policy of title insurance or certificate of title from an abstract company for examination in order to ascertain whether all parties in interest have signed the owner's certificate on the plat.

(3) CERTIFICATE OF TAXES PAID. A certificate of the clerk or treasurer of the municipality or town in which the subdivision lies and a certificate of the treasurer of the county in which the subdivision lies stating that there are no unpaid taxes or unpaid special assessments on any of the lands included in the plat.

History: 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85; 2001 a. 16; 2013 a. 358; 2019 a. 125.

SUBCHAPTER V

RECORDING OF PLATS

236.25 Recording a plat. (1) The subdivider shall have the final plat recorded in the office of the register of deeds of the county in which the subdivision is located.

(2) The register of deeds shall not accept a plat for record unless:

(a) It is a permanent nonfading black image on durable white media that is 22 inches wide by 30 inches long or on other media that is acceptable to the register of deeds, complies with the requirements of s. 59.43 (2m) (b) 4., and bears a department certification of no objection. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals;

(b) The plat is offered for record within 12 months after the date of the last approval of the plat and within 36 months after the first approval;

(c) The plat shows on its face all the certificates and affidavits required by ss. 236.12 (3) and 236.21;

(d) The plat shows on its face the approval of all bodies required by s. 236.10 to approve or the certificate of the clerk that the plat is deemed approved under s. 236.11 (2) (a).

(3) The recording of a plat which is not entitled to be recorded under sub. (2) shall not of itself affect the title of a purchaser of a lot covered by the plat, the donation or dedication of land made by the plat, or the validity of a description of land by reference to the plat, but it allows the purchaser a right to rescind the sale under s. 236.31.

(4) Each final plat entitled to be recorded under this section shall be bound or filed by the register of deeds into properly indexed volumes or stored electronically in a plat index. Any facsimile of the original whole record, made and prepared by the register of deeds or under his or her direction shall be deemed to be a true copy of the final plat.

(5) The register of deeds may furnish certified copies or other accurate reproductions of any plat on record in his or her office to surveyors, engineers or other interested parties at cost.

History: 1979 c. 248 ss. 19, 25 (5); 1983 a. 473; 1997 a. 332; 2001 a. 16; 2005 a. 9, 41; 2009 a. 376; 2013 a. 358; 2015 a. 48.

236.26 Notification to approving authorities. When a final plat is recorded, the register of deeds shall notify all authorities required by s. 236.10 to approve or permitted by s. 236.12 to object to the plat by mailing to the clerk of each authority written notice thereof.

History: 1981 c. 314.

236.27 Filing of copy of plat. The subdivider shall file a true copy of the final plat as a public record with the clerk of the municipality or town in which the subdivision is located.

236.28 Description of lots in recorded plat. When a subdivision plat has been recorded in accordance with s. 236.25, the lots in that plat shall be described by the name of the plat and the lot and block in the plat for all purposes, including those of assessment, taxation, devise, descent and conveyance as defined in s. 706.01 (4). Any conveyance containing such a description shall be construed to convey to the grantee all portions of vacated streets and alleys abutting such lots and belonging to the grantor unless the grantor by appropriate language indicates an intention to reserve or except them from the conveyance.

History: 1971 c. 41 s. 11; 1983 a. 189 s. 329 (26).

One who buys lots with reference to a plat that shows certain ways in common is entitled to the use, with the other lot owners, of the ways in common. Lot owners in the same subdivision whose lots are purchased with reference to the same plat are estopped to deny the use in common with other lot owners in the subdivision. The recording of the plat and conveyance of lots by the owner with reference to the plat constitutes the granting of an easement to the purchasers of lots within the subdivision to ingress and egress over private roadways in common with other lot owners, and the original proprietors and their grantees are estopped to deny the legal existence of such rights of ingress and egress. Schimmels v. Noordover, 2006 WI App 7, 288 Wis. 2d 790, 709 N.W.2d 466, 04-2794.

236.29 Dedications. (1) EFFECT OF RECORDING ON DEDICATIONS. When any plat is certified, signed, acknowledged and recorded as prescribed in this chapter, every donation or grant to the public or any person, society or corporation marked or noted as such on said plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted, and shall be considered a general warranty against such donors, their heirs and assigns to the said donees for their use for the purposes therein expressed and no other; and the land intended for the streets, alleys, ways, commons or other public uses as designated on said plat shall be held by the town, city or village in which such plat is situated in trust to and for such uses and purposes.

(2) DEDICATIONS TO PUBLIC ACCEPTED BY APPROVAL. When a final plat of a subdivision has been approved by the governing body of the municipality or town in which the subdivision is located and all other required approvals are obtained and the plat is recorded, that approval constitutes acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public including street dedications.

(3) MUNICIPALITY MAY LEASE TO A SUBDIVISION ASSOCIATION LAND ACCEPTED FOR PARK. The municipality or town in which the accepted subdivision is located may lease to a subdivision association any part of the subdivision intended for park purposes where such part has never been improved nor work done thereon nor funds expended therefor by the governing body, but such lease shall not exceed 10 years and shall only be for park improvement purposes.

(4) ACCEPTANCE OF STORM WATER FACILITIES DEDICATED TO PUBLIC. Notwithstanding sub. (2), unless an earlier date is agreed to by the municipality, the dedication of any lands within a plat of a subdivision located within a municipality that are intended to include a permanent man-made facility designed for reducing the quantity or quality impacts of storm water runoff from more than one lot and that are shown on the plat as "Dedicated to the Public for Storm Water Management Purposes" is not accepted until at least 80 percent of the lots in the subdivision have been sold and a professional engineer registered under ch. 443 has certified to the municipality that all of the following conditions are met with respect to the facility:

(a) The facility is functioning properly in accordance with the plans and specifications of the municipality.

(b) Any required plantings are adequate, well-established, and reasonably free of invasive species.

(c) Any necessary maintenance, including removal of construction sediment, has been properly performed.

History: 2007 a. 44.

A complaint against plat subdividers by a city set forth a cause of action with respect to costs incurred by the city in moving a tower and acquiring a right-of-way when the plat of a street dedicated as part of a subdivision did not show the existence, location, or easement of a power company's transmission line located in the area platted as a street. City of Kenosha v. Ghysels, 46 Wis. 2d 418, 175 N.W.2d 223 (1970).

