ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The statement of scope for this rule was published in Register No. 652, on May 1, 2010.

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 211.03 (19m) (d), NR 211.11 (3) (b) and (c), NR 211.12 (6); to **renumber** NR 211.03 (5), NR 211.235 (1) (intro.) and (a) to (g); to **renumber and amend** NR 211.15 (4), NR 211.235 (3); to **amend** NR 211.01, NR 211.03 (8), (16) and (19m) (a) and (c), NR 211.10 (3) (d), NR 211.11 (3) (title) and (4) (a) (intro.), NR 211.15 (1) (e) (intro) and (1) (e) 1., (5), (6), (7) and (10) (b) 2., NR 211.23 (1) (j), NR 211.235 (1) (am) (intro) and 3., 6., 7., and (4) (a), NR 211.25 (2), and (4) (c) and (d); to **repeal and recreate** NR 211.13 (2) (e) 2. b., NR 211.30 (7); to **create** NR 211.03 (1e), (5), (8m), NR 211.10 (3) (e), NR 211.11 (3) (a) 5., (bm), (cm), (d) and (e), NR 211.15 (4) (b), (c) and (d), NR 211.235 (1) (am) 8., (b), (c) and (d), (3) (a), (b) and (c), NR 211.25 (3) (e), (4) (a) 3. and (4) (e) relating to pretreatment requirements for industrial users, publicly owned wastewater treatment plants and the Department of Natural Resources and affecting small businesses.

WT-28-10

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 283.11(1),(2); 283.21(2); 283.31

2. Statutory authority: Sections 283.11(1),(2); 283.21(2); 283.31

3. Explanation of agency authority: Chapter 283 of the Wisconsin Statutes grants authority to the Department to establish, administer and maintain a Wisconsin Pollutant Discharge Elimination System (WPDES). Section 283.21(2), Stat., authorizes the Department to promulgate pretreatment standards to regulate the introduction of pollutants into publicly owned treatment works. Sections 283.11 and 283.31, Stats. provide authority to promulgate rules to administer the WPDES permit program consistent with federal requirements in the Clean Water Act.

4. Related statutes or rules: NR 211, General Pretreatment Requirements, relates to the regulation of industrial wastewater discharges to publicly owned treatment plants (POTWs) in the ch. NR 200 series of rules and in ch 283, Stats.

5. Plain language analysis: On July 18, 2011, the Department received a letter from US EPA identifying seventy-five questions or potential inconsistencies between Wisconsin law and federal Clean Water Act requirements. Issue # 16 of the EPA letter identified inconsistencies concerning requirements for industrial discharges to POTWs in Wis. Admin. Code, ch. NR 211, compared with its federal counterpart in 40 CFR Part 403. The Department is proposing amendments to NR 211 regarding pretreatment requirements for industrial users and POTWs, in response to issue #16 identified by EPA. The proposed changes more closely align Wisconsin's pretreatment requirements with revisions to the federal pretreatment regulations known as the Pretreatment Streamlining Rule, so named because many of the changes reduced federal pretreatment requirements for both regulated industries and their regulators (DNR or delegated POTWs with pretreatment programs).

The proposed Streamlining revisions to NR 211 would make the following significant changes:

1. Remove sampling requirements for wastewater pollutants, discharged by industries to sanitary sewers, shown to be neither present nor expected to be present in the discharge.

2. Remove all pretreatment sampling and reporting requirements for industries never discharging more than 100 gallons per day (gpd) of regulated industrial wastewater to the sanitary sewer.
3. Reduce pretreatment sampling and reporting requirements (from twice per year to once per year) for industries which discharge less than .01 percent of the wastewater flow capacity of the municipal treatment plant they discharge to.
4. Reduce pretreatment inspection requirements (from once per year to once per 2 years) for municipal wastewater treatment plants, with industrial pretreatment programs, when inspecting industries which discharge less than .01 percent of the wastewater flow capacity of the municipal treatment plant they discharge to.
5. Require municipal wastewater treatment plants with industrial pretreatment programs to repeat sampling at industries if a test result from the municipal sample exceeded a limit.
6. Allow municipal wastewater treatment plants with industrial pretreatment programs to use a general discharge permit to regulate several similar industries rather than several individual discharge permits.
7. Require municipal wastewater treatment plants with industrial pretreatment programs to include applicable Best Management Practices and slug control measures in industrial discharge permits.

