BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
Natural Resources Board Order WT-31-10

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on proposed revisions to ch. NR 106 Wisconsin Admin Code, relating to the Wisconsin Pollutant Discharge Elimination System (WPDES) wastewater permit program regarding bioaccumulative chemicals of concern mixing zones, pollutants in intake waters, non-contact cooling water exemption, and mercury reasonable potential determination and other aspects of the WPDES permitting program, on the date and at the time and location listed below.

Hearing Information

Date and Time
Monday, December 7, 2015, 8 - 10:30 am

Location
Wisconsin Department of Natural Resources
Room G09
101 South Webster Street
Madison, WI 53703

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Amanda Minks using the contact information below. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate
The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link https://health.wisconsin.gov/admrules/public/Home. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Jennifer Jerich using the contact information below.

Submitting Comments
Comments on the proposed rule must be received on or before December 18, 2015. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Jennifer Jerich
Department of Natural Resources
N7725 Highway 28
Horicon, WI 53032-9782

Phone: (920) 387-7886
Fax: (920) 387-7888
E-mail: Jennifer.Jerich@Wisconsin.gov
Internet: Use the Administrative Rules System Web site accessible through the link provided

Analysis Prepared by the Department of Natural Resources

1. *Statutes interpreted:* Chapter 283, Stats.

2. *Statutory authority:* Sections 227.11(2)(a), 283.13(5), 283.13, 283.31(3), (4), Stats.

3. *Explanation of agency authority:* Chapter 283, Stats. grants authority to the department to establish, administer and maintain a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit Program

consistent with the requirements of the federal water pollution control act of 1972, commonly known as the Clean Water Act, and amendments to the act. Section 283.13(5), Stats, authorizes the department to establish more stringent water quality based effluent limitations and to require compliance with such limitations if these limitations are necessary to comply with any state or federal law, rule or regulation. Section 283.31(3), (4) Stats., provides authority to issue permits that require compliance with effluent limitations and standards for point source discharges to surface waters and any more stringent limitations needed to comply with state or federal water quality standards or any applicable federal law or regulation. The department also has general authority to promulgate rules under s. 227.11 (2) (a), Stats. that interpret the specific statutory authority granted in ch. 283, Stats.

4. Related statute or rule: These rule changes relate directly to the WPDES Permit program and the regulation of wastewater discharges. Chapter NR 106, Wis. Adm. Code, contains the procedures used by the Bureau of Water Quality to calculate water quality based effluent limitations for WPDES permits issued to point source discharges to surface waters under ch. 283, Stats. Related statutes and rules include: s. 281.15, Stats., which authorizes the department to promulgate water quality standards for waters of the state. Water quality standards for surface waters are set in chs. NR 102 to 105, Wis. Adm. Code.

5. Plain language analysis: The primary purpose of these proposed rule changes to ch. NR 106, Wis. Adm. Code, is to be consistent with federal requirements for calculating and implementing water quality based effluent limitations for point source discharges to surface waters included in WPDES Permits.

In a letter dated July 18, 2011, U.S. Environmental Protection Agency (EPA) identified 75 potential issues or deficiencies in Wisconsin's statutory and regulatory authority for the WPDES Permit Program. EPA directed the department to either make rule changes to address these inconsistencies or deficiencies or obtain a statement from the Attorney General's Office verifying that the existing rules are consistent with federal regulations. The proposed rules address four of the 75 issues identified in EPA's July 18, 2011 letter.

In addition to making some minor clarifications and cross-referencing corrections to the Administrative Code for uniformity, these proposed rule changes will:

- Revise s. NR 106.06(2) to phase out (with some exceptions) mixing zone allowances for discharges of bioaccumulative chemicals of concern (BCC)s in the Great Lakes system. While Wisconsin is already adhering to the requirements of the federal Great Lakes Water Quality Initiative (GLI), the proposed rules formally adopt the GLI requirements. When Wisconsin last made changes to NR 106, a footnote in the rule indicated that such changes would be promulgated.

- Modify s. NR 106.06(6) provisions that regulate pollutant discharges when a pollutant is present in the intake water used as the water supply for industrial and municipal dischargers. The proposed rules adopt the federal requirements for establishing effluent limitations.