While sub. (1) provides that every donation or grant to the public marked or noted as such on a properly recorded plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted, statutory dedication requires compliance with statutory procedure. For the state to rely on sub. (1) to convey property via a certified survey map (CSM) that marked a parcel as a dedication, the property first has to be properly dedicated in accordance with s. 236.34 (1m) (e). Under that statute, the city council or village or town board involved must have approved the dedication. As no governmental board involved in the development in this case approved any road dedication or land grant for inclusion in the CSM, the CSM lacked the force and effect required to convey the property to the state. Somers USA, LLC v. DOT, 2015 WI App 33, 361 Wis. 2d 807, 864 N.W.2d 114, 14-1092.

236.292 Certain restrictions void. (1) All restrictions on platted land that interfere with the development of the ice age trail under s. 23.17 are void.

(2) All restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), are void.

History: 1991 a. 39; 1993 a. 414; 1999 a. 150 s. 672.

236.293 Restrictions for public benefit. Any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body or which names a public body or public utility as grantee, promisee or beneficiary, vests in the public body or public utility the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction. The restriction may be released or waived in writing by the public body or public utility having the right of enforcement.

History: 1979 c. 248.

The hidden dangers of placing easements on plats. Ishikawa. WBB Apr. 1988.

236.295 Correction instruments. (1) Correction instruments shall be recorded in the office of the register of deeds in the county in which the plat or certified survey map is recorded and may include any of the following:

(a) Affidavits to correct distances, angles, directions, bearings, chords, block or lot numbers, street names, or other details shown on a recorded plat or certified survey map. A correction instrument may not be used to reconfigure lots or outlots.

(b) Ratifications of a recorded plat or certified survey map signed and acknowledged in accordance with ch. 140.

(c) Certificates of owners and mortgagees of record at time of recording.

(2) (a) Each affidavit in sub. (1) (a) correcting a plat or certified survey map that changes areas dedicated to the public or restrictions for the public benefit must be approved prior to recording by the governing body of the municipality or town in which the subdivision is located. The register of deeds shall include on the plat or certified survey map a notation of the document number of the affidavit or instrument and, if the affidavit or instrument is assigned a volume and page number, the volume and page where the affidavit or instrument is recorded. The record of the affidavit or instrument, or a certified copy of the record, is prima facie evidence of the facts stated in the affidavit or instrument.

(b) Notwithstanding par. (a), in a county that maintains a tract index pursuant to s. 59.43 (12m), a correction may be made by reference in the tract index to the plat or certified survey map.

History: 1971 c. 41 s. 11; 1979 c. 248; 1999 a. 85; 2001 a. 16; 2005 a. 41; 2017 a. 102; 2019 a. 125.

This section does not apply to assessors' plats. 61 Atty. Gen. 25.

SUBCHAPTER VI

PENALTIES AND REMEDIES

236.30 Forfeiture for improper recording. Any person causing his or her final plat to be recorded without submitting such plat for approval as herein required, or who shall fail to present the same for record within the time prescribed after approval, shall forfeit not less than $100, nor more than $1,000 to each municipality, town or county wherein such final plat should have been submitted.

History: 1979 c. 248 s. 25 (5).

236.31 Penalties and remedies for transfer of lots without recorded plat. (1) Any subdivider or the subdivider's agent who offers or contracts to convey, or conveys, any subdivision as defined in s. 236.02 (12) or lot or parcel which lies in a subdivision as defined in s. 236.02 (12) knowing that the final plat thereof has not been recorded may be fined not more than $500 or imprisoned not more than 6 months or both; except where the preliminary or final plat of the subdivision has been filed for approval with the town or municipality in which the subdivision lies, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.

(2) Any municipality, town, county, or state agency with subdivision review authority may institute injunction or other appropriate action or proceeding to enjoin a violation of any provision of this chapter, an ordinance, or a rule adopted under this chapter. Any such municipality, town, or county may impose a forfeiture for violation of any such ordinance, and order an assessor's plat to be made under s. 70.27 at the expense of the subdivider or the subdivider's agent when a subdivision is created under s. 236.02 (12) (am) 2. by successive divisions.

(3) Any conveyance or contract to convey made by the subdivider or the subdivider's agent contrary to this section or involving a plat which was not entitled to be recorded under s. 236.25 (2) shall be voidable at the option of the purchaser or person contracting to purchase, his or her heirs, personal representative or trustee in insolvency or bankruptcy within one year after the execution of the document or contract; but such document or contract shall be binding on the vendor, the subdivider's assignee, heir or devisee.

History: 1979 c. 248 s. 25 (6); 1979 c. 355, 357; 1983 a. 189 s. 329 (23); 2013 a. 272.

Sub. (3) does not allow a purchaser to force a seller to violate sub. (1) and become subject to criminal penalties by doing so. Gordie Boucher Lincoln-Mercury Madison Inc. v. J&H Landfill, Inc., 172 Wis. 2d 333, 493 N.W.2d 375 (Ct. App. 1992).

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8) [now s. 236.02 (12)]. Penalties under this section apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.32 Penalty for disturbing or not placing monuments. (1m) Any of the following may be fined not more than $250 or imprisoned not more than one year in county jail for any of the following violations:

(a) Any owner, professional land surveyor, or subdivider who fails to place monuments as prescribed in this chapter when subdividing land.

(b) Any person who knowingly removes or disturbs any such monument without the permission of the governing body of the

municipality or county in which the subdivision is located or fails to report such disturbance or removal to it.

(c) Any person who fails to replace properly any monuments that have been removed or disturbed when ordered to do so by the governing body of the municipality or county in which the subdivision is located.

(2m) Each monument to which a violation under sub. (1m) applies constitutes a separate violation.

History: 2013 a. 358.

236.33 Division of land into small parcels in cities of the first class prohibited; penalty. It shall be unlawful to divide or subdivide and convey by deed or otherwise any lot in any recorded plat or any parcel or tract of unplatted land in any city of the first class so as to create a lot or parcel of land which does not have street or public highway frontage of at least 4 feet or an easement to a street or public highway of a minimum width of 4 feet but this section shall not apply to conveyances by tax deed or through the exercise of eminent domain or to such reductions in size or area as are caused by the taking of property for public purposes. This section shall not prohibit the dividing or subdividing of any lot or parcel of land in any such city where the divided or subdivided parts thereof which become joined in ownership with any other lot or parcel of land comply with the requirements of this section, if the remaining portion of such lot or parcel so divided or subdivided complies. Any person who shall make such conveyance or procure such a sale or act as agent in procuring such sale or conveyance shall be fined not less than $100 or more than $500 or imprisoned not more than 6 months or both.

