



NR 209

Filed April 27, 1976
2:15 pm B. J. Tolson

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 450
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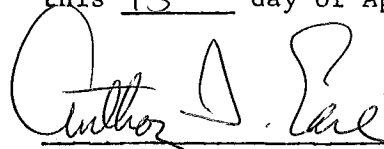
IN REPLY REFER TO: _____

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. EL-25-76 was duly approved and adopted by this Department on February 19, 1976. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at Pyare Square Building in the Village of Shorewood Hills, this 13th day of April, 1976.



Anthony S. Earl, Secretary

(SEAL)

STATE OF WISCONSIN NATURAL RESOURCES BOARD

.....
IN THE MATTER of creating Chapter NR 209 .
of the Wisconsin Administrative Code .
pertaining to thermal effluent limitations .
.....

EL-25-76

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

CREATING RULES

Pursuant to authority vested in the State of Wisconsin Natural Resources Board by sections 147.05(4)(a) and 227.014(2)(b), Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby creates rules as follows:

Chapter NR 209
Thermal Effluent Limitations
Modification Procedures

NR 209.01 Purpose. The purpose of this chapter is to establish procedures implementing section 147.05(4), Wis. Stats., for the imposition of alternative effluent limitations for the thermal components of a point source discharge to surface waters of the state which are less restrictive than limitations and standards adopted pursuant to sections 147.04 and 147.06, Wis. Stats.

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, standards of performance, or a thermal mixing zone for the control of the thermal component of a discharge which are less restrictive than limitations and standards adopted pursuant to sections 147.04 and 147.06, Wis. Stats.

(2) "Petitioner" 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 and on 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.

NR 209.03 Petition 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 to allow for a facility expansion, or no later than 60 days following issuance by the department

NR 209.05 Public notice. (1) If a petition has been filed in accordance with section NR 209.03(1) and the petitioner 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:

(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 pursuant to sections 147.04 and 147.06, Wis. Stats.,

(b) A statement that such a petition for alternative effluent limitations 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 included in the petition,

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

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

(e) A statement that any interested person may comment upon the petitioner's proposed alternative effluent limitations by participating in the hearing.

(2) If a petition has been filed in accordance with section NR 209.03(1) and the petitioner 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 subsections (1)(a) and (b):

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

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

(c) A statement that such 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 petitioner's proposed plan of study and may request a public informational hearing to consider such plan.

NR 209.06 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.

(a) Alternative effluent limitations may be established by the department for a source, whether or not the discharge commenced prior to the filing of a petition for such limitations, if the petitioner demonstrates that the discharge will assure the protection and propagation of representative, important species, selected in accordance with section NR 209.04(2), 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.

(b) Notwithstanding section (a) above, the department shall not establish alternative effluent limitations if it determines based on evidence introduced at the hearing that;

1. The species studies are not representative, in terms of biological needs, of a balanced, indigenous community in the receiving water,

2. 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

3. 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) 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 petitioner 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.

NR 209.09 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 petitioner plans to present or the petitioner'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 paragraph (2) above shall be given public notice in accordance with sections NR 209.04(1) or (2) as appropriate and be held sufficiently in advance of any final compliance date in a permit to allow the permittee to take measures necessary to comply in the event his request for alternative effluent limitations is denied.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 19, 1976.

The rules contained herein shall take effect upon publication.

Dated at Madison, Wisconsin 13 April 1976

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

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