

1987 Assembly Bill 418

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1987 Wisconsin Act 60

AN ACT to renumber and amend 144.025 (2) (b); to amend 147.05 (2) (a) 2 and (b) 1 and 2, 147.05 (3), 147.05 (5) (b), 147.05 (6) and 147.20 (1) (am); to repeal and recreate 147.05 (4) (a) 1 and 147.05 (5) (c); and to create 144.025 (2) (b) 2 to 5, 147.05 (4) (a) 3, 147.05 (4) (d), 147.05 (8), 147.10 (3), 147.105 and 147.20 (5) of the statutes, relating to Wisconsin pollution discharge elimination system permit review, water quality based effluent limitations for point sources, variance procedures, water quality standards and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 144.025 (2) (b) of the statutes is renumbered 144.025 (2) (b) 1 and amended to read:

144.025 (2) (b) 1. The department shall ~~adopt~~ promulgate rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Such Water quality standards shall consist of the designated uses of the waters or portions thereof and the water quality criteria for those waters based upon the designated use. Water quality standards of quality shall be such as to protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water supplies, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.

SECTION 2. 144.025 (2) (b) 2 to 5 of the statutes are created to read:

144.025 (2) (b) 2. In adopting or revising any water quality criteria for the waters of the state or any designated portion thereof, the department shall do all of the following:

a. At least annually publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following year.

b. Consider information reasonably available to the department on the likely social, economic, energy usage and environmental costs associated with attaining the criteria and provide a description of the eco-

nomical and social considerations used in the establishment of the criteria.

c. Establish criteria which are no more stringent than reasonably necessary to assure attainment of the designated use for the water bodies in question.

d. Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

e. Develop a technical support document which identifies the scientific data utilized, the margin of safety applied and any facts and interpretations of those data applied in deriving the water quality criteria, including the persistence, degradability and nature and effects of each substance on the designated uses, and which provides a summary of the information considered under this paragraph.

3. Subdivision 2 does not apply to rules promulgated under this paragraph by the department for any substance before the effective date of this subdivision [revisor inserts date].

4. By April 1, 1989, the department shall review, in accordance with subd. 2, and as necessary revise all water quality criteria, except those for dissolved oxygen, temperature, pH and ammonia, adopted under this paragraph before the effective date of this subdivision [revisor inserts date].

5. The department shall comply with this paragraph with respect to all water quality criteria adopted or revised after the effective date of this subdivision [revisor inserts date].

SECTION 3. 147.05 (2) (a) 2 and (b) 1 and 2 of the statutes, as affected by 1987 Wisconsin Act 27, are amended to read:

147.05 (2) (a) 2. After an application for a variance is submitted to the department, ~~the permittee is not required to comply with the water quality based efflu-~~

ent limitation under s. 147.04 (5) and the corresponding compliance schedule until the application is denied under par. (d) or sub. (4) (a) 2 and until the last day for seeking review of the secretary's final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 147.04 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 147.20. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

(b) 1. The department shall specify by rule the information ~~which the permittee must include to be included~~ in the application. The permittee shall submit an application for a variance within ~~30~~ 60 days after the department issues, reissues or modifies the permit.

2. If a permittee applies for a variance before the promulgation of rules under subd. 1, the permittee shall submit an application for a variance within 30 days after the department issues, reissues or modifies the permit. Within ~~15~~ 30 days after receipt of the application, the department shall specify the information which the permittee must include in the application. The permittee shall provide the information within ~~30~~ 60 days after receipt of the department's request.

SECTION 4. 147.05 (3) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

147.05 (3) TENTATIVE DECISION. The secretary shall issue a tentative decision on the variance within 120 days after receipt of a completed application. The department shall circulate the tentative decision to the parties in s. 147.03 (2) (c). If the tentative decision is to grant a variance based upon one or more of the conditions specified in sub. (4) (a) 1. a to e, the department shall include in the notice under this subsection a statement on the effect of the variance, if granted, on the designated use of the water body during the term of the underlying permit. The department shall provide a 30-day period for written comments on the tentative decision.

SECTION 5. 147.05 (4) (a) 1 of the statutes, as created by 1987 Wisconsin Act 27, is repealed and recreated to read:

147.05 (4) (a) 1. Within 90 days after expiration of the comment period under sub. (3), the secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

a. Naturally occurring pollutant concentrations prevent the attainment of the standard;

b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements;

c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place;

d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the standard;

e. Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

f. The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

SECTION 6. 147.05 (4) (a) 3 of the statutes is created to read:

147.05 (4) (a) 3. The failure of the secretary to issue a final decision under subd. 1 or 2 within the time required under this paragraph shall constitute a denial of the application for the variance.

SECTION 7. 147.05 (4) (d) of the statutes is created to read:

147.05 (4) (d) The decision under this subsection is reviewable under subch. III of ch. 227, except that ss. 227.40 to 227.46, 227.485 to 227.51 and 227.60 do not apply to the decision under this subsection.