236.335 Prohibited subdividing; forfeit. No lot or parcel in a recorded plat may be divided, or used if so divided, for purposes of sale or building development if the resulting lots or parcels do not conform to this chapter, to any applicable ordinance of the approving authority or to the rules of the department of safety and professional services under s. 236.13. Any person making or causing such a division to be made shall forfeit not less than $100 nor more than $500 to the approving authority, or to the state if there is a violation of this chapter or the rules of the department of safety and professional services.

History: 1979 c. 221; 1995 a. 27 s. 9130 (4); 1997 a. 3; 2007 a. 20; 2011 a. 32.

Discussing the circumstances under which lots in a recorded subdivision may be legally divided without replatting. 64 Atty. Gen. 80.

236.34 Recording of certified survey map; use in changing boundaries; use in conveyancing. (1) DESCRIPTION AND USES. (am) A certified survey map of not more than 4 parcels of land, or such greater maximum number specified by an ordinance enacted or resolution adopted under par. (ar) 1., consisting of lots or outlots may be recorded in the office of the register of deeds of the county in which the land is situated.

(ar) 1. Notwithstanding s. 236.45 (2) (ac) and (am), a municipality, town, or county that has established a planning agency may enact an ordinance or adopt a resolution that specifies a maximum number of parcels that is greater than 4 into which land that is situated in the municipality, town, or county and zoned for commercial, multifamily dwelling, as defined in s. 101.01 (8m), industrial, or mixed-use development may be divided by certified survey map.

2. Before the enactment of an ordinance or the adoption of a resolution under subd. 1., the governing body of the municipality, town, or county shall receive the recommendation of its planning agency and shall hold a public hearing on the ordinance or resolution. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance enacted or resolution adopted shall be published in a form suitable for public distribution.

3. Notwithstanding subd. 1., an ordinance enacted or resolution adopted under subd. 1. by a municipality may specify the number of parcels into which land within the extraterritorial plat approval jurisdiction of the municipality, as well as land within the corporate limits of the municipality, may be divided by certified survey map if the municipality has the right to approve or object to plats within that area under s. 236.10 (1) (b) 2. and (2).

4. If more than one governing body has authority to enact an ordinance or adopt a resolution under subd. 1. with respect to the same land and those governing bodies enact ordinances or adopt resolutions with conflicting provisions, any certified survey map affecting that land must comply with the most restrictive provisions.

(bm) A certified survey map may be used to change the boundaries of lots and outlots within a recorded plat, recorded assessor's plat under s. 70.27, or recorded certified survey map if the reconfiguration does not result in a subdivision or violate a local ordinance or resolution.

(cm) A certified survey map may not alter areas previously dedicated to the public or a restriction placed on the platted land by covenant, by grant of an easement, or by any other manner.

(dm) A certified survey map that crosses the exterior boundary of a recorded plat or assessor's plat shall apply to the reconfiguration of not more than 4 parcels, or such greater maximum number specified by an ordinance enacted or resolution adopted under par. (ar) 1., by a single owner, or if no additional parcels are created. Subject to sub. (2m), such a certified survey map must be approved in the same manner as a final plat of a subdivision must be approved under s. 236.10, must be monumented in accordance with s. 236.15 (1), and shall contain owners' and mortgagees' certificates that are in substantially the same form as required under s. 236.21 (2) (a).

(1m) PREPARATION. A certified survey must meet the following requirements:

(a) The survey shall be performed and the map prepared by a professional land surveyor. The error in the latitude and departure closure of the survey may not exceed the ratio of one in 3,000.

(b) All corners shall be monumented in accordance with s. 236.15 (1) (ac), (c), (d), and (g).

(c) The map shall be prepared in accordance with ss. 236.16 (4) and 236.20 (2) (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), and (L) and (3) (b), (d), and (e) at a graphic scale of not more than 500 feet to an inch, which shall be shown on each sheet showing layout features. The map shall be prepared with a binding margin 1.5 inches wide and a 0.5 inch margin on all other sides on durable white media that is 8 1/2 inches wide by 14 inches long, or on other media that is acceptable to the register of deeds, with a permanent nonfading black image. When more than one sheet is used for any map, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the map and showing the relationship of that sheet to the other sheets. "CERTIFIED SURVEY MAP" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter-quarter section, section, township, range and county noted. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals.

(d) The map shall include a certificate of the professional land surveyor who surveyed, divided, and mapped the land which has the same force and effect as an affidavit and which gives all of the following information:

1. By whose direction the professional land surveyor made

the survey, division, and map of the land described on the certified survey map.

2. A clear and concise description of the land surveyed, divided, and mapped by government lot, recorded private claim, quarter-quarter section, section, township, range and county; and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section that is not the center of a section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the land is located. If, however, the land is shown in a recorded subdivision plat, recorded addition to a recorded subdivision plat, or recorded certified survey map that has previously been tied to the monumented line of a quarter section, government lot, recorded private claim, or federal reservation in which the land is located, the land shall be described by the subdivision name or certified survey map number and the description of the lot and block thereof.

3. A statement that the map is a correct representation of all of the exterior boundaries of the land surveyed and the division of that land.

4. A statement that the professional land surveyor has fully complied with the provisions of this section in surveying, dividing, and mapping the land.

(e) A certified survey map may be used for dedication of streets and other public areas, and for granting easements to the public or any person, society, or corporation marked or noted on the map, when owners' certificates and mortgagees' certificates which are in substantially the same form as required by s. 236.21 (2) (a) have been executed and the city council or village or town board involved have approved such dedication or grant. Approval and recording of such certified surveys shall have the force and effect provided by s. 236.29.

(em) 1. Except as provided in subd. 2., if the certified survey map divides land into more than 4 parcels in accordance with an ordinance enacted or resolution adopted under sub. (1) (ar) 1., notwithstanding pars. (b) and (c), the survey and the map shall comply with ss. 236.15, 236.20, and 236.21 (1) and (2) and the map shall be submitted to the department of administration for a review of the compliance with those sections.

