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PUBLIC HEARING - COMMITTEE RECORDS**

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Joint

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NR 217.13 Calculation of water quality based effluent limitations for phosphorus. (1)

BASIS FOR LIMITATIONS. (a) The department shall calculate potential water quality based effluent limitations for point source dischargers of phosphorus using the procedures in this section.

(b) Water quality based effluent limitations for phosphorus shall be calculated based on the applicable phosphorus criteria in s. NR 102.06 at the point of discharge, except the department may calculate the limitation to protect downstream waters.

(2) DISCHARGES TO STREAMS AND RIVERS. (a) *Limitation calculation.* For discharges of phosphorus to flowing streams and rivers, the water quality based effluent limitation shall be calculated using the following conservation of mass equation:

$$\text{Limitation} = [(WQC) (Q_s + (1-f)Q_e) - (Q_s - fQ_e) (C_s)] / Q_e$$

Where:

Limitation = Water quality based effluent limitation (in units of mass per unit of volume),

WQC = The water quality criterion concentration (in units of mass per unit volume) from s. NR 102.06,

Q_s = Receiving water design flow (in units of volume per unit time) as specified in par. (b),

Q_e = Effluent flow (in units of volume per unit time) as specified in par. (c),

f = Fraction of the effluent flow that is withdrawn from the receiving water, and

C_s = Upstream concentration (in units of mass per unit volume) as specified in par. (d).

(b) *Receiving water design flow (Q_s)*. Based on the availability of information and the professional judgment of the department, the value of Q_s to be used in calculating the effluent limitation for discharges to flowing waters shall be determined using one of the following:

1. The average minimum 7-day flow which occurs once every 2 years (7-day Q_2) based on information derived by the U. S. geological survey or other department approved information source, using data from a representative gauging station with a period of record of at least 10 years.

2. If provided by the permittee and approved by the department, the average low 30-day flow which occurs once every 3 years (30-day Q_3) based on information derived by the U. S. geological survey or other department approved information source, using data from a representative gauging station with a period of record of at least 10 years.

3. Other flow deemed more representative of flow conditions and approved by the department.

(c) *Effluent flows (Q_e)*. 1. For dischargers subject to ch. NR 210 and which discharge for 24 hours per day on a year-round basis, Q_e shall equal the maximum effluent flow, expressed as a daily average, that is anticipated to occur for 12 continuous months during the design life of the treatment facility unless it is demonstrated to the department that this design flow rate is not representative of projected flows at the facility.

2. For other dischargers not subject to ch. NR 210, Q_e shall equal, based on the best professional judgment of the department, one of the following:

a. The maximum effluent flow, expressed as a 365 day rolling average of daily discharges that has occurred for 12 continuous months and represents normal operations.

b. The maximum effluent flow, expressed as a 30 day rolling average, which has occurred for 30 continuous days and represents normal operations.

3. For seasonal discharges, discharges proportional to stream flow, or other non-continuous discharge situations, Q_e shall be determined on a case by case basis.

(d) *Upstream concentrations (C_s)*. The representative upstream concentration of phosphorus shall be used in specific water quality based effluent limit calculations. At a minimum, the representative upstream concentration shall be either a concentration derived by the department based on data from the specific stream or from a similar location. Where data is collected on the upstream location, the concentration used shall equal the median of at least four samples collected throughout the period of May through October. All samples collected during a 28-day period shall be considered as a single sample and the average of the concentrations used. Where data is available from more than one year in the last five years, the department may use all of the years of data in the calculation of the upstream concentration. The department may also use data older than five years provided that it is representative of current conditions. Upstream concentrations may not be measured at a location within the direct influence of a point source discharge. The determination of upstream concentrations shall be evaluated at each permit reissuance.

Note: The department has guidance on collection methods for ambient water sampling and may develop guidance for the evaluation of representative data. The guidance may be obtained from the offices of the department of natural resources, bureau of watershed management at 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

(3) DISCHARGES TO INLAND LAKES AND RESERVOIRS. For discharges of phosphorus directly to inland lakes, reservoirs and other receiving waters which do not exhibit a unidirectional flow at

the point of discharge, the department shall set the effluent limit equal to the criterion for the receiving water or the downstream water.

Note: As described in s. NR 217.16, effluent limitations for discharges to lakes may also be based on the wasteload allocation of a total maximum daily load, where the total maximum daily load has been approved by US EPA.

(4) DISCHARGES DIRECTLY TO GREAT LAKES. For discharges directly to the Great Lakes, the department shall set effluent limits consistent with nearshore or whole lake model results approved by the department. The department may set an interim effluent limit based on the best readily available phosphorus removal technology commonly used in Wisconsin.

Note: At the time this rule was promulgated, . . . [legislative reference bureau inserts date], the best readily available phosphorus removal technology indicates a limit of 0.6 mg/L.

(5) OTHER METHODS OF LIMIT CALCULATION. The department may use other models and equations for calculating a water quality based effluent limitation if, in the best professional judgment of the department, the model provides a more accurate representation of the conditions.

(6) MULTIPLE DISCHARGES. (a) Except as provided in par. (b), whenever the department determines that more than one discharge may be affecting the water quality of the same receiving water, the resultant combined allowable load shall be divided among the various discharges using an allocation method based on site-specific considerations. Whenever the department makes a determination under this subsection, the department shall notify all permittees who may be affecting the water quality of the same receiving water of the determination and any limitations developed under this subsection. Permittees shall be given the opportunity to comment to the department on any determination made under this subsection.

