
Wisconsin Legislative Council

ACT MEMO



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2019 Wisconsin Act 151
[2019 Senate Bill 91]

Water Quality Credit Trading

BACKGROUND

Under state law implementing the federal Clean Water Act, any discharge to a navigable water from a point source must be authorized by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Among other requirements, limitations, and conditions, a WPDES permit establishes effluent limitations, expressed as technology-based limits or water quality-based limits, whichever is more stringent. [s. 283.31 (3) (a), Stats.] Those effluent limitations must be consistent with requirements established under state and federal law.

Under prior law, retained by 2019 Wisconsin Act 151, the Department of Natural Resources (DNR) may allow a WPDES permit holder to exceed otherwise applicable effluent limitations if the person negotiates a binding, written agreement with another WPDES permit holder, DNR, a local government, or a nonpoint source.¹ DNR may authorize a permit holder to discharge pollutants at above-permit levels only if all of the following criteria are satisfied:

- The agreement results in an improvement in water quality.
- The increase in pollutants and offsetting reduction in pollutants involve the same pollutant or water quality standard.
- The increase in pollutants and offsetting reduction in pollutants occur within the same basin or portion of a basin.

[s. 283.84 (1m), Stats.]

Neither the Clean Water Act nor federal regulations implementing it expressly authorize water quality trading. Instead, state water quality trading programs have been developed and approved by the U.S. Environmental Protection Agency (EPA) by adhering to an EPA policy and toolkit, last updated in 2009. DNR provided details regarding its implementation of the state statute authorizing water quality trading through guidance issued in 2013. In a February 2019 letter, the EPA encouraged states to explore flexible options in credit trading programs, including encouraging credit banking and trades across larger geographic areas.

2019 WISCONSIN ACT 151

2019 Wisconsin Act 151 creates additional, alternative mechanisms for trades through Wisconsin's water quality credit trading program. Specifically, in addition to the options for trading under prior law,

¹ A "nonpoint source" is "a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source." [s. 281.65 (2) (b), Stats.] Generally, nonpoint source pollution is not subject to WPDES permitting requirements. Instead, the state primarily addresses nonpoint source pollution through incentive programs such as cost-sharing, adaptive management, and water pollution credit trading.

the act authorizes DNR to allow a WPDES permit holder to discharge pollutants above effluent limitations if the person does either of the following:

- Reaches a binding, written agreement with a clearinghouse for the purchase of credits.
- Reaches a binding, written agreement, approved by DNR, with a third party, under which the third party agrees to work with one or more persons to reduce water pollution.

The act specifies that the clearinghouse must be a single clearinghouse that has entered into a contract with the Department of Administration, subject to various requirements set forth in the act. Among other responsibilities, the act requires the clearinghouse to produce, sell, and maintain a bank of water quality trading credits. The act specifies that each credit must require 1.2 times as much pollution reduction as pollution being offset by the credit.

Credits purchased through a clearinghouse or third party under the act must satisfy the same general requirements as apply to trades under prior law, except that, rather than the same basin, trades purchased through a clearinghouse must increase and reduce pollutants within the same “applicable hydrologic area,”² as determined by DNR.

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² The act defines “applicable hydrologic area” to mean the largest area possible within this state to facilitate implementation of the trading program while achieving water quality standards and any applicable federally approved total maximum daily load allocations.