

Report From Agency

REPORT TO LEGISLATURE

NR 102, Wis. Adm. Code

Board Order No. WY-09-18
Clearinghouse Rule No. 19-083

Basis and Purpose of the Proposed Rule

This rule creates phosphorus site-specific criteria (SSC) for three waterbodies, Petenwell Lake located in Wood, Juneau, and Adams Counties, Castle Rock Lake located in Adams and Juneau Counties, and Lake Wisconsin located in Columbia and Sauk Counties. Pursuant to s. NR 102.06 (7), Wis. Adm. Code, and s. 281.15, Wis. Stats., the Department of Natural Resources (department) has the authority to develop an SSC in place of the current applicable phosphorus criteria in s. NR 102.06, Wis. Adm. Code, where site-specific and scientifically defensible data and analysis demonstrate a different criterion is protective of the designated use of a specific surface waterbody.

The department is proposing rules to establish SSC for the three waterbodies because modeling and analysis of monitoring data conducted during the development of the legislative initiated Wisconsin River Basin Total Maximum Daily Load (TMDL) has concluded that the current statewide phosphorus criteria for Petenwell Lake and Castle Rock Lake are more restrictive than needed to protect the designated uses and that the current phosphorus criterion for Lake Wisconsin is not sufficiently protective of the designated uses. The designated uses associated with the phosphorus criteria for reservoirs and lakes are recreational uses and aquatic life uses. The current phosphorus criteria promulgated in s. NR 102.06 and recommended phosphorus SSC proposed as part of this rulemaking effort are shown in Table 1. In this document, phosphorus criteria are expressed in micrograms per liter ($\mu\text{g/L}$).

Table 1: Current and Recommended Phosphorus Criteria

Reservoir Name	Existing NR 102.06 TP Criterion ($\mu\text{g/L}$)	Recommended Site-Specific TP Criterion ($\mu\text{g/L}$)
Petenwell Lake	40	53
Castle Rock Lake	40	55
Lake Wisconsin	100	47

When the department promulgated the phosphorus criteria in s. NR 102.06, Wis. Adm. Code, it recognized that statewide phosphorus criteria could be revised for some waterbodies with unique physical features (e.g. different residence times). Section NR 102.06 (7), Wis. Adm. Code, allows phosphorus SSC to be promulgated by rule when scientifically defensible analysis demonstrates that a different criterion is protective of the designated use. As part of the TMDL analysis for the Wisconsin River Basin, the department determined that different phosphorus criteria are appropriate to protect the recreational uses of Petenwell Lake, Castle Rock Lake, and Lake Wisconsin.

Summary of Public Comments

See attached Response to Public Comments.

Modifications Made

No modifications were made to the proposed rule as a result of public comments or testimony received at the public hearing.

Appearances at the Public Hearing

Kristy Neumann
Jim Klosiewski
Rich Boden representing Village of Plover
Scott Bordeau
Bob Schoenhard representing Foremost Farms USA
Rick Georgeson
Andrew Koch representing Foremost Farms USA
James Nuteals representing WEPCO
Leroy Donahue
Emily Salvinski representing Wood County LWCD
Bruce Dimick representing Saratoga Concerned
Craig Mackey representing Verso Wisconsin Rapids Mill
Maria Lewandowski
Tina Sebold representing Wisconsin River Dischargers Group (WRDG)
Todd Rietmann
Patrick Cardiff representing Grande Cheese

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate as a result of public comments or testimony. During the public solicitation for information on the draft Economic Impact Analysis, a comment was received that the Department had provided insufficient information to show how the compliance costs had been calculated. This comment was addressed by supplementing the Economic Impact Analysis with detailed information on compliance cost estimation methodology when it went out to public notice with the rule package. No further comments on the economic estimate were received.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted no comments on this rule.

Final Regulatory Flexibility Analysis

The Department has determined that the rule will have no direct effect on small business. The fiscal impacts from the proposed rules will affect WPDES permitted municipalities and industries (with phosphorus discharges to surface waters) that are not considered small businesses. There may be an indirect effect on small businesses that discharge to municipal wastewater treatment plants, but this impact is difficult to estimate because user fees are set by each municipality.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.