

Modifications 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, Wis. Adm. Code, 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 department 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.

Germane Modifications

In December 2019, the Board adopted Board Order WT-17-12. The board order was approved by the Governor on December 20, 2019 and submitted to the Chief Clerks on January 2, 2020. This rule, referred to here as the "site-specific criteria rule," has been proceeding concurrently with another rule, the "waterbody assessments rule" (WY-23-13; ch. NR 102), because the site-specific criteria rule contains numerous cross-references to biological metrics and thresholds established in the waterbody assessments rule. On February 28, 2020, the department recalled both rules from the legislative committees to make germane modifications to address comments received on the other rule (waterbody assessment rule) at the legislative hearing.

The comments and germane modifications pertained primarily to the biological metrics established in the waterbody assessments rule. However, corresponding revisions are needed to the site-specific criteria rule to reflect the revised terminology in other other rule and to update the cross-references. These revisions do not change how the biological metrics are applied within the construct of developing site-specific criteria in this rule, and are therefore very minor.

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.