2. Subdivision 1. does not apply if any of the following applies:

a. The certified survey map is only changing the boundaries of lots and outlots in a recorded plat, recorded assessor's plat under s. 70.27, or recorded certified survey map, regardless of whether the certified survey map crosses the exterior boundary of the recorded plat, assessor's plat, or certified survey map.

b. The certified survey map is dividing land that is wholly situated in a 1st class city.

c. The certified survey map is dividing unincorporated land in a county with a population of 750,000 or more.

(er) 1. Except as provided in subd. 2., the certified survey map and survey shall comply with the rules of the department of transportation described in s. 236.13 (1) (e) and the map shall be submitted to the department of transportation for a review of the compliance with those rules if all of the following apply:

a. The certified survey map divides land into more than 4 parcels in accordance with an ordinance enacted or resolution adopted under sub. (1) (ar) 1.

b. The certified survey map is changing the external boundary of a recorded plat, recorded assessor's plat, or recorded certified survey map.

c. The certified survey map or recorded plat, recorded assessor's plat, or recorded certified survey map shows lots that abut or adjoin a state trunk highway or connecting highway.

2. Subdivision 1. does not apply if any of the following applies:

a. The certified survey map is dividing land that is wholly situated in a 1st class city.

b. The certified survey map is dividing unincorporated land in a county with a population of 750,000 or more.

(f) Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, approve conditionally, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act.

(2) RECORDING. (a) Certified survey maps prepared in accordance with subs. (1) and (1m) shall be numbered consecutively by the register of deeds and shall be recorded in a bound volume kept in the register of deeds' office, known as the "Certified Survey Maps of .... County", or stored electronically in the register of deeds office.

(b) If the certified survey map is approved by a local unit of government, the register of deeds may not accept the certified survey map for record unless all of the following apply:

1. The certified survey map is offered for record within 12 months after the date of the last approval of the map and within 36 months after the date of the first approval of the map.

2. The certified survey map shows on its face all of the certificates and affidavits required under subs. (1) and (1m).

(2m) COUNTY APPROVAL AUTHORITY. (a) Except as provided in par. (b), a county planning agency under s. 236.10 (1) (b) 3. or (c) 2. has no authority to approve or object to a certified survey map that divides land that is located in a town that has, before the certified survey map is submitted for approval, enacted an ordinance under s. 60.23 (34) or (35) withdrawing the town from county zoning and the county development plan.

(b) A county planning agency under s. 236.10 (1) (b) 3. or (c) 2. may object to any of the following portions of a certified survey map that divides land located in a town described in par. (a):

1. Any land shown on and subject to the certified survey map that is shoreland, as defined in s. 59.692 (1) (b), in the county.

2. Any land shown on and subject to the certified survey map that is in a 100-year floodplain in the county.

(3) USE IN CONVEYANCING. When a certified survey map has been recorded in accordance with this section, the parcels of land in the map shall be, for all purposes, including assessment, taxation, devise, descent, and conveyance, as defined in s. 706.01 (4), described by reference to all of the following:

(a) The number of the map.

(b) The lot or outlot number of the parcel.

(c) If the map is assigned a document number, the document number assigned to the map.

(d) If the map is assigned a volume and page number, the volume and page where the map is recorded.

(e) The name of the county.

(4) VACATION. A certified survey map may be vacated by the circuit court of the county in which the parcels of land are located in the same manner and with like effect as provided in ss. 236.40 to 236.44, except that application for vacation of the certified survey map may be made by any of the following:

(a) The owner of any lot or outlot in the land that is the subject of the certified survey map.

(b) The county board if the county has acquired an interest by tax deed in any lot or outlot in the land that is the subject of the certified survey map.

History: 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96; 2001 a. 16; 2005 a. 9, 41; 2013 a. 272, 358; 2015 a. 48, 178; 2017 a. 102; 2017 a. 207 s. 5; 2017 a. 243; 2021 a. 238 s. 45; 2023 a. 264.

While s. 236.29 (1) provides that every donation or grant to the public marked or noted as such on a properly recorded plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted, statutory dedication requires compliance with statutory procedure. For the state to rely on s. 236.29 (1) to convey property via a certified survey map (CSM) that marked a parcel as a dedication, the property first has to be properly dedicated in accordance with sub. (1m) (e). Under that statute, the city council or village or town board involved must have approved the dedication. As no governmental board involved in the development in this case approved any road dedication or land grant for inclusion in the CSM, the CSM lacked the force and effect required to convey the property to the state. Somers USA, LLC v. DOT, 2015 WI App 33, 361 Wis. 2d 807, 864 N.W.2d 114, 14-1092.

Sub. (2) requires that certified survey maps be numbered consecutively without dependent reference to ownership, developer, or surveyor. 61 Atty. Gen. 34.

Certified survey maps under this section cannot substitute for subdivision surveys under s. 236.02 (8) [now s. 236.02 (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

SUBCHAPTER VII

SUPPLEMENTAL PROVISIONS

236.35 Sale of lands abutting on private way outside corporate limits of municipality. (1) No person shall sell any parcel of land of one acre or less in size, located outside the corporate limits of a municipality, if it abuts on a road which has not been accepted as a public road unless the seller informs the purchaser in writing of the fact that the road is not a public road and is not required to be maintained by the town or county.

(2) Any person violating this section may be fined not more than $200 or imprisoned not more than 30 days or both.

SUBCHAPTER VIII

VACATING AND ALTERING PLATS

236.36 Replats. Except as provided in s. 70.27 (1), replat of all or any part of a recorded subdivision, if it alters areas dedicated to the public, may not be made or recorded except after proper court action, in the county in which the subdivision is located, has been taken to vacate the original plat or the specific part thereof.

A recorded subdivision may be replatted under this section without undertaking the court proceedings set forth in ss. 236.40, 236.41, and 236.42 if the replat complies with the requirements of this chapter applicable to original plats and does not alter areas dedicated to the public. 58 Atty. Gen. 145.

A replat of a recorded subdivision must comply with the formal platting requirements of this chapter relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

This section permits the replat of a part of a previously recorded subdivision plat, without circuit court action, if the only areas dedicated to the public in that portion of the original subdivision being replatted are discontinued streets fully and properly vacated under s. 66.296 [now s. 66.1003]. 63 Atty. Gen. 210.