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

NR 211 is currently deficient in many respects compared with its federal counterpart, 40 CFR Part 403, which was revised in 2005 to include the changes collectively known as the Pretreatment Streamlining Rule. These changes include the above significant changes, along with a number of lesser changes which address more detailed aspects of pretreatment regulations such as signature requirements and record keeping.

In its July 18, 2011 letter, U.S. EPA stated that existing state pretreatment regulations did not incorporate the changes made by EPA to the federal pretreatment regulations in 2005. Some of these changes made the federal regulation less stringent than it used to be, by reducing requirements; others made it more stringent. EPA has stated that Wisconsin must adopt the more stringent provisions into NR 211.
(These, more stringent, provisions are described at:
http://www.epa.gov/npdes/pubs/pretreatment_streamlining_required_changes.pdf.)

The proposed revision to NR 211 is intended to address EPA's concerns and also to incorporate those Streamlining changes that reduce pretreatment requirements for regulated industries and delegated POTWs without adversely affecting environmental protection.

7. Comparison of similar rules in adjacent states:

The following U.S. EPA Region 5 states (Illinois, Indiana, Minnesota and Ohio) have adopted the 2005 changes to the federal pretreatment regulation into their corresponding state regulations. In Michigan, a streamlining rule has been drafted but the authority of the state's environmental agency to adopt such a rule has been removed.

8. Summary of factual data and analytical methodologies:

The Department has compared Wisconsin pretreatment regulations in ch. NR 211 with the federal rule, 40 C.F.R. Part 403, and has proposed these changes to NR 211 to make it consistent with its federal counterpart and to address recent EPA concerns about the lack of consistency between these two rules.

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

As part of its research in creating the federal Pretreatment Streamlining Rule in 2005, U.S. EPA was required to address the economic impact of the same rule changes on small entities, i.e., small governmental units, industries and not-for-profit organizations, as are being proposed here. EPA concluded, in its Final Rule published Oct. 14, 2005, in the Federal Register, at 70 Fed. Reg. 60134 (Oct.14, 2005), that the national economic effect of its rule, "will either relieve regulatory burden or have no significant impact for all small entities." It also estimated that, overall, governmental units and industries would save $10.1 million annually by implementing the Streamlining changes.

10. Effect on small business:

Based on responses from industrial manufacturers, about one-half of small business manufacturers are expected to realize small reductions in costs ($810 annually) for wastewater sampling and testing.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs: [if not applicable, so state]

Not applicable.

12. Agency Contact (include email and telephone number):

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SECTION 1. NR 211.01 is amended to read:

NR 211.01 Purpose. The purpose of this chapter is to establish under s. ~~283.55(2)~~ 283.21(2), Stats., the responsibilities of industrial users and of publicly owned treatment works in preventing the discharge into publicly owned treatment works of pollutants which will interfere with the operation of the POTW, will pass through the POTW ~~treatment works~~ insufficiently treated, or which will impair the use or disposal of POTW sludge.

SECTION 2. NR 211.03 (1e) is created to read:

NR 211.03 (1e) "Best management practices" or "BMPs" means maintenance or operating procedures, schedules of activities, prohibited practices, treatment requirements and other

management practices to implement the prohibitions listed in s. NR 211.10 (1) and (2) or to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage areas.

SECTION 3. NR 211.03 (4m) is created to read:

NR 211.03 (4m) "EPA" means the U.S. environmental protection agency.

