

Chapter NR 209

THERMAL EFFLUENT LIMITATIONS
MODIFICATION PROCEDURES

(Interim effluent limitations)

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Note: Pursuant to chapter 147, Wis. Stats. and under the procedure of section 227.027, Wis. Stats., the department of natural resources has promulgated interim effluent limitations which were in effect for one year. These interim effluent limitations will be periodically replaced by permanent effluent limitations.

NR 209.01 Purpose. The purpose of this chapter is to establish procedures for the imposition of alternative effluent limitations for the thermal components of a point source discharge to surface waters of the state in accordance with section 147.05 (4) Wis. Stats.

History: Cr. eff. 7-22-75.

NR 209.02 Definitions. The following definitions are applicable to terms used in this chapter. Definitions of other terms and meanings of abbreviations are set forth in Wis. Adm. Code chapter NR 205.

(1) "Alternative effluent limitations" means effluent limitations or standards of performance for the control of the thermal component of a discharge which are less restrictive than would be required in the permit for such discharge by the application of limitations and standards required by sections 147.04 and 147.06 Wis. Stats.

(2) "Applicant" means the owner or operator of any point source who desires the department to impose alternative effluent limitations.

(3) "Balanced, indigenous community" or "balanced, indigenous population" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and non-domination of pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with effluent limitations and standards effective by July 1, 1983, including modifications thereof in accordance with the provisions of this chapter.

(4) "Relevant evidence" means new or historical biological data, physical monitoring data, and engineering or diffusion models.

(5) "Representative, important species" means species which are representative, in terms of their biological needs, of a balanced,

indigenous community of shellfish, fish, and wildlife in the body of water receiving a thermal discharge.

(6) "Spatial" means area, volume, configuration, and location.

(7) "Water quality standards" means applicable water quality standards set forth in Wis. Adm. Code chapters NR 102-104, or any federally promulgated water quality standards applicable to surface waters of the state.

History: Cr. eff. 7-22-75.

NR 209.03 Application for alternative effluent limitations. (1)

The owner or operator of any point source who desires the department to impose alternative effluent limitations shall petition the department for an adjudicatory hearing upon filing an application for a WPDES permit or requesting a modification of an existing permit, or not later than 60 days following issuance by the department of a public notice of intent to issue or modify such permit. Such petition may include a description of the alternative effluent limitations desired by the applicant.

(2) Such owner or operator shall submit to the department:

(a) Within 90 days after the petition required by subsection (1) of this section, or within 90 days after being notified of the department's selection of representative, important species in accordance with section NR 209.07(5), or within such longer or shorter time as the department may specify, such data and other information as he wishes to have considered in support of his application for alternative effluent limitations, or

(b) Within 60 days after such petition, or within 60 days after being advised of the department's identification of representative, important species in accordance with section NR 209.07(5), whichever is later, and after consultation with the department, a written plan of study and demonstration in accordance with section NR 209.06.

(3) An applicant who desires to have the determination with respect to alternative effluent limitations deferred in accordance with the provisions of section NR 209.08 shall so specify at the time the plan of study is submitted.

(4) An applicant who desires to attempt a demonstration showing the absence of prior appreciable harm in accordance with section NR 209.07(1), and to limit the contents of his demonstration on the basis that his discharge has and will have a low impact on the segment of the water body receiving the discharge, shall not undertake such demonstration without the prior written approval of the department.

History: Cr. eff. 7-22-75.

NR 209.04 Public notice. (1) If an application for alternative effluent limitations has been filed in accordance with section NR 209.03 for a discharge having a thermal component subject to effluent limitations, the public notice of the proposed issuance of the permit shall include, in addition to the information required by Wis. Adm. Code section NR 3.02;

(a) A statement that the thermal component of the discharge is subject to effluent limitations together with a brief quantitative

description of the thermal effluent limitations required by sections 147.04 and 147.06 Wis. Stats., and

(b) A statement that such an application has been filed and that less stringent effluent limitations may be imposed on the thermal component of the discharge, together with a brief quantitative description of the proposed alternative effluent limitations, if any, included in the petition.

(2) If a petition has been filed in accordance with section NR 209.03(1) and the applicant has submitted data and information in accordance with section NR 209.03(2)(a), the public notice of the proposed issuance of a permit shall include, in addition to the statements required by subsection (1) of this section.

(a) A statement that the applicant has submitted evidence in support of his request for alternative effluent limitations and that the department is considering imposition of such alternative effluent limitations,

(b) A statement that all data submitted by the applicant, and a summary thereof, are available at the office of the department for public inspection during office hours, and

(c) A statement that any interested person may comment in writing upon the applicant's proposed alternative effluent limitations and may participate in the hearing.

(3) If a petition has been filed in accordance with section NR 209.03(1) and the applicant has filed a written plan of study and demonstration in accordance with section NR 209.03(2)(b), the public notice of the proposed issuance of a permit shall include, in addition to the information required by subsection (1) of this section;

(a) A statement that the applicant has submitted such a plan of study,

(b) A summary of the applicant's proposed plan of study and demonstration,

(c) A statement that the plan is available at the office of the department for public inspection during office hours, and

(d) A statement that any interested person may comment in writing upon the applicant's proposed plan of study and may request a public informational hearing to consider such plan.

History: Cr. eff. 7-22-75.

