

Chapter NR 212

WASTE LOAD ALLOCATED WATER QUALITY RELATED
EFFLUENT LIMITATIONS

NR 212.01	Purpose (p. 51)	NR 212.115	Transferable wasteload allocation (p. 56)
NR 212.02	Applicability (p. 51)	NR 212.12	Instream aeration (p. 56)
NR 212.03	Definitions (p. 51)	NR 212.13	Flow reregulation (p. 56-1)
NR 212.05	General (p. 53)	NR 212.40	Determination of lower Fox river water quality related effluent limitations (p. 57)
NR 212.06	Determination of the total maximum load (p. 54)	NR 212.60	Determination of upper Wisconsin river water quality related effluent limitations (p. 60)
NR 212.07	Allocation for reserve capacity (p. 54)	NR 212.70	Determination of Peshtigo river water quality related effluent limitations (p. 84)
NR 212.08	Allocation for margin of safety (p. 54)		
NR 212.09	Nonpoint source allocation (p. 54)		
NR 212.10	Point source allocations (p. 54)		
NR 212.11	Modifications and temporary reallocation of point source allocations (p. 55)		

NR 212.01 Purpose. The purpose of this chapter is to establish the procedures, methodologies and requirements to be used by the department for determining total maximum pollutant loadings and corresponding water quality related effluent limitations in accordance with ss. 147.04 (5), 147.05 and 147.25 (3), Stats. Such restrictions are established to attain and maintain the designated uses specified in the water quality standards appearing in chs. NR 102, 103 and 104.

History: Cr. Register, September, 1981, No. 309, eff. 10-1-81.

NR 212.02 Applicability. (1) The provisions of this chapter are applicable to water quality related effluent limitations for conventional pollutants, ammonia and phosphorus developed through waste load allocations and established under s. 147.05, Stats.

(2) Nothing in this chapter shall in any way inhibit, override, preclude or prevent the department from issuing any permit with toxic effluent limits even if such permit limitations would result in more stringent limitations than provided in this chapter.

History: Cr. Register, September, 1981, No. 309, eff. 10-1-81.

NR 212.03 Definitions. In addition to the definitions and abbreviations in ss. NR 205.03 and 205.04, the following definitions are applicable to terms used in this chapter:

(1) "Baseline load" means the reference load used in distributing all or part of the total maximum load among multiple point source dischargers to a water quality limited segment.

(2) "Categorical effluent limitation" means a point source effluent limitation for categories and classes of point sources other than publicly-owned treatment works achieved by application of the best practicable control technology currently available, the best conventional pollutant control technology, or the best available technology economically achievable as required by s. 147.04 (2), Stats.; or means a point source

Register, March, 1986, No. 363

effluent limitation for a publicly-owned treatment works achieved by application of secondary treatment as required by s. 147.04 (4), Stats.

(3) "Conventional pollutant" means those pollutants identified in section 304 (a) (4) of the federal clean water act amendments of 1977. These pollutants are; biological oxygen demand (BOD), total suspended solids (TSS), pH, fecal coliform and oil and grease.

(4) "Cost-effective analysis" means a systematic comparison of alternative means of meeting state water quality standards, effluent limitations or other treatment standards in order to identify the alternative which will minimize the total resources costs over the appropriate planning period. These resources costs include monetary costs and environmental as well as other nonmonetary costs.

(5) "Critical water quality conditions" means those water conditions upon which are based the most stringent water quality effluent limitations.

(6) "Effluent limitation" whenever used without qualification means any restriction including schedules of compliance, established by the department, on quantities, rates and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of this state.

(7) "Flow reregulation" means any practice with respect to the available surface waters in a basin that would alter the stream flows from those which would occur under existing regimes.

(8) "Infiltration" means water other than waste water that enters a sewerage system, including sewer service connections, from the ground through such sources as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(9) "Inflow" means water other than waste water that enters a sewerage system, including sewer service connections, from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(10) "Instream aeration" means techniques which increase the dissolved oxygen content of a receiving water. Those techniques include, but are not limited to, mechanical aeration devices, diffuser systems, and turbine venting.

(11) "Margin of safety" means a portion of the total maximum load which accounts for the uncertainties concerning the relationship between effluent limitations and water quality or provide a greater assurance that the water quality standards will be met. This portion of the total maximum load is not available for allocation to point sources.

(12) "New point source", for the purposes of this chapter, means a point source which commenced operation after January 1, 1980.

(13) "Nonpoint source" means a source of pollution resulting from a land management activity which contributes to runoff, seepage or percolation; and which is not defined as a point source.

(3) The department may permit point source water quality related effluent limitations to vary according to flow, temperature or other water quality conditions only when all of the following are met:

(a) The limitations shall result in the attainment of water quality standards; and

(b) During the term of the permit the discharger provides sufficient monitoring capability where such capability does not otherwise exist.

(4) Water quality related effluent limits shall be expressed as daily maximum loads. Consistent with techniques established under ss. NR 212.40 through 212.70 effluent limits may be expressed as averages in conjunction with daily maximum limits if the permittee demonstrates that such limits would not increase the probability of water quality standards violations. The flow and temperature measurements of stream conditions for flow and temperature related permits may be based on averages in cases where averages better approximate actual river conditions.

