

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

Date: 02/04/19

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2. Administrative Rule Chapter, Title and Number

NR 119, Phosphorus site-specific water quality criteria; WT-17-12

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3. Subject

Process for developing site-specific numeric phosphorus water quality criteria for surface waters

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

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5. Chapter 20, Stats. Appropriations Affected

APPR 401/441

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect       Increase Existing Revenues       Increase Costs  
 Indeterminate       Decrease Existing Revenues       Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy       Specific Businesses/Sectors  
 Local Government Units       Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes       No

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9. Policy Problem Addressed by the Rule

The existing policy for deriving site-specific phosphorus criteria is found in s. NR 102.06(7), Wis. Adm. Code, which recognizes that the Department can promulgate by rule phosphorus site-specific criteria (SSC). The proposed rule, NR 119, is not a change from past policy, but rather establishes a methodology and process for establishing SSC. Instead of requiring the promulgation of individual numeric phosphorus SSC in separate rule packages, the Department is proposing to promulgate the methodology and a streamlined process for determining an SSC. SSC may be appropriate when the statewide phosphorus criteria are either over- or under-protective of Wisconsin's waters in a given water segment. The existing phosphorus criteria are sufficiently protective in most cases. However, there are instances where the applicable phosphorus criteria under s. NR 102.06, Wis. Adm. Code, need to be adjusted to ensure that the applicable designated uses (such as recreation and aquatic life) are being reasonably protected. If designated uses are not being supported by the statewide criterion, a more stringent SSC may be necessary. In cases where a statewide criterion is more stringent than reasonably necessary to protect the designated uses of the waterbody, a less stringent SSC would likely be warranted. Deriving SSC for these waters may alter WPDES permit limits for point source discharges at or upstream of these specific surface water segments.

This rule specifies the scientifically defensible methods required to derive phosphorus SSC. This rule also identifies the process DNR staff and interested parties should follow to derive phosphorus SSC and participate in SSC decisions. The process includes public participation opportunities and review by the Environmental Protection Agency (EPA). Additionally, this rule will streamline the SSC process for DNR and the public by promulgating the procedure and methodology for deriving an SSC rather than requiring promulgation of each individual SSC by rule. Although the proposed rule does not require rulemaking for each SSC, it does allow for rulemaking on individual SSC when requested by the public.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule maintains the status quo but documents a clear and consistent process for developing SSC. An external advisory committee representing many entities worked with the department on development of this rule. These included

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a variety of business sectors that require WPDES permits for wastewater discharge, organizations representing municipal wastewater treatment facilities, and environmental organizations.

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11. Identify the local governmental units that participated in the development of this EIA.

The Department provided an opportunity for local governmental units to provide information to the Department for consideration in the EIA. Two entities representing municipal wastewater dischargers submitted comments during the EIA solicitation period: The City of Brookfield and Municipal Environmental Group. Several entities representing municipal wastewater dischargers participated as standing members of the department's External Advisory Committee during development of this rule: Municipal Environmental Group, Central States Water Environment Association-WI Section, WI Rural Water Association, and Milwaukee Metropolitan Sewerage District.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Because this rule simply clarifies and documents a process for conducting a review already expressly allowed by state statutes and recognized in existing code, the creation of this rule is not expected to incur costs. The processes outlined in this rule are similar to those that the department has followed under the existing rule, NR 102.06(7), and s. 281.15, Stats. The department recognizes that during the SSC development process, a person requesting an SSC is likely to incur some costs for monitoring or modeling, but it is their choice whether to request an SSC and incur those costs. Also, by specifying the type of demonstration that needs to be made to support an SSC, the rule may save requestors costs and time by streamlining their study design and reducing the time needed for SSC approval. Once an SSC is developed for a waterbody, there may be alterations to WPDES (Wisconsin Pollutant Discharge Elimination System) permit limits for point source discharges at, or upstream of, these specific surface water segments. However, these are no different from any adjustments that would happen under SSC developed under the rulemaking process.

