LCRC FORM 2

# WISCONSIN LEGISLATIVE COUNCIL STAFF

*RULES CLEARINGHOUSE*

AUG 0 9 REC'D

AUG 0 9 1999

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## CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **99–108**

AN ORDER to amend NR 140.10 Table 1 and NR 140.28 (2), relating to groundwater quality standards.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07–13–99 RECEIVED BY LEGISLATIVE COUNCIL.

08–05–99 REPORT SENT TO AGENCY.

RNS:MCP:jal;rv

## LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☐ NO ☑

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

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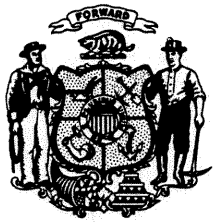

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# CLEARINGHOUSE RULE 99–108

## Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

### *2. Form, Style and Placement in Administrative Code*

a. The strike-through of "mg/l" for barium in Table 1 should be corrected.

b. In s. NR 140.28 (2) (b), all of the subdivisions should end with a period. In par. (b) (intro.), "all of the following occur" should be inserted before the colon. [See s. 1.03 (intro.), Manual.]

### *5. Clarity, Grammar, Punctuation and Use of Plain Language*

a. The proposed amendment to s. NR 140.28 (2) authorizes the department to grant an exemption from certain requirements of the groundwater law when background concentrations of certain substances are below the preventive action limit. The applicability of this authorization to grant an exemption is established in current s. NR 140.28 (1). However, it is difficult to determine how the proposed amendment relates to the applicability provisions of s. NR 140.28 (1), and it is not obvious what specific kinds of facilities, practices or activities may require or be eligible for such an exemption. The proposed amendment could be rewritten to improve clarity. The department should consider whether all of s. NR 140.28 should be rewritten.

b. Should "caused by the facility, practice or activity" be inserted before "does not present a threat" in s. NR 140.28 (2) (a)?

c. To be consistent with statutory language, s. NR 140.28 (2) (b) (intro.) should refer to "public health concern" rather than "health concern."

NOV 1 1 1999

State of Wisconsin
Department of Natural Resources

# NOTICE TO PRESIDING OFFICERS

# OF PROPOSED RULEMAKING

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. DG-27-99

Legislative Council Rules Clearinghouse Number 99-108

Subject of Rules Groundwater quality standards

Date of Transmittal to Presiding Officers November 9, 1999

**Send a copy of any correspondence or notices pertaining to this rule to:**

**Carol Turner, Rules Coordinator**
**DNR Bureau of Legal Services**
**LC/5, 101 South Webster**

**266-1959**

REPORT TO LEGISLATURE

NR 140, Wis. Adm. Code
Groundwater quality standards

Board Order No. DG-27-99
Clearinghouse Rule No. 99-108

## Statement of Need

In 1994 the Board requested that a study be conducted to identify what concentrations of toluene and xylenes in water pose a concern from a taste and odor perspective. An advisory committee was formed and helped design the study. UW River Falls conducted a study to determine what concentrations of toluene and xylenes in drinking water the average adult can smell or taste. The proposed amendments would revise the standard for these substances so they are protective of human health while also addressing taste and odor concerns.

Changes are also proposed to clarify the exemption criteria for health and welfare standard exceedances. These changes would create separate exemption criteria for health and welfare standard exceedances thus fixing an existing inconsistency in the rule.

## Modifications as a Result of Public Hearings

No modifications were made as a result of public hearing.

## Appearances at the Public Hearings and Their Position

*August 12, 1999 – Green Bay*

In support:

Roger A. Miller, STS Consultants, Ltd., 1035 Kepler Drive, Green Bay, WI 54311

In opposition – none
As interest may appear – none

*August 13, 1999 – Rhinelander* – no appearances

*August 16, 1999 – Eau Claire* – no appearances

*August 17, 1999 – Madison*

In support – none
In opposition – none

As interest may appear:

Patrick Stevens, WI Manufacturers & Commerce, 501 E. Washington Ave., Madison, WI 53551

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The Department does not believe that the proposed amendments will have a significant economic impact on a substantial number of small businesses. Rather, the Department anticipates the amendments would benefit small businesses in two ways. First, small businesses would not be required to take an action until the higher standards were exceeded. Second, a number of entities that formerly were not eligible for an exemption under ch. NR 140 would be. This would mean a number of cases, including brownfield sites, could be closed and redeveloped.

**ORDER OF THE STATE OF WISCONSIN**
**NATURAL RESOURCES BOARD**
**AMENDING, REPEALING AND**
**RECREATING, AND CREATING RULES**

.....
The Wisconsin Natural Resources Board
proposes an order to amend NR 140.10 Table 1
and NR 140.28(2), relating to groundwater quality standards. DG-27-99
.....

Analysis prepared by the Department of Natural Resources

Statutory authority: ss. 281.12(1), 281.15 and 281.19(1), and s. 299.11, Stats., and ch. 160, Stats.

Statutes interpreted: ss. 281.12(1), 281.15 and 281.19(1), and s. 299.11, Stats., and ch. 160, Stats.

