



Assembly Committee on Environment

Clearinghouse Rule 19-093

Development of Site-Specific Numeric Phosphorus Water Quality Criteria for Surface Waters

February 6, 2020

Good morning Chairman Kitchens and members of the Committee. My name is Adrian Stocks and I am the Water Quality Program Director with the Wisconsin Department of Natural Resources. Joining me is Kristi Minahan, a Water Quality Standards Specialist with the Department. Thank you for the opportunity to testify on Clearinghouse Rule 19-093 (CR 19-093), relating to the development of site-specific numeric phosphorus water quality criteria for surface waters.

Background

Wisconsin's statewide phosphorus criteria for surface waters were established in 2010. These criteria allow for different phosphorus concentrations based on the type of waterbody: streams, rivers, and several lake categories. The existing code contains a statement recognizing that in some cases, the statewide phosphorus criterion may not be appropriate for an individual waterbody due to site-specific characteristics, and that in those cases site-specific phosphorus criteria may be necessary. However, the existing code does not contain an explanation of how such site-specific criteria are to be developed. CR 19-093 will establish detailed methods for developing phosphorus site-specific criteria, which I will refer to as SSC throughout the testimony today.

Rule establishes a consistent process

The proposed rule is not a change from past policy, but rather establishes a methodology and process for developing SSC. It's important to note that the existing statewide phosphorus criteria are appropriately protective in most cases, so the SSC process is expected to be used in a relatively small number of cases. However, there are instances where the statewide phosphorus criterion that would otherwise apply needs to be adjusted for an individual waterbody to ensure that the designated uses (such as recreation and aquatic life) are being reasonably protected without being overprotective. SSC can be developed that is either more stringent or less stringent, depending on the circumstances. In some cases, the statewide criterion may not be protective enough to meet water quality goals for recreation and aquatic life, in which case a more stringent SSC may be necessary. In other cases, the statewide criterion may be more stringent than necessary, in which case a less stringent SSC may be warranted.

You may be familiar with these concepts from your recent consideration of the proposed SSC for certain impoundments and reservoirs in the Wisconsin River Basin. In that case, the proposed SSC were tailored to three impoundments and reservoirs to determine the specific level of phosphorus that would allow recreational goals to be met. This resulted in two proposed SSC that are higher than the statewide

criteria, and one that was lower. Once SSC are set, those revised criteria are used to determine appropriate permit limits for phosphorus dischargers within the basin.

CR 19-093 does not establish individual SSC in and of itself. Rather, it establishes a consistent process to follow for those who wish to propose a phosphorus SSC in the future. Under this rule, any interested party, including the DNR, can propose SSC to the Department for review. The motivation for developing this rule came from input we received from both businesses and environmental groups who saw the need to tailor the phosphorus criteria under certain circumstances. To provide a consistent process, the rule specifies the scientifically defensible methods that are required to derive phosphorus SSC, such as how to develop the study design, where and when to monitor the waterbody, and information needed to demonstrate that the new SSC will be protective of recreation and aquatic life in the waterbody. After the Department reviews a proposal, it would still need to go through rulemaking before taking effect. If we don't establish this process in code, site-specific criteria can still be developed for phosphorus and promulgated by rule. However, expectations would not be clearly defined, which may result in hurdles for those developing SSC as they try to provide all the necessary information.

Relation to CR 19-094, Waterbody assessments, biocriteria, and phosphorus response indicators

We also want to ensure that you are aware that this rule cross-references a different rule package currently in progress, CR 19-094, which I will refer to here as the Waterbody Assessments rule. The Waterbody Assessments rule was assigned to the Assembly Committee on Forestry, Parks, and Outdoor Recreation, where it is currently being considered. It documents methods for evaluating the biological health of waterbodies by assessing fish, aquatic insects, aquatic plants, and algae. Under the SSC process proposed in this rule, eligibility for an SSC depends in large part on determining what SSC is appropriate to maintain or achieve a healthy biological community and good recreational conditions. Therefore, this rule requires that biological assessments be done in accordance with the Waterbody Assessments rule. Because these two rule packages work in tandem and cross-reference one another, they are moving simultaneously through the rulemaking process, but were assigned to separate committees. If the Waterbody Assessments rule is not promulgated, then this SSC rule would need to be revised such that it does not cross-reference the other rule.

Both rules were developed using an inclusive process, with a stakeholder advisory committee that met over the course of two years to develop the two rules in tandem. The committee had about 20 standing members representing business groups, municipalities, environmental organizations, and the U.S. EPA. Both rules were refined throughout that process based on stakeholder feedback and discussion.

Economic Analysis

The creation of this rule is not expected to incur costs because it simply clarifies and documents a process already expressly allowed by statutes and existing code.

The Department recognizes that during the SSC development process, a party requesting an SSC is likely to incur some costs for monitoring or modeling, but it is voluntary as to whether they choose to request an SSC and incur those costs. Once an SSC is developed for a waterbody, there may be alterations to permit limits for point source dischargers, which may result in increased or decreased compliance costs. However, because each proposed SSC would still have to go through rulemaking to take effect, any potential economic impacts would be evaluated with an individual SSC developed

through the future rulemaking process, and not the result of this procedural rule. We expect this procedural rule may save requestors costs and time by specifying the type of demonstration that needs to be made to support an SSC, streamlining their study design and reducing the time needed for SSC approval. This process was developed to be of service to those who are interested in developing an SSC, to help them develop an appropriate and approvable proposal.

On behalf of the Water Quality Bureau, I would like to thank you for your time today. We would be happy to answer any questions you may have.