NR 209.05 Hearing procedures. (1) Hearings to consider alternative effluent limitations shall be adjudicatory hearings in accordance with the provisions of section 147.20, Wis. Stats., and Wis. Adm. Code chapter NR 3, subchapter III.

(2) Hearings to consider a proposed plan of study shall be public informational hearings held in accordance with Wis. Adm. Code chapter NR 3, subchapter II.

History: Cr. eff. 7-22-75.

NR 209.06 Plan of study and demonstration. (1) Any written plan of study and demonstration submitted in accordance with section NR 209.03 (2) (b) shall:

(a) Describe the alternative effluent limitations proposed by the applicant,

(b) Identify the type of demonstration contemplated in accordance with section NR 209.07, ✓

(c) Include a description of the data and information which the applicant proposes to submit, and

(d) Include a schedule for the completion and submission of such demonstration.

(2) The department shall consult with the applicant as to the nature and contents of his plan of study and may advise the applicant of the department's concurrence in, recommendation for modification of, or objection to such plan. No failure to adopt a recommended modification of a plan, and no objection to a plan, shall preclude the use of such plan or prejudice any determination based on the results of completion of such plan, nor shall the existence of such plan in any way suspend or negate the requirements of sections 147.04, 147.05 (4), and 147.06, Wis. Stats.

History: Cr. eff. 7-22-75.

NR 209.07 Determination of alternative effluent limitations.

(1) Absence of prior harm. Alternative effluent limitations may be established by the department in the case of a point source which has commenced discharge prior to the filing of an application for such limitations if the applicant has demonstrated that no appreciable harm has resulted from the thermal component of the discharge, taking into account the interaction of such component with other pollutants and the additive effect of other thermal discharges, to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water receiving the discharge, or that despite the occurrence of such previous harm the desired alternative effluent limitations, or appropriate modifications thereof, will assure the protection and propagation of such a community. In determining whether appreciable harm has occurred the department shall consider:

(a) Evidence as to the period of time over which the discharge has occurred,

(b) Evidence demonstrating compliance or noncompliance during the period of prior discharge with water quality standards designed to protect fish and aquatic life, and

(c) Additional evidence which has been submitted by the applicant or required by the department, including evidence that such water quality standards are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community.

(2) Protection of representative, important species. Alternative effluent limitations may be established by the department for a source, whether or not the discharge commenced prior to the filing of an application for such limitations, if the applicant demonstrates that the discharge will assure the protection and propagation of

representative, important species, selected in accordance with section NR 209.07 (5), whose protection and propagation, if assured, will assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and aquatic life in and on the body of receiving water. However, the department shall not establish alternative effluent limitations if it determines based on evidence introduced at the hearing that;

(a) The species selected by the department are not representative, in terms of biological needs, of a balanced, indigenous community in the receiving water,

(b) The temperature requirements employed in calculating the proposed alternative effluent limitations are not adequate to assure the protection and propagation of those species in and on the receiving water, or

(c) The temporal or spatial distribution of the proposed mixing zone is excessively large or otherwise inconsistent with the purposes of section 147.05 (4), Wis. Stats.

(3) Biological, engineering, and other data. The department may establish alternative effluent limitations if it determines on the basis of evidence and data submitted by the applicant, which may include evidence to satisfy the requirements of subsection (1) above or other relevant evidence, that the alternative effluent limitations will assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of receiving water.

(4) In determining in accordance with subsection (2) above whether the protection and propagation of the representative, important species will be assured the department may consider evidence demonstrating that the discharge will comply with applicable temperature requirements for growth, reproduction, and survival of such species as specified in any applicable water quality criteria or in water quality information published by EPA, or additional information supplied by the applicant or required by the department. Compliance with such temperature requirements shall be determined outside a proposed mixing zone whose temporal and spatial distribution will assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the receiving water body.

(5) When an applicant proposes to include a demonstration in accordance with subsection (2) above, he shall so notify the department at the time the application is made and may at the same time submit data and information to assist the department in selecting appropriate representative, important species. The department shall within 60 days of receiving such application advise the applicant of the species selected, which shall include any species included in applicable state water quality standards and such other species as the department deems appropriate. If available information is insufficient to enable the department to select representative, important species, the applicant may at the request of the department conduct such studies and furnish such evidence as may be necessary to select appropriate species and shall have the burden of proving the

species are appropriate and that discharge will assure the protection and propagation of such species.

History: Cr. eff. 7-22-75.

NR 209.08 Deferred determination. (1) The department may defer determination with respect to alternative effluent limitations in any case in which it determines, after reviewing the evidence which the applicant plans to present or the applicant's plan of study, that sufficient information on which to base a knowledgeable determination is not likely to be available within a reasonable period of time.

(2) When the department defers such determination with respect to a particular discharge it may issue a permit for a term up to five years which requires that discharge to achieve thermal effluent limitations no later than the date specified in applicable effluent limitations and standards required by sections 147.04 and 147.06, Wis. Stats., but affords the permittee an opportunity to request the deferred hearing when the necessary evidence has been developed.

(3) Any hearing scheduled in accordance with subsection (2) above shall be given public notice in accordance with sections NR 209.04 (2) or (3) as appropriate and be held sufficiently in advance of any final compliance date to allow the permittee to take measures necessary to comply in the event his request for alternative effluent limitations is denied.

History: Cr. eff. 7-22-75