SECTION 4. NR 211.03 (8) is amended to read:

NR 211.03 (8) "Interference" means the inhibition or disruption of a POTW's sewer system, treatment processes, or operations by an indirect discharge which, alone or in conjunction with the discharge or discharges from other sources, causes a violation or increases the magnitude or duration of a violation of any requirement of the POTW's WPDES permit, ~~including the impairment of~~ or impairs the use or disposal of POTW sludge under chs. 281 and 283, Stats.

SECTION 5. NR 211.03 (8m) is created to read:

NR 211.03 (8m) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or groups of industrial users identified by the POTW, may discharge pursuant to local limits developed under s. NR 211.10 (3).

SECTION 6. NR 211.03 (16) and (19m) (a) and (c) are amended to read:

NR 211.03 (16) "Pretreatment standard" means any regulation which applies to industrial users and which contains pollutant discharge limits promulgated by the department in accordance with s. ~~283.55 (2) (a)~~ 283.21(2), Stats. This term includes both prohibited discharge standards set forth in or established under s. NR 211.10 and categorical pretreatment standards set forth in s. NR 211.11 and in chs. NR 221 through 297.

(19m) (a) Any industrial user subject to the categorical pretreatment standards in chs. NR 221 to 297 except as provided in s. NR 211.15(4)(d);

(c) Any industrial user that discharges to the POTW a process waste stream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

SECTION 7. NR 211.03 (19m) (d) is repealed.

SECTION 8. NR 211.10 (3) (d) is amended to read:

NR 211.10 (3) (d) Where specific prohibited discharge standards or limits on pollutants or pollutant parameters are developed by a POTW under this subsection, they shall be deemed pretreatment standards for the purposes of s. ~~283.55(2)~~ 283.21(2), Stats.

SECTION 9. NR 211.10 (3) (e) is created to read:

NR 211.10 (3) (e) POTWs may develop best management practices to implement the prohibitions of subs. (1) and (2). Such BMPs shall be considered specific prohibited discharge standards under this subsection and pretreatment standards for the purposes of s. 283.21 (2), Stats.

SECTION 10. NR 211.11 (3) (title) is amended to read:

NR 211.11 (3) (title) CONVERSION ~~FROM PRODUCTION BASED STANDARDS~~ TO EQUIVALENT MASS OR CONCENTRATION STANDARDS.

SECTION 11. NR 211.11 (3) (a) 5. is created to read:

NR 211.11 (3) (a) 5. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within 2 business days after the industrial user has reason to know that the production level will significantly change within the next calendar month. Any industrial user which does not notify the control authority of such anticipated change shall meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

SECTION 12. NR 211.11 (3) (b) is repealed.

SECTION 13. NR 211.11 (3) (bm) (1) is created to read:

NR 211.11 (3) (bm) 1. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user:

a. Employs or demonstrates that it will employ water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

b. Uses control and treatment technologies that are adequate to achieve compliance with the applicable categorical pretreatment standard, and has not used dilution as a substitute for treatment;

c. Provides sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate shall be representative of current operating conditions;

d. Does not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

e. Has consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

2. Upon approval by the control authority an industrial user subject to equivalent mass limits shall:

a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

c. Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subd. 1. c. Upon notification of a revised production rate, the control authority shall reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subd. 1. a. so long as it discharges under an equivalent mass limit.

3. A control authority which chooses to establish equivalent mass limits:

a. Shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated processes by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

b. Upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

c. May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use

of dilution as a substitute for treatment as prohibited by s. NR 211.10 (4). The industrial user shall also be in compliance with s. NR 211.19.

4. A control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

SECTION 14. NR 211.11 (3) (c) is repealed.

SECTION 15. NR 211.11 (3) (cm), (d), and (e) are created to read:

NR 211.11 (3) (cm) The control authority may convert the mass limits of the categorical pretreatment standards in chs. NR 233, 235, and 279 to equivalent concentration limits. When converting such limits to concentration limits, the control authority shall use the concentrations listed in the applicable subparts of chs. NR 233, 235, and 279 and document that dilution is not being substituted for treatment as prohibited by s. NR 211.10 (4).