Chapter 160, Stats., requires the Department to develop numerical groundwater quality standards, consisting of enforcement standards and preventive action limits. Chapter NR 140, Wis. Adm. Code, establishes groundwater standards and creates a framework for implementation of the standards by the Department. The proposed amendments to ch. NR 140 would revise the standards for toluene and xylene. The proposed amendments also include provisions to clarify exemption criteria for health and welfare standard exceedances.

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SECTION 1. NR 140.10, Table 1 is amended to read:

Table 1
Public Health Groundwater Quality Standards

| Substance[1] | Enforcement Standard (micrograms per liter - except as noted) | Preventive Action Limit (micrograms per liter - except as noted) |
|---|---|---|
| Acetone | 1000 | 200 |
| Alachlor | 2 | 0.2 |
| Aldicarb | 10 | 2 |
| Antimony | 6 | 1.2 |
| Anthracene | 3000 | 600 |
| Arsenic | 50 | 5 |
| Asbestos | 7 million fibers per liter (MFL) | 0.7 MFL |
| Atrazine, total chlorinated residues | 3[2] | 0.3[2] |

| | | |
|---|---|---|
| Bacteria, Total Coliform | 0[3] | 0[3] |
| Barium | 2 ~~mg/l~~ milligrams/liter (mg/l) | 0.4 mg/l |
| Bentazon | 300 | 60 |
| Benzene | 5 | 0.5 |
| Benzo(b)fluoranthene | 0.2 | 0.02 |
| Benzo(a)pyrene | 0.2 | 0.02 |
| Beryllium | 4 | 0.4 |
| Boron | 960 | 190 |

Note: Boron as a health standard will become effective on January 1, 2000. Boron as an indicator parameter in s. NR 140.20, Table 3, will be effective until December 31, 1999.

| | | |
|---|---|---|
| Bromodichloromethane | 0.6 | 0.06 |
| Bromoform | 4.4 | 0.44 |
| Bromomethane | 10 | 1 |
| Butylate | 67 | 6.7 |
| Cadmium | 5 | 0.5 |
| Carbaryl | 960 | 192 |
| Carbofuran | 40 | 8 |
| Carbon disulfide | 1000 | 200 |
| Carbon tetrachloride | 5 | 0.5 |
| Chloramben | 150 | 30 |
| Chlordane | 2 | 0.2 |
| Chloroethane | 400 | 80 |
| Chloroform | 6 | 0.6 |
| Chloromethane | 3 | 0.3 |
| Chromium | 100 | 10 |
| Chrysene | 0.2 | 0.02 |
| Cobalt | 40 | 8 |

| | | |
|---|---|---|
| Copper | 1300 | 130 |
| Cyanazine | 1 | 0.1 |
| Cyanide | 200 | 40 |
| Dacthal | 4 mg/l | 0.8 mg/l |
| 1,2-Dibromoethane (EDB) | 0.055 | 0.005 |
| Dibromochloromethane | 60 | 6 |
| 1,2-Dibromo-3-chloro propane (DBCP) | 0.2 | 0.02 |
| Dibutyl phthalate | 100 | 20 |
| Dicamba | 300 | 60 |
| 1,2-Dichlorobenzene | 600 | 60 |
| 1,3-Dichlorobenzene | 1250 | 125 |
| 1,4-Dichlorobenzene | 75 | 15 |
| Dichlorodifluoromethane | 1000 | 200 |
| 1,1-Dichloroethane | 850 | 85 |
| 1,2-Dichloroethane | 5 | 0.5 |
| 1,1-Dichloroethylene | 7 | 0.7 |
| 1,2-Dichloroethylene (cis) | 70 | 7 |
| 1,2-Dichloroethylene (trans) | 100 | 20 |
| 2,4-Dichlorophenoxy acetic Acid (2,4-D) | 70 | 7 |
| 1,2-Dichloropropane | 5 | 0.5 |
| 1,3-Dichloropropene (cis/trans) | 0.2 | 0.02 |
| Di (2-ethylhexyl) phthalate | 6 | 0.6 |
| Dimethoate | 2 | 0.4 |
| 2,4-Dinitrotoluene | 0.05 | 0.005 |
| 2,6-Dinitrotoluene | 0.05 | 0.005 |
| Dinoseb | 7 | 1.4 |

