ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to renumber NR 102.10(1)(f)1. and NR 102.11(1)(d)1.; amend NR 102.10(1)(f)1t., 3., 8., 13., 18., 20., 22. and 23., 102.11(1)(d)29.; and to create NR 102.10(1)(f)1d., 1h., 1p., 2d., 2h., 2p., 5m., 6m., 7m., 10m., 15e., 15m., 15s., 20m., 21g., 21r., 22m., 23m., 102.11(1)(d)1g., 1r., 15m., 25m., 26c., 26n., 26r., 26w., 31m., 35m. and 38m. relating to the designation of waters as outstanding or exceptional resource waters.

WT-44-05

Analysis Prepared by Department of Natural Resources

Statutory Authority and Explanation: The statute that authorizes the promulgation of this order is s. 281.15, Stats. This section grants rule-making authority to the Department to set standards of water quality applicable to waters of the state.

Statutes Interpreted: Section 281.15, Stats., directs the Department to establish water quality standards for all waters of the state. Section 281.11, Stats., directs that water quality standards for those rivers emptying into Lake Superior and Michigan and Green Bay shall be as high as practicable.

Related Statute or Rule: Chapter NR 102 contains water quality standards for Wisconsin surface waters. This chapter identifies an antidegradation policy that states that waters of the state shall not be lowered in quality, unless appropriately justified. Outstanding and Exceptional Resource waters are identified as categories within the antidegradation policy.

Plain Language Rule Analysis: In 1989, a new antidegredation policy was adopted in Wisconsin, in response to federal Clean Water Act requirements. These requirements complied with federal guidelines for surface waters that exceeded water quality necessary for protection of fish and aquatic life and recreation in/on the water, as well as waters that constituted outstanding national resources. By assigning classifications of "outstanding resource water" (ORW) and "exceptional resource water," (ERW) designated high quality waters receive additional protection from point sources of pollution.[1] To date, a total of 323 water have been designated as ORW, and 1,532 waters as ERW.[2]

In response to an August 2004 petition received from Midwest Environmental Advocates, River Alliance of Wisconsin, and various other conservation groups, the Department evaluated 100 waters located in northern Wisconsin to determine if they met the conditions to be designated as Outstanding or Exceptional Resource Waters. These changes would be made in ss. NR 102.10 and 102.11. AS a result of the review of information related to fishery condition, water quality, recreational use, and pollution sources, the Department is proposing to add 43 waters are proposed to be listed as Outstanding Resource Waters or Exceptional Resource Waters in NR 102.10 and 11, respectively. Some of the waters are proposed to be listed in discrete segments. This was necessary to prevent listing defined lakes or flowages that are associated with several of the waters included in the August 2004 petition. Of the 43 waters proposed for listing, 62 segments are recommended for the Outstanding Resource Water designation and 18 segments are recommended for the Exceptional Resource Water designation.

[1] Wisconsin Department of Natural Resources. September 1995. *Outstanding and Exceptional Resource Waters: Analysis of Effects on Marinette County, WI.*
[2] Wisconsin Department of Natural Resources. 2004. Wisconsin Water Quality Assessment Report to Congress. PUB-WT-798-2004.

Federal Regulatory Analysis
The proposed revision is related to water quality standards, which the federal government requires states to adopt.

State Regulatory Analysis

Iowa: Iowa classifies waters as High Quality Waters and High Quality Resource Waters. They have a codified petition process that details how to propose a water for designation to the Environmental Protection Commission.
Illinois: Illinois has a placeholder in their administrative code that specifies the petition process to list waters as Outstanding Resource Waters (ORW). To date, Illinois does not have any waters listed as ORW.
Michigan: Michigan has classified specific waters as Outstanding State Resource Waters, and also has provisions for classifying Outstanding International Resource Waters.
Minnesota: Minnesota has designated waters as tier II High Quality Waters and tier III Very High Quality Waters (also known as Outstanding Resource Value Waters).