(d) Equivalent limitations calculated in accordance with par. (a), (bm) or (cm) are deemed pretreatment standards for the purposes of this chapter and s. 283.21(2), Stats. The control authority shall document how the equivalent limits were derived and make this information available to the public. Once incorporated into its control mechanism, the industrial user shall comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(e) When pretreatment standards specify both maximum daily and maximum average limits, the same production or flow figures shall be used in calculating maximum daily and maximum average limits.

SECTION 16. NR 211.11 (4) (a) (intro.) is amended to read:

NR 211.11 (4) (a) (intro.) Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water if the applicable categorical pretreatment standards specifically provide that they may be applied on a net basis ~~and~~ <u>or</u> if the industrial user demonstrates to the control authority that:

SECTION 17. NR 211.12 (6) is repealed.

SECTION 18. NR 211.13 (2) (e) 2. b. is repealed and recreated to read:

NR 211.13 (2) (e) 2. b. The POTW is complying with all WPDES permit requirements and any additional requirements in any order or decree issued pursuant to the Federal Water Pollution Control Act, (33 U.S Code section 1251 *et seq.)*, (Clean Water Act), affecting combined sewer

outflows. These requirements include, but are not limited to, any requirements contained in EPA's Combined Sewer Overflow Control Policy.

SECTION 19. NR 211.15 (1) (e) (intro.) and 211.15 (1) (e) 1. are amended to read:

NR 211.15 (1) (e) (intro.) The nature and concentration of pollutants in the discharge from each of the industrial user's regulated processes and an identification of the applicable categorical pretreatment standards and pretreatment requirements. The nature and concentration of pollutants in each discharge shall be determined in accordance with subds. 1. to 5. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standard to determine compliance.

1. Sampling and analysis shall be performed to identify the concentration or mass of regulated pollutants in the discharge from each regulated process, according to the requirements of the applicable categorical pretreatment standard and the control authority. Both daily maximum and average values shall be reported. Samples shall be representative of daily operations. A minimum of 4 grab samples per day shall be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organics. All other samples shall be 24-hour flow proportional composites, ~~except when the industrial user demonstrates to the control authority's satisfaction that flow proportional sampling is infeasible. When flow proportional sampling is infeasible, the industrial user may use time proportional composite sampling or at least 4 grab samples if the industrial user has shown to the control authority's satisfaction that these methods provide representative samples of the effluent being discharged~~ unless time proportional or grab sampling is authorized by the control authority. Where alternative sampling is authorized by the control authority, the samples shall be representative of the discharge and the decision to allow alternative methods shall be documented in the industrial user's file. Multiple grab samples collected during a 24-hour period may be composited prior to analysis provided appropriate protocols specified in ch. NR 219, and in EPA and department guidance are followed. Samples for cyanide, total phenols and sulfides may be composited in the laboratory or in the field. Samples for volatile organics and oil and grease may be composited in the laboratory. Other samples may be composited using approved methodologies as authorized by the control authority.

SECTION 20. NR 211.15 (4) is renumbered NR 211.15 (4) (a) and amended to read:

NR 211.15 (4) (a) After the compliance date for an applicable categorical pretreatment standard, industrial users, except those meeting the requirements in par. (c) or (d), shall submit semi-annual reports to the control authority. New sources and sources that become industrial users subsequent to the compliance date of an applicable categorical pretreatment standard shall

submit the semi-annual reports to the control authority after commencement of discharge to the POTW. The report shall include the information required by sub. (1) (d) ~~to~~ and (e) except that the control authority may require more detailed reporting of flows and alternative sampling techniques may be used if they result in samples that are representative of the user's discharge and are approved by the control authority and documented in the industrial user's file. For industrial users subject to equivalent mass or concentration limits established by the control authority according to s. NR 211.11 (3), this report shall contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the industrial user's actual production or other measure of operation during the reporting period. For all wastes subject to categorical pretreatment standards that have been shipped off-site for disposal, these reports shall include the category, manufacturing process, volume and destination of such wastes. In cases where the pretreatment standard requires compliance with best management practices (or pollution prevention alternative) the user shall submit documentation needed to determine the compliance status of the user. These reports shall be submitted during June and December unless otherwise specified by the control authority. Industrial users shall submit these reports more frequently if required to do so by the control authority, or the department, or the applicable categorical pretreatment standards.