SECTION 8. 147.05 (5) (b) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

147.05 (5) (b) A variance applies for the term established by the secretary, but not to exceed 3 years. The term of the initial variance and any renewals thereof may not exceed the time that the secretary determines is necessary to achieve the water quality based effluent limitation. Initial and interim effluent limitations established under par. (c) 1 apply, as appropriate, for the term of the underlying permit as issued, reissued or modified to implement the decision under sub. (4) (b) or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s. 227.51 (2) shall apply for the purposes of continuing the provisions of a permit pending the issuance or reissuance of a permit. Upon the issuance or reissuance of the new permit, sub. (2) (a) 2 and s. 147.20 (1) (am) apply.

SECTION 9. 147.05 (5) (c) of the statutes, as affected by 1987 Wisconsin Act 27, is repealed and recreated to read:

147.05 (5) (c) The permit modified pursuant to sub. (4) (c) to implement a variance shall require:

1. Compliance with an initial effluent limitation which at the time the variance is approved represents the level currently achievable by the permittee. At the time a variance is approved a compliance schedule and an interim effluent limitation that is achievable by the permittee during the term of the variance may be specified. The initial and the interim effluent limitations may not be less stringent than a categorical effluent limitation that applies to the permittee under s. 147.04 (2) or (4) or 147.06 or a toxic effluent standard that applies to the permittee under s. 147.07.

2. Investigation of treatment technologies, process changes, wastewater reuse or other techniques that may result in compliance by the permittee with the water quality standard adopted under s. 144.025 (2) (b), and submission of reports on the investigations at such times as required by the department. The secretary shall modify or waive the requirements specified in this subdivision if the secretary determines, based upon comments received on the tentative decision under sub. (3), that the requirements of this subdivision are:

- a. Reasonably beyond the technical or financial capability of the permittee; or
- b. Unreasonable in light of the conditions specified in sub. (4) (a) 1. a to e.

SECTION 10. 147.05 (6) of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

147.05 (6) RENEWAL. A variance may be renewed using the procedures in and subject to subs. (2) to (5). A variance may not be renewed if the permittee did not submit the reports required under sub. (5) (c) 2 or substantially comply with all other conditions of the variance.

SECTION 11. 147.05 (8) of the statutes is created to read:

147.05 (8) NO RIGHT TO A HEARING. Notwithstanding s. 227.42, there is no right to a hearing under this section.

SECTION 12. 147.10 (3) of the statutes is created to read:

147.10 (3) If the department proposes to include a water quality based effluent limitation in the permit, a fact sheet prepared under this section shall include all of the following:

(a) A description of the calculation used by the department to derive the water quality based effluent limitation.

(b) A discussion of the rationale used by the department to determine whether or not a compliance schedule for the water quality based effluent limitation shall be included in the proposed permit and the rationale used to develop any such schedule. The discussion shall include a description of treatment technologies or control strategies that may be available to the per-

mittee for achieving compliance with the water quality based effluent limitation.

(c) The assumptions and information used by the department to calculate the mixing zone for the discharge.

SECTION 13. 147.105 of the statutes is created to read:

147.105 Requests for information by permittee. When a permit for which a fact sheet is required to be prepared under s. 147.10 is issued, reissued or modified, if the permittee submits, during the public comment period afforded under s. 147.09, to the department a written request for information on the background levels in the receiving water of substances for which a water quality based effluent limitation under s. 147.04 (5) is included in the proposed permit, the department shall, to the extent the information is available, provide to the permittee no later than the time that the permit is issued, reissued or modified such information or list of documents which present such information. Nothing in this section limits rights under ss. 19.31 to 19.37.

SECTION 14. 147.20 (1) (am) of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

147.20 (1) (am) After a verified petition for review is filed and until the department issues a decision on the petition, ~~the permittee is not required to comply with last day for seeking review of the department's decision or a later date fixed by order of the reviewing court,~~ any term or condition, thermal effluent limitation or water quality based effluent limitation which is the subject of the petition is not effective. All other provisions of the permit continue in effect except those for which an application for a variance has been submitted under s. 147.05. For those provisions for which a petition for review has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

SECTION 15. 147.20 (5) of the statutes is created to read:

147.20 (5) Rules promulgated under s. 144.025 (2) (b) may not be reviewed under this section. The application of rules promulgated under s. 144.025 (2) (b) may be reviewed under this section.

SECTION 16. **Appropriation changes; natural resources.** (1) WASTEWATER DISCHARGE PERMIT STAFFING. The appropriation to the department of natural resources under section 20.370 (2) (ma) of the statutes, as affected by the acts of 1987, is increased by \$40,000 for fiscal year 1987-88 and by \$80,000 for fiscal year 1988-89 to fund, beginning on the effective date of this section, 2.0 FTE GPR positions to implement and provide ongoing staffing for the administration of the Wisconsin pollution discharge elimination system permit program.