Report to
Legislative Council Rules Clearinghouse
NR 102, Wis. Adm. Code
Natural Resources Board Order No. WY-09-18

Wisconsin Statutory Authority
Section 281.15, Stats.

Federal Authority

- 40 CFR 131 Subparts A-C contain requirements for establishing state water quality standards.
- 40 CFR s. 131.4: States are responsible for establishing and revising water quality standards. U.S. EPA approves or disapproves standards under 40 CFR s. 131.5.
- 40 CFR 131.6: Water quality standards consist of designated uses and criteria to protect the designated uses.
- 40 CFR 131.11: States must adopt water quality criteria that protect designated uses. For waters with multiple uses, the criteria must protect the most sensitive use. 40 CFR 131.11(b)(1)(ii) authorizes states to adopt numeric water quality criteria that are "modified to reflect site-specific conditions."
- 40 CFR 131.20: Revision of state water quality standards is subject to public participation procedures and U.S. EPA review and approval under 40 CFR 131.20.

Comparison of Adjacent States
Iowa does not have numeric nutrient criteria.

Illinois has adopted partial phosphorus criteria for lakes and reservoirs. The phosphorus criteria for any lake or reservoir greater than 20 acres is set at 50 µg/L. Illinois does not have provisions for site-specific criteria.

Michigan has phosphorus goals set through Rule 60(2) which prevents total phosphorus levels in ambient water from stimulating growth of plants, fungi, and bacteria which are or may become injurious. Michigan translates water quality goals into effluent limits. Total phosphorus goals range from approximately 1.0 mg/L to 0.1 mg/L. Site-specific total phosphorus goals for lakes range between 0.008 and 0.06 mg/L. In Michigan, like Wisconsin, the evaluation of site-specific total phosphorus criteria is an inherent component of the TMDL analysis process.

Minnesota (MN) has adopted phosphorus criteria (standards) for lakes and reservoirs by ecoregion with values ranging from 12 to 90 µg/L. In addition, MN allows specific water quality standards, referred to as SSC in Wisconsin, to be adopted when appropriate and information is available to derive standards based on information specific to a water body including temperature, variations in hydraulic residence time, watershed size, and distance from neighboring ecoregion. This process is outlined in Minn. R. 7050.0222. Other site-specific standards can be considered using Minn. R. 7050.0220, Subp. 7 (Site-specific Modification of Standards) and in the Lake Superior Basin using Minn. R. 7052.0270 (Site-specific water quality standards or criteria). Site-specific standard must maintain and protect the beneficial use.

In MN, six site-specific standards for lakes have been approved and one that is proposed. The proposed site-specific standard is for the Sauk River Chain of Lakes and was submitted to U.S. EPA for their approval in June 2017. The Sauk River Chain of Lakes is a reservoir system. Given the unique characteristics of this reservoir system, MN deemed it appropriate to propose and use site-specific eutrophication standards to protect swimming and boating uses. The flowage lakes

are very shallow, with a large watershed to lake surface area, and water residence times are very low. The non-flowage lakes are influenced by their connection to the flowage lakes and were adjusted accordingly to utilize appropriate standards. The site-specific standards focus on reduction in the frequency and intensity of algal blooms so that aquatic recreational uses are protected for the majority of the summer.

Court Decisions Directly Relevant
None.

Analysis of the Rule - Rule Effect - Reason for the Rule
The proposed rule will create phosphorus site-specific criteria (SSC) for three waterbodies, Petenwell Lake located in Wood, Juneau, and Adams Counties, Castle Rock Lake located in Adams and Juneau Counties, and Lake Wisconsin located in Columbia and Sauk Counties.

Pursuant to s. NR 102.06 (7), Wis. Adm. Code, and s. 281.15, Wis. Stats., the Department of Natural Resources (department) has the authority to develop an SSC in place of the current applicable phosphorus criteria in s. NR 102.06, Wis. Adm. Code, where site-specific and scientifically defensible data and analysis demonstrate a different criterion is protective of the designated use of a specific surface waterbody.

The department is proposing rules to establish SSC for the three waterbodies because modeling and analysis of monitoring data conducted during the development of the legislative-initiated Wisconsin River Basin Total Maximum Daily Load (TMDL) has concluded that the current statewide phosphorus criteria for Petenwell Lake and Castle Rock Lake are more restrictive than needed to protect the designated uses and that the current phosphorus criterion for Lake Wisconsin is not sufficiently protective of the designated uses. The designated uses associated with the phosphorus criteria for reservoirs and lakes are recreational uses and aquatic life uses.

Agency Procedures for Promulgation
The department will hold a hearing on August 13, 2019 at 1:30 p.m. at Wood County Land & Water Conservation Dept., River Block, 111 W Jackson St., Wisconsin Rapids WI, 54495. The hearing will be followed by board adoption expected in December 2019 followed by a request for the governor's signature and legislative review.

Description of any Forms (attach copies if available)
N/A

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