This process is expected to be applicable to a relatively small proportion of waterbodies. However, the number of waterbodies in the state that may be eligible for SSC, or for which the permittees or other entities would be interested in pursuing an SSC, is unknown.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule has several benefits. It provides clarity and consistency for those requesting an SSC regarding the documentation needed to support their SSC request. It provides a streamlined process for approving SSC that would only require rulemaking in certain cases, thereby making DNR's approval process more efficient and saving time for the requestor and the state. And ecologically, it provides a more efficient approach to tailoring water quality criteria to specific waterbodies' characteristics when the statewide phosphorus criteria are either over- or under-protective. This allows resource managers to tailor their management actions appropriately to individual waterbodies.

If this rulemaking were not completed, SSC could still be derived for phosphorus under the existing rule language at ch. NR 102.06(7). However, expectations would not be clearly defined, which may result in inconsistencies and added complexity for those developing SSC, and the process would take significantly longer if every SSC is required to go through the rulemaking process individually.

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14. Long Range Implications of Implementing the Rule

The long-range implications of this rule are the same as its short-range implications. In the long-term, this rule benefits the environment and the public by providing a more efficient means for identifying appropriate management goals for a waterbody's water quality. It will also reduce state staff time spent on processing individual requests, so that department

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staff can focus on additional high priorities.

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### 15. Compare With Approaches Being Used by Federal Government

The Federal water quality standards regulation at 40 CFR 131.11(b)(1)(ii) provides States with the opportunity to adopt water quality criteria that are “modified to reflect site-specific conditions.” Wisconsin has used this authority, as well as the authority under 281.15, Wis. Stats., to promulgate the existing narrative phosphorus site-specific criteria language in s. NR 102.06(7), Wis. Adm. Code. The portions of 40 CFR 131 related to establishing water quality standards include:

- 40 CFR 131 Subparts A-C: Requirements for establishing state water quality standards.
- 40 CFR s. 131.4: States are responsible for establishing and revising water quality standards. U.S. EPA approves or disapproves standards under 40 CFR s. 131.5.
- 40 CFR 131.6: Water quality standards consist of designated uses and criteria to protect the designated uses.
- 40 CFR 131.11: States must adopt water quality criteria that protect designated uses. For waters with multiple uses, the criteria must protect the most sensitive use. 40 CFR 131.11(b)(1)(ii) authorizes states to adopt numeric water quality criteria that are “modified to reflect site-specific conditions.”

40 CFR 131.20: Revision of state water quality standards is subject to public participation procedures and U.S. EPA review and approval under 40 CFR 131.20.

Wisconsin has authority under s. 281.15, Stats., to promulgate and revise water quality standards. Promulgation of site specific criteria methodology would provide consistency with the federal regulations in 40 CFR 131.6 and 131.11 that require that criteria be based on protecting the designated uses of a waterbody.

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### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Iowa, Indiana, Michigan and Ohio do not have statewide numeric phosphorus criteria. However, Michigan widely applies a method to derive appropriate site-specific phosphorus targets for waterbodies in the state. Ohio has a longstanding approach for developing site-specific phosphorus targets using a weight of evidence approach based on several eutrophication indicators. The targets set by Michigan and Ohio are applied in TMDLs and permits.

Illinois has adopted partial phosphorus criteria for lakes and reservoirs. Illinois does not have provisions for site-specific criteria.

Minnesota has adopted phosphorus criteria for lakes, reservoirs, streams and rivers. Minnesota allows site-specific water quality standards, referred to as site-specific criteria in Wisconsin, to be adopted when appropriate if information is available to derive standards based on a waterbody’s specific characteristics. This process is outlined in Minn. R. 7050.0220 and 7050.0222. Site-specific standards must maintain and protect a waterbody’s beneficial uses. Several site-specific phosphorus criteria have been approved in Minnesota.

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