

# NATURAL RESOURCES BOARD AGENDA ITEM

**SUBJECT:** Request approval of the Statement of Scope for Board Order SS-14-12, to revise Chapter NR 219, Wis. Admin. Rule - Analytical Test Methods and Procedures

**FOR:** JUNE 2012 BOARD MEETING

**TO BE PRESENTED BY / TITLE:** Russ Rasmussen, Deputy Water Division Administrator

**SUMMARY:**

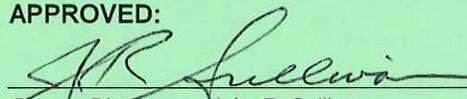
This rule change is necessary to comply with findings by the Environmental Protection Agency (EPA). On July 28, 2011, the Department received a letter (dated July 18, 2011) from EPA identifying seventy-five questions and potential inconsistencies between Wisconsin's statutory or regulatory authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program and federal statutes or regulations. This rule package is designed to address the ninth citation in EPA's July 18th letter. After conferring with EPA, the Department is proposing to respond to the ninth citation through revisions to Chapter NR 219. The purpose of the proposed changes is to ensure that the state's regulations are consistent with federal regulations. Specifically, the proposed rule package will address EPA's issues with the Department rule incorporating SW 846 methods for wastewater sample analysis. The EPA publication SW-846, entitled Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, is the waste division of EPA's official compendium of analytical and sampling methods that have been evaluated and approved for use in complying with the federal RCRA regulations. The DNR has allowed SW 846 methods for analysis of wastewater samples since 1995 because the methods are revised frequently and contain stringent quality control measures. However, EPA has requested that DNR remove from NR 219 all references to allowing SW 846 methods as "approved" methods for analysis of wastewater samples. EPA has also requested that DNR update NR 219 to incorporate analytical methods that have been federally approved in the Federal Register (40 CFR 136). Therefore, one objective of this rule change is to remove analytical methods that EPA has not approved for wastewater from the list of approved analyses in NR 219. The other objective is to add methods that are currently allowed by EPA per 40 CFR Part 136 but are not included in NR 219.

**RECOMMENDATION:** Approve of Department action to revise NR 219 to be consistent with federal regulations.

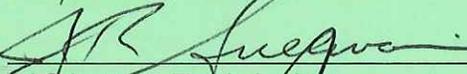
**LIST OF ATTACHED MATERIALS:**

- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input checked="" type="checkbox"/> | Fiscal Estimate Required                              | Yes | <input type="checkbox"/>            | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/>            | Attached |
| No | <input type="checkbox"/>            | Background Memo                                       | Yes | <input checked="" type="checkbox"/> | Attached |

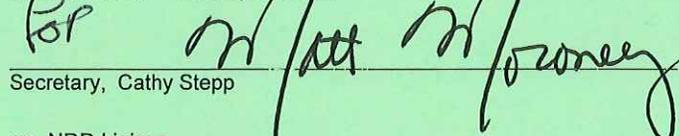
**APPROVED:**

  
Bureau Director, John R. Sullivan

5/30/12  
Date

  
Administrator, Timothy Lawhern

5/30/12  
Date

  
Secretary, Cathy Stepp

6/7/12  
Date

cc: NRB Liaison  
DNR Rules Coordinator

Camille Turcotte - SS/7  
Cheryl Heilman - LS/8

DATE: May 30, 2012

TO: Natural Resources Board Members

FROM: Cathy Stepp, Secretary

SUBJECT: Scoping Statement Related to Revision of NR 219

### **Subject/Objective of Proposed Rule**

This rule change is necessary to comply with findings by the Environmental Protection Agency (EPA).

On July 28, 2011, the Department received a letter (dated July 18, 2011) from EPA identifying seventy-five questions and potential inconsistencies between Wisconsin's statutory or regulatory authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program and federal statutes or regulations.

DNR is taking a broad-based approach in response to EPA's letter. For the rule making component of this broad based approach, the Department is proposing seven different rule packages to address some of the listed concerns. This is the seventh proposed rule package which is designed to address the ninth citation in EPA's July 18<sup>th</sup> letter. After conferring with EPA, the Department is proposing to respond to the ninth citation through revisions to Chapter NR 219. The purpose of the proposed changes is to ensure that the state's regulations are consistent with federal regulations.

Specifically, the proposed rule package will address EPA's issues with the Department rule (NR 219) incorporating SW 846 methods for wastewater sample analysis. The EPA publication SW-846, entitled *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, is the waste division of EPA's official compendium of analytical and sampling methods that have been evaluated and approved for use in complying with the federal Resource Conservation and Recovery Act (RCRA) regulations. The DNR has allowed SW 846 methods for analysis of wastewater samples since 1995 because the methods are revised frequently and contain stringent quality control measures. However, EPA has requested that DNR remove from NR 219 all references to allowing SW 846 methods as "approved" methods for analysis of wastewater samples. EPA has also requested that DNR update NR 219 to incorporate analytical methods that have been federally approved in the Federal Register (40 CFR 136).