SECTION 21. NR 211.15 (4) (b), (c) and (d) are created to read:

NR 211.15 (4) (b) The control authority may authorize a monitoring waiver for individual pollutants for an industrial user subject to a categorical standard if the user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

1. The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

2. The monitoring waiver is valid only for the duration of the effective permit or equivalent control mechanism, but in no case longer than 5 years. The user shall submit a new request for the waiver before the waiver may be granted for each subsequent control mechanism or 5 year period.

3. In making a demonstration that a pollutant is not present, the industrial user shall provide data from at least one sampling of the facility's process wastewater prior to any treatment

present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver shall include the certification statement and be signed in accordance with s. NR 211.15 (10) (b). Non-detectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

4. Any grant of the monitoring waiver by the control authority shall be included as a condition in the user's control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver shall be maintained by the control authority for 3 years after expiration of the waiver.

5. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user shall certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

Based on my inquiry of the person or persons directly responsible for managing compliance with the applicable pretreatment standards, I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____[list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report.

6. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user shall immediately comply with the monitoring requirements of par. (a) or other more frequent monitoring requirements and notify the control authority.

7. This paragraph does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

(c) The control authority may reduce the frequency of the reports required under par. (a) to no less than once per year, unless required more frequently by the pretreatment standard or the department, where the industrial user meets all of the following conditions:

1. The industrial user's total categorical wastewater flow does not exceed any of the following:

a. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

b. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with s. NR 211.10 (3);

2. The industrial user has not been in significant noncompliance, as defined in s. NR 211.23 (1) (j), at any time in the past two years;

3. The industrial user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement would result in data that are not representative of conditions occurring during the reporting period;

4. The industrial user shall notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subd. 1. or 2. Upon notification, the industrial user shall immediately begin complying with the minimum reporting requirements in par. (a); and

5. The control authority shall retain documentation to support the determination that a specific industrial user qualifies for reduced reporting requirements under this paragraph for a period of 3 years after the expiration of the term of the control mechanism.

(d) The control authority may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user on a finding that all of the following conditions are met:

1. The industrial user never discharges more than 100 gallons per day of total categorical wastewater, excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard.

2. The industrial user has consistently complied with all applicable categorical pretreatment standards and requirements.

3. The industrial user never discharges any untreated concentrated wastewater.

4. The industrial user annually submits the following certification statement signed in accordance with the signatory requirements of s. NR 211.15 (10) along with any additional information required by the control authority:

Based on my inquiry of the person or persons directly responsible for managing compliance with pretreatment standards, I certify that, to the best of my knowledge and belief that during the period from _____, to _____, [months, days, year], the facility described as _____ [facility name] met the definition of a non-significant categorical industrial user as described in s. NR 211.15 (4) (d); the facility compiled with all applicable pretreatment standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information:_____

_____.

SECTION 22. NR 211.15 (5), (6) and (7) are amended to read:

NR 211.15 (5) Significant industrial users which are not subject to categorical pretreatment standards and which discharge to a POTW with a pretreatment program shall submit reports to the control authority at least twice per year. At a minimum, these reports shall describe the flow rate and concentration of pollutants in wastewater discharges, and shall be based on sampling

and analysis performed in the period covered by the report. Sampling shall be conducted at the appropriate sampling location and shall be representative of conditions during the reporting period. If a user monitors any regulated pollutant more frequently than required by the control authority using procedures prescribed in sub. (8), the results of this monitoring shall be included in the report. In cases where a local limit requires compliance with best management practices or pollution prevention alternative, the user shall submit documentation required by the control authority to determine the compliance status of the user. Other industrial users not subject to categorical pretreatment standards shall submit reports according to the requirements of the control authority.

