

Report From Agency

REPORT TO LEGISLATURE

NR 106, 205, and 212, Wis. Adm. Codes

Board Order No. WT-11-12
Clearinghouse Rule No. 15-085

Basis and Purpose of the Proposed Rule

The purpose of the proposed rule is to ensure that the state's regulations relating to Wisconsin Pollution Discharge Elimination System (WPDES) permitting, total maximum daily load (TMDL) implementation, and TMDL development are consistent with federal regulations. On July 18, 2011, the department received a letter from the U.S. Environmental Protection Agency (EPA) identifying 75 issues and potential inconsistencies with Wisconsin's authority to administer its approved WPDES permit program. The proposed rule addresses 18 of the 75 EPA issues relating to calculation of water quality based effluent limitations, expression and inclusion of effluent limits in WPDES permits, whole effluent toxicity, compliance schedules, and TMDL development and implementation, among others. Specifically, the proposed rule revisions perform six overall functions: modifies the procedures used to calculate water quality-based effluent limitations for toxic substances; changes how effluent limitations for toxic substances are expressed and when they are included in WPDES permits; modifies the procedure used for determining when whole effluent toxicity (WET) limitations are required in WPDES permits; creates a framework to develop and implement TMDLs; clarifies and modifies procedures for granting compliance schedules; and other modifications.

Summary of Public Comments

Three written comments were received from the public during the formal public comment period for WT-11-12, which concluded December 18, 2015. Additionally, one hearing participant provided verbal testimony during the public hearing which occurred on December 7, 2015. Comments were also received from the Wisconsin Legislative Council Rules Clearinghouse (15-085). These changes were largely formatting and editorial in nature. Minor technical comments were also received from the EPA.

Modifications Made

Formatting and editorial changes were made consistent with the comments received from the Wisconsin Legislative Council Rules Clearinghouse (15-085). Minor technical changes were also made to ensure the final rule language is consistent with applicable federal regulations. EPA confirmation was received that these changes satisfied EPA comments. These technical changes do not increase the restrictiveness of the proposed rule. Comments received from the public were largely clarifying in nature. A response to comments was prepared and is included in the Green Sheet Package that addresses these comments. Substantive changes were not made as a result of these comments.

Appearances at the Public Hearing

The public hearing for this rule was conducted on December 7, 2015 in room G09 in the GEF II building at 101 S. Webster St. in Madison, WI. Two participants attended this meeting, one of which provided verbal testimony. These participants were Vanessa Wishart, Municipal Environmental Group - Wastewater Division (MEG), and Pat Cardiff, Grande Cheese. Neither participant indicated a position on the appearance slip.

Changes to Rule Analysis and Fiscal Estimate

Minor editorial changes were recommended for the rule analysis by the Legislative Council Rules Clearinghouse (15-085). These changes were incorporated into the final rule package. The department also received several comments on its draft economic impact analysis. Commenters pointed out that while WET test costs estimated in the draft EIA were appropriate, the Department failed to consider costs associated with shipping of effluent samples for WET tests. This has been rectified in the final EIA. Additionally, commenters

were concerned about the site-specific cost variability of Toxicity Reduction Evaluation (TRE) studies, staff time needed to perform these studies, and shipping costs, among other things. To account for the site-specific cost variability, the Department doubled its original cost estimate for TRE studies, and also included a margin of safety in the final EIA. Once these updates were made, the final EIA concluded that the proposed rule would cost an estimated total of about \$452,000 - \$626,000 statewide over a 5-year period. Given the nature of these costs, these costs are not believed to dissipate over time.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style, and placement in administrative code as well as clarity, grammar, punctuation, and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, excluding portions of the comment at s. NR 212.77(2) (comment "t"). In some cases, there may be multiple applicable lake management plans or remedial action plans that a total maximum daily load (TMDL) would incorporate. For this reason, the department finds that it is appropriate to keep "plans" plural in s. NR 212.77(2), Wis. Adm. Code. Changes were incorporated in the final board order to address the other comments received in 15-085.

Final Regulatory Flexibility Analysis

Of the 126 WPDES permit holders that are believed to be economically and fiscally impacted by the proposed rule revision, 43 dischargers are believed to be small businesses. The potentially impacted businesses include food processors, cheese makers, and other small businesses like metal finishing plants and manufacturers. WET laboratories are typically small business and would likely be positively impacted by the revisions. Using the same methods previously described, it is estimated that small cheese makers may incur a fiscal impact of \$83,000-\$109,000, the impact to food processors may range from \$51,000-\$65,500, and other small businesses may incur a cost between \$24,000-\$35,000. This rule does not specify monitoring frequencies or TRE requirements. Therefore, TRE thresholds and monitoring frequencies were assumed for each permittee. Additional guidance will be developed to help clarify what appropriate monitoring frequencies may be, and when a TRE study should be considered. These decisions will be made on a case-by-case basis to ensure adequate environmental protection and reasonable reporting requirements.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.