Therefore, one objective of this rule change is to remove analytical methods that EPA has not approved for wastewater from the list of approved analyses in NR 219. The other objective is to add methods that are currently allowed by EPA per 40 CFR Part 136 but are not included in NR 219 at this time.

## **Description of Policy Issues/Analysis of Policy Alternatives**

NR 219 establishes analytical test methods, preservation procedures, requirements for laboratories, and procedures applicable to effluent limitations for discharges from point sources as authorized by

ss. 299.11 and 283.55 (1), Stats. The proposed changes to this rule will remove SW 846 analytical methods that EPA has determined are not allowed for WPDES wastewater analyses. NR 219 will also be changed to include methods now allowed by EPA under 40 CFR 136. In the July 18<sup>th</sup> letter, EPA notified Wisconsin that changes must be made to state rules or statutes to ensure consistency with federal laws and regulations for the NPDES permit program, or alternatively, the state must demonstrate that it has adequate authority (through an Attorney General's Statement or other information). For all of the issues addressed in this rule package, the Department determined that proposing rule changes should be made so state rules for the WPDES permit program are clearly consistent with federal regulations.

### **Economic Impact**

This rule change will not have a significant impact on any entities or small businesses. It will only change the options for the analytical methods that a laboratory can use to assess WPDES samples. There could be a small cost to laboratories that have been using the SW 846 methods that will no longer be allowed. The cost would be for obtaining copies of allowed methods, and staff time needed to update their methodology and change forms or other documents that reference the SW 846 methods. The Department believes that any change in test procedures should not significantly change the fees charged to permittees by laboratories. The Department believes the economic impact would be minimal because the regulatory changes are very minor (insignificant impact on small businesses).

### **Statutory Authority**

The purpose of this proposed rule package is to amend NR 219, Wis. Admin. Code, to comply with specific federal NPDES testing requirements that apply to Wisconsin's WPDES permit program.

Wisconsin Stat. s. 299.11(7)(b) authorizes the Department to prescribe by rule the accepted methodology to be followed by certified laboratories in conducting tests. This section requires the Department to attempt to prescribe this methodology so that it is consistent with any methodology requirements under federal law, including under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

Wisconsin Stat. s. 283.31(3) authorizes the Department to issue permits for the discharge of any pollutant or combination of pollutants upon certain conditions, including that such discharges will meet effluent limitations, standards of performance for new sources, effluent standards, prohibitions, and pretreatment standards, and any more stringent limitations including those necessary to comply with any applicable federal law.

Wisconsin Stat. 283.55(1) authorizes the Department to prescribe by rule the methods, locations, and manner of sampling of effluents from each owner or operator of a point source who is required to obtain a permit under 283.31. Samples and test results are required to meet the requirements in Wisconsin Stat. 283.55(1) to provide records to the Department regarding, among other things, the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's control.

Wisconsin Stat. 281.19(1) authorizes the Department to 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 waters of the state. NR 219 prescribes procedures and test methods for determining the concentration and quantities of pollutants discharged under WPDES permits.

### **Estimate of Time Needed to Develop the Rule**

It will take state employees approximately 160 hours to develop the rule and other resources to make the changes required by the EPA.

### **Summary and Comparison of Applicable Federal Regulations**

This rule package will ensure state rules are consistent with federal regulations identified by EPA in their July 18th letter that is specified above.

### **Entities Affected by the Rule**

75 Commercial Analytical Laboratories – these are laboratories that analyze environmental (aqueous, solid and drinking water) samples for hire.

57 Industrial Analytical Laboratories – these are laboratories that are a part of an industry and analyze environmental samples on their own behalf.

245 Municipal Analytical Laboratories – these are laboratories owned by a municipality that generally do analysis of samples for the community's wastewater treatment facility.

10 Public Health/Public Water Utility Analytical Laboratories – these are generally county labs that support the public health department in that area and analyze primarily drinking water samples but may do some wastewater analyses.

WPDES Permittees – these are the permittees that have a WPDES permit which requires samples to be analyzed by approved methods.

### **Agency Contact Person**

ESS Section Chief, Camille Turcotte 608.266.0245

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: NR 219 SS - 14 - 12

Relating to: Analytical Test Methods and Procedures for Analysis of Wastewater Samples

Rule Type: Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

### 2. Detailed description of the objective of the proposed rule:

This rule change is necessary to comply with findings by the Environmental Protection Agency (EPA).

On July 28, 2011, the Department received a letter (dated July 18, 2011) from EPA identifying seventy-five questions and potential inconsistencies between Wisconsin's statutory or regulatory authority to administer its National Pollutant Discharge Elimination System (NPDES) approved program and federal statutes or regulations.

DNR is taking a broad-based approach in response to EPA's letter. For the rule making component of this broad based approach, the Department is proposing eight different rule packages to address some of the listed concerns. This is the eighth proposed rule package which is designed to address the ninth citation in EPA's July 18<sup>th</sup> letter. After conferring with EPA, the Department is proposing to respond to the ninth citation through revisions to Chapter NR 219. The purpose of the proposed changes is to ensure that the state's regulations are consistent with federal regulations.