NR 211.15 (6) The industrial user shall notify the ~~POTW~~ control authority, and the POTW if the POTW is not the control authority, in advance of any substantial change in the volume or character of the pollutants in the discharge, including changes in listed or characteristic hazardous wastes for which the industrial user has submitted initial notification according to s. NR 211.17. Industrial users shall immediately notify the POTW of any discharge that could cause problems at the POTW, such as any slug loading in violation of s. NR 211.10 (2)~~.~~ or of any changes at the facility affecting the potential for a slug discharge and the need for a slug control plan as required by s. NR 211.235 (4) (a).

NR 211.15 (7) If sampling and analysis performed by an industrial user indicates a violation, the industrial user shall notify the control authority within 24 hours of becoming aware of the violation. The industrial user shall repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, unless the control authority regularly performs sampling at the industrial user at least once per month or performed sampling at the industrial user between the time of the industrial user's initial sampling and the time when the industrial user received the results of the initial sample. Where the control authority has performed the original sampling and analysis in lieu of the industrial user as allowed in sub. (9), the control authority shall perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis.

SECTION 23. NR 211.15 (10) (b) 2. is amended to read:

NR 211.15 (10) (b) 2. The manager of one or more manufacturing facilities ~~having a total of at least 250 employees or having gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars, but only if~~ provided the manager is authorized to make decisions which govern the operation of the facility, make major capital investment recommendations, initiate and direct comprehensive measures to assure long-term compliance with environmental laws, can ensure the necessary systems are established to gather complete and accurate

information for the report and where authority to sign documents has been delegated to the manager according to the corporation's procedures; or

SECTION 24. NR 211.23 (1) (j) is amended to read:

NR 211.23 (1) (j) Annually publish a list of the industrial users that were in significant noncompliance with the applicable pretreatment standards and requirements at any time during the previous 12 months. The list shall be published in ~~the daily~~ a newspaper ~~with the largest circulation in the municipality in which the POTW is located~~ of general circulation that provides meaningful public notice in the area served by the POTW. ~~An~~ A significant industrial user has been in significant noncompliance if: any of the criteria in subds. 1. to 8. apply. A non-significant industrial user has been in significant noncompliance if criteria in subd. 3., 4., or 8 apply.

1. Sixty-six percent or more of all the measurements of the industrial user's wastewater for ~~any~~ the same pollutant taken during a 6 month period exceeded by any magnitude ~~the daily maximum limit or the average~~ any numeric pretreatment standard or requirement including an instantaneous limit~~;~~.

2. Thirty-three percent or more of all the measurements of the industrial user's wastewater for ~~any~~ the same pollutant taken during a 6 month period ~~equal or exceed~~ equaled or exceeded the product of ~~the daily maximum limit or the average~~ the numeric pretreatment standard or requirement including an instantaneous limit multiplied by either 1.4 for BOD, TSS, and fats-oil-grease; 1.2 for all other pollutants except pH; or ~~exceed~~ exceeded a pH limit by .4 standard units~~;~~.

3. The control authority has reason to believe that the industrial user has caused, alone or in combination with other discharges, interference, pass through or endangerment of the health of POTW personnel or the general public because of a violation of a pretreatment standard or requirement~~;~~.

4. The industrial user has discharged a pollutant that has caused imminent endangerment to human health, welfare or the environment or has otherwise resulted in the POTW's exercise of its emergency authority to halt or prevent a discharge~~;~~.

5. The industrial user failed to meet, by 90 days or more, a milestone date contained in a compliance schedule within a local control mechanism or enforcement order for starting construction, completing construction or attaining compliance~~;~~.