(b) This subsection does not apply if there is a US EPA approved TMDL for phosphorus for the receiving water. If there is a US EPA approved TMDL, the combined allowable load shall be divided in accordance with the approved TMDL.

(7) MINIMUM EFFLUENT LIMITATIONS. If the water quality based effluent limitation calculated pursuant to the procedures in this section is less than the phosphorus criterion specified in s. NR 102.06 for the water body, the effluent limit shall be set to be equal to the criterion.

(8) NEW DISCHARGERS. If a new discharger is proposing a discharge of phosphorus to a receiving or downstream water that is a phosphorus impaired water, the new discharger may not discharge phosphorus except as follows:

(a) The new discharge of phosphorus is allocated part of the reserve capacity or part of the wasteload allocation in a US EPA approved TMDL;

(b) The new discharger can demonstrate the new discharge of phosphorus will improve water quality in the phosphorus impaired segment; or

(c) The new discharger can demonstrate that the new phosphorus load will be offset through a phosphorus trade or other means with another discharge of phosphorus to the 303 (d) listed water. The offset must be approved by the department and must be implemented prior to discharge.

Note: S. 283.84, Stats., establishes requirements for pollutant trades.

SECTION 13. NR 217.14 is created to read:

NR 217.14 Expression of limitations. (1) GENERAL. (a) Water quality based effluent limitations, when required pursuant to s. NR 217.15, shall be expressed in a discharge permit as a

concentration. A mass limit shall also be included in a permit for discharges of phosphorus to any of the following receiving or downstream waters:

1. A lake or reservoir;
2. An outstanding or exceptional resource water, as designated in ss. NR 102.10 and 102.11;
3. A phosphorus impaired water; or
4. A surface water that has an approved TMDL for phosphorus.

(b) The department may establish mass limitations in permits for any other discharges of phosphorus if a concentration limit for phosphorus is included in the permit, and where an increase in phosphorus load is likely to result in adverse effects on water quality in the receiving water or downstream water.

(c) For discharges to lakes, the department shall also include an annual mass limit for phosphorus in the permit.

(d) If there is a US EPA approved TMDL for the receiving water, the department shall include a mass limit expressed in the manner consistent with the requirements of the TMDL. As provided in s. NR 217.16, this TMDL based mass limit may be included in the permit in addition to, or in lieu of the mass limit established pursuant to this section.

Note: In accordance with s. 283.84, Stats., the department may approve the use of phosphorus trading as a means for a point source to achieve compliance with the water quality based effluent limitation, including a TMDL based limitation. The trade shall be incorporated into the terms of the WPDES permit for the point source and must be approved by the department prior to implementation.

(2) CONCENTRATION BASED LIMITATIONS. Concentration effluent limitations calculated under s. NR 217.13 shall be expressed as a monthly average in permits, except for concentrations of less than or equal to 0.3 mg/L where limitations may be expressed as annual averages. If a concentration limitation expressed as an annual average is included in a permit, a monthly average concentration limitation equal to three times the water quality based effluent limitation calculated under s. NR 217.13 shall also be included in the permit.

(3) MASS BASED LIMITATIONS. Concentration effluent limitations as calculated under s. NR 217.13 shall be converted into mass effluent limitations using the effluent flow identified in s. NR 217.13 and an appropriate conversion factor, and expressed as a monthly average in the permit, except for concentration based limitations of less than or equal to 0.3 mg/L where mass limitations may be expressed as annual averages.

SECTION 14. NR 217.15 is created to read:

NR 217.15 Determination of necessity for water quality based effluent limitations for phosphorus. (1) (a) *General.* The department shall include a water quality based effluent limitation for phosphorus in a permit whenever the discharge or discharges from a point source or point sources contain phosphorus at concentrations or loadings which will cause, has the reasonable potential to cause or contribute to, an exceedance of the water quality standards in s. NR 102.06 in either the receiving water or downstream waters. The department shall use the procedures in this section to make this determination.

(b) *Permittees with existing phosphorus limitations.* If a permittee has a technology based phosphorus limitation in a permit that is less restrictive than a water quality based effluent

limitation for phosphorus calculated pursuant to s. NR 217.13, then the department shall include the water quality based effluent limitation in the permit.

(c) *Permittees without existing phosphorus limitations.* If a permittee discharges phosphorus, but does not have a technology based limitation for phosphorus in its permit, the department shall use the procedures in this paragraph to determine whether a discharge will cause, has the reasonable potential to cause or contribute to, an exceedance of the phosphorus water quality criterion in s. NR 102.06 in the receiving or downstream waters, and whether to include a water quality based effluent limit for phosphorus in the WPDES permit.

1. Using at least 11 daily discharge concentrations of phosphorus, if the upper 99th percentile of the 30 day average discharge concentration of phosphorus exceeds the potential phosphorus limitation calculated under s. NR 217.13, then the water quality based effluent limitation for phosphorus shall be included in the WPDES permit. If the upper 99th percentile of the 30 day average discharge concentration of phosphorus is less than the potential phosphorus limitation calculated under s. NR 217.13, then a water quality based effluent limitation for phosphorus is not required in the WPDES permit. The upper 99th percentile of available discharge concentrations shall be calculated pursuant to s. NR 106.04 (5).

2. If 11 daily discharge concentrations of phosphorus are not available for a permittee, then a water quality based effluent limitation for phosphorus shall be included in the permit when the mean of available effluent concentrations is greater than one-fifth of the limit.

