

Report to
Legislative Council Rules Clearinghouse
Natural Resources Board Order No. WT-25-08
Revisions to chs. NR 102 and 217, Wis. Adm. Code

Wisconsin Statutory Authority

Sections 227.11(2)(a), 281.15, 283.001(2), 283.13(5), 283.15, 283.31, 283.35, 283.37

Federal Authority

40 CFR 131.11

Court Decisions Directly Relevant

None

Analysis of the Rule – Rule Effect – Reason for the Rule

This rule is being proposed to adopt numeric phosphorus water quality standards criteria for lakes, reservoirs, streams and rivers under s. 281.15, Wis. Stats, and to adopt procedures for developing and implementing limitations in Wisconsin Pollutant Discharge Elimination System (WPDES) permits based on the phosphorus criteria. The revisions are based on recognition of phosphorus related water quality problems across the state, including algal mats on Lake Michigan beaches, nuisance algae conditions in many Wisconsin lakes, low dissolved oxygen in many Wisconsin streams, and “toxic” blue-green algae in a number of lakes. Presently, 172 lakes and streams are included on Wisconsin’s impaired waters list for phosphorus. The revisions are also in response to nationwide federal requirements to adopt nutrient criteria pursuant to 40 CFR 131.11.

In late 2000, US EPA, under the authority of s. 304(a) of the Clean Water Act, published two guidance documents for use by states in setting water quality standards nutrient criteria. Once EPA publishes such guidance documents, states are generally required within a reasonable number of years to adopt water quality criteria that are protective of designated uses. Under s. 303(c)(4)(B) of the Clean Water Act, US EPA may determine, in the absence of state adopted criteria, that a new or revised standard is needed to meet Clean Water Act requirements and may promulgate criteria for the state. On November 23, 2009, seven groups notified EPA of their intent to sue over the EPA’s failure to promulgate phosphorus and nitrogen criteria for Wisconsin.

The current regulations for phosphorus establish specific procedures for including technology based limitations and standards in WPDES permits (existing chapter NR 217). The proposed regulations create phosphorus water quality standards criteria for Wisconsin waters and establish procedures for determining when a water quality based effluent limitation is needed in a WPDES permit; equations and procedures for calculating effluent limits based on different types of waters and stream flow assumptions; and provisions for expressing permit compliance averaging periods, such as a monthly average. The rule requires concentration limits, as commonly used in permits. However, it also specifies where and how mass limits are required, such as for discharges to impaired waters, where there is a downstream lake and where there is a downstream outstanding or exceptional resource water. The rule also addresses the relationship and procedures for including a various types of phosphorus limits in permits such as a phosphorus

limit based on a total maximum daily load, a technology based phosphorus limit and a water quality based phosphorus limit calculated under the new procedures in chapter NR 217.

The proposed rule allows the department to include compliance schedules in permits. The compliance schedule provisions specify factors the department may consider when establishing the length of a compliance schedule. One of the options for a compliance schedule provision for discharges to nonpoint source dominated waters includes an adaptive management option where interim limits may be phased in, if phosphorus concentrations improve over time in the receiving water. There are also provisions for a streamlined approach for processing variances for stabilization pond and lagoon systems very similar to procedures for ammonia variances in ch. NR 106.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoptions and legislative review. US EPA approval of the criteria is required under the federal Clean Water Act.

Description of any Forms (attach copies, if available)

None

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