History: Cr. Register, September, 1981, No. 309, eff. 10-1-81; am. (2) and (4), Register, May, 1985, No. 353, eff. 6-1-85.

NR 212.11 Modifications and temporary reallocation of point source allocations. (1) When a discharger to a publicly-owned point source covered by this chapter applies to receive a separate WPDES permit or when a person with a WPDES permit applies to terminate its direct discharge in order to contribute to a publicly-owned point source covered by this chapter, permit modification procedures contained in ss. 147.025 and 147.03 (2), Stats., shall apply. Any reallocation pursuant to such action shall only affect the applicant and the publicly-owned point source to which it discharges.

(2) Procedures for temporary reallocation for individual stream segments are identified in ss. NR 212.40 through 212.70. Notwithstanding procedures identified in ss. NR 212.40 through 212.70, temporary reallocation of wasteload allocations may be allowed under the following conditions:

(a) Reallocations approved by the department shall be for at least one calendar year and shall expire at the end of the affected discharger's WPDES permit term;

(b) Reallocations shall account for differences in waste characteristics and location of discharge as determined by the department and may not adversely affect a downstream segment's wasteload allocation; and

(c) Reallocations may not affect baseline loads in affected stream segments but may result in an adjustment to total maximum daily loads identified in ss. NR 212.40 through 212.70.

(3) Reallocations may not be approved by the department until the discharger applying for a reallocation demonstrates through the use of a toxicity test approved by the department that such reallocation will not result in toxicity in the receiving water.

(4) Prior to department approval of a reallocation, all parties to the transfer shall waive all rights under s. 227.14, Stats., to retain any reallocation beyond the expiration date of the WPDES permit of the dischargers applying to receive a reallocation. The waiver shall be effectuated

through incorporation into the WPDES permit of the affected discharger.

History: Cr. Register, September, 1981, No. 309, eff. 10-1-81; r. and recr. Register, August, 1985, No. 356, eff. 9-1-85.

NR 212.115 Transferable wasteload allocation. (1) Transfers of wasteload allocations between point source dischargers may be allowed through the permit issuance or modification process under the following conditions:

(a) The discharger applying to receive a transfer secures a legally binding agreement approved by the department, that the WPDES permit allocations for one or more existing dischargers shall be reduced by an amount sufficient to prevent the total maximum load under ss. NR 212.40 to 212.70 from being exceeded;

(b) The department shall consider the differences in waste characteristics and location of the affected point sources to determine amounts by which the existing point source allocations are reduced; and

(c) Transfer agreements approved by the department shall be for at least one wasteload allocation season and may not extend beyond the term of the seller's discharge permit.

(d) Transfers may not be approved by the department until the discharger applying for an increased wasteload allocation demonstrates through the use of a toxicity test approved by the department that the transfer will not result in a failure, as defined by the department, of the toxicity.

(2) Prior to department approval of a transfer, the discharger applying for an increased wasteload allocation shall demonstrate to the satisfaction of the department that the increase is needed due to:

(a) New production by a new discharger,

(b) Increased production which cannot be accommodated by the current treatment facility, or

(c) The inability of the current waste treatment facility to meet current wasteload allocations despite optimal operation and maintenance of the treatment facility.

(3) Prior to department approval of a transfer, all parties to the transfer shall waive all rights under s. 227.14, Stats., to retain any transfer beyond the expiration date of the WPDES permit of the dischargers applying to receive a transfer. The waiver shall be incorporated into both the legally binding agreement in sub. (1) (a) and the WPDES permit of all parties to the agreement.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

NR 212.12 Instream aeration. (1) Total maximum loads established under this chapter may be calculated based on the use of instream aeration techniques when WPDES permit applications meet both the following conditions:

(a) A cost-effectiveness analysis is submitted to the department which demonstrates that instream aeration is a satisfactory means of attaining water quality standards; and

Register, March, 1986, No. 363

(b) A demonstration is made to the satisfaction of the department that applicable water quality standards will be met and no environmental pollution as defined in s. 144.01 (3), Stats., will occur.

(2) Instream aeration may not be used to accommodate new or increased discharges of pollutants either from new point sources or from the expansion of existing point sources, except that instream aeration may be available on a temporary basis to accommodate increased pollution loads due to the growth of a municipality when:

(a) The use of aeration for this purpose is restricted to residential or public sector growth;

(b) Adequate operation and maintenance of the publicly-owned point source exists;

(c) Excessive infiltration and inflow have been removed from the collection systems;

(d) No bypasses exist which are not authorized by the department; and

(e) The municipality has taken all reasonable steps to obtain federal and state financing for its point source.

(3) The use of instream aeration under sub. (2) shall be allowed for a period not to exceed 5 years, at which time the publicly-owned point source shall have sufficient treatment capability in place to meet the waste water treatment needs as required by an approved municipal waste water treatment facility plan developed under ch. NR 110.

History: Cr. Register, September, 1981, No. 309, eff. 10-1-81.

NR 212.13 Flow reregulation. (1) Total maximum loads established under this chapter may be calculated based on the use of flow reregulation techniques when WPDES permit applicants meet all of the following conditions:

(a) A cost-effectiveness analysis is submitted to the department which demonstrates that flow reregulation is a satisfactory means of attaining water quality standards.

(b) A technical analysis is presented to the satisfaction of the department which determines the critical water quality conditions for the affected stream segment as a function of the flow reregulation technique.