Summary of Factual Data and Analytical Methodologies: The 2004 petition to the Department requesting that 100 waters be listed as Outstanding or Exceptional Resource waters was initiated when petitioners reviewed a 1997 Department project known as the Northern Rivers Initiative (NRI). The goal of the NRI was to identify valuable waters in northern Wisconsin, that could benefit from additional protection from shoreland development. The NRI ranked nearly 1,500 streams and rivers according to their ecological, recreation, and cultural values. Using these NRI rankings, the petitioners identified NRI ranked waters that are currently designated as ORW or ERW in NR 102.10 or NR 102.11. They identified 433 stream segments that had an NRI rank that was higher than the lowest ranked ERW. Of those 433 segments, the petitioners chose a subset of 100 segments which they felt were deserving of the increased regulatory protection that an ORW/ERW designation could provide.

A Department workgroup compiled available data to look at biological and social aspects of each waterbody. Because NR 102.11 defines an ERW as a surface water that provides "valuable fisheries, hydrologically or geologically unique features, outstanding recreational opportunities, unique environmental settings…" it seemed most appropriate to utilize biological and social data when evaluating the segments. Segments that had high quality biological communities and were deemed socially important within the NRI were recommended for listing, provided that there were not other water quality concerns that would preclude their designation. Segments that did not have adequate data to move forward, but that were known locations for State endangered or threatened species, were also recommended for designation.

The primary difference between Outstanding and Exceptional Resource waters is whether or not a point source is present. For purposes of addressing the petition, waters that did not have a current or potential point source discharge was given a recommended designation of ORW. Those water with point source discharges, or active facility plans considering a point source alternative, were recommended for ERW designation.

Analysis and Documents Supporting Determination of Small Business Effect: Any person placing a structure or making similar physical modifications to public navigable waters either qualifies for an exemption or must obtain a general or individual permit under state statute. To comply, small businesses follow the same requirements as other waterfront property owners: (1) make a self-determination of exemption using web-based tools provided by the department or describe their activity on an exemption determination request form; (2) complete a general permit application; or (3) complete an individual permit application. Schedules, application steaps and compliance/reporting requirements are very basic

for all applicants, and most projects can be planned and conducted by individuals with no specific professional background.

Anticipated Private Sector Costs: Any fees associated with the preparation of application materials in support of Ch. 30 permits would be borne by the private party seeking a permit for activities in the riparian zone of waters designated as Outstanding or Exceptional Resource waters.

Effects on Small Businesses: Building contractors, developers of waterfront property, and other waterfront businesses may be affected by this rule revision.

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Comments: Comments should be submitted to Bob Masnado, WT/2, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921. (608) 267-7662. robert.masnado@dnr.state.wi.us

SECTION 1. NR 102.10(1)(f)1. is renumbered NR 102.10(1)(f)1t. and amended to read:

NR 102.10(1)(f)

1t.	Barron	Engle Creek	Class I & II Portions
		Hickey Creek	Class I & II Portions
		Red Cedar River	SEG 1: Outlet of Red Cedar Lake to Inlet of Rice Lake
		Rock Creek	SEG 2: All within Barron County
		Upper Pine Creek	Above Dallas Flowage

SECTION 2. NR 102.10(1)(f)1d., 1h., 1p., 2d., 2h., and 2p. are created to read:

NR 102.10(1)(f)

