



State of Wisconsin

CR 87-174

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

RECEIVED

DEC 23 1988

10:00 am  
Revisor of Statutes  
Bureau

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS;

I, Bruce B. Braun, Deputy 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. WR-45-87 was duly approved and adopted by this Department on July 28, 1988 and November 17, 1988. 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 here-  
unto set my hand and affixed the  
official seal of the Department at  
the Natural Resources Building in  
the City of Madison, this 22<sup>nd</sup>  
day of December, 1988.

*Bruce B. Braun*  
Bruce B. Braun, Deputy Secretary

(SEAL)

3-1-89

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, AND CREATING RULES

.....  
IN THE MATTER of repealing s. NR 104.03; and  
creating ss. NR 102.05(1)(b) and 102.10 to .  
102.13, and ch. NR 207 of the Wisconsin .  
Administrative Code pertaining to surface . WR-45-87  
water quality antidegradation .  
.....

Analysis Prepared by the Department of Natural Resources

Statutory authority: chs. 144 and 147, and s. 227.11(2)(a), Stats.  
Statutes interpreted: chs. 144 and 147, Stats.

The revisions to ch. NR 102 establish an antidegradation classification system for all surface waters of the state. The classifications are: outstanding resource waters, exceptional resource waters, Great Lakes waters, fish and aquatic life waters, and waters listed in ss. NR 104.05 to 104.10. Ch. NR 207 contains detailed implementation procedures for applying the antidegradation policy in ch. NR 102 to new or increased wastewater discharges to waters in each of the classifications. The repeal of s. NR 104.03 removes the reference to antidegradation in that rule. Antidegradation will not apply to surface waters listed in ss. NR 104.05 to 104.10.

The outstanding resource waters classification includes those surface waters with unique characteristics and which are not significantly impacted by human activities. A reduction in existing water quality would not be permitted for these waters.

The exceptional resource waters classification includes all Class I trout streams which are not included in the outstanding resource waters classification. The antidegradation procedure for these waters is similar to that for outstanding resource waters, except that some minimal degradation due to increases in existing discharges or to a new wastewater discharge necessary to abate an environmental or public health problem may be allowed.

All waters not listed in the other four classifications are fish and aquatic life waters. For these waters, the antidegradation evaluation is a two-step process. The first step is to determine if the proposed discharge will cause a significant lowering of water quality in the receiving water. If the predicted change in water quality is insignificant and it is demonstrated that the proposed discharge will accommodate important economic and social development, then no further evaluation is required. Where the proposed action would significantly lower water quality, then the second step involves a demonstration that the lowering of water

quality is necessary to accommodate important economic and social development and an analysis of reasonable pollutant control options.

In addition to the other requirements for new or increased discharges to fish and aquatic life waters, proposed discharges to the Great Lakes and their tributaries will be strictly regulated to protect them from the impacts of persistent, toxic bioaccumulating substances.

The antidegradation rule will not apply to waters already given variances to water quality standards in ss. NR 104.05 to 104.10 - unless a proposed discharge to these waters will impact a downstream water in one of the other classifications.

Changes to ch. NR 102 list outstanding resource waters and exceptional resource waters and describe the process whereby waterbodies can be added to, or deleted from, these classifications.

Ch. NR 207 establishes procedures for determining whether or not a proposed new or increased discharge is subject to the antidegradation policy and for determining effluent limits for those discharges that are subject to the policy. In order to facilitate antidegradation evaluations, ch. NR 207 also lists information requirements to be provided by permittees proposing a new or increased discharge to fish and aquatic life waters. All evaluations and determinations will be integrated into the WPDES permit application review process.

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[Drafter's Note: Other modifications to chs. NR 102 and NR 104 are being proposed under orders WR-10-87 and WR-47-87.]