Specifically, the proposed rule package will address EPA's issues with the Department rule incorporating SW 846 methods for wastewater sample analysis. The EPA publication SW-846, entitled *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, is the waste division of EPA's official compendium of analytical and sampling methods that have been evaluated and approved for use in complying with the federal Resource Conservation and Recovery Act (RCRA) regulations. The DNR has allowed SW 846 methods for analysis of wastewater samples since 1995 because the methods are revised frequently and contain stringent quality control measures. However, EPA has requested that DNR remove from NR 219 all references to allowing SW 846 methods as "approved" methods for analysis of wastewater samples. EPA has also requested that DNR update NR 219 to incorporate analytical methods that have been federally approved in the Federal Register (40 CFR 136).

Therefore, one objective of this rule change is to remove analytical methods that EPA has not approved for wastewater from the list of approved analyses in NR 219. The other objective is to add methods that are currently allowed by EPA per 40 CFR Part 136 but are not included in NR 219 at this time.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

NR 219 establishes analytical test methods, preservation procedures, requirements for laboratories, and procedures applicable to effluent limitations for discharges from point sources as authorized by ss. 299.11 and 283.55 (1), Stats. The proposed changes to this rule will remove SW 846 analytical methods that EPA has determined are not allowed for WPDES wastewater analyses. NR 219 will also be changed to include methods now allowed by EPA under 40 CFR 136. In the July 18<sup>th</sup> letter, EPA notified Wisconsin that changes must be made to state rules or statutes to ensure consistency with federal laws and regulations for the NPDES permit program, or alternatively, the state must demonstrate that it has adequate authority (through an Attorney General's Statement or other information). For all of the issues addressed in this rule package, the Department determined that proposing rule changes should be made so state rules for the WPDES permit program are clearly consistent with federal regulations.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The purpose of this proposed rule package is to amend NR 219, Wis. Admin. Code, to comply with specific federal NPDES testing requirements that apply to Wisconsin's WPDES permit program.

Wisconsin Stat. s. 299.11(7)(b) authorizes the Department to prescribe by rule the accepted methodology to be followed by certified laboratories in conducting tests. This section requires the Department to attempt to prescribe this methodology so that it is consistent with any methodology requirements under federal law, including under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

Wisconsin Stat. s. 283.31(3) authorizes the Department to issue permits for the discharge of any pollutant or combination of pollutants upon certain conditions, including that such discharges will meet effluent limitations, standards of performance for new sources, effluent standards, prohibitions, and pretreatment standards, and any more stringent limitations including those necessary to comply with any applicable federal law.

Wisconsin Stat. 283.55(1) authorizes the Department to prescribe by rule the methods, locations, and manner of sampling of effluents from each owner or operator of a point source who is required to obtain a permit under 283.31. Samples and test results are required to meet the requirements in Wisconsin Stat. 283.55(1) to provide records to the Department regarding, among other things, the volume of effluent discharged and the amount of each pollutant discharged from each point source under the owner's or operator's control.

Wisconsin Stat. 281.19(1) authorizes the Department to 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 waters of the state. NR 219 prescribes procedures and test methods for determining the concentration and quantities of pollutants discharged under WPDES permits.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

It will take state employees approximately 160 hours to develop the rule and other resources to make the changes required by the EPA.

**6. List with description of all entities that may be affected by the proposed rule:**

75 Commercial Analytical Laboratories – these are laboratories that analyze environmental (aqueous, solid and drinking water) samples for hire.

57 Industrial Analytical Laboratories – these are laboratories that are a part of an industry and analyze environmental samples on their own behalf.

245 Municipal Analytical Laboratories – these are laboratories owned by a municipality that generally do analysis of samples for the community's wastewater treatment facility.

10 Public Health/Public Water Utility Analytical Laboratories – these are generally county labs that support the public health department in that area and analyze primarily drinking water samples but may do some wastewater analyses.

WPDES Permittees – these are the permittees that have a WPDES permit which requires samples to be analyzed by approved methods.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

This rule package will ensure state rules are consistent with federal regulations identified by EPA in its July 18<sup>th</sup> letter that are specified in section 2 above.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

This rule change will not have a significant impact on any entities or small businesses. It will only change the options for the analytical methods that a laboratory can use to assess WPDES samples. There could be a small cost to laboratories that have been using the SW 846 methods that will no longer be allowed. The cost would be for obtaining copies of allowed methods, and staff time needed to update their methodology and change forms or other documents that reference the SW 846 methods. The Department believes that any change in test

procedures should not significantly change the fees charged to permittees by laboratories. The Department believes the economic impact would be minimal because the regulatory changes are very minor (insignificant impact on small businesses).

Contact Person: Camille Turcotte 608.266.0245

*Matt Mowrey*

Department Head or Authorized Signature

*5/3/12*

Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. BOX 7863  
MADISON, WI 53707

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May 29, 2012

Cathy Stepp  
Secretary  
Wisconsin Department of Natural Resources  
101 South Webster St.  
P.O. Box 7921  
Madison, WI 53707-7921

**RE: Scope Statement for SS-14-12**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on May 3, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 219 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker  
Governor