**BEFORE THE**
**DEPARTMENT OF NATURAL RESOURCES**

**NOTICE OF PUBLIC HEARING**
Natural Resources Board Order SS-14-12

**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 an order to repeal NR 219.04, Table BM; to renumber NR 219.05 and NR 219.06; to amend NR 157.21, NR 219.04 (1), (2), (4)(Note) and NR 233.40 (2); to repeal and recreate NR 219.04 Tables A, B, C, D, E, EM, ES and F; and to create NR 219.04 Tables G and H, relating to analytical methods used for Wisconsin Pollutant Discharge Elimination System (WPDES) compliance on the date(s) and at the time(s) and location(s) listed below.

**Hearing Information**

| ***Date and Time*** | ***Location*** |
|---|---|
| January 27, 2013 @ 11:00 a.m.-12:00 p.m. | DNR – LaCrosse, WI<br>3550 Mormon Coulee Rd<br>McGilvray Room |
| January 27, 2013 @ 11:00 a.m.-12:00 p.m. | DNR – Madison, WI<br>101 S. Webster St.<br>Room 707 |
| January 27, 2013 @ 2:00-3:00 p.m. | DNR – Green Bay, WI<br>2984 Shawano Ave.<br>Lake Michigan Room |

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Richard Mealy, Madison, WI 53707; by E-mail to Richard.mealy@wisconsin.gov or by calling (608) 264-6006. 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 Richard Mealy, Department of Natural Resources, Bureau of Science Services 101 S. Webster St, Madison, WI, 53703, or by calling (608) 264-6006.

**Submitting Comments**
Comments on the proposed rule must be received on or before Monday January 27, 2014. 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:

Richard Mealy
Department of Natural Resources
Bureau of Science Services SS/7
101 S Webster St, Madison, WI 53703

Phone: (608) 264-6006
Fax: (608) 266-5226
E-mail: Richard.Mealy@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:***

Sections 283.31, 283.55 (1), 299.11 and 299.15(2), Stats.

***2. Statutory authority:***

Sections 227.11 (2), 281.19(1),283.31, 283.55(1), 299.11, and 299.15(2), Stats.

***3. Explanation of agency authority:***

Section 281.19(1), Stats. authorizes the department to issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of systems, methods and means to prevent and abate pollution of the waters of the state. Section 283.31, Stats. prohibits the discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person unless such discharge or disposal is done under a permit issued by the department. Section 283.55(1), Stats. requires permittees to use monitoring methods, including where appropriate, biological monitoring methods, to identify and determine the amount of each pollutant discharged from each point source under the owner's or operator's ownership or control. Section 299.15(2)(a), Stats. authorizes the department by rule to prescribe methods of analysis for pollutants.

***4. Related statutes or rules:***

Chs. 157, 233, Wis. Adm. Code and Chapter 283, Stats.

***5. Plain language analysis:***

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.

***6. Summary and comparison with existing and proposed federal regulations.***

The federal counterpart to this rule is 40 CFR 136. On May 18, 2012, EPA published as final rule, "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures". The proposed revision to ch. NR 219 incorporates these changes and is consistent with the federal regulations.

***7. Comparison of similar rules in adjacent states:***

The States of Illinois, Iowa, Michigan, and Minnesota have wastewater programs delegated to them from the U.S. Environmental Protection Agency. Wisconsin has been the only state within EPA Region 5 which has allowed the use of SW-846 methods for NPDES compliance monitoring. Therefore, removing SW-846 methods from the rule will bring Wisconsin into line with other states.

With respect to new methods promulgated by the EPA, the Illinois EPA incorporated changes to 40 CFR Part 136 with legislation which took effect February 2013. The State of Michigan does not certify laboratories that perform analyses of wastewater. The Minnesota Environmental Laboratory Accreditation Program incorporated the changes to 40 CFR Part 136 for its October 2013 application period. The Iowa Department of Natural Resources rules reference the 2007 edition of 40 CFR Part 136 at this time.

***8. Summary of factual data and analytical methodologies:***

This proposed rule revision brings Wisconsin up to date with the current federal rules that establish analytical test methods.

***9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:***
Alternate approved methods from different authoritative sources are available for all of the analytical methods that are being deleted. The quality control requirements for analyses are established in ch. NR 149; these will not change with updating methods tables. For several analyses, newer methods and techniques have been added. It is possible for a laboratory to change the analytical method it uses and not incur additional costs or, in some cases, actually reduce costs.

The requirements imposed upon small business include following approved analytical methods listed in the rule. There are no reporting requirements in NR 219. The small businesses that will likely be impacted by this rule are commercial laboratories certified under ch. NR 149. The vast majority of these laboratories likely follow approved analytical methods that are being maintained in this chapter.

**10. Effect on small business*:***
The proposed changes to ch. NR 219 potentially only affect larger certified commercial laboratories and larger municipal wastewater facilities that analyze samples for compliance with their Wisconsin Pollutant Discharge Elimination System (WPDES) permit. There are 371 laboratories certified or registered to perform analyses by the department. Of these, 238 municipal wastewater laboratories, 48 industrial environmental, and 71 commercial environmental will be impacted by this rule. The remaining laboratories are public health laboratories that analyze drinking water and those that perform testing at hazardous waste facilities. This update will allow laboratories to utilize new techniques that currently require approval by the U. S. Environmental Protection Agency and deletes outdated methods that lack adequate quality control procedures.

Of the 371 certified or registered laboratories that will be impacted by this rule, there are less than 12, 3% of the total, that fit the definition of "small businesses". This proposed rule would affect commercial, industrial, and municipal laboratories that analyze effluent discharges to determine compliance with WPDES permit limitations. All laboratories performing analyses to determine WPDES compliance are expected to keep detailed records of all laboratory information, including: analytical methods and results, corrective action logs, equipment records, quality control records, and sample receipt logbooks.

This proposal does not change analytical testing requirements, nor does it address any change in reporting, schedule or deadline requirements. Sections 299.11 and 283.55, Stats., do not allow for less stringent schedules, deadlines or reporting requirements. Laboratories may seek approval of an alternate test procedure, as specified in s. NR 219.05, Wisc. Adm. Code, from U.S. EPA. WPDES permit terms and conditions and other related regulations require that permitted facilities conduct analytical tests in compliance with the procedures of ch. NR 219. The Laboratory Certification and Registration Program audits laboratories performing these analyses to ensure that testing is performed in compliance with the proposed rule. If a laboratory does not follow an approved method, it is cited during the audit process; a laboratory must correct all identified deficiencies to maintain their certification under ch. NR 149.

"The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us , or by calling (608) 266-1959."]

**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**
This rule will have no fiscal effect on state government .Minimal economic impact associated with this rule revision is anticipated for local governments and the private sector. The majority of the costs are upfront costs resulting from labs having to change SOPs and from validating the new EPA methods. Even the minimal fiscal impact is unavoidable as this rule revision is being directed by the U.S. EPA.

Dated at Madison, Wisconsin DECEMBER 19, 2013

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Cathy Stepp
Cathy Stepp, Secretary