SECTION 1. NR 102.05(1)(b) is created to read:

NR 102.05(1)(b) Classification system. For the purposes of this subsection, all surface waters of the state, or portions thereof, shall be classified as one of the following:

1. Outstanding resource waters as listed in s. NR 102.10,
2. Exceptional resource waters as listed in s. NR 102.11,
3. Great Lakes waters as listed in s. NR 102.12(1),

4. Fish and aquatic life waters as described in s. NR 102.13, or

5. Waters listed in tables 3 through 8 in ss. NR 104.05 to 104.10.

SECTION 2. NR 102.10 to 102.13 are created to read:

NR 102.10 OUTSTANDING RESOURCE WATERS. (1) The following surface waters are designated as outstanding resource waters:

(a) National wild and scenic rivers. All rivers designated under the national wild and scenic rivers act, as amended, 16 USC 1271 to 1287, except those portions flowing through Indian reservations, including:

1. St. Croix river between the northern boundary of the Hudson city limits and the St. Croix flowage dam in Douglas county except that the portion of the St. Croix river from the northern boundary of the St. Croix Falls city limits to a distance one mile below the STH 243 bridge at Osceola shall be classified exceptional resource waters under s. NR 102.11.

2. Namekagon river between its confluence with the St. Croix river and the outlet of Lake Namekagon in Bayfield county.

(b) State wild and scenic rivers. All state wild and scenic rivers designated under s. 30.26, Stats., including:

1. Pike river in Marinette county.

2. Pine river and its tributary Popple river in Florence and Forest counties.

(c) Wolf river upstream of the northern Menominee county line.

(d) The following Class I trout waters:

1. Adams county - Big Roche-a-Cri creek
2. Bayfield county - Flag river, Sioux river
3. Chippewa county - Duncan creek, Elk creek, McCann creek
4. Door county - Logan creek
5. Douglas county - Bois Brule river and its tributaries
6. Dunn county - Elk creek
7. Florence county - Brule river including Montagne creek and Riley creek tributaries; tributaries to the Pine-Popple rivers including Chipmunk, Cody, Haley, Haymarsh, LaMontagne, Lepage, Lunds, Martin, Olson, Patten, Pine, Riley, Rock, Simpson, Seven Mile, Wakefield and Woods creeks; Little Popple river
8. Iowa county - Love-Strutt creek, Trout creek
9. Kewaunee county - Little Scarboro creek
10. Langlade county - Clearwater creek, Drew creek, Evergreen river
11. Lincoln county - Center fork New Wood creek, Little Pine creek
12. Marathon county - Holt creek, Spranger creek, Plover river
13. Marinette county - Cedarville creek, Otter creek, Holmes creek, East Thunder creek, North Fork Thunder river, Eagle creek, Little Eagle creek, Plumadore creek, Meadow brook, Upper Middle Inlet creek, Middle Inlet creek, Wausaukee river, Little Wausaukee creek, Coldwater brook, Medicine brook, South Branch Miscauno river, Miscauno river, Swede John creek, South Branch Pemebonwon

river, Spikehorn creek, Silver creek, Little Silver creek, Sullivan creek; tributaries to the Pike river including Little South Branch Pike river, Camp D creek, Camp F creek, Camp 9 creek, Cole creek, Glen creek, Harvey creek, North Branch Harvey creek, South Branch Harvey creek, Hemlock creek, Holloway creek, K.C. creek, Little Harvey creek, Lost creek, MacIntire creek, Phillips creek, Sackerson creek, Shinns creek, Sidney creek, Smeesters creek, Springdale brook, Whiskey creek

14. Marquette county - Chaffee creek, Lawrence creek, Tagatz creek

15. Monroe county - Rullands Coulee creek

16. Oconto county - First South Branch Oconto river, Second South Branch Oconto river, Hills Pond creek

17. Portage county - Emmons creek, Radley creek, Sannes creek, Trout creek

18. Richland county - Camp creek

19. Sheboygan county - Nichols creek

20. St. Croix county - Kinnickinnic river above STH "35"

21. Vernon county - Rullands Coulee creek, Spring Coulee creek, Timber Coulee creek

22. Vilas county - Deerskin river

23. Walworth county - Bluff creek, Potawatomi creek, Van Slyke creek

24. Waupaca county - Emmons creek, Griffin creek, Jackson creek, Leers creek, Peterson creek, Radley creek, Sannes creek,

Spaulding creek, Trout creek, Whitcomb creek, North Branch Little Wolf river

25. Waushara county - Willow creek north of Redgranite, Mecan river north of Richford, Little Pine creek

(2) The waters in sub. (1) may not be lowered in quality.

(3) Surface waters, or portions thereof, may be added to, or deleted from, the outstanding resource waters designation through the rule making process under the provisions of ch. 227, Stats., and s. NR 2.03.