Discussing the circumstances under which lots in a recorded subdivision may be legally divided without replatting. 64 Atty. Gen. 80.

This chapter does not require a replat when the division of a lot or redivision of more than one lot does not meet the definition of a "subdivision" under s. 236.02. 67 Atty. Gen. 121.

236.40 Who may apply for vacation of plat. Any of the following may apply to the circuit court for the county in which a subdivision is located for the vacation or alteration of all or part of the recorded plat of that subdivision:

(1) The owner of the subdivision or of any lot in the subdivision.

(2) The county board if the county has acquired an interest in the subdivision or in any lot in the subdivision by tax deed.

236.41 How notice given. Notice of the application for the vacation or alteration of the plat shall be given at least 3 weeks before the application:

(1) By posting a written notice thereof in at least 2 of the most public places in the county; and

(2) By publication of a copy of the notice as a class 3 notice, under ch. 985; and

(3) By service of the notice in the manner required for service of a summons in the circuit court on the municipality or town in which the subdivision is located, and if it is located in a county having a population of 750,000 or over, on the county; and

(4) By mailing a copy of the notice to the owners of record of all the lots in the subdivision or the part of the subdivision proposed to be vacated or altered at their last-known address.

History: 2017 a. 207 s. 5.

The provisions of this section relating to vacation of streets are inapplicable to assessors' plats under s. 70.27. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessors' plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998), 98-0841.

236.42 Hearing and order. (1) After requiring proof that the notices required by s. 236.41 have been given and after hearing all interested parties, the court may in its discretion grant an order vacating or altering the plat or any part thereof except:

(a) The court shall not vacate any alleys immediately in the rear of lots fronting on county trunk highways without the prior approval of the county board or on state trunk highways without the prior approval of the department of transportation.

(b) The court shall not vacate any parts of the plat which have been dedicated to and accepted by the public for public use except as provided in s. 236.43.

(2) The vacation or alteration of a plat shall not affect:

(a) Any restriction under s. 236.293, unless the public body having the right to enforce the restriction has in writing released or waived such restriction.

(b) Any restrictive covenant applying to any of the platted land.

History: 1977 c. 29 s. 1654 (8) (c).

236.43 Vacation or alteration of areas dedicated to the public. Parts of a plat dedicated to and accepted by the public for public use may be vacated or altered as follows:

(1) The court may vacate streets, roads or other public ways on a plat if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) During all that period the areas dedicated for streets, roads or other public ways were not improved as streets, roads or other public ways; and

(c) Those areas are not necessary to reach other platted property; and

(d) All the owners of all the land in the plat or part thereof sought to be vacated and the governing body of the city, village or town in which the street, road or other public way is located have joined in the application for vacation.

(2) The court may vacate land platted as a public square upon the application of the municipality or town in which the dedicated land is located if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) The land was never in fact developed or utilized by the municipality or town as a public square.

(3) The court may vacate land, in a city, county, village or town, platted as a public park or playground upon the application of the local legislative body of such city, county, village or town

where the land has never been developed by said city, county, village or town as a public park or playground.

(4) When the plat is being vacated or altered in any 2nd, 3rd or 4th class city or in any village or town which includes a street, road, alley or public walkway, said street, road, alley or public walkway may be vacated or altered by the circuit court proceeding under ss. 236.41 and 236.42 upon the following conditions:

(a) A resolution is passed by the governing body requesting such vacation or alteration.

(b) The owners of all frontage of the lots and lands abutting on the portion sought to be vacated or altered request in writing that such action be taken.

History: 1993 a. 246; 1997 a. 172; 2003 a. 286.

Cross-reference: See s. 66.1003 for other provisions for vacating streets.

Although dedicated as a street, an improvement of land as another public way may meet the requirements of sub. (1) (b). A walkway cleared and improved to be conducive to pedestrian traffic is a public way improved in accordance with sub. (1) (b). K.G.R. Partnership v. Town of East Troy, 187 Wis. 2d 376, 523 N.W.2d 120 (Ct. App. 1994).

A municipality is not an owner under sub. (1) (d). Closser v. Town of Harding, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997), 96-3086.

Isolated improvements to provide for a scenic outlook were not improvements as a street, road, or public way under sub. (1). Closser v. Town of Harding, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997), 96-3086.

1997 Wis. Act 172 makes several things clear: 1) a local government has no obligation to improve a lake or stream access, regardless of when that access is created; 2) a lake or stream access may not be discontinued under s. 80.32 [now s. 82.19]; and 3) a lake or stream access may be vacated under this section only, and only if the governing municipality agrees. Vande Zande v. Town of Marquette, 2008 WI App 144, 314 Wis. 2d 143, 758 N.W.2d 187, 07-2354.

236.44 Recording order. The applicant for the vacation or alteration shall record in the office of the register of deeds the order vacating or altering the plat together with the plat showing the part vacated if only part of the plat is vacated or the altered plat if the plat is altered.

236.445 Discontinuance of streets by county board. Any county board may alter or discontinue any street, slip or alley in any recorded plat in any town in such county, not within any city or village, in the same manner and with like effect as provided in s. 66.1003.

History: 1999 a. 150 s. 672.

SUBCHAPTER IX

SUBDIVISION REGULATION AND REGIONAL PLANS

236.45 Local subdivision regulation. (1) DECLARATION OF LEGISLATIVE INTENT. The purpose of this section is to promote the public health, safety and general welfare of the community and the regulations authorized to be made are designed to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations provided for by this section shall be made with reasonable consideration, among other things, of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town or county.

(2) DELEGATION OF POWER. (ac) To accomplish the purposes listed in sub. (1), any municipality, town or county that has established a planning agency may enact ordinances governing the subdivision or other division of land that are more restrictive than the provisions of this chapter, except that no ordinance may modify in a more restrictive way time limits, deadlines, notice requirements, or other provisions of this chapter that provide protections for a subdivider.

