

Report to
Legislative Council Rules Clearinghouse
NR 102 and 106, Wis. Adm. Code
Natural Resources Board Order No. WT-36-07

Wisconsin Statutory Authority

ss. 227.11(2), 281.15, 283.13 and 283.17, Stats., interpreting ss. 281.15, 283.13 and 283.17, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

In 1975, the Department was sued by several steam-electric power companies on the grounds that the temperature standards set forth in ch. NR 102 were more stringent than federal requirements. The Wisconsin Supreme Court ruled that the provisions of ch. NR 102 were equivalent to categorical-based effluent limitations for the steam-electric power discharge category and overturned the thermal requirements of ch. NR 102 for the steam-electric discharge category. The effect of the ruling was to severely limit the Department's ability to regulate the amount of heat discharged from power plants, and has made regulation of all heated discharges to waters of the state confusing and difficult to conduct consistently. Subsequently, the U.S. EPA has requested that the Department issue WPDES permits which implement the standards contained in ch. NR 102. To do so would violate the Wisconsin Supreme Court decision.

The proposed rule is necessary in order to meet U.S. EPA's request and to provide clarity and better consistency in the regulation of heated discharges to waters of the state, as the rule will establish water quality standards for temperature (in ch. NR 102) and procedures to calculate water quality-based effluent limitations (in ch. NR 106) to regulate the discharge of heated wastewater to prevent adverse impacts to fish and other aquatic life.

Two new subchapters will be created in ch. NR 106: subch. V entitled Effluent Limitations for Temperature and subch. VI entitled Alternative Effluent Limitations for Temperature. Subchapter V specifies data requirements, variance procedures, methods for determining the necessity for and calculation of water quality-based effluent limitations, application of and compliance with the limitations in WPDES permits, and other related limitation and permitting issues. As a primary means of assuring the limitations are water quality-based, the proposed rule takes into account the ambient temperature and flow of a receiving water in the calculation of effluent limitations. The effluent limitation calculation incorporates a mass balance equation, making it equivalent to other codified limit calculation procedures. The mass balance approach enables the determination of the amount of heat that a receiving water can assimilate without adversely affecting fish and aquatic life. Supplemental limits, including those of 120°F to prevent incidental injury (scalding) to humans and of 95°F to protect wetlands, ephemeral streams, and other limited aquatic life waterbodies, are also proposed. Additionally a "cap limit" is to be applied simultaneously with the calculated limit to prevent excessive acute mixing zones.

Subchapter VI specifies procedures to determining alternative effluent limitations that may be established for point source discharges with limitations calculated under subch. V that are demonstrated to be more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is made. The subchapter includes application, compliance schedule and public notice procedures, among others. Subchapter VI replaces ch. NR 209 which is proposed to be repealed.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

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Submitted on December 6, 2007