NR 102.11 EXCEPTIONAL RESOURCE WATERS. (1) Surface waters which provide valuable fisheries, hydrologically or geologically unique features, outstanding recreational opportunities, unique environmental settings, and which are not significantly impacted by human activities may be classified as exceptional resource waters. All the following surface waters are designated as exceptional resource waters:

(a) Class I trout waters listed in Wisconsin Trout Streams publication 6-3600(80) that are not listed in s. NR 102.10.

(b) Other Class I trout waters:

1. Abraham Coulee creek in section 29, township 20 north, range 8 west from its headwaters to the Abraham Coulee road bridge in Trempealeau county.

2. Bear creek originating in section 3, township 20 north, range 7 west in Trempealeau county.

3. Biser creek originating in section 19, township 12 north, range 3 west in Sauk county.
4. Bostwick creek from CTH M upstream 6.2 miles to the headwaters in LaCrosse county.
5. Bufton Hollow creek originating in section 23, township 12 north, range 2 west in Richland county.
6. Columbus creek originating in section 29, township 20 north, range 6 west in Jackson county.
7. Dutch creek originating in section 12, township 19 north, range 8 west in Trempealeau county.
8. Joe Coulee creek originating in section 1, township 20 north, range 7 west in Trempealeau county.
9. Little creek originating in section 21, township 20 north, range 6 west in Jackson county.
10. Marble creek originating in section 30, township 10 north, range 3 east in Sauk county.
11. Marshall creek originating in section 4, township 11 north, range 1 west in Richland county.
12. Martin creek originating in section 22, township 6 north, range 2 east in Iowa county.
13. South Bear creek originating in section 2, township 12 north, range 2 west in Richland county.
14. Spring brook downstream from CTH Y south of Antigo to its confluence with the Eau Claire river in Marathon county.

15. Spring Coulee creek from the headwaters to SE 1/4, SE 1/4, section 33, township 16 north, range 1 east in Monroe county.

16. Unnamed creek 2-12 originating in section 36, township 20 north, range 7 west of Trempealeau county.

17. Unnamed creek 4-9 originating in section 4, township 11 north, range 1 west in Richland county.

18. Unnamed creek 5-6 originating in section 6, township 19 north, range 8 west in Trempealeau county.

19. Unnamed creek 7-4 originating in section 6, township 20 north, range 7 west in Trempealeau county.

20. Unnamed creek 8-9 originating in section 5, township 20 north, range 7 west in Trempealeau county.

21. Unnamed creek 8-14 originating in section 1, township 20 north, range 8 west in Trempealeau county.

22. Unnamed creek 9-13 originating in section 4, township 20 north, range 6 west in Jackson county.

23. Unnamed creek 10-8 originating in section 10, township 11 north, range 1 west in Richland county.

24. Unnamed creek 10-10 originating in section 14, township 20 north, range 6 west in Jackson county.

25. Unnamed creek 11-4 originating in section 1, township 20 north, range 7 west in Trempealeau county.

26. Unnamed creek 11-7 originating in section 2, township 20 north, range 7 west in Trempealeau county.

27. Unnamed creek 13-3a originating in section 19, township 20 north, range 6 west in Trempealeau county.

28. Unnamed creek 13-3b originating in section 6, township 20 north, range 6 west in Trempealeau county.

29. Unnamed creek 15-13 originating in section 1, township 20 north, range 8 west in Trempealeau county.

30. Unnamed creek 15-4 originating in section 3, township 20 north, range 6 west in Trempealeau county.

31. Unnamed creek 16-2 originating in section 22, township 20 north, range 6 west in Jackson County.

32. Unnamed creek 17-5 originating in SE 1/4, section 5, township 20 north, range 6 west in Jackson county.

33. Unnamed creek 24-3a originating in section 24, township 11 north, range 1 west in Richland county.

34. Unnamed creek 26-7 originating in section 2, township 20 north, range 6 west in Jackson county.

35. Unnamed creek 34-2 originating in section 17, township 20 north, range 8 west in Trempealeau county.

36. Unnamed creek 34-15 originating in section 27, township 20 north, range 7 west in Trempealeau county.

37. Unnamed stream originating in section 29, township 10 north, range 3 east in Sauk county.

38. Washington Coulee creek originating in section 29, township 20 north, range 6 west in Jackson county.

(2) The waters identified in sub. (1) may not be lowered in quality except as provided in ch. NR 207.