1d.	Ashland	Bad River	SEG 1: Origin to Outfall in Mellen at NW¼SW¼ S6 T44N R2W
		Brunsweiler River	SEG 1: Origin to Inlet of Spider Lake
			SEG 2: Outlet of Moquah Lake to Inlet of Mineral Lake
			SEG 3: Outlet of Mineral Lake to Inlet of Beaverdam Lake
			SEG 4: Outlet of Beaverdam Lake (at the dam) to the Bad River Indian Reservation Boundary
1h.	Ashland & Bayfield	Marengo River	SEG 1: Origin to Inlet of Marengo Lake
			SEG 2: Outlet of Marengo Lake to Bad River Indian Reservation Boundary
1p.	Ashland & Sawyer	E. Fork Chippewa River	SEG1: T42N R1E S17/18 Line to Ashland County Highway "N" in Glidden
			SEG 6: Outlet of Barker Lake to Confluence with Chippewa Flowage
			SEG 3: Outlet of Pelican Lake to Inlet of Blaisdell Lake
			SEG 4: Outlet of Blaisdell Lake to Inlet of Hunter Lake

			SEG 5: Outlet of Hunter Lake to Inlet of Barker Lake
2d.	Bayfield & Ashland	Beartrap Creek	SEG 1: Origin to Bad River Indian Reservation Boundary
2h.	Bayfield, Ashland & Sawyer	West Fork Chippewa River	SEG 1: Origin (Outlet of Chippewa Lake) to Inlet of Day Lake
			SEG 2: Outlet of Day Lake to Inlet of Upper Clam Lake
			SEG 3: Outlet of Upper Clam Lake to Inlet of Lower Clam Lake
			SEG 4: Outlet of Lower Clam Lake to Inlet of Cattail Lake
			SEG 5: Outlet of Cattail Lake to Inlet of Meadow Lake
			SEG 6: Outlet of Meadow Lake to Inlet of Partridge Crop Lake
			SEG 7: Outlet of Partridge Crop Lake to Inlet of Moose Lake
			SEG 8: Outlet of Moose Lake to Sawyer County Highway "B"
2p.	Bayfield, Sawyer, Washburn, Douglas & Burnett	Totagatic River	SEG 1: Origin (Confluence of West Fork Totagatic River and East Fork Totagatic River) to Inlet of Nelson Lake
			SEG 2: Outlet of Totagatic Flowage to Inlet of Colton Flowage
			SEG 3: Outlet of Colton Flowage to Inlet of Minong Flowage
			SEG 4: Outlet of Minong Flowage to Confluence with Namekagon River

SECTION 3. NR 102.10(1)(f)3. is amended to read:

NR 102.10(1)(f)

3.	Burnett	North Fork Clam River Tributaries to the N. and S. Forks of the Clam River	County Highway "H" to Confluence with Clam River All—Class I & II Portions

SECTION 4. NR 102.10(1)(f)5m., 6m, and 7m. are created to read:

NR 102.10(1)(f)

5m.	Douglas	Amnicon River	SEG 1: Origin (Outlet of Amnicon Lake) to Inlet of Lyman Lake
			SEG 2: Outlet of Lyman Lake to mouth at Lake Superior, including the waters of Lake Superior within a ¼ mile semi-circular arc centered at the middle of the river mouth.
		Moose River	All

		Spruce River	All
		St. Croix River	SEG 1: Outlet of Upper St. Croix Lake to Inlet of St. Croix Flowage
6m.	Forest & Langlade	Swamp Creek	SEG 1: Outlet of Lake Lucerne to Mole Lake Indian Reservation Boundary SEG 3: All below Mole Lake Indian Reservation Boundary to Confluence of Wolf River
7m.	Iron & Ashland	Tyler Forks	SEG 1: Origin in Iron County to Bad River Indian Reservation Eastern Boundary in Ashland County
			SEG 3: From Bad River Indian Reservation Southern Boundary to Confluence with Bad River
		Potato River	SEG 1: Origin to Bad River Indian Reservation Boundary

SECTION 5. NR 102.10(1)(f)8. is amended to read:

NR 102.10(1)(f)

8.	Iron, Ashland & Price	Flambeau River	SEG 1: Turtle-Flambeau Flowage (Outlet @ Turtle-Flambeau Dam) to Inlet of Upper Park Falls Flowage
		No. Fork Flambeau River	From Turtle-Flambeau Flowage Downstream to Park Falls