(am) Ordinances under par. (ac) may include provisions regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to s. 66.1002, may prohibit the division of land in areas where such prohibition will carry out the purposes of this section. Such ordinances shall make applicable to such divisions all of the provisions of this chapter, or may provide other surveying, monumenting, mapping and approving requirements for such division. The governing body of the municipality, town, or county shall require that a plat of such division be recorded with the register of deeds and kept in a book provided for that purpose or stored electronically. "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter-quarter section, section, township, range, and county noted. When so recorded, the lots included in the plat shall be described by reference to "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT," the name of the plat and the lot and block in the plat, for all purposes, including those of assessment, taxation, devise, descent, and conveyance as defined in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5 parcels, shall not apply to:

1. Transfers of interests in land by will or pursuant to court order;

2. Leases for a term not to exceed 10 years, mortgages or easements;

3. The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this chapter or other applicable laws or ordinances;

4. Such other divisions exempted by such ordinances.

(b) This section and any ordinance adopted pursuant thereto shall be liberally construed in favor of the municipality, town or county and shall not be deemed a limitation or repeal of any requirement or power granted or appearing in this chapter or elsewhere, relating to the subdivision of lands.

(3) AREAS IN WHICH SUBDIVISION ORDINANCES APPLY. (a) An ordinance adopted hereunder by a municipality may regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the municipality as well as land within the corporate limits of the municipality if it has the right to approve or object to plats within that area under s. 236.10 (1) (b) 2. and (2).

(b) Notwithstanding par. (a) and subs. (1) and (2), a municipality may not deny approval of a plat or certified survey map under this section or s. 236.10 or 236.13 on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction of the municipality, unless the denial is based on a plan or regulations, or amendments thereto, adopted by the governing body of the municipality under s. 62.23 (7a) (c).

(4) PROCEDURE. Before adoption of a subdivision ordinance or any amendments thereto the governing body shall receive the recommendation of its planning agency and shall hold a public hearing thereon. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance adopted shall be published in form suitable for public distribution.

(5) REGULATION OF FEDERAL SURPLUS LAND. With respect to any surplus lands in excess of 500 acres in area, except the Bong air base in Kenosha County, sold in this state by the federal government for private development, the department, in accordance with the procedure specified in ch. 227, may regulate the

subdivision or other division of such federal surplus land in any of the ways and with the same powers authorized hereunder for municipalities, towns or counties. Before promulgating such rules, the department shall first receive the recommendations of any committee appointed for that purpose by the governor.

(6) REQUIREMENTS FOR APPROVAL CONDITIONS. (ac) In this subsection, "improvement of land for public parks" means grading, landscaping, installation of utilities, construction of sidewalks, installation of playground equipment, and construction or installation of restroom facilities on land intended for public park purposes.

(am) Notwithstanding subs. (1) and (2) (ac), a municipality, town, or county may not, as a condition of approval under this chapter, impose any fees or other charges to fund the acquisition or improvement of land, infrastructure, or other real or personal property, except that a municipality or town may impose a fee or other charge to fund the acquisition or initial improvement of land for public parks if the fee or other charge is imposed under a subdivision ordinance enacted or amended in accordance with the procedures under s. 66.0617 (3) to (5) and meets the requirements under s. 66.0617 (6) to (10).

(b) Any land dedication, easement, or other public improvement or fee for the acquisition or initial improvement of land for a public park that is required by a municipality, town, or county as a condition of approval under this chapter must bear a rational relationship to a need for the land dedication, easement, or other public improvement or parkland acquisition or initial improvement fee resulting from the subdivision or other division of land and must be proportional to the need.

(c) If a subdivision ordinance of a municipality, town, or county requires, as a condition of approval under this chapter, that a subdivider dedicate land for a public park, the municipality, town, or county may offer the subdivider the option of either dedicating land consistent with the municipality's, town's, or county's park plan and comprehensive plan or paying a fee or other charge under par. (am) in lieu of the dedication. If the subdivider elects to pay a fee or other charge under this paragraph, the fee or other charge is payable by the landowner to the municipality, town, or county upon the issuance of a building permit by the municipality, town, or county. If the subdivider elects to dedicate land under this paragraph, unless the municipality, town, or county agrees otherwise, the subdivider only may dedicate land that is consistent with the municipality's, town's, or county's park plan and comprehensive plan.

History: 1979 c. 221, 248, 355; 1981 c. 354; 1983 a. 189 s. 329 (26); 2001 a. 16; 2005 a. 477; 2007 a. 44; 2009 a. 376, 399; 2015 a. 48, 391; 2017 a. 243.

This section authorizes towns to regulate minimum lot size. Town of Sun Prairie v. Storms, 110 Wis. 2d 58, 327 N.W.2d 642 (1983).

The assessment of school and park land dedication fees as a condition for rezoning and issuance of a building permit was authorized. Black v. City of Waukesha, 125 Wis. 2d 254, 371 N.W.2d 389 (Ct. App. 1985).

This section does not prevent municipalities from adopting and enforcing more than one ordinance that relates to subdivisions. Manthe v. Town Board, 204 Wis. 2d 546, 555 N.W.2d 167 (Ct. App. 1996), 95-1312.

A city may not condition extraterritorial plat approval on annexation. Hoepker v. City of Madison Plan Commission, 209 Wis. 2d 633, 563 N.W.2d 145 (1997), 95-2013.

It was not a violation of this section, s. 61.34, or the public purpose doctrine for a municipality to assume the dual role of subdivider of property it owned and reviewer of the plat under this chapter. Town of Beloit v. County of Rock, 2001 WI App 256, 249 Wis. 2d 88, 637 N.W.2d 71, 00-1231.
Affirmed on other grounds. 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344, 00-1231.

A municipality has the authority under sub. (2) to impose a temporary town-wide prohibition on land division while developing a comprehensive plan under s. 66.1001. Wisconsin Realtors Ass'n v. Town of West Point, 2008 WI App 40, 309 Wis. 2d 199, 747 N.W.2d 681, 06-2761.

A city may not use its extraterritorial plat approval authority to impose land use regulation that should have been done in cooperation with neighboring towns through extraterritorial zoning. Although purporting to be a density standard, the city's 35-acre density restriction was a use prohibition, the very essence of zoning. Lake Delavan Property Co. v. City of Delavan, 2014 WI App 35, 353 Wis. 2d 173, 844 N.W.2d 632, 13-1202.

Although they often work together, zoning and subdivision regulations provide separate and distinct means of regulating the development of land. There are areas of overlap between the two powers, but there are also key differences. Subdivision control is concerned with the initial division of undeveloped land, while zoning more specifically regulates the further use of this land. State ex rel. Anderson v. Town of Newbold, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18-0547.