(3) DESIGNATION PROCEDURES. Surface waters, or portions thereof, may be added to, or deleted from, the exceptional resource waters designation through the rule making process under the provisions of ch. 227, Stats., and s. NR 2.03.

NR 102.12 GREAT LAKES WATERS. (1) The following surface waters are designated as Great Lakes waters:

(a) Lake Michigan, including Green Bay.

(b) Lake Superior.

(2) For the purpose of administering ch. NR 207 and consistent with chs. NR 105 and 106, the waters identified in sub. (1) and their tributaries are to be protected from the impacts of persistent, bioaccumulating toxic substances by avoiding or limiting to the maximum extent practicable increases in these substances.

NR 102.13 FISH AND AQUATIC LIFE WATERS. All surface waters not included in s. NR 102.05(1)(b)1, 2, 3 or 5 are fish and aquatic life waters.

SECTION 3. NR 104.03 is repealed.

SECTION 4. Chapter NR 207 is created to read:

#### Chapter NR 207

#### Water Quality Antidegradation

- NR 207.01 Purpose and applicability
- NR 207.02 Definitions
- NR 207.03 Antidegradation evaluation procedure
- NR 207.04 Fish and aquatic life waters
- NR 207.05 Determining significant lowering of water quality
- NR 207.06 Nonpoint Sources

[Drafter's Note: This chapter contains references to chapters NR 105 and NR 106, which are being drafted on approximately the same schedule as this chapter. Chapter NR 105 pertains to surface water quality criteria for toxic substances. Chapter NR 106 pertains to water quality based effluent limits for toxicants and organoleptic substances. This chapter also contains references to chs. NR 102 and NR 104 which are also being revised on approximately the same schedule as this chapter. Creation of chapters NR 105 and NR 106 and revisions of chs. NR 102 and NR 104 are being proposed under orders WR-10-87 and WR-47-87.]

NR 207.01 PURPOSE AND APPLICABILITY. (1) PURPOSE. The purpose of this chapter is to establish implementation procedures for the antidegradation policy in s. NR 102.05(1)(a). This chapter sets procedures applicable to proposed new or increased discharges to outstanding resource waters, exceptional resource waters, Great Lakes waters, fish and aquatic life waters, and waters listed in tables 3 through 8 in ss. NR 104.05 to 104.10.

(2) APPLICABILITY. This chapter applies to any person proposing to increase an existing discharge or create a new discharge to the surface waters of the state.

NR 207.02 DEFINITIONS. In addition to the definitions in ch. NR 205, the following definitions apply to this chapter:

(1) "Assimilative capacity" means the difference between the water quality criterion for a substance identified in ch. NR 102 or 105 and the existing level of that substance in a surface water.

(2) "Bioaccumulation factor" means the ratio of the concentration of a substance in an aquatic organism to the concentration of the substance in water to which the organism is exposed regardless of whether the concentration in the organism results solely from body contact with the water or from body contact plus ingestion of food contaminated with the substance, as determined under ch. NR 105 and associated technical support documents.

(3) "Exceptional resource waters" means any surface water, or portion thereof, in s. NR 102.11.

(4) "Fish and aquatic life water" means any surface water, or portion thereof, in s. NR 102.13.

(5) "Great Lakes waters" means any surface water in s. NR 102.12(1).

(6)(a) "Increased discharge" means any change in concentration, level or loading of a substance which would exceed an effluent limitation specified in a current WPDES permit.

(b) Increased discharge does not include the initial imposition of effluent limitations for substances which were in a previous discharge but which had not been limited in a prior or the current permit unless the initial imposition of effluent limitations occurs due to a changed discharge location, other than

a change in location necessary to accommodate a mixing zone as provided for in ch. NR 106.

(7) "Loading" means the concentration of a substance within a discharge multiplied by the flow of that discharge.

(8) "New discharge" means any point source which has not received a WPDES permit from the department prior to the effective date of this chapter...[revisor insert date].

(9) "Outstanding resource waters" means any surface water, or portion thereof, in s. NR 102.10.

(10) "Receiving water" means the portion of a surface water which will be affected by a proposed new or increased discharge.

(11) "Significant lowering of water quality" means a lowering of water quality determined to be significant under s. NR 207.05.

(12) "Surface water" means all waters of the state, as designated in s. 144.01(19), Stats., except groundwater.