| | | |
|---|---|---|
| Dioxin (2,3,7,8-TCDD) | 0.00003 | 0.000003 |
| Endrin | 2 | 0.4 |
| EPTC | 250 | 50 |
| Ethylbenzene | 700 | 140 |
| Ethylene glycol | 7 mg/l | 0.7 mg/l |
| Fluoranthene | 400 | 80 |
| Fluorene | 400 | 80 |
| Fluoride | 4 mg/l | 0.8 mg/l |
| Fluorotrichloromethane | 3490 | 698 |
| Formaldehyde | 1000 | 100 |
| Heptachlor | 0.4 | 0.04 |
| Heptachlor epoxide | 0.2 | 0.02 |
| Hexachlorobenzene | 1 | 0.1 |
| *N*-Hexane | 600 | 120 |
| Hydrogen sulfide | 30 | 6 |
| Lead | 15 | 1.5 |
| Lindane | 0.2 | 0.02 |
| Mercury | 2 | 0.2 |
| Methanol | 5000 | 1000 |
| Methoxychlor | 40 | 4 |
| Methylene chloride | 5 | 0.5 |
| Methyl ethyl ketone (MEK) | 460 | 90 |
| Methyl isobutyl ketone (MIBK) | 500 | 50 |
| Methyl tert-butyl ether (MTBE) | 60 | 12 |
| Metolachlor | 15 | 1.5 |
| Metribuzin | 250 | 50 |
| Monochlorobenzene | 100 | 20 |

| | | |
|---|---|---|
| Naphthalene | 40 | 8 |
| Nickel | 100 | 20 |
| Nitrate (as N) | 10 mg/l | 2 mg/l |
| Nitrate + Nitrite(as N) | 10 mg/l | 2 mg/l |
| Nitrite (as N) | 1 mg/l | 0.2 mg/l |
| *N*-Nitrosodiphenylamine | 7 | 0.7 |
| Pentachlorophenol (PCP) | 1 | 0.1 |
| Phenol | 6 mg/l | 1.2 mg/l |
| Picloram | 500 | 100 |
| Polychlorinated biphenyls (PCBs) | 0.03 | 0.003 |
| Prometon | 90 | 18 |
| Pyrene | 250 | 50 |
| Pyridine | 10 | 2 |
| Selenium | 50 | 10 |
| Silver | 50 | 10 |
| Simazine | 4 | 0.4 |
| Styrene | 100 | 10 |
| 1,1,1,2-Tetrachloro ethane | 70 | 7 |
| 1,1,2,2-Tetrachloro ethane | 0.2 | 0.02 |
| Tetrachloroethylene | 5 | 0.5 |
| Tetrahydrofuran | 50 | 10 |
| Thallium | 2 | 0.4 |
| Toluene | ~~343~~ 1 mg/l | ~~68.6~~ 0.2 mg/l |
| Toxaphene | 3 | 0.3 |
| 1,2,4-Trichlorobenzene | 70 | 14 |
| 1,1,1-Trichloroethane | 200 | 40 |
| 1,1,2-Trichloroethane | 5 | 0.5 |

| | | |
|---|---|---|
| Trichloroethylene (TCE) | 5 | 0.5 |
| 2,4,5-Trichlorophenoxy-propionic acid (2,4,5-TP) | 50 | 5 |
| 1,2,3-Trichloropropane | 60 | 12 |
| Trifluralin | 7.5 | 0.75 |
| Trimethylbenzenes (1,2,4- and 1,3,5-combined) | 480 | 96 |
| Vanadium | 30 | 6 |
| Vinyl chloride | 0.2 | 0.02 |
| Xylene[4] | ~~620~~ 10 mg/l | ~~124~~ 1 mg/l |

[1] Appendix I contains Chemical Abstract Service (CAS) registry numbers, common synonyms and trade names for most substances listed in Table 1.

[2] Total chlorinated atrazine residues includes parent compound and the following metabolites of health concern: 2-chloro-4-amino-6-isopropylamino-s-triazine (formerly deethylatrazine), 2-chloro-4-amino-6-ethylamino-s-triazine (formerly deisopropylatrazine) and 2-chloro-4,6-diamino-s-triazine (formerly diaminoatrazine).

[3] Total coliform bacteria may not be present in any 100 ml sample using either the membrane filter (MF) technique, the presence-absence (P-A) coliform test, the minimal medium ONPG-MUG (MMO-MUG) test or not present in any 10 ml portion of the 10-tube multiple tube fermentation (MTF) technique.

[4] Xylene includes meta-, ortho-, and para-xylene combined. The preventive action limit has been set at a concentration that is intended to address taste and odor concerns associated with this substance.

SECTION 2. NR 140.28(2) is repealed and recreated to read:

NR 140.28(2) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS BELOW THE PREVENTIVE ACTION LIMIT. (a) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of nitrate or a substance of public welfare concern is below the preventive action limit if the facility, practice or activity is designed and implemented to achieve the lowest possible concentration for that substance which is technically and economically feasible and the

existing or anticipated increase in the concentration of that substance does not present a threat to public health or welfare.

(b) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of a substance of health concern, other than nitrate, is below the preventive action limit for that substance if:

1. The measured or anticipated increase in the concentration of the substance will be minimized to the extent technically and economically feasible;

2. Compliance with the preventive action limit is either not technically or economically feasible;

3. The enforcement standard for that substance will not be attained or exceeded at the point of standards application; and

4. Any existing or projected increase in the concentration of the substance above the background concentration does not present a threat to public health or welfare.

Note: An exemption may be considered under this subsection even if monitoring data indicates no detectable background concentration of the substance.

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The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

(SEAL) By _____
George E. Meyer, Secretary