3. If no phosphorus effluent data is available for an existing permittee, the department may require phosphorus sampling as part of a permit application for reissuance to determine whether a water quality based effluent limit is necessary in the WPDES permit under par. (a), or the

department may use effluent data information from similar point sources to make the determination under par. (a).

Note: The department will develop guidance regarding the administration of this section to ensure that permitted discharges with a reasonable potential to cause or contribute to exceedances of the applicable phosphorus water quality criterion in s. NR 102.06 are identified.

(d) *Sampling.* Prior to permit reissuance, a permittee discharging any phosphorus shall collect effluent samples of phosphorus at a frequency specified by the department in the permit application for reissuance.

(e) *New dischargers.* The department shall include a water quality based phosphorus limitation in a permit for a new discharger if the department determines the new discharger will discharge phosphorus at concentrations or loadings which may cause or contribute to exceedances of the water quality criteria in s. NR 102.06 in either the receiving water or downstream waters. To estimate the amount of phosphorus discharged by a new discharger, the department may consider projected discharge information from the permit applicant and phosphorus discharge information from similar sources.

(2) If the department determines a water quality based effluent limitation is not necessary in a permit based on the procedures in this section, the department may still require monitoring for phosphorus discharges.

SECTION 15. NR 217.16 is created to read:

NR 217.16 Relationship of WQBELs and TMDL based limitations.

(1) In addition to a water quality based effluent limitation calculated pursuant to s. NR 217.13, the department may derive a water quality based effluent limitation for phosphorus

consistent with the wasteload allocation and assumptions of a US EPA approved TMDL that is designed to achieve water quality standards in ch. NR 102. This TMDL based limitation may be included in a permit in addition to, or in lieu of, the water quality based limitation calculated under s. NR 217.13. When deciding whether to use a TMDL based limit as a substitute for the limitation calculated under s. NR 217.13, the department shall consider the following factors:

- (a) The degree to which nonpoint sources contribute phosphorus to the impaired water;
- (b) Whether waters upstream of the impaired waters are meeting the phosphorus criteria;

and

- (c) Whether waters downstream of the impaired water are meeting the phosphorus criteria.

(2) If the phosphorus limitation based on an approved TMDL is less stringent than the water quality based effluent limitation calculated in s. NR 217.13, the department may include the TMDL based limit in lieu of the limit calculated in s. NR 217.13 if the limit calculated under s. NR 217.13 has not yet taken effect. If the department includes the TMDL based limitation for phosphorus in the WPDES permit in lieu of the limit calculated in s. NR 217.13, the TMDL based limit may remain in the permit for up to two permit terms to allow time for implementation of the TMDL, or the implementation period specified in the TMDL, whichever is less. The department may include a schedule of compliance to achieve a TMDL based limit if the department determines a schedule of compliance is necessary. If after two permit terms, the department determines the nonpoint source load allocation has not been substantially reduced, the department may impose the more stringent water quality based effluent limitation calculated under s. NR 217.13, or may include the TMDL based limitation for an additional permit term if the department determines there will be significant nonpoint source load reductions within the upcoming permit term. If the department decides to remove a TMDL based phosphorus limit from a permit and instead include a

more stringent water quality based phosphorus limit in the permit calculated under s. NR 217.13, the department may provide a schedule of compliance for the more stringent limit if the department determines additional time is needed for the permittee to comply with the revised limit. Such schedules shall require compliance as soon as possible, but in no case no more than five years from the date that the permit is reissued or modified to include the revised effluent limitations.

(3) If a phosphorus water quality based limit calculated under s. NR 217.13 has already taken effect in a permit, the department may replace the limit with a less stringent TMDL based limit, if allowed pursuant to antidegradation procedures in ch. NR 207.

Note: The TMDL based limitation may be less stringent than the water quality based effluent limitation calculated under s. NR 217.13 in cases where nonpoint sources are the significant phosphorus sources responsible for the impairment.

(4) If the phosphorus limitation based on an approved TMDL is more stringent than the water quality based effluent limitation calculated under s. NR 217.13, the department shall include the more stringent TMDL based limitation in the WPDES permit.

SECTION 16. NR 217.17 is created to read:

NR 217.17 Schedules of Compliance. (1) GENERAL. (a) Except as provided in sub. (4), the department may provide a schedule of compliance for a water quality based phosphorus limitation in a WPDES permit, where based on available information the department finds that:

1. The schedule of compliance will lead to compliance with the water quality based effluent limitation as soon as possible; and

2. The schedule of compliance is appropriate and necessary because the permittee cannot immediately achieve compliance with the water quality based effluent limitation based on existing operation of its treatment system.

Note: Before any compliance schedule is established in a permit pursuant to this subchapter, the department must make the finding in par (a).

(b) In determining whether a compliance schedule is appropriate and determining the length of the compliance schedule, the department shall consider all of the following factors:

1. Whether there is any need for modifications to the treatment facilities, operations or measures to meet the water quality based effluent limitation, and if so, how long it will take to implement the modifications. If the department determines that a permittee only needs to make operational changes to achieve compliance with a limitation, the compliance schedule shall be as brief as possible and only allow time for operational start-up adjustments.

2. The amount of time the discharger has already had to meet the water quality based effluent limitation under prior permits.

3. The extent to which the discharger has made good faith efforts to comply with the water quality based effluent limitation and other requirements in prior permits, if applicable.