(13) "Water quality based effluent limitations" means effluent limitations established by the department pursuant to s. 147.04(5), Stats.

NR 207.03 ANTIDegradation Evaluation Procedure. (1) OUTSTANDING RESOURCE WATERS. If the department determines that a WPDES permit application proposes a new or increased discharge to outstanding resource waters, effluent limitations for substances in the new or increased portion of the discharge will be set equal to the background levels of these substances, upstream of, or adjacent to, the discharge site unless it is determined that for tributaries to

Great Lakes waters, such limitations would result in significant lowering of water quality under s. NR 207.05(4)(b). Effluent limitations for those substances shall be determined in accordance with s. NR 207.04.

(2) EXCEPTIONAL RESOURCE WATERS. If the department determines that a WPDES permit application proposes a new or increased discharge to exceptional resource waters, it shall review the application as follows:

(a) For a proposed new discharge which is needed to prevent or correct either an existing surface or groundwater contamination situation, or a public health problem, water quality based effluent limitations shall be determined in accordance with sub. (4).

(b) For a proposed new discharge which is not needed to prevent or correct either an existing surface or groundwater contamination situation, or a public health problem, water quality based effluent limitations shall be set equal to the existing levels of these substances upstream of, or adjacent to, the discharge site.

(c) For a proposed increased discharge, water quality based effluent limitations for the increased portion of the discharge shall be determined in accordance with sub. (4).

(d) Whenever effluent limitations determined in accordance with s. NR 207.03(2)(a) to (c) would result in any substance in the proposed new or increased discharge causing significant lowering of water quality as determined under s. NR 207.05(4)(b),

effluent limitations shall be determined in accordance with s. NR 207.04.

(3) GREAT LAKES WATERS. If the department determines that a WPDES permit application proposes a new or increased discharge to Great Lakes waters, it shall establish effluent limitations based on the procedures in ss. NR 207.04 and 207.05.

(4) FISH AND AQUATIC LIFE WATERS. If the department determines that a WPDES permit application proposes a new or increased discharge to fish and aquatic life waters, it shall establish effluent limitations using the procedures in ss. NR 207.04 and 207.05.

(5) WATERS LISTED IN TABLES 3 THROUGH 8 IN ss. NR 104.05 TO 104.10. If the department determines that a WPDES permit application proposes a new or increased discharge to waters listed in tables 3 through 8 in ss. NR 104.05 to 104.10, the following procedure shall apply:

(a) The person proposing a new or increased discharge shall demonstrate to the department whether or not the discharge will result in:

1. Significant lowering of water quality in downstream fish and aquatic life or Great Lakes waters as determined under s. NR 207.05;

2. Lowering of water quality of downstream outstanding resource waters;

3. Lowering of water quality of downstream exceptional resource waters, except for a proposed increased discharge or a proposed new discharge necessary to correct or prevent an existing surface or groundwater contamination situation or a public health problem.

(b) Sections NR 207.04 and 207.05 shall apply under either of the following circumstances:

1. A proposed increased discharge would result in significant lowering of water quality of downstream fish and aquatic life waters, exceptional resource waters, or Great Lakes waters; or

2. A proposed new discharge which is necessary to correct or prevent an existing surface or groundwater contamination situation or a public health problem and would result in a significant lowering of downstream exceptional resource waters.

(c) Effluent limitations shall be set to prevent a lowering of water quality under the following circumstances:

1. The proposed new or increased discharge would result in a lowering of water quality to downstream outstanding resource waters; or

2. A proposed new discharge not subject to par. (b)2 would result in a lowering of water quality to downstream exceptional resource waters.

(d) The remaining provisions of this chapter do not apply to situations relating to proposed new or increased discharges to

waters listed in tables 3 through 8 in ss. NR 104.05 to 104.10 not covered by pars. (a) to (c).

(6) NONCONTACT COOLING WATER. The requirements of subs. (1) and (2) apply to new or increased discharges of noncontact cooling water. The requirements of subs.(3) to (5) do not apply to new or increased discharges of noncontact cooling water which meet the following criteria:

(a) The discharge contains no additives other than those necessary to provide a safe drinking water supply or those similar in type and amount to substances typically added to a public drinking water supply.

(b) The discharge complies with the thermal criteria in ch. NR 102.

