

What does an Outstanding or Exceptional Resource Water (ORW/ERW) designation mean for permittees?

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How does an ORW or ERW designation affect permitting decisions along the waterway?

- **Point source discharges:**

Any permittee proposing a **new** discharge to an ORW or ERW will be required to discharge wastewater that is equal to or better than the background water quality of the stream upstream or adjacent to the discharge site. Some flexibility is given to discharges to ERWs if a new surface water discharge is needed to prevent or correct a public health or water contamination problem. Permittees with an **existing** discharge to an ERW would have to make a demonstration of need according to s. NR 207.04 for any increase in load of pollutants discharged. Existing dischargers to ORWs – though rare – would not be allowed to increase the discharge of pollutants unless the added load was equal to or better than background water quality of the receiving stream upstream or adjacent to the discharge site.

- **Chapter 30 permits for modifications to public navigable waters:**

Placement of structures, dredging and similar activities in or adjacent to navigable waterways are regulated under chapter 30 of Wisconsin Statutes, and often require permits from the Department of Natural Resources. Waters designated as ORW or ERW are considered Areas of Special Natural Resources Interest, and as a result, exemptions from waterway permits are not allowable within these areas. A general or individual permit from the Department is required for various waterway alteration activities, to ensure that projects do not harm fish and wildlife habitat, natural scenic beauty or public access in navigable waterways. More information and application materials for waterway permits can be found at the Department's website at:

<http://dnr.wi.gov/org/water/fhp/waterway/>

- **High capacity wells:**

As defined in 281.34, Wis. Stats., “groundwater protection areas” include locations within 1,200 feet of an ORW or ERW. As a result, increased environmental review would be required before approval would be given for construction of a new high capacity well within that area, and additional restrictions may be placed on the construction and operation of the well. Information on requirements for groundwater wells can be found on the Department's website at:

<http://dnr.wi.gov/org/water/dwg/wells.htm>

Can a new industry discharge its wastewater to an existing municipal plant that is discharging to an ERW water – even if this results in an increased discharge from the municipal plant?

This is possible if the increased discharge from the municipal plant is justified under the conditions of s. NR 207.04(1)(c)1.e.

How will the Department calculate effluent limitations for a permitted discharge to a Warm Water Sport Fish receiving stream if there is an ORW or ERW designated segment downstream?

The federal Clean Water Act and state law require the Department to protect for the most applicable downstream use when calculating effluent limitations. However, each case is unique and requires the Department to make a decision about the fate of the pollutants being discharged. Some pollutants do not degrade in water rapidly (i.e., toxic metals, organochlorine pesticides, phosphorus, etc.) and may travel downstream much further than substances like ammonia that do degrade quickly. If Department staff has information to suggest that the pollutants being discharged may reach a downstream segment, effluent limits would need to be set in a manner that would not result in background water quality being impacted at that

downstream location.

What is meant by “background” water quality?

This refers to the physico-chemical conditions of a receiving stream near or above the point of discharge from a permitted facility. When several discharges are located in a concentrated stretch of a receiving water, the background water quality will be determined to be upstream and outside of the direct influence of all of the discharges. With few exceptions, the Department limits the comparison of background water quality and effluent quality to those pollutants that are commonly tested for in the permitting process. These may include pH, temperature, biochemical oxygen demand, ammonia, chlorine, suspended solids, toxic metals, pesticides, volatile organic compounds, polycyclic aromatic halogenated compounds and any other substances that may be added to the water being treated by the permitted facility.

Will effluent limitations be more stringent if a point source discharge currently has a WPDES permit that includes limits for the protection of a warm water sport fish community and a new ERW designation is proposed for a downstream segment?

Point sources would maintain their existing limits and would still have to go through the antidegradation process (NR. 207.04) if they requested an increased discharge. Future limits would not be more restrictive, because they would stay the same in order to maintain protection of the warm water sport fish community.

Are General Permits available for point source discharges to ORW & ERW waters?

The applicability criteria for a General Permit provide specific guidance to answer this question. In summary, General Permits are not available for the following types of discharges to ORW waters:

- Carriage and/or Interstitial Water from Dredging Operations
- Concrete Products Operations
- Contaminated Groundwater from Remedial Action Operations*
- Hydrostatic Test Water or Water Supply System Water
- Noncