



## WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

### DOCUMENT ID

WY-19-0007-C

### DOCUMENT TITLE

Permit Termination Guidance

### PROGRAM/BUREAU

Water Quality

### STATUTORY AUTHORITY OR LEGAL CITATION

Sections 283.53 (2), Wis. Stats., and NR 203.136 (3) (d), Wis. Adm. Code, provide the DNR with the authority to terminate permits upon "a change in any condition that requires either a temporary or permanent reduction or elimination of the discharge."

### DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

10/14/2019

### DATE FINALIZED

11/05/2019

### DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

11/5/2019

Signature

Date



BUREAU of WATER QUALITY  
PROGRAM GUIDANCE

WASTEWATER POLICY AND MANAGEMENT TEAM

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

Permit Termination Guidance

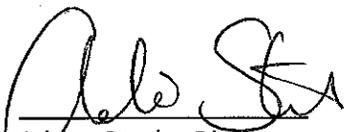
November 5, 2019

EGAD Number: 3400-2019-04

*This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.*

---

APPROVED:

  
Adrian Stocks, Director  
Bureau of Water Quality

11/5/19  
Date

## Purpose

The following guidance describes the process that permit drafters should follow when terminating an individual Wisconsin Pollutant Discharge Elimination System (WPDES) permit for a wastewater discharge pursuant to chapter 283 Wis. Stats., and chapter NR 203, Wis. Adm. Code. This guidance addresses when DNR staff should terminate a WPDES permit, provide notice of the intent to terminate a WPDES permit, and frequently asked questions regarding the effect of WPDES permit termination.

## Permit Termination

Sections 283.53 (2), Wis. Stats., and NR 203.136 (3) (d), Wis. Adm. Code, provide the DNR with the authority to terminate permits upon *“a change in any condition that requires either a temporary or permanent reduction or elimination of the discharge.”* DNR should terminate permits as soon as possible after the cessation of the discharge(s) covered by that permit. This includes when an industry or municipality that holds a WPDES permit continues to generate wastewater, but decides to send their wastewater to another entity for treatment and/or discharge. Similarly, individual outfalls should be removed from a permit (via permit modification or reissuance) after the cessation of that outfall’s discharge, even if the permit will not be terminated because there are other outfalls still in use.

### **283.53 Permit duration, modification, revocation and reissuance.**

(2)(a) Any permit issued by the department under s. 283.31 or 283.33 may, after an opportunity for hearing, be modified, terminated, or revoked and reissued, in whole or in part, for cause, including but not limited to:

1. Violation of any terms or conditions of the permit;
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

### **NR 203.136 Causes for a modification, revocation and reissuance, or termination.**

(3) TERMINATION. The department may terminate a permit, or deny an application for reissuance, for any of the following causes:

- (a) Substantial noncompliance by the permittee with any condition of a permit.
- (b) Failure by the permittee in the permit application or during the permit issuance process to fully disclose all relevant facts, or the permittee’s misrepresentation of any relevant facts at any time.
- (c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation and reissuance, or termination.
- (d) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice regulated by the permit.

It is necessary to terminate permits when a discharge has ceased or become inactive in order to remove the need for work related to permit applications and reissuances, facility inspections, nonreporting violations flagged by SWAMP for inactive discharges, etc. so that staff can spend their time and efforts on active discharges. Additionally, total maximum daily loads (TMDL) assign wasteload allocation (WLA) to all permitted outfalls so inactive permits and/or outfalls should be terminated when TMDLs are under development, in order to avoid assigning WLA to an inactive discharge and thereby limiting the amount available to other wastewater discharges in the area.

A permit or outfall for an industrial discharger should be deemed inactive when the industrial process or other source of the wastewater has been eliminated. For example, if paper machines at a paper mill are removed, dismantled, or rendered inoperable, the permit should be terminated promptly. As long as production equipment remains in place and operational and the permittee is actively attempting to sell the facility or is planning an imminent restart of production at the facility the permit may be continued, but no longer than until permit expiration. In situations where there is uncertainty regarding whether or exactly when a discharge may resume, the permit may be maintained until the end of the permit term, but no longer. Once the permit expires, it should be terminated (not reissued) unless the permittee can, on or before the date of permit expiration, provide tangible plans for resumption of the discharge within the next 12 months. As noted above, it may be necessary to terminate a permit prior to its expiration in cases where a TMDL is being developed.