(c) The department has determined that the discharge does not contain concentrations of substances other than additives specified in par.(a) which will result in violations of water quality criteria established under ch. NR 105 or if the department has determined that the existing concentration of a toxic substance in the receiving water is greater than the water quality criterion in ch. NR 105 that the source of the water supply for the discharge is the same receiving water.

(d) The discharge does not contain groundwater which is withdrawn from a location because of noncompliance with the standards in ch. NR 140.

(7) PERMIT CONDITIONS AND REPORTING REQUIREMENTS. All WPDES permit applications for new or increased discharges reviewed under the procedures established in this chapter shall be subject to the permit conditions and reporting requirements in chs. NR 200 to 297.

NR 207.04 FISH AND AQUATIC LIFE WATERS. (1) APPLICATION INFORMATION. Persons proposing a new or increased discharge to fish and aquatic life waters shall provide documentation for the following:

(a) An assessment of existing treatment capability which demonstrates:

1. Any of the following:

a. The permittee's monthly average discharge equals or exceeds 85% of a monthly average effluent limitation established in a permit for 3 consecutive months;

b. The permittee's daily discharge equals or exceeds 85% of a daily maximum effluent limitation established in a permit 5 or more times during a calendar year;

c. There are exceedances of any daily maximum, weekly average or monthly average effluent limitation for a parameter in a permit; or

d. A municipal permittee's compliance maintenance annual report point total, as required in ch. NR 208, is 70 or greater;

2. The treatment facilities were maintained in good working order;

3. The treatment facilities were operated and maintained as efficiently as possible; and

4. The conditions documented in subd. 1 were not due to temporary upsets.

(b) Effluent quality data and background water quality data for indicator parameters as a determination will be made on whether or not a significant lowering of water quality will occur under s. NR 207.05.

(c) If the proposed new or increased discharge is found to result in any lowering of water quality or if the person proposing the new or increased discharge has waived the procedure in ss. NR 207.05(a) to (d), the permit applicant shall demonstrate the following:

1. The proposed new or increased discharge will accommodate important economic or social development in any of the following ways:

- a. The discharger will be increasing its employment.
- b. The discharger will be increasing its production level.
- c. The discharger will be avoiding a reduction in its employment level.
- d. The discharger will be increasing its efficiency.
- e. There will be industrial, commercial or residential growth in the community.
- f. The discharger will be providing economic or social benefit to the community.

g. The discharger will be correcting an environmental or public health problem.

(d) If the new or increased discharge is found to result in a significant lowering of water quality or if the person proposing the new or increased discharge has waived the procedure in ss. NR 207.05(2)(a) to (d) the permit applicant shall demonstrate the following:

1. The proposed significant lowering of water quality cannot be prevented in a cost effective manner by the following types of pollution control alternatives:

a. Use of conservation measures.

b. Use of recycling measures.

c. Use of other applicable wastewater treatment process or operational changes.

d. Use of source reduction measures.

2. For proposals involving the expansion of a wastewater treatment plant, whether or not there are alternative wastewater treatment technologies which:

a. Have documented performance levels for similar wastewater composition,

b. Have capital costs less than 110% of the capital costs (or present worth less than 115% of the related total present worth value) for alternatives achieving the water quality based effluent limitations or the effluent limitations determined pursuant to chs. NR 200 to 297, as appropriate, and

c. Would prevent a significant lowering of water quality.

3. Whether or not there are other discharge locations or alternatives which would meet the conditions of subds. 2b and c.

4. Any other information required by the department or believed by the applicant to be necessary to complete review of the application.

Note: It is the intent of the department that, where possible, an applicant may use applicable information contained in a facility plan approved by the department to meet the requirements of s. NR 207.04(1)(a) to (d).

(2) DEPARTMENT DETERMINATIONS (a) If the department determines that the existing wastewater treatment facilities have treatment capability to treat any proposed new or increased discharge and maintain treatment levels sufficient to meet existing effluent limitations as documented under sub. (1) (a), effluent limitations will remain unchanged.

(b) If the department determines that the existing treatment facilities do not have treatment capability to treat any proposed new or increased discharge and maintain treatment levels sufficient to meet existing effluent limitations, effluent limitations will be developed using the following procedures:

1. If the proposed new or increased discharge will not significantly lower water quality as determined under s. 207.05(4)

and will accommodate important economic and social development as documented under sub. (1)(c), water quality based effluent limitations will be determined based on applicable procedures and criteria in chs. NR 102,103, 105 and 106 or on categorical effluent limitation procedures pursuant to chs. NR 200 to 297 as appropriate.