6. The industrial user has failed to provide within ~~30~~ 45 days of a deadline a required report containing all required monitoring results and other information, such as a baseline monitoring report, 90 day compliance report, periodic self-monitoring report or report on compliance with a compliance schedule~~;~~.

7. The industrial user has failed to accurately report noncompliance~~; or~~.

8. The control authority has determined that any other violation or group of violations, which may include a violation of required best management practices, by the industrial user has adversely affected the operation or implementation of the local pretreatment program.

SECTION 25. NR 211.235 (1) (intro.) and (a) to (g) are renumbered NR 211.235 (1) (am) (intro.) and 1. to 7. and NR 211.235 (1) (am) (intro.) and 3., 6., and 7. are amended to read:

NR 211.235 (1) (am) (intro.) Control the discharge from each significant industrial user through individual control mechanisms or, as provided in par. (b), through general control mechanisms. The control mechanism shall have a duration of no longer than 5 years. ~~The control mechanism~~ and may not be transferred without prior notification to the POTW. The control mechanism shall contain or contain by reference the following:

3. Effluent limits, including best management practices, based on prohibited discharge standards, categorical pretreatment standards, local limits and state and local law;

6. Any applicable compliance schedule; ~~and~~

7. A description of the civil and criminal penalties for violation of pretreatment standards or requirements~~.~~; and

SECTION 26. NR 211.235 (1) (am) 8. is created to read:

NR 211.235 (1) (am) 8. Requirements to control slug discharges, if determined by the control authority to be necessary.

SECTION 27. NR 211.235 (1) (b), (c) and (d) are created to read:

NR 211.235 (1) (b) At the discretion of the POTW, this control may include use of general control mechanisms which contain the elements listed in par. (am) if all facilities to be covered:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations;
4. Require the same or similar monitoring; and
5. Are more appropriately controlled under a general control mechanism than under individual control mechanisms as determined by the control authority.

(c) To be covered by the general control mechanism, the user shall file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with s. NR 211.15 (4) (b) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the control

authority deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the control authority has provided written notice to the user that such a waiver request has been granted in accordance with s. NR 211.15 (4) (b). The control authority shall retain a copy of the general control mechanism, documentation to support the determination that a specific user meets the criteria in par. (b) 1. to 5., and a copy of the user's written request for coverage for 3 years after the expiration of the general control mechanism.

(d) A control authority may not use general control mechanisms for facilities that are subject to production-based categorical standards, standards expressed as mass of a pollutant discharged per day, limits that are based on the combined waste stream formula in s. NR 211.12 or limits that are adjusted for pollutants in intake water in s. NR 211.11 (4).

SECTION 28. NR 211.235 (3) is renumbered NR 211.235 (3) (intro.) and amended to read:

NR 211.235 (3) (intro.) Inspect and sample the effluent from each significant industrial user at least once per year~~.~~ <u>except as otherwise specified below:</u>

SECTION 29. NR 211.235 (3) (a), (b), and (c) are created to read:

NR 211.235 (3) (a) Where the POTW has authorized a user subject to a categorical pretreatment standard to forego sampling for a pollutant that is not present in accordance with s. NR 211.15 (4) (b), the POTW shall sample for the waived pollutant at least once during the term of the user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW shall immediately begin at least annual effluent monitoring for that pollutant and inspection.

(b) Where the POTW has determined that an industrial user meets the criteria for classification as a non-significant categorical industrial user in accordance with s. NR 211.15 (4) (d), the POTW shall evaluate, at least once per year, whether the industrial user continues to meet those criteria.

(c) Where the POTW has determined that an industrial user is `subject to reduced reporting requirements under s. NR 211.15 (4) (c), the POTW shall inspect and sample the effluent from the industrial user at least once every two years. If the industrial user no longer meets the conditions for reduced reporting, the POTW shall immediately begin sampling and inspecting the industrial user at least once a year.

