

Report From Agency

REPORT TO LEGISLATURE

NR 102, 104, 210 and 219, Wis. Adm. Code

Board Order No. WY-17-15
Clearinghouse Rule No. 19-014

Basis and Purpose of the Proposed Rule

The Clean Water Act (CWA) requires states to adopt water quality standards to protect recreation in and on the water. Water quality standards include a recreation designated use and water quality criteria that protect this use. In addition to the CWA requirements, the Beaches Environmental Assessment and Coastal Health (BEACH) Act requires states with coastal waters (e.g., the Great Lakes) to adopt new or revised criteria for pathogens (including bacteria) to protect recreation not later than three years after the United States Environmental Protection Agency (EPA) publishes revised criteria to maintain eligibility for grant funding for communities. The EPA published revised national recommended recreation water quality criteria for bacteria in 2012.

Human waste contains a number of pathogens that can be spread through water and cause a wide range of diseases. The EPA employs the pathogen indicator concept for these criteria in which the indicator does not itself cause disease, but instead signals the potential for illness caused by human fecal contamination. Pathogen indicators, such as certain bacteria, are used because they tend to be more numerous than pathogens in human fecal matter and are cheaper, safer, and easier to measure. In their 2012 recommended criteria, EPA provides a choice for states to use either *E. coli* or enterococci as their pathogen indicator.

The goals of this rule package are to adequately protect the public while recreating in and on Wisconsin's waters; revise Wisconsin's bacteria water quality criteria to be consistent with EPA's latest recommendations; and update the permit requirements for sewage treatment works to ensure consistency with EPA's policies. To accomplish these goals, the department proposes to revise the bacteria water quality criteria for recreation in ch. NR 102, Wis. Adm. Code, remove fecal coliform criteria for individual waters from ch. NR 104, Wis. Adm. Code, revise the permit requirements for publicly owned and privately owned domestic sewage treatment works in ch. NR 210, Wis. Adm. Code, and update Tables A, EM, and H, or portions thereof related to bacteria, to incorporate EPA's most recent approved methods in ch. NR 219, Wis. Adm. Code.

Summary of Public Comments

See attached Wisconsin Department of Natural Resources Response to Comments on Proposed Bacteria Rule Revisions.

Modifications Made

Substantive modifications were made after the first public comment period in response to comments received. Most notably:

- the expression of permit limits for facilities discharging *E. coli* was revised to a more practicable approach;
- the time frame during which *E. coli* permit limits would be required was reduced; and
- additional information was added to the economic impact analysis.

The revised rule was then made available for a second public comment period. For these and other specific changes made, see item numbers 1, 4, 7, 11, 13, 16, 18, 19, and 24 in the attached Wisconsin Department of

Natural Resources Response to Comments on Proposed Bacteria Rule Revisions. These contain comments and responses from both comment periods.

Appearances at the Public Hearing

There were two separate public comment periods with two public hearings; they are combined in this synopsis:

- In support (3): Brandon Koltz, Rob Lee (Midwest Environmental Advocates), Julie Kinzelman (City of Racine Public Health Dept.)
- In opposition (0): None
- As interest may appear or none selected (6): Vanessa Wishart (Municipal Environmental Group), Kayla Wandsnider, Jerome Donohue, Andrew Fritz, Josie Mayhew, Elliott Blenkiron

Changes to Rule Analysis and Fiscal Estimate

In the Board Order's section 5, Plain Language Analysis, under the subheader "Permit Requirements", the department revised language describing effluent limitations to reflect the revised expression of limits and the revised time frame during which *E. coli* limits are required. Sections 9 and 10 regarding the Fiscal Estimate and effect on small businesses were also revised to reflect adjustments to the final Fiscal Estimate. The original Fiscal Estimate had focused on changes in analytical costs for monitoring *E. coli* versus fecal coliform. The department received several comments stating that wastewater treatment facilities expected to need to increase disinfection to meet the revised permit limits, and that these costs should be included. For the revised estimate, the department undertook significant additional analysis to assess the number of facilities that are likely to need increased disinfection, either through UV or chlorine treatment, and to estimate the likely costs for the increased treatment. This is described in the final Fiscal Estimate as well as in the Board Order.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style, placement; 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, except for those discussed below.

Comment 5.a.: In the rule summary's plain language analysis, a brief explanation for the changes to the year-round disinfection provisions in s. NR 201.06 (1) (b), Wis. Adm. Code, could be added. What is the reason or source for the 5-mile and 20-mile threshold?

Response: Change made to rule language for clarity. The statement contained in an earlier version of the rule that year-round disinfection is required for facilities that are within a 5-mile radius or 20 miles upstream from a drinking water source was not a new requirement. It has been in Wisconsin Administrative Code in s. NR 210.06 (3) (b), Wis. Adm. Code, since 1986. In an earlier version of this rule proposal it had been repeated under s. NR 210.06 (1) (b), Wis. Adm. Code, as it was also relevant to that paragraph. However, to avoid redundancy, we have removed this addition and s. NR 210.06 (1) (b), Wis. Adm. Code, now remains as currently in effect.

Final Regulatory Flexibility Analysis

Privately owned sewage treatment facilities that currently disinfect wastewater are likely to be affected by this rule. There are currently five such facilities that may be affected small businesses, such as mobile home parks or nursing homes. Some facilities may need to increase disinfection to comply with *E. coli* permit limits and/or change lab analysis procedures. The total annual compliance cost for these five facilities combined is estimated at \$2,200. This includes an estimated cost of \$1,500 for increasing disinfection, and a cost of \$660 for switching analytical methods from fecal coliform to *E. coli* during the recreation period.

Response to Small Business Regulatory Review Board Report

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