2. If the proposed new or increased discharge will not significantly lower water quality as determined under s. NR 207.05(4) and will not accommodate important economic and social development as documented under sub. (1)(c), water quality based effluent limitations for substances in the new or increased discharge will be set equal to the existing levels of these substances upstream of, or adjacent to, the discharge site.

3. If the proposed new or increased discharge will significantly lower water quality as determined under s. NR 207.05(4), or the applicant has chosen to waive the procedure in s. NR 207.05(2)(a) to (d), and the proposed discharge will not accommodate important economic and social development as documented under sub.(1)(c), water quality based effluent limitations for substances in the new or increased discharge will be set equal to the existing levels of these substances upstream of, or adjacent to, the discharge site.

4. If the proposed new or increased discharge will significantly lower water quality as determined under s. NR 207.05(4), or the applicant has chosen to waive the procedure in s. NR 207.05(2)(a) to (d), and the proposed discharge will accommodate important economic and social development as documented under sub.(1)(c), effluent limitations for the proposed new or increased discharge will be determined using the procedure in par. (c).

(c) The department shall use the following procedures to determine water quality based effluent limitations or effluent limitations determined pursuant to chs. NR 200 to 297 as appropriate, for each substance in the proposed new or increased discharge for which the existing levels upstream of, or adjacent to, the discharge site are of better quality than applicable water quality criteria in ch. NR 102, 103 or 105:

1. If there are no applicable pollution control alternatives or alternative discharge locations which meet the conditions of sub. (1)(d)2 or 3, effluent limitations will be determined for the new or increased portion of the discharge based on applicable procedures and criteria in chs. NR 102, 103, 105 and 106 or based on effluent limitations pursuant to chs. NR 200 to 297, as appropriate.

2. If there are applicable pollution control alternatives or alternative discharge locations which meet the conditions of sub. (1)(d)2 or 3, water quality based effluent limitations will be determined for the new or increased portion of the discharge based on the applicable pollution control alternative or alternative discharge site which prevents the significant lowering of water quality.

3. For an increased discharge not involving expansion of a wastewater treatment plant:

a. If there are no demonstrated, cost effective pollution control alternatives which would prevent significant lowering of water quality as demonstrated under sub. (1)(d)1, effluent limitations shall be determined pursuant to chs. NR 102 and 106 or chs. NR 200 to 297, as appropriate.

b. If there are demonstrated, cost effective pollution control alternatives which would prevent the significant lowering of water quality as demonstrated under sub. (1)(d)1, water quality based effluent limitations will be determined for the new or increased portion of the discharge based on the cost effective pollution control alternative which prevents the significant lowering of water quality.

(d) The department shall determine water quality based effluent limitations using the water quality criteria in ch. NR 102, 103,

104 or 105 for substances in the proposed new or increased discharge whose levels in the receiving water are of lesser quality than the water quality criteria for the receiving water upstream of, or adjacent to, the discharge site.

(e) In addition to the provisions of pars. (a) to (c), if the department determines that a proposed new or increased discharge will result in lowering of water quality in downstream outstanding resource waters or a proposed new discharge would result in lowering of water quality in exceptional resource waters, other than for the reasons specified in s. NR 207.03(2)(a), water quality based effluent limitations for substances in the new or increased portion of the discharge will be set to prevent the lowering of water quality in the downstream outstanding or exceptional resource water. Whenever s. NR 207.03(2)(a) applies, effluent limitations shall be established using the procedures in s. NR 207.04.

NR 207.05 DETERMINING SIGNIFICANT LOWERING OF WATER QUALITY.

(1) INDICATOR PARAMETERS. For each proposed new or increased discharge the department shall determine a list of water quality parameters for which the significant lowering of water quality test will be applied. The list shall consist of:

(a) Biochemical oxygen demand/dissolved oxygen, ammonia-nitrogen, and copper; or

(b) Some other list of substances for which water quality criteria have been determined in chs. NR 102 to 105, not to exceed 10 parameters, which is determined to be representative of the discharge.

(2) APPLICATION INFORMATION. Persons proposing a new or increased discharge shall use the following procedure to demonstrate to the department whether the discharge will result in a significant lowering of water quality:

(a) Determine the expected levels of the indicator parameters in the discharge.