4. The extent to which the phosphorus removal process technologies have been developed and proven to be effective.

(c) In determining whether a compliance schedule is appropriate and determining the length of the compliance schedule, the department may also consider any of the following factors:

1. Whether there is a need to acquire a substantial amount of property to accommodate the needed modifications; and

2. Whether there is a need to develop an extensive financing plan and obtain financing for the proposed treatment plant upgrade.

Note: A compliance schedule may be provided for a water quality based effluent limit for phosphorus calculated under s. NR 217.13 and a TMDL based limit for phosphorus.

(2) **MAXIMUM COMPLIANCE SCHEDULE PERIOD.** Except for situations where filtration or a similar phosphorus removal process is required, any compliance schedule established by the department under sub. (1) may not exceed seven years from the date a permit was first modified or reissued to include a water quality based phosphorus limit calculated under s. NR 217.13. Where compliance with the water quality based phosphorus limit requires the construction of filtration or a similar phosphorus removal process, the department may grant a schedule of compliance not to exceed nine years from the date that the permit is first reissued or modified to include effluent limitations developed under provisions of this subchapter. In cases where a compliance schedule extends beyond five years, the department may revise the schedule at reissuance or pursuant to a permit modification.

(3) **REQUIREMENTS, LIMITATIONS, DATES AND REPORTING.** When granting a schedule of compliance, the department shall include, as conditions of the permit, the following:

(a) Dates for achievement of interim requirements. The time between interim dates may not exceed one year.

(b) A sequence of actions or operations that may include, as appropriate, but are not limited to:

1. Development and implementation of a phosphorus discharge optimization plan for the current operation.

2. Preparation of preliminary and final designs for new or modified treatment technology.

3. Initiation and completion of construction.

(c) Interim effluent limitations representing good management and operation for similar treatment processes based on performance of other wastewater treatment facilities that will lead to compliance with the final water quality based effluent limitation.

(d) A requirement that no later than 30 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or non-compliance with the interim or final requirements, including submittal of progress reports. If any interim requirement will take more than one year to complete, the permit shall also include a projected completion date for the interim requirement.

(e) The final water quality based effluent limit for phosphorus calculated pursuant to s. NR 217.13 shall be included in the permit even if the limit is not effective during the permit term. The department may revise the final limit at permit reissuance or pursuant to a permit modification.

(f) If the permittee chooses to engage in pollutant trading as a means to achieve compliance with interim limitation or final water quality based effluent limitations, then the terms and conditions related to the trade shall be incorporated into the permit.

(4) NEW DISCHARGERS. Any new discharger may not receive a compliance schedule to achieve compliance with a phosphorus water quality based effluent limitation.

SECTION 17. NR 217.18 is created to read:

NR 217.18 Watershed Adaptive Management Option. (1) GENERAL. The adaptive management option is a strategy to achieve the phosphorus water quality criteria in s. NR 102.06 in the most economically efficient manner, and as soon as possible, taking into consideration the contributions of phosphorus from point and nonpoint sources in a watershed.

(2) APPLICATION. If requested by the permittee in the permit application for reissuance and if approved by the department, the permittee may implement a watershed adaptive management approach under this section as a means to achieve compliance with the phosphorus water quality standards in s. NR 102.06. The department may approve and authorize the adaptive management option in this section only if the permittee demonstrates and the department concurs that all of the following conditions are met:

(a) The exceedance of the applicable phosphorus criterion in s. NR 102.06 is caused by phosphorus contributions from both point sources and nonpoint sources;

(b) Either the sum of the nonpoint sources and the permitted municipal separate storm sewer system contribution of phosphorus to the receiving water is at least 50 percent of a total contribution within the watershed of the receiving water where the applicable phosphorus criterion in s. NR 102.06 is exceeded; or the permittee demonstrates that the applicable phosphorus criterion cannot be met in the watershed without the control of phosphorus from nonpoint sources.

(c) Documentation that the proposed water quality based effluent limit in the applicant's permit will require filtration or other equivalent treatment technology to achieve compliance.

(d) The permittee has submitted an adaptive management plan that identifies specific actions to be implemented that will achieve compliance with the applicable phosphorus criterion in s. NR 102.06 through verifiable reductions of phosphorus from point and nonpoint sources in the watershed. At a minimum, the plan shall include the following:

1. An analysis of the levels of phosphorus in the permittee's effluent and significant sources of point and nonpoint phosphorus loadings in the watershed.

2. Goals and measures for determining whether the actions identified in the plan are effective in achieving compliance with the applicable phosphorus criterion in s. NR 102.06.

3. Identification of any anticipated partners that will assist in implementing the phosphorus reductions to achieve compliance with the applicable phosphorus criterion in s. NR 102.06, including the partner's level of support for the plan.

4. A demonstration that the permittee has the ability to fund and implement the plan either individually, or in conjunction with other permittees and nonpoint sources, or other partners, including municipal and county governments, in the watershed. Plans should include any contracts reflecting commitments by partners to implement applicable actions.

(3) PERMIT TERMS AND CONDITIONS. If the department determines that the permittee has provided all necessary information and the conditions in sub. (2) have been met, it may issue a permit that includes watershed adaptive management actions to achieve compliance with the applicable phosphorus criterion in s. NR 102.06 on a schedule approved by the department. At a minimum, the permit shall include the following:

(a) Monitoring in the receiving water at locations and times established in the permit to assess phosphorus loading and to document progress toward achieving the applicable phosphorus criterion in s. NR 102.06. The department shall also require permittees to monitor, record and report the mass and concentration of phosphorus in the effluent at an appropriate frequency specified by the department in the permit.

