

## **Report From Agency**

### REPORT TO LEGISLATURE

NR 102 and 119, Wis. Adm. Code

Board Order No. WT-17-12  
Clearinghouse Rule No. 19-093

#### Basis and Purpose of the Proposed Rule

The existing policy for deriving phosphorus site-specific criteria is found in s. NR 102.06(7), Wis. Adm. Code, which recognizes that the Department can promulgate by rule phosphorus site-specific criteria. The proposed rule, ch. NR 119, is not a change from past policy, but rather establishes a methodology and process for establishing site-specific criteria. Site-specific criteria may be appropriate when the statewide phosphorus water quality criteria are either over- or under-protective of Wisconsin's waters in a given waterbody or segment. The existing statewide phosphorus criteria are sufficiently protective in most cases. However, there are instances where the applicable phosphorus criteria under s. NR 102.06, Wis. Adm. Code, need to be adjusted for an individual waterbody to ensure that the applicable designated uses (such as recreation and aquatic life) are being reasonably protected. If designated uses are not being supported by the statewide criterion, a more stringent site-specific criterion may be necessary. In cases where the statewide criterion is more stringent than reasonably necessary to protect the designated uses of a waterbody, a less stringent site-specific criterion would likely be warranted.

This rule specifies the scientifically defensible methods required to derive phosphorus site-specific criteria. This rule also identifies the process DNR staff and interested parties should follow to derive phosphorus site-specific criteria. If this rulemaking were not completed, site-specific criteria for phosphorus could still be developed by rule under existing statute and administrative code. However, expectations would not be clearly defined, which may result in inconsistencies and added complexity for those developing site-specific criteria.

#### Summary of Public Comments

See attached "Public Comments and DNR Responses on: NR 119: A process for developing site-specific criteria for phosphorus (Natural Resources Board Order No. WT-17-12)"

#### Modifications Made

See the following item numbers in the "Public Comments and DNR Responses" document referenced above describing revisions made to the rule in response to comments:

- 1b: Rule language was revised to specify that all approvable site-specific criteria proposals shall go through the rulemaking process instead of allowing a non-rulemaking option. This addresses a point raised by LCRC on statutory authority questioning whether site-specific criteria can be approved without going through rulemaking.
- 5: Language was revised to recognize that multiple stressors can influence a waterbody and to clarify when phosphorus site-specific criteria may be appropriate.
- 7a-b: Notes were revised for clarity related to modeling and statistical demonstrations.
- 7c: Language was revised regarding the requirements that must be met under statute for site-specific criteria approval.

#### Appearances at the Public Hearing

There were three attendees; none indicated support or opposition:

- Evan Miller, representing Senator Cowles, District 2
- Toni Herkert, representing Senator Cowles, District 2
- Waltraud Brinkmann

#### Changes to Rule Analysis and Fiscal Estimate

The Rule Analysis and Fiscal Estimate were revised to reflect the requirement that all approvable site-specific criteria proposals shall go through the rulemaking process instead of allowing a non-rulemaking option. This does not change the Fiscal Estimate. Language in the Rule Analysis was also revised regarding other requirements that must be met under statute for site-specific criteria approval.

#### Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style, placement; duplication of existing rules; clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations.

#### Final Regulatory Flexibility Analysis

Because this rule simply clarifies and documents a process for conducting a review already expressly allowed by state statutes and recognized in existing code, the creation of this rule is not expected to incur costs. The proposed rule changes are not expected to have an impact on small business.

#### Response to Small Business Regulatory Review Board Report

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