In this case, the town's ordinance set minimum lot frontage requirements for each lake within its borders. Pursuant to the *Zwiefelhofer*, 2012 WI 7, factors, the town's ordinance was not a zoning ordinance. It did not concern land use, and it did not separate compatible and incompatible land uses, which is a key purpose of a zoning ordinance. Because it was not a zoning ordinance, the restrictions on town enactment of zoning ordinances set by s. 59.692 did not apply, and the ordinance was a permissible exercise of the town's subdivision authority pursuant to this section. State ex rel. Anderson v. Town of Newbold, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18-0547.

A subdivision plat prepared in compliance with a local ordinance enacted under the authority of this section is not required by statutes to be submitted for state level review unless such land division results in a "subdivision," as defined in s. 236.02 (8) [now s. 236.02 (12)]. 59 Atty. Gen. 262.

If subdivision regulations, adopted under this section, conflict, a plat must comply with the most restrictive requirement. 61 Atty. Gen. 289.

Discussing the application of municipal and county subdivision control ordinances within the municipality's extraterritorial plat approval jurisdiction. 66 Atty. Gen. 103.

A county's minimum lot size zoning ordinance applies to parcels created by a court through division in a partition or probate action, even if such division would be exempted from a municipality's subdivision authority under sub. (2) (am) 1. A county can enact a subdivision ordinance requiring prior review of sales or exchanges of parcels between adjoining landowners in order to determine whether the division would comply with minimum lot size requirements. OAG 1-14.

236.46 County plans. (1) (a) The county planning agency may prepare plans, in such units as it may determine, for the future platting of lands within the county, but without the limits of any municipality, or for the future location of streets or highways or parkways, and the extension or widening of existing streets and highways. Before completion of these plans, the county planning agency shall fix the time and place it will hear all persons who desire to be heard upon the proposed plans, and shall give notice of that hearing as required below for the passage of the ordinance by the county board. After these hearings the county planning agency shall certify the plans to the county board, who may, after having submitted the same to the town boards of the several towns in which the lands are located and obtained the approval of the town boards, adopt by ordinance the proposed plans for future platting or for street or highway or parkway location in towns which may have approved the same, and upon approval of those towns may amend the ordinance. Before the ordinance or any amendments to the ordinance are adopted by the county board, notice shall be given by publication of a class 2 notice, under ch. 985, of a hearing at which all persons interested shall be given an opportunity to be heard at a time and place to be specified in the notice. The ordinance with any amendments as may be made shall govern the platting of all lands within the area to which it applies.

(b) In counties having a population of less than 750,000 any plan adopted under this section does not apply in the extraterritorial plat approval jurisdiction of any municipality unless that municipality by ordinance approves the same. This approval may be rescinded by ordinance.

(2) A plan adopted under this section may be any of the following:

(a) A system of arterial thoroughfares complete for each town.

(b) A system of minor streets for the complete area surrounded by any such main arterial thoroughfares and connecting therewith.

(c) The platting of lots for any area surrounded completely by any such arterial thoroughfares or any such minor streets or both.

(3) Such system of arterial thoroughfares and such system of minor streets within such system of arterial thoroughfares and such platting of lots within any such system of minor streets may be adopted by the same proceeding. For the purpose of this section a parkway may be considered either an arterial thoroughfare or a minor street if it performs the function of an arterial thoroughfare or minor street. A natural obstacle like a lake or river or

an artificial obstacle like a railroad or town line may, where necessary, be the boundary of a plan adopted under this section instead of a street or highway or parkway.

History: 1979 c. 248; 2017 a. 207 s. 5.

SUBCHAPTER X

GENERAL PROVISIONS

236.50 Date chapter applies; curative provisions as to plats before that date. (1) (a) This chapter shall take effect upon July 1, 1956, but any plat recorded prior to December 31, 1956, may be approved and recorded in accordance with this chapter or ch. 236, 1953 stats. This chapter shall not require that any subdivision made prior to July 1, 1956, which was platted under the laws in force at that time or which did not constitute a subdivision under the laws in force at that time, be platted and the plat approved and recorded as provided in this chapter.

(b) This chapter shall not require the preparation and recording of a plat of any subdivision which has been staked out and in which sales or contracts of sales have actually been made prior to June 28, 1935, and nothing herein contained shall require the recording of a plat showing property sold or contracted for sale by metes and bounds or by reference to an unrecorded plat prior to June 28, 1935, as a condition precedent to the sale or contract of sale of the whole or part thereof.

(2) No plat which was recorded in the office of any register of deeds prior to July 1, 1956, shall be held invalid by reason of noncompliance with any statute regulating the platting of lands, in force at the time of such recording. Any unaccepted offer of donation or dedication of land attempted to be made in any such plat shall be as effectual as though all statutory requirements had been complied with unless an action to set aside such offer of donation or dedication is commenced prior to July 1, 1958.

conditions related to assurance of protection of the interest of the public in the body of water.

(4) ENVIRONMENTAL DEGRADATION. Access sites may also be abandoned where environmental degradation is occurring at the site as a result of existing use, and abandonment of the access will reduce or eliminate the degradation without reducing public interests in access to that body of water.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; renum. from NR 1.32, Register, October, 1977, No. 262, eff. 11-1-77; r. and recr. Register, March, 1994, No. 459, eff. 4-1-94; corrections in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register April 2005 No. 592.

NR 1.93 Access in platted subdivisions. Under s. 236.16 (3), Stats., the department has authority to recommend wider access at less frequent intervals than are prescribed in the statutes. The department shall consider waiver of the 60-foot access requirement only where the department determines:

(1) It will be advantageous to public interests in navigable water;

(2) Adequate space for access users and adequate buffering for private property is assured by access wider than 60 feet where possible; and

(3) The access that would result provides an equal or greater opportunity for public access than would be provided by dedication at statutorily prescribed intervals and the 60-foot width.

History: Cr. Register, January, 1980, No. 289, eff. 2-1-80; am. (2) (a) and (2) (b) 7., r. and recr. (3), r. (4) (a) 3., Register, October, 1982, No. 322, eff. 11-1-82; r. and recr. Register, March, 1994, No. 459, eff. 4-1-94.