(b) Requirements to design and implement the actions identified in the permittee's approved adaptive management plan in accordance with the goals and measures identified in the plan and any compliance schedule included in the permit.

(c) Requirements to optimize the permittee's treatment system to control phosphorus.

(d) Reporting procedures and deadlines for all monitoring, assessment and data gathering requirements in the plan. Permittees shall be required to file and the department will review an

annual report that identifies implementation of actions in the plan that were completed the previous year, and that documents any progress in achieving the goals and measures in the adaptive management plan. Adjustment or corrections, to the extent that they are needed, will be incorporated into the permit via permit modification procedures.

(e) Numerical effluent limitations as follows:

1. All permits issued under the adaptive management option in this section shall include water quality based effluent limitations calculated consistent with the federal water pollution control act, s. 33 USC 1251 to 1387, that are established according to s. NR 217.13 or a US EPA approved TMDL. These limitations shall take effect in accordance with the timeframe established in this paragraph, or pursuant to par. (g) if the adaptive management option is terminated.

2. In the first permit reissuance term following approval by the department under sub. (2), the initial interim effluent limitation shall be no higher than 0.6 mg/L of total phosphorus expressed as a six-month average. An effluent limit not to exceed 1.0 mg/L of total phosphorus expressed as a monthly average shall also be included in the permit. The department may allow the permittee a compliance schedule that may not exceed five years if necessary to meet this interim limitation.

3. If the permittee has met all of the requirements of its previous permit, but the monitoring data of the receiving water indicate that the applicable phosphorus water quality criterion in s. NR 102.06 has not been met by the time the first permit issued under the adaptive management option expires, the department may issue a subsequent adaptive management permit. The subsequent permit shall include an interim effluent limitation of no higher than 0.5 mg/L expressed as a six-month average. An effluent limit not to exceed 1.0 mg/L of total phosphorus expressed as a monthly average shall also be included in the permit. The subsequent permit shall also include an updated adaptive management plan to achieve the phosphorus water quality criterion in s. NR

102.06. The department may allow the permittee a compliance schedule that may not exceed five years if necessary to meet this interim limitation.

4. If by the expiration of the second permit issued under the adaptive management option, monitoring data collected for the receiving water indicate that the applicable phosphorus criterion under s. NR 102.06 has not been met, the department shall require compliance with a water quality based effluent limitation for phosphorus calculated under s. NR 217.13 or a US EPA approved TMDL. The department may allow the permittee a compliance schedule that may not exceed five years if necessary to meet this limitation.

(f) A statement that failure to implement any of the terms or conditions established under subparagraphs (a) through (e) above, is a violation of the permit.

(g) Provisions that the department may terminate the adaptive management option for a permittee and require compliance with a phosphorus effluent limitation calculated under s. NR 217.13 or a US EPA approved TMDL based on any of the following reasons:

1. Failure to implement the adaptive management actions in accordance with the approved adaptive management plan and compliance schedule established in the permit.
2. New information becomes available that changes the department's determinations made under sub. (2).
3. Circumstances beyond the permittee's control have made compliance with the applicable phosphorus criterion in s. NR 102.06 pursuant to the plan's goals and measures infeasible.
4. A determination by the department that sufficient reductions have not been achieved to timely reduce the amount total phosphorus to meet the criteria in s. NR 102.06.

SECTION 18. NR 217.19 is created to read:

NR 217.19 Variances for stabilization ponds and lagoon systems. (1) GENERAL.

(a) An owner or operator of a permitted wastewater treatment system that consists primarily of a stabilization pond system or a lagoon system may apply for a variance to the phosphorus water quality based effluent limitations pursuant to s. 283.15 (4) (a) 1. f., Stats., using the procedures in this section.

Note: Stabilization ponds and lagoons are operated primarily by communities serving a population of 2000 or less and small industries. With currently available technology that could be used in conjunction with stabilization ponds or lagoons, it is unlikely that phosphorus water quality based effluent limits less than 1 mg/L can be consistently met. To meet phosphorus water quality based effluent limits of less than 1 mg/L, it will be necessary for owners of the systems to construct new wastewater treatment plants which could result in substantial and widespread adverse social and economic impacts.

(b) A new discharger may not receive approval for a variance under this section or pursuant to any other variance procedure.

(2) APPLICATION FOR A VARIANCE. (a) The application for a variance under this section shall be submitted with the WPDES permit application for reissuance, or within 30 days after the permittee receives written notification of the proposed phosphorus limits, if the notification occurs later. The application shall be submitted on the phosphorus lagoon and stabilization pond variance form made available from the department or on a form containing equivalent information.

Note: Owners or operators of stabilization ponds or lagoon systems may obtain the variance application form from the offices of the department of natural resources, bureau of watershed management at 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

The form will provide guidance on the type of information needed to demonstrate widespread social and economic impacts.

(b) The application shall, at a minimum, include the following information:

1. Information required by s. NR 200.22, except for the information in s. NR 200.22 (1) (e) 6.
2. A statement that the permittee is seeking a variance pursuant to this section and s. 283.15 (4) (a) 1. f., Stats.
3. Information on the number and volume of lagoon or pond treatment cells, treatment processes, discharge periods, retention times, population served, influent flow, and available capacity for holding wastewater.
4. Other information requested by the department that is relevant to the review conducted under sub. (3).