## Process for Permit Termination

According to s. NR 203.135 (1), Wis. Adm. Code, the department may modify, revoke and reissue, or terminate a permit at the request of any interested person, including the permittee, or upon the department's initiative. If a facility has connected to a POTW, permanently closed, or otherwise stopped discharging, the department may terminate the permit by providing a 30-day notice to the permittee (s. NR 203.135 (6), Wis. Adm. Code). Permit termination is effective 30 days after the notice is sent, unless the permittee files a written objection with the DNR within the 30 day time period. If a notice of objection is filed by the permittee, the department must public notice its intent to terminate the permit. This is subject to public comment, public hearing, and legal challenge just as though it is a proposed permit (s. NR 203.11 (2), Wis. Adm. Code).

## Questions About Permit Termination

Some permit holders may be concerned about their permit being terminated. The following are a few frequently asked questions and related information.

### 1. *What if I want to resume discharging after my permit has been terminated?*

Permittees will have to reapply for permit coverage, if they decide to restart their discharge after the permit has been terminated.

### 2. *Will I be considered a "new discharger" or "new source" if my discharge resumes?*

The federal definition for "new discharger" (40 CFR 122.2) provides that a "new discharger"

Means any building, structure, facility, or installation:

- (a) From which there is or may be a 'discharge of pollutants;'
- (b) That did not commence the 'discharge of pollutants' at a particular 'site' prior to August 13, 1979;
- (c) Which is not a 'new source;'
- (d) Which has never received a finally effective NPDES permit for discharges at that 'site.'

Therefore, permit termination may not affect a facility's status as an existing facility under federal definitions. Similarly, an existing facility recommencing discharge may not be a "new source," according to s. NR 205.03 (20), Wis. Adm. Code, so the facility would also not be subject to more stringent technology based effluent limits (TBELs) or effluent limit guidelines (ELGs). Several pollutant-specific regulations also define a new discharge as one that has not previously been covered by a permit. For example, for phosphorus limits a new discharger means "a point source which was not authorized by a WPDES permit as of December 1, 2010," according to s. NR 217.11(3), Wis. Adm. Code.

### 3. *What happens to my TMDL wasteload allocation when the permit is terminated? Can I get it back if I restart my discharge?*

Subchapter II of NR 212, Wis. Adm. Code, provides BOD limits based on WLAs developed for the Lower Fox, Upper Wisconsin, and Peshtigo Rivers. The procedures in that subchapter must be followed for reallocations or temporary transfers of those WLAs. Other pollutants and TMDL areas not specifically addressed in NR 212 are discussed in the *TMDL Implementation Guidance for Wastewater Permits* (see "Reassigning Wasteload Allocations", <https://dnr.wi.gov/water/wsSWIMSDocument.ashx?documentSeqNo=208569391>). That guidance document recommends that WLAs assigned to the discharge at the time of permit termination be rolled into reserve capacity, in order to allow for future growth within the TMDL area.

When a facility reapplies for a permit in order to resume discharging, it will also need to submit a written notice of interest for reserve capacity along with a demonstration of need to the department in order to request enough reserve capacity to cover the amount needed for the discharge. Depending on the TMDL area, there may be reserve capacity that was set aside at the time of TMDL development and/or the original WLA that was put in reserve after the previous permit was terminated may still be available (see "Reserve Capacity", <https://dnr.wi.gov/water/wsSWIMSDocument.ashx?documentSeqNo=208569391>).

If a discharger needs more mass than what is available in reserve capacity, the difference can be made up through an off-set such as water quality trading (see "*Guidance for Implementing Water Quality Trading in WPDES Permits*" <http://dnr.wi.gov/topic/SurfaceWater/waterqualitytrading.html>). If sufficient reserve capacity is not available in that TMDL area, the discharge will need to be offset or the TMDL can be re-evaluated to determine if more assimilative capacity has become available since the original analysis.

Additional questions about permit termination should be directed to the Wastewater Section Chief in the Central Office.