

Clearinghouse Rule 15-084

Report to
Legislative Council Rules Clearinghouse
NR 106, Wis. Adm. Code
Natural Resources Board Order No. WT-31-10

Wisconsin Statutory Authority

Water quality based effluent limitations for toxic and organoleptic substances to attain and maintain surface water quality standards in accordance with s. 281.15910, Stats. and calculation of water quality effluent limitations s. 283.13(5), Stats.

Federal Authority

Implementing the Administrative Rule revisions as proposed will align Wisconsin's WPDES regulations with federal regulations including:

- 40 CFR Part 132, Appendix F, Procedure 3, Paragraph C
- 40 CFR Part 132, Appendix F, procedure 5
- 40 CFR Part 132, Appendix F, procedure 5, Paragraphs D, and E
- 40 CFR 122.44(d)

In a November 6, 2000 Federal Register Notice, EPA objected to provisions in ss. NR 106.06(2), 106.06(6) and 106.06(10) as inconsistent with the federal Water Quality Guidance for the Great Lakes System required by section 118(c) of the Clean Water Act, 33 U.S.C. 1268(c). See Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission from the State of Wisconsin, and Final Rule, 60 Fed. Reg. 66502 to 66511 (November 6, 2000). Section 118(c) requires all Great Lakes states, including Wisconsin, to adopt procedures consistent with the federal guidance. In a February 17, 2009 letter, EPA objected to the department's mercury reasonable potential rule as inconsistent with federal requirements.

Comparison of Adjacent States

All of the other EPA Region 5 states and/or adjacent states (Illinois, Indiana, Iowa, Michigan, Minnesota and Ohio) are subject to EPA regulations implementing the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) Program. All other states bordering the Great Lakes system (Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Pennsylvania), are subject to the GLI. See 40 CFR Part 132 (setting forth requirements that Great Lakes States must adopt). The proposed rules will align Wisconsin's WPDES regulations with federal regulations.

Court Decisions Directly Relevant

Dane County Circuit Court Case MEDC v. DNR, Case No. 12CV3654, from 2014 ruled that NR 106.145(2) is invalid because it is inconsistent with 40 CFR 122.44(d) (1) (iii).

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

On July 18, 2011, the Department received a letter from EPA identifying seventy five issues or potential inconsistencies with Wisconsin's authority

to administer its National Pollutant Discharge Elimination System (NPDES) approved permit program. These proposed rule revisions address some of EPA's issues regarding Chapter NR 106. Implementing the proposed rule revisions will ensure that the State's regulations are consistent with and in compliance with federal regulations.

Agency Procedures for Promulgation

Public hearing on 12/7/2015; Natural Resources Board final adoption; Governor's Office of Regulatory Compliance final approval; followed by legislative review

Description of any Forms (attach copies if available)

None

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