Note: It is recommended that the permittee ask for calculation of potential phosphorus water quality based limits at least 12 months prior to permit expiration. This information will help the permittee complete their variance request portion of the permit application which is due 180 days prior to permit expiration.

(3) DEPARTMENT REVIEW. (a) The department shall review the submitted application for the variance and determine whether the permittee can achieve the phosphorus effluent limitations calculated pursuant to s. NR 217.13 without widespread adverse social and economic impacts. In making this determination, the department shall:

1. Compare the calculated phosphorus effluent limitations to the phosphorus effluent data submitted under sub. (2). If the permittee does not have sufficient phosphorus discharge data for its system, the department may augment the data set with effluent data from a similar lagoon or pond

system in the state to make the comparison. The department may apply statistical methodologies to make its determination on the ability of the current lagoon or stabilization pond system to meet phosphorus limitations.

2. Evaluate the financial affordability analysis submitted by the permittee in response to the variance application requirement in s. NR 200.22 (p).

Note: The department may use a US EPA publication titled, Interim Economic Guidance for Water Quality Standards – Workbook, EPA-823-B-95-002, March 1995, which provides information on evaluating economic and social impacts.

(b) The department's decision to approve or deny a variance under this section shall be made on or before the date of the s. 283.53 (3) (d), Stats., public notice for the proposed permit reissuance and shall be made in accordance with the following:

1. If the department determines that the permittee cannot meet the phosphorus water quality based effluent limitation without widespread adverse social and economic impacts, the department shall approve the variance. If the variance is approved, the department shall specify in the permit that the variance has been granted for phosphorus, and the requirements in sub. (4) shall also be included in the permit.

2. If the department determines that the permittee can meet the phosphorus effluent limitations without widespread adverse social and economic impacts or that effluent limitations are not necessary as determined by s. NR 217.15, the department shall deny the variance and notify the applicant of this determination in writing.

(c) If the department denies a variance under this section, a permittee may not apply again after the permit is issued for a variance from the phosphorus water quality standard based on the factor in s. 283.15 (4) (a) 1. f., Stats., for the same permit term.

(d) A permittee may seek a variance from a phosphorus limit in a reissued WPDES permit based on the factors in s. 283.15 (4) (a) 1. a. to e., Stats, and using the procedures and requirements in s. 283.15, Stats., and ch. NR 200.

Note: All variances are subject to US EPA review and approval.

(4) PERMIT TERMS IF VARIANCE IS APPROVED. If the department approves a variance to the phosphorus effluent limitations under this section, the following requirements shall be included in the reissued permit:

(a) The permit shall include a phosphorus variance effluent limitation as follows:

1. The numeric limitation shall equal the upper 99th percentile of representative daily discharge concentrations (one-day P₉₉) as calculated in s. NR 106.05 (5) (a).

2. The variance limitation shall be expressed as a daily maximum concentration.

(b) The permittee shall conduct monitoring of phosphorus during discharge periods at a frequency specified in the permit.

(c) The permittee shall, to the extent practicable, identify and minimize the non-domestic sources of phosphorus to the system and operate the treatment system to minimize exceedances of the calculated limits.

(d) The permittee shall investigate treatment technologies, process changes, pollutant source reduction steps, wastewater reuse or other techniques that may result in compliance by the permittee with the applicable phosphorus water quality standard, and shall submit reports on those investigations as required by the department.

(5) CONTINUED VARIANCES. If a permittee received approval for a variance to the phosphorus standard under this section in a reissued permit, the permittee may request a continued

variance from the phosphorus standard in a subsequent reissued permit pursuant to the procedures and requirements in this section.

SECTION 19. EFFECTIVE DATE. This 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), Stats.

SECTION 20. BOARD ADOPTION. The forgoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By _____.

Matthew J. Frank, Secretary

(SEAL)

Fiscal Estimate — 2009 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number WT-25-08

Subject
 Phosphorus Water Quality Standards and Effluent Standards and Limitations

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others Sanitary districts
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.370 (4) (ma)

Assumptions Used in Arriving at Fiscal Estimate

I. RULE SUMMARY

The rule package proposes to implement numeric phosphorus water quality standards criteria for lakes and streams, as required by EPA. If the Department does not adopt phosphorus criteria, EPA has the authority to do so for Wisconsin. On November 23, 2009, EPA received a notice of intent to sue over a lack of numeric criteria for Wisconsin waters.

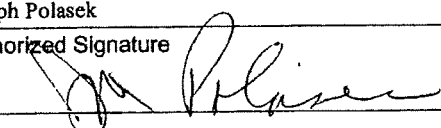
The rule package also includes procedures for using the phosphorus criteria to develop water quality based effluent limitations for publicly and privately owned wastewater treatment facilities, and implementing those limitations through Wisconsin Pollutant Discharge Elimination System (WPDES) permits. Various options included in these permit procedures are limitations derived from total maximum daily load (TMDL) plans, compliance schedules, interim limitations and variances.

II. STATE FISCAL IMPACT

This rule package has no impact on state revenues; however, the Department would incur costs associated with WPDES permits to implement the provisions of the rule package. An ongoing workload equivalent to about 2.0 FTE statewide is projected for at least five to ten years. Wastewater engineer positions will develop effluent limitations, including consideration of TMDL wasteload allocations, review of variance requests, development of compliance schedules, etc. The workload estimate is based on 100 permits per year at about 40 hours per permit with five years to complete an initial cycle of permit reissuances. Salary and fringe costs are estimated at \$220,000 per year (4,000 hours x \$35/hour salary + 48.59% fringe + travel and supplies).

