

Report to
Legislative Council Rules Clearinghouse
NR 111, Wis. Adm. Code
Natural Resources Board Order No. WY-19-14

Wisconsin Statutory Authority

Sections 283.11, 283.31, 283.37, 283.55, 283.83, and 227.11 (2) (a), Wis. Stats.

Federal Authority

Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1251 et. seq.; CWA Section 316(b). 33 U.S.C.1326(b); 40 CFR Parts 122, 123 and 125.

Comparison of Adjacent States

All the other adjacent states including EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota, and Ohio) and EPA Region 7 states (Iowa, Nebraska, Kansas and Missouri) are subject to the EPA regulations that apply to the National Pollutant Discharge Elimination System permit program and that are delegated to the states for implementation, and therefore, have the same requirements as Wisconsin. The proposed rule does add select definitions to clarify implementation of the rule, and such definitions are not in place in neighboring states.

Court Decisions Directly Relevant

Riverkeeper, Inc. v. Whitman, 2001 WL 1505497 (S.D.N.Y. Nov. 27, 2001) (consent decree setting multiphase timetable for EPA to promulgate § 316(b) regulations)

Riverkeeper, Inc. v. Johnson, 358 F.3d 174 (2d. Cir. 2004) (Phase 1 “new facilities” rules largely upheld by 2nd Circuit)

Riverkeeper, Inc. v. EPA, 475 F.3d 83 (2d. Cir. 2007) (Phase II “existing facilities” regulations)

Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208 (2009) (U.S. Supreme Court held that EPA was permitted to rely on cost-benefit analysis and provide cost-benefit variances in Phase II “existing facilities” regulations)

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

The purpose of the proposed rule is to ensure that the state’s regulations are consistent with federal regulations. Minor clarifications and corrections will also be made.

Under the federal water pollution control act (Clean Water Act), the U.S. Environmental Protection Agency (EPA) has a responsibility to promulgate rules addressing the impingement and entrainment of aquatic organisms at cooling water intake structures. Effective January 17, 2002 and October 14, 2014, the EPA promulgated rules that specify requirements for New Facilities and Existing Facilities that address impingement and entrainment at cooling water intake structures. In order to be consistent with the EPA-promulgated New Facilities and Existing Facilities Rules, the Department of Natural Resources is proposing to create ch. NR 111, Wis. Adm. Code.

Agency Procedures for Promulgation

The department will hold hearings on the following dates:

Date: September 9, 2019
Time: 3:00 p.m.
Location: WI Department of Natural Resources, 101 S. Webster St., Madison, WI 53707, Room G27

Date: September 11, 2019
Time: 1:00 p.m.
Location: WI Department of Natural Resources, 5301 Rib Mt. Dr., Wausau, WI 54401

The hearings will be followed by board adoption expected in December 2019, followed by a request for the governor's signature and legislative review.

Description of any Forms (attach copies if available)

N/A

Name and Telephone Number of Agency Contacts

Processing: Daniela Branco, (608) 266-7524

Technical: Emma Lorenzen, (608) 267-7643