(b) Determine existing levels of the indicator parameters upstream of, or adjacent to, the discharge site using applicable procedures in chs. NR 102 and 106 or specified by the department if none of those procedures apply. Existing levels shall be based on the earliest source of data after the effective date of this chapter... [revisor insert date] unless a demonstration is made that there has been a change in existing levels resulting in a change in the assimilative capacity of the receiving water, in which case the existing levels shall be based on the data used in the demonstration.

(c) Calculate expected levels in the receiving water of the indicator parameters as a result of the proposed new or increased discharge. In calculating expected levels in the receiving water, the following shall be used:

1. Applicable design low flow rates or dilution ratios for the receiving water in ch. NR 102 or 106 or specified by the department if none of those rates or ratios apply.

2. The daily average discharge loading rates for the new or increased portion of a municipal discharge or the yearly average discharge loading rates for the new or increased portion of an industrial discharge.

(d) Compare the expected levels in the receiving water of each indicator parameter as calculated in par.(c) to:

1. The assimilative capacity multiplied by one-third for all indicator parameters except dissolved oxygen; or

2. The sum of the existing level multiplied by two-thirds and the water quality criterion multiplied by one-third for dissolved oxygen.

(3) PROCEDURE WAIVER. Persons proposing a new or increased discharge may choose to waive the procedure in sub.(2), and proceed directly to the economic and social development test.

(4) DEPARTMENT DETERMINATIONS. The department shall determine that a proposed new or increased discharge will result in a significant lowering of water quality if either:

(a) The proposed new or increased discharge, along with all other new or increased discharges after the effective date of this chapter... [revisor insert date], taking into account any changes in assimilative capacity over time that have been demonstrated

under sub.(2)(b), results in an expected level of an indicator parameter in the receiving water of either of the following:

1. Greater than one-third multiplied by the assimilative capacity for any indicator parameter other than dissolved oxygen; or

2. Greater than the sum of the existing level multiplied by two-thirds and the water quality criterion multiplied by one-third for dissolved oxygen.

(b) For a discharge to Great Lakes waters or their tributaries, the mass loading to the receiving water of any substance in the proposed new or increased discharge having a bioaccumulation factor greater than 250 would be increased.

NR 207.06 NONPOINT SOURCES. Reserved.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Carroll D. Besadny, Secretary

(SEAL)

DATE



State of Wisconsin — Joint Committee for Review of Administrative Rules

December 19, 1988

Secretary C.D. "Buzz" Besadny  
Dept. of Natural Resources  
101 S. Webster St.  
Madison WI 53702

Dear Buzz:

As you know, the Joint Committee for Review of Administrative Rules adopted requests on December 14, 1988 that your department modify CR 87-158 (regarding PCBs) and CR 87-174 (regarding source reduction alternatives). The modifications submitted to the committee on December 15, 1988 appear to comply with the intent of those requests. The committee record of our action, including our nonconcurrence in standing committee objections, is attached.

We greatly appreciate the cooperation of you and your staff in the development of the important and complex surface water rules. We hope that the rules -- and the department's enforcement of them -- will prove to be of lasting benefit to the state of Wisconsin.

Sincerely,

  
JOHN R. PLEWA  
Senate Co-Chair

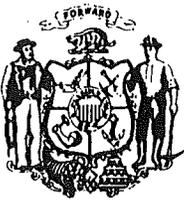
  
JOHN M. ANTARAMIAN  
Assembly Co-Chair

JMA:JRP:bmc

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OFFICE OF THE  
SECRETARY



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

December 22, 1988.

File Ref: 8250

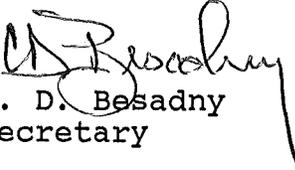
Mr. Orlan L. Prestegard  
Revisor of Statutes  
Suite 702  
30 W. Mifflin Street  
Madison, WI

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board order No. WR-45-88. These rules were reviewed by the Assembly Committee on Natural Resources, the Senate Committee on Urban Affairs, Energy, Environmental Resources and Elections, and the Joint Committee for Review of Administrative Rules pursuant to s. 227.19, Stats. A summary of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

  
C. D. Besadny  
Secretary

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Encs.