Long-Range Fiscal Implications

The fiscal impact on local governments and industries will likely be spread over a 10 to 20 year period with less costly interim limitations being imposed in the initial five to ten years and the more stringent limits being phased in primarily in the 10 to 20 year period.

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 06-11-10

Fiscal Estimate — 2009 Session

**Page 2 Assumptions Narrative
Continued**

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number

Assumptions Used in Arriving at Fiscal Estimate – Continued

III. LOCAL FISCAL IMPACT

The proposed rule package will result in compliance costs for a number of municipal and other publicly owned wastewater treatment facilities. These costs may be in the form of capital expenditures, increased operation and maintenance costs, or both, and will vary considerably by municipality or sanitary district. For some facilities, no additional costs will be needed since they discharge to streams and rivers and already meet the phosphorus criteria. For up to an estimated 163 facilities, the addition of filtrations processes may be needed and a substantial cost could be incurred. The Department estimates that municipalities and sanitary districts will incur costs of between \$300 million \$1.13 billion to comply with the provisions in the rule package. Costs per unit of phosphorus removed are much lower for larger facilities than for smaller facilities. Furthermore, it should be noted that the estimated cost range does not take into account the possibility that some municipalities and sanitary districts may need to acquire land for locating additional wastewater treatment facilities, and thus incur the corresponding land acquisition costs.

There are a number of factors that could push the costs toward the low end of the range, or even lower. These mitigating factors include nonpoint source control that lessens the need for point source control of phosphorus either in general or through implementation of TMDLs. Other factors include economic variances that limit the degree of control to affordable levels, emerging technology that may lower costs, and pollutant trading. The low end of the range may also be overstated to the extent that facilities have already upgraded their treatment plants and/or treatment processes and have thus already incurred some of the costs.

IV. PRIVATE SECTOR FISCAL IMPACT

The proposed rule package will result in compliance costs for a number of industrial wastewater facilities. These costs may be in the form of capital expenditures, increased operation and maintenance costs, or both. The paper industry and the food processing industry would be most affected. The Department estimates that up to 43 facilities could have stringent effluent limitations. Those discharging wastes to municipal wastewater treatment plants may also face increased service fees. Similar to local governmental entities, there is a great degree of variability in the costs that would be incurred. The Department estimates the cost range to be between \$100 million and \$460 million.

The same mitigating factors described above for local governmental entities will push costs toward the lower end of the range for private sector facilities.

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-25-08

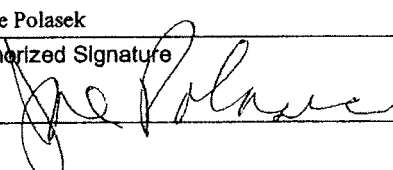
Subject
 Phosphorus Water Quality Standards and Effluent Standards and Limitations

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 208,000	\$ - 0
(FTE Position Changes)		(2.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs		12,000	- 0
Local Assistance		0	- 0
Aids to Individuals or Organizations		0	- 0
Total State Costs by Category		\$ 220,000	\$ - 0
B. State Costs by Source of Funds			
GPR		\$ 220,000	\$ - 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change In Costs	\$ 220,000	\$ see narrative
Net Change In Revenues	\$ 0	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 06-11-10





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 10-035

AN ORDER to amend chapter NR 217 (title), NR 217.01, 217.02, and 217.03; to repeal and recreate NR 102.06; and to create subchapters I (title), II (title), and III (title) of chapter NR 217, and NR 217.10 to 217.19, relating to phosphorus water quality standards criteria and limitations and effluent standards.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-17-2010 RECEIVED BY LEGISLATIVE COUNCIL.

04-13-2010 REPORT SENT TO AGENCY.

RS:JES

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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-035

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

Section 283.15 (4) (a) 1. f., Stats., generally provides that the Secretary of the Department of Natural Resources must approve all or part of a requested variance, or modify and approve a requested variance, if the permittee demonstrates that attaining the water quality standard is not feasible because the standard will cause a substantial and widespread adverse social and economic impact in the area where the permittee is located. Section NR 217.18 (1) (b) 3. is a departmental finding that in many cases it will be necessary for owners of stabilization ponds and lagoons to construct a new wastewater treatment plant to comply with phosphorus effluent limitations; construction of these facilities will result in substantial and widespread adverse social and economic impacts in the area served by the existing stabilization pond and lagoon system. Section NR 217.18 (3) (c) also provides that a permittee with a lagoon and stabilization pond that is denied a variance may not be granted a variance for phosphorus based on the criteria in s. 283.15 (4) (a) 1. f., Stats., and using the procedures in ch. NR 200 and s. 283.15, Stats. It appears, although it is not clear, that the rule provision voids the statutory provision regarding variances. If so, what statutory authority exists for the rule provisions?