- Remove the exemption from regulation in s. NR 106.10(1) and (2) for noncontact cooling water (NCCW) containing chlorine or other chemical additives present at levels consistent with those in public water supplies, as required by a Dane County Circuit Court Stipulation and Order in Case No. 12-CV-0569, *Midwest Environmental Defense Center v. WDNR, et. al.* (March 2, 2012) and federal regulations.

- Remove the special definition of "representative data" for purposes of determining reasonable potential to exceed effluent limitations for mercury in s. NR 106.145(1) and (2).

7. Comparison of similar rules in adjacent states: All of the other EPA Region 5 states (Illinois, Iowa Indiana, Michigan, Minnesota and Ohio) are subject to EPA regulations implementing the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) Program. All other states bordering the Great Lakes system (Illinois, Indiana, Michigan, Minnesota, New York, Ohio and

Pennsylvania), are subject to the GLI. See 40 CFR Part 132 (setting forth requirements that Great Lakes States must adopt). The proposed rules will align Wisconsin's WPDES regulations with federal regulations.

8. *Summary of factual data and analytical methodologies:* The methodology identified in this rule package is based on Clean Water Act and Great Lake Initiative requirements and on EPA guidance including the *Technical Support Document for Water Quality-based Toxics Control* (March 1991). PB91-127415.

9. *Analysis and supporting documentation used to determine effect on small business or in preparation of an economic impact analysis:*

A discussion of EPA's reasons for issuing the federal Water Quality Guidance for the Great Lakes System and the data underlying EPA's analysis are included in "Final Water Quality Guidance for the Great Lakes System: Supplementary Information Document" (SID) (EPA 1995). See also 60 Fed. Reg. 15366 to 15385 (1995) (concerning the history of the Great Lakes Water Quality Initiative and EPA's adoption of Final Water Quality Guidance for the Great Lakes System).

10. *Effect on small business:*

Notice soliciting comments regarding potential economic impacts of these proposed rule changes has been sent to all industrial and municipal facilities currently regulated by a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit.

The department estimates that the economic impact of these rules will be moderate and, pursuant to 2011 Executive Order 50, facilitated a 30 day period for comment on a draft economic impact analysis. Two comments were received.

The department anticipates there may be moderate financial effects on municipal wastewater treatment facilities and industrial facilities with permitted wastewater discharges. For example, facilities may identify an economic impact resulting from the removal of mixing zone considerations or chlorine exemptions that may have been previously granted in determining discharge effluent limitations in their WPDES Permits.

Proposed revisions to s. NR 106.06 contain provisions relating to discharges within the Great Lakes system and outside the Great Lakes system. The department solicited information on economic impacts if the department were to adopt the proposed rules and, as an alternative, if the department were to follow proposed s. NR 106.06(6)(c)(1), Wis. Adm. Code statewide.

This is not a complete summary of economic impacts but, rather, a summary which indicates that these rules could have moderate economic effects and that a longer period to gather information from affected entities is warranted. The final economic analysis for these rules is anticipated to include descriptions of specific impacts of these rule revisions on affected facilities.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

Businesses and municipalities most likely to be economically impacted by the proposed rule revision are those with substances of concern in the intake water. The changes made by this rule package including bioaccumulation of chemicals of concern and non-contact cooling water additive exemption have either been over-promulgated by EPA for the State of Wisconsin or required by the courts. As such, these standards are already being used by the Department when establishing Water Quality Based Effluent Limits for permit reissuance. Some municipalities and industries are projected require modifications or

upgrades to meet the water quality based limits in their Wisconsin Pollution Discharge Elimination System (WPDES) permits as a result of this rule package. The proposed rule revision is, therefore, believed to cost an estimated moderate financial effect on municipal wastewater treatment facilities and industrial facilities with permitted wastewater discharges. Given the nature of these costs, these costs are not believed to dissipate over time. The other aspects of this revision are expected to have no economic impact.

Dated at Madison, Wisconsin 11-10-15

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Cathy Stepp
Cathy Stepp, Secretary
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