SECTION 30. NR 211.235 (4) (a) is amended to read:

NR 211.235 (4) (a) ~~At least once every two years, evaluate~~ Evaluate whether each significant industrial ~~user's need for a slug control plan~~ user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to **[30 days after the effective date of this paragraph…LRB insert date]**, this evaluation shall have been conducted by **[1 year after effective date of this paragraph…LRB insert]**. Additional significant industrial users shall be evaluated within 1 year of being designated as significant industrial users.

SECTION 31. NR 211.25 (2) is amended to read:

NR 211.25 (2) Documents submitted in accordance with this section shall be signed by a principal executive officer, ranking elected official, or a duly authorized employee if the employee is responsible for the overall operation of the POTW~~.~~ or the pretreatment program. This authorization shall be made in writing by the principal executive officer or ranking elected official and submitted to the department prior to or together with the report being submitted.

SECTION 32. NR 211.25 (3) (e) is created to read:

NR 211.25 (3) (e) POTWs that elect to receive electronic documents shall satisfy the requirements of 40 CFR Part 3 – Electronic Reporting.

SECTION 33. NR 211.25 (4) (a) 3. is created to read:

NR 211.25 (4) (a) 3. An identification of categorical users listed in subd. 1 that are subject to reduced reporting requirements under s. NR 211.15 (4) (b) and (c).

SECTION 34. NR 211.25 (4) (c) and (d) are amended to read:

NR 211.25 (4) (c) A summary of industrial user compliance over the reporting period; ~~and~~

(d) ~~Any other information requested by the department.~~ A summary of changes to the POTW's program that have not been previously reported to the department; and

SECTION 35. NR 211.25 (4) (e) is created to read:

NR 211.25 (4) (e) Any other information requested by the department.

SECTION 36. NR 211.30 (7) is repealed and recreated to read:

NR 211.30 (7) (a) The department shall use the procedures in par. (b) for approval of any of the following substantial pretreatment program modifications:

1. Modifications that relax POTW legal authorities, as outlined in s. NR 211.22, except for modifications that directly reflect a revision to this chapter or to other state or federal pretreatment requirements and are reported under par. (c);

2. Modifications that relax local limits, except for pH and reallocations of maximum allowable industrial loadings that do not increase the total industrial loadings of a pollutant and are reported under par. (c);

3. Changes to the POTW's control mechanism;

4. A decrease in the frequency of self-monitoring or reporting required of industrial users;

5. A decrease in the frequency of industrial user inspections or sampling by the POTW;

6. Changes to the POTW's confidentiality procedures; and

7. Other modifications designated as substantial by the department on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program, result in an increase in pollutant loadings at the POTW or result in less stringent requirements being imposed on industrial users of the POTW.

(b) The department shall approve or disapprove the modifications listed in par. (a) using the procedures in subs. (1) to (5) except as provided in subds. 1. and 2. The modification shall become effective upon approval by the department.

1. The department need not publish a notice of decision under sub. (5) provided:

a. The notice of request for approval under sub. (2) states that that the request will be approved if no comments are received by the date specified in the notice;

b. No substantive comments are received; and

c. The request is approved without change.

2. Notices required by subs. (2) and (5) may be performed by the POTW provided that the department finds that the notice otherwise satisfies the requirements of those subsections.

(c) For modifications not listed in par. (a) and that are not considered substantial the following procedures will be used.

1. The POTW shall notify the department of any non-substantial modifications at least 45 days prior to implementation in a statement as described in s. NR 211.27.

2. Within 45 days after receipt of the POTW's statement the department shall notify the POTW of its decision to approve or disapprove the non-substantial modification or to treat the modification as substantial under par. (a). If the department does not notify the POTW within 45 days of its decision, the POTW may implement the modification.

(d) After approval by the department, the modification shall be incorporated into the POTW's WPDES permit.

SECTION 37. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 38. BOARD ADOPTION. The forgoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Cathy Stepp, Secretary

(SEAL)