2. Form, Style and Placement in Administrative Code

a. The rule contains a number of references to the effective date of the rule that do not conform with the preferred drafting style in s. 1.01 (9) (b), Manual. See ss. NR 217.11 (2) and 217.18 (1) (b) (intro.) and (c).

b. The department should review the entire rule and make all references to the "department" lower case, as called for in s. 1.01 (4) Manual. See, for example, ss. NR 217.13 (1) (b) and 217.15 (2). Similarly, "U.S. Geological Survey" should not be capitalized in s. NR 217.13 (2) (b) 1. and 2.

c. The department should review the entire rule and remove the underscoring of text in provisions being created in the administrative code. Only amendments of existing administrative code provisions should contain text that is underscored. See, for example, ss. NR 217.13 (2) (c) 1. and 217.18 (4) (c) 3.

d. Notes should not contain substantive requirements. See s. 1.09 (1), Manual. This drafting style was not followed in the note following s. NR 217.13 (2) (d).

e. A directive to the department should be expressed through the use of "shall" rather than "will" or "should." See s. 1.01 (2), Manual. This drafting style was not followed in ss. NR 217.13 (3) and 217.17 (1) (b) 1.

f. In the rule preface statement of related statutes or rules, the notation "Stats." should be inserted after the reference "s. 283.11 (3) (am)."

g. In s. NR 102.06 (2), the introduction should read: "In this section:" and the definitions of the terms in pars. (a) and (b) should be placed in alphabetical order.

h. In s. NR 102.06 (3) (b), the correct cross-reference to sub. (4) is "sub. (4) (a)." Also, in sub. (4) (c), the notation "sub" should be replaced by the notation "sub."

i. In s. NR 217.01, the stricken-through portions of amended text should precede the underscored portion of the amended text.

j. In s. NR 217.10 (4), the notation "ch." should be replaced by the notation "chs."

k. In s. NR 217.11 (2) and (5), only the first word of the defined term should be capitalized.

l. In s. NR 217.15 (1) (c), the introductory material should be numbered subd. 1. and the remaining subdivisions should be renumbered accordingly.

m. In s. NR 217.17 (4) (c) 4. c., the notation "ss." should be replaced by the notation "s."

4. Adequacy of References to Related Statutes, Rules and Forms

a. The references in s. NR 217.11 (intro.) to other provisions in the administrative code that contain applicable definitions should be to the specific provision rather than a chapter, e.g., s. NR 102.03 rather than ch. NR 102.

b. For clarity, should the references to "this section" in s. NR 217.13 (6) (a) be to "this subsection"?

c. Section NR 217.18 (2) (a) refers to a form. The requirements of s. 227.14 (3), Stats., should be met.

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

a. In the second paragraph of item 9 of the rule preface, it appears that the word “of” in the first sentence should be deleted.

b. There should be a period rather than a closed quotation mark at the end of s. NR 102.06 (2) (c).

c. Is the “mean water residence time” in s. NR 102.06 (1) (f) the same as the “mean annual hydraulic residence time” in s. NR 102.06 (4) (c)? If so, the department should use consistent terminology and, as appropriate, define the term. In addition, should the period of time over which the “mean water residence time” in s. NR 102.06 (1) (f) is being measured be specified, e.g., 30 years? Finally, the definition is written in terms of raising the depth of the water by more than two times; two times more than what?

d. Section NR 102.06 (4) (b) (intro.) refers to all “lakes and other surface waters that do not exhibit unidirectional flow.” The list of surface waters in s. NR. 102.06 (4) (b) 1. to 5. only refers to particular types of lakes and not other surface waters. Thus, the need for the reference to “other surface waters” in sub. (4) (intro.) is not apparent.

e. In s. NR 102.06 (5) (c), it appears that the word “that” should be inserted before the phrase “are suitable.”

f. The second note following s. NR 102.06 (7) uses the undefined term “303(d) list.” The department should provide a definition of this term applicable to this subsection. Also, the last sentence of the second note should make consistent use of commas and semicolons.

g. Section NR 217.13 (2) (b) 1. and 2. specifies a flow “determined by the U.S. geological survey using data from a gauging station with a period of record of at least 10 years.” Do these gauging stations have to be located within a particular distance or other measure from the source of the discharge of phosphorus to the flowing stream or river? Also, is it the department’s intent that the U.S. geological survey is the only entity that can determine these flows, or can the survey provide the data that others can use to determine the flows?

h. In s. NR 217.13 (2) (b) 3., it appears that the word “of” should be inserted before the word “flow.”

i. The department should review the following terms to ensure that they are unambiguous and do not require a definition or elaboration:

(1) “Specific upstream location” in s. NR 217.13 (2) (d).

(2) “Adaptive management approaches” in s. NR 217.17 (4) (a) (intro.).

j. Section NR 217.13 (2) (d) Note refers to department “guidance.” The rule should indicate to the reader how this guidance may be obtained.

k. In s. NR 217.13 (8) (intro.), “is” should follow “that.”

l. The abbreviation "WQBEL" that is used in s. NR 217.16 (1) (intro.) should be defined.

m. The phrase "as appropriate, but are not limited to" in s. NR 217.17 (3) (intro.) is redundant and not needed.

n. The department should review the entire rule to ensure the proper spacing in references included in the rule, as illustrated in s. 1.07 (2), Manual. See, for example, the reference to "s. NR 102. 06" in s. NR 217.17 (4) (a) 3., to "subchap.II" in s. NR 217.17 (4) (c) 4. a., and to "s. NR 217. 13" in s. NR 217.18 (3) (a).

o. It is not clear why s. NR 217.18 (3) (c) refers to "procedures" in ch. NR 200 and s. 283.15, Stats., and s. NR 217.18 (3) (d) refers to "procedures and requirements" in the same subsection.