SECTION 6. NR 102.10(1)(f)10m. is created to read:

NR 102.10(1)(f)

10m.	Lincoln	New Wood River	Origin (T33N R4E S14) to Confluence with Wisconsin River

SECTION 7. NR 102.10(1)(f)13. is amended to read:

NR 102.10(1)(f)

13.	Oneida	Noisy Creek	Class II Portion
		Squirrel River	Outlet of Squirrel Lake to Confluence with Tomahawk River
		Tomahawk River	SEG 2: Outlet of Willow Flowage Dam to Inlet of Lake Nokomis

SECTION 8. NR 102.10(1)(f)15e. , 15m., and 15.s. are created to read:

NR 102.10(1)(f)

15e.	Polk & Burnett	Clam River	SEG 1: Outlet of Clam Falls Flowage to Inlet of Clam Lake SEG 2: Outlet of Lower Clam Lake to Section Line @ T39N R16W S21/22

15m.	Price	Elk River	SEG 1: Headwaters to Inlet of Musser Lake
15s.	Price & Lincoln	Spirit River	Outlet of Spirit Lake to Inlet of Spirit River Flowage

SECTION 9. NR 102.10(1)(f)18. and 20. are amended to read:

NR 102.10(1)(f)

18.	Rusk	Devils Creek	All-Class I & II Portions
		Soft Maple Creek	SEG 1: Origin to Rusk County Highway "F"
		So. Fork Main Creek	Class I & II Portions (T35N R3W S28 downstream to T34N R4W S11)
		Swift Creek	Outlet of Island Lake to Inlet of Fireside Lake
20.	Sawyer	Benson Creek	All—Class I Portion
		Couderay River	SEG 1: Origin at Outlet of Billy Boy Flowage to Inlet of Grimh Flowage (Including Waters within Lac Courte Oreilles Indian Reservation)
		Eddy Creek	All—Class I Portion
		Grindstone Creek	All—Class I Portion
		Knuteson Creek	SEG 1: Outlet of Wise Lake to Inlet of Knuteson Lake
			SEG 2: Outlet of Knuteson Lake to Inlet of Lake Chetek
		Little Weirgor Creek & Tribs	All—Class I & II Portions
		McDermott Creek	All
		Mosquito Brook	All—Class I Portion
		Teal River	Outlet of Teal Lake to Confluence with West Fork Chippewa River

SECTION 10. NR 102.10(1)(f)20m., 21g., and 21r. are created to read:

NR 102.10(1)(f)

20m.	Sawyer & Rusk	Thornapple River	SEG 1: Origin to Rusk County Highway "J"
		Chippewa River	SEG 1: Dam at Chippewa Flowage to Inlet of Radisson Flowage (T38N R7W S13)
21g.	Taylor & Chippewa	Yellow River	SEG 1: Confluence with South Fork Yellow River to Inlet of Chequamegon Waters Flowage
			SEG 2: Outlet of Chequamegon Waters Flowage (at Miller Dam) to State Highway 64/73
21r.	Taylor & Price	Silver Creek	SEG 1: Origin to Westboro Sanitary District Outfall

SECTION 11. NR 102.10(f)22. is amended to read:

NR 102.10(1)(f)

22.	Vilas	Allequash Springs	Class I & II Portions
		Brule Creek	All
		East Br. Blackjack Cr.	All
		Elvoy Creek & Springs	Class I & II Portions
		Manitowish River	SEG 1: Adjacent to Dam Road Downstream to Inlet of Boulder Lake SEG 2: Outlet of Boulder Lake to Inlet of Island Lake
		Mishonagon Creek	Class I & II Portions
		Siphon Creek	All
		Spring Meadow Creek	Class I Portion
		Tamarack Creek	All
		Trout River	SEG 1: Outlet of Trout Lake to Lac Du Flambeau Indian Reservation Eastern Boundary

SECTION 12. NR 102.10(f)22m. is created to read:

NR 102.10(1)(f)

22.	Vilas & Oneida	Wisconsin River	SEG 1: Orgin (Outlet of Lac Vieux Desert) to Inlet of Watersmeet Lake

SECTION 13. NR 102.10(f)23. is amended to read:

NR 102.10(1)(f)

23.	Washburn	Beaver Brook	All—Class I Portion
		Sawyer Creek	All—Class I & II Portions
		So. Fork Bean Brook	All—Class I Portion
		Stuntz Brook	Origin to Confluence with Namekagon River

SECTION 14. NR 102.10(f)23m. is created to read:

NR 102.10(1)(f)

23m.	Washburn & Barron	Bear Creek	SEG 1: Outlet of Kekegama Lake to Inlet of Bear Lake SEG 2: Outlet of Bear Lake to Inlet at Stump Lake

SECTION 15. NR 102.11(1)(d)1. is renumbered NR 102.11(1)(d)1t. to read:

NR 102.11(1)(d)

1t.	Barron	Brill River	All—Class II Portion

SECTION 16. NR 102.11(1)(d)1g., 1r., 15m., 25m., 26c., 26n., 26r., and 26w. are created to read

NR 102.11(1)(d)

1g.	Ashland	Bad River	SEG 2: Outfall in Mellen at NE¼SW¼ S6 T44N R2W to Bad River Indian Reservation Boundary
1r.	Ashland & Sawyer	East Fork Chippewa River	SEG 2: Ashland County Highway "N" to Confluence of Rocky Run Creek (Includes Glidden POTW)
15m.	Iron & Ashland	Vaughn Creek	SEG 1: Origin to Bad River Indian Reservation Boundary
25m.	Oneida & Lincoln	Wisconsin River	SEG 2: Hat rapids Dam to Lincoln County A crossing SEG 4: Grandfather Dam to Inlet of Alexander Lake
26c.	Polk & Burnett	Clam River	SEG 3: Section Line @ T39N R16W S21/22 to Inlet of Clam River Flowage SEG 4: Outlet of Clam River Flowage to Confluence with St. Croix River
26g.	Price	North Fork Jump River	SEG 1: Origin (outlet of Cranberry Lake) to Inlet of Spring Creek Flowage SEG 2: Outlet of Spring Creek Flowage to Confluence with South Fork Jump River
26n.	Price, Rusk & Taylor	Jump River	SEG 1: Confluence of the North Fork Jump River and South Fork Jump River to the Village of Jump River
26r	Price, Sawyer, Rusk	Flambeau River	SEG 2: Crowley Dam to Inlet of Big Falls Flowage
26w.	Price & Taylor	South Fork Jump River	Origin to Confluence with North Fork Jump River

SECTION 17. NR 102.11(1)(d)29m. is amended to read:

NR 102.11(1)(d)

29.	Rusk	Big Weirgor Creek	All—Class III Portion
		<u>Main Creek</u>	<u>Rusk County Highway P to Inlet of Holcombe Flowage</u>
		<u>Soft Maple Creek</u>	<u>SEG 2: Rusk County Highway "F" to Confluence with Chippewa River</u>

SECTION 18. NR 102.11(1)(d)31m., 35m., and 38m are created to read

NR 102.11(1)(d)

31m.	Sawyer	Couderay River	SEG 2: Dam at Grimh Flowage to Confluence with Chippewa River
35m.	Taylor & Price	Silver Creek	SEG 2: Westboro Sanitary District Outfall to Confluence with South Fork Jump River
38m.	Vilas & Oneida	Wisconsin River	SEG 2: State Highway 70 to Inlet at Rainbow Flowage (Oneida County Line) SEG 3: Outlet of Rainbow Flowage (Oneida County Highway "D" to Inlet of Rhinelander Flowage (T37N R8E S8 SE¼NE¼)

SECTION 19. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 20. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 28, 2006.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Scott Hassett, Secretary

(SEAL)