NR 1.95 Wetlands preservation, protection, restoration and management. (1) PURPOSE. It is the intent of the natural resources board to establish rules policy for the preservation, protection, restoration and management of wetlands in the state of Wisconsin. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values. Proposals for administrative rules and for legislation shall include appropriate provisions, consistent with this section, except as otherwise provided by law.

(2) AUTHORITY. The department, under existing law, has the responsibility of making and enforcing regulatory and management decisions which, directly or indirectly, affect the quantity and quality of many Wisconsin wetlands.

(a) Wisconsin has a history of active water resource protection under the public trust doctrine which originated in the northwest ordinance of 1787, the enabling act under which Wisconsin became a state, and the Wisconsin constitution.

(b) The department is designated under s. 281.11, Stats., as the central unit of state government responsible for protecting, maintaining and improving the quality of the waters of the state. Department actions must be consistent with the goal of maintaining, protecting and improving water quality.

(c) Under the Wisconsin environmental policy act, s. 1.11, Stats., the department is required to study, develop and describe appropriate alternatives to recommended courses of action for proposals which involve unresolved conflicts concerning alternative uses of available resources and to make decisions with the knowledge of their effects on the quality of the human environment.

(d) The department, pursuant to ss. 23.09 and 29.011, Stats., and s. NR 1.015, must provide for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources of the state. The department is obliged to develop and implement appropriate scientific management practices to achieve these objectives.

(3) NATURAL RESOURCES BOARD FINDINGS. (a) *Introduction.* The presence of wetlands signifies physical characteristics which are limiting factors in the human activities which may occur in and adjacent to them. What may be limitations for one use of a wetland may also be the principal values supporting a different use. The state's policy as articulated in its trusteeship of navigable waters and the statutes enacted to further the protection and enhancement of the quality of its waters, creates a presumption against activities which adversely affect those wetlands under department jurisdiction or control.

(b) *Wetland values.* Wetlands are known to possess a wide range of natural and human values, some or all of which may apply to a particular wetland under review. Assessing the value of a wetland is a complex procedure requiring thoughtful analysis of all possible wetland values and functions.

1. 'Biological functions.' Wetlands are environments in which a variety of biological functions occur. In many cases, wetlands are very productive ecosystems which support a wide diversity of aquatic and terrestrial organisms. Many wetland areas are vital spawning, breeding, nursery or feeding grounds for a variety of indigenous species. Some wetlands are the habitats for state or federally designated rare, threatened or endangered species.

2. 'Watershed functions.' In addition to their biological functions, wetlands may serve important physical and chemical functions with respect to other wetlands and waters of the state. A specific wetland, or set of wetlands, may play a critical role in maintaining the stability of the ecosystem to which it is physically and functionally related. This functional role may include the maintenance of both the hydrologic patterns and the physical and chemical processes of related wetlands and other related waters of the state.

a. A particular wetland may function to maintain the hydrologic characteristics, and thereby the physical and chemical integrity of an entire aquatic ecosystem.

b. Groundwater may discharge to a wetland, recharge from a wetland to another area, evaporate from and/or flow through a wetland.

c. Some wetlands may be important for storing water and retarding flow during periods of flood or storm discharge. Even wetlands without surface water connections to other water bodies may serve this function. Such wetlands can reduce or at least modify the potentially damaging effects of floods by intercepting and retaining water which might otherwise be channeled through open flow systems. The importance of a given wetland for storm and flood water storage may be modified by the cumulative effects of the proposed activities and previous activities within the watershed.

d. Wetlands also function to dissipate the energy of wave motion and runoff surges from storms and snowmelt, and thus lessen the effects of shoreline erosion. Wave action shielding by wetlands is not only important in preserving shorelines and channels, but also in protecting valuable residential, commercial and industrial acreage located adjacent to the aquatic ecosystems.

e. A wetland may perform a variety of other important functions within a watershed. Wetlands may degrade, inactivate or store materials such as heavy metals, sediments, nutrients, and organic compounds that would otherwise drain into waterways.

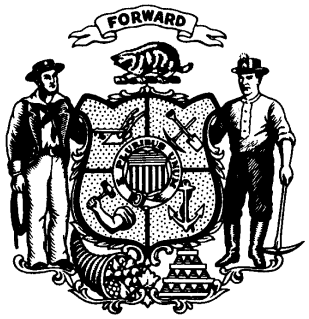
3. 'Recreational, cultural and economic value.' Some wetlands are particularly valuable in meeting the demand for recreational areas (for uses such as hunting, canoeing, hiking, snowshoeing, and nature study), directly or indirectly, by helping to maintain water quality and providing wildlife habitat. To some people and cultures certain wetlands provide an important part of their economic base and/or contribute to their cultural heritage.

4. 'Scarcity of wetland type.' Certain wetland types, e.g., calcareous fens, wild rice lakes, which are statewide or regionally scarce possess special resource significance. Scarcity or rareness depends on the frequency of occurrence of the type, the area of the type in existence prior to settlement, the historical conversion

Policy 5.10.3 (deleted)

~~5.10.3) The Wisconsin public service commission may not certify any nuclear power plant unless the commission finds that a federally licensed facility, or a facility outside of the United States which the commission determines will satisfy the public welfare requirements of the people of the state, with adequate capacity to dispose of high-level nuclear waste from all nuclear power plants operating in the state will be available, as necessary, for the disposal of the waste and the proposed nuclear power plant, in comparison with feasible alternatives, is economically advantageous to ratepayers. (See Wis. Stats. § 196.493)~~

State of Wisconsin



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2015 WISCONSIN ACT 344

AN ACT ***to repeal*** 196.493; ***to amend*** 196.491 (3) (d) (intro.); and ***to create*** 1.12 (4) (cm) of the statutes; **relating to:** requirements for approval of construction of nuclear power plants and changes to the state's energy priorities policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 1.12 (4) (cm) of the statutes is created to read:

1.12 **(4)** (cm) Advanced nuclear energy using a reactor design or amended reactor design approved after December 31, 2010, by the U.S. Nuclear Regulatory Commission.

SECTION 2. 196.491 (3) (d) (intro.) of the statutes is amended to read:

196.491 **(3)** (d) (intro.) Except as provided under par. (e) ~~and s. 196.493~~, the commission shall approve an application filed under par. (a) 1. for a certificate of public convenience and necessity only if the commission determines all of the following:

SECTION 3. 196.493 of the statutes is repealed.

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* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."