

Report From Agency

REPORT TO LEGISLATURE

NR 102, Wis. Adm. Code

Board Order No. WY-21-20
Clearinghouse Rule No. CR 22-082

Basis and Purpose of the Proposed Rule

This rule proposes a site-specific criterion of 10 µg/L total phosphorus for Lac Courte Oreilles (LCO), a lake in Sawyer County. The lake straddles both state land and Tribal lands of the Lac Courte Oreilles Band of Lake Superior Chippewa (LCO Tribe). LCO is a state-classified Outstanding Resource Water and one of a small number of “two-story fishery” lakes in Wisconsin that support a coldwater fishery within its deep basins.

Coldwater fish require a cold, oxygenated layer of water to survive, referred to as the oxythermal layer. Die-offs of cisco and whitefish have occurred in the main basins of the lake due to the combination of low dissolved oxygen and warmer water temperatures. LCO is currently listed on the state’s impaired waters list as impaired for dissolved oxygen. The department’s analysis confirmed that phosphorus is one of the factors contributing to low dissolved oxygen levels and quantified the effects of varying phosphorus concentrations. The analysis further confirmed that a phosphorus criterion of 10 µg/L is appropriate and necessary to increase survival of the lake’s coldwater species, particularly whitefish.

Pursuant to s. NR 102.06(7), Wis. Adm. Code, and s. 281.15, Wis. Stats., the department has the authority to develop a site-specific criterion in place of the generally applicable phosphorus criteria in s. NR 102.06, Wis. Adm. Code, if site-specific, scientifically defensible data and analysis demonstrate a different criterion is protective of the designated use of the specific surface waterbody and the site-specific criterion is no more stringent than reasonably necessary to protect the designated use, as is the case here.

Summary of Public Comments

See attached “Comments and DNR Responses Natural Resources Board Order WY-21-20.”

Modifications Made

There were no changes made to the rule language based on public comments received.

Appearances at the Public Hearing

The hearing had a total of 66 attendees (not counting DNR staff), with 25 in person and 41 online via Zoom; this includes the LCO Tribe and representatives of 5 local organizations. Forty-six attendees registered in support of the rule, including the LCO Tribe and 4 local organizations. Four attendees registered in opposition to the rule, which includes one representative of a local municipality. Fifteen were neither in support nor opposition. Seven people provided oral statements at the hearing (5 supported, 2 opposed). Those attending the hearing in person or via Zoom are shown below. In addition to statements/letters from those attending the hearing, an additional 42 comment letters/emails were received (not included below).

Representatives of Entities

Brian Bisonette (Lac Courte Oreilles Band of Lake Superior Chippewa)
James Coors (Courte Oreilles Lakes Assoc.)
Jane Getting (Whitefish Lake Property Owners Assoc.)
Justin Hall (Town of Bass Lake)
Mike Persson (Hayward Lakes Chapter Muskies, Inc.)
PJ Schaefer (Osprey Lake Property Owners Assoc.)

Frank Zufall (Sawyer County
Record)

Individuals

Jeff Aspenwell

Christine Bedwell

Todd Bedwell

Karren Bihun/Cole

Robert Bihun/Cole

David Brown

Kevin Burke

Donna Carlson

Lauren Chafoulias	Bryant Hokeness	Barbara Murray	Michael Shal
Margaret Chubb	Gloria Hosch	Stacie O'leary	Alf Sivertson
Sara Cyr	Jim Humann	Richard O'Neill	Bond Sutton
Patrick Delaney	Joe Jacobson	Douglas Orr	Leslie Taylor
Sarah Delaney	Wendy Jacobson	Edward Packee	John Terhune
Douglas Easker	Doug Jensen	James Paine	Paul Thalacker
David Ford	Garry Jensen	Shelley Paine	Daniel Tyrolt
Tim Frojd	Mary Jensen	Tony Pfenndt	Steve Umland
John Fulton	Jay Johns	Deb Pike	Stanley Walczak
Robert Haselman	Thomas Jones	Ann Pollock	Scott Yukel
Carol Heinrich	Mark Laustrup	Randy Rients	Bill Zimmer
Tom Heinrich	Nora Lloyd	Russell Ruzicka	David Zimmer
Hans Holmberg	Margaret Martens	Carolyn Sentry	

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the Rule Analysis or Fiscal Estimate as a result of public comments or testimony, though some clarifications were made to the rule's Technical Support Document.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code; and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

The department has determined the rule will have no fiscal impact on small businesses. Promulgation of a site-specific criterion for the lake will not impose additional pollution reduction requirements for WPDES permittees, because there are none, or for nonpoint sources. Small businesses within the watershed could take voluntary measures to reduce phosphorus inputs to the lake if desired, but that can be done without a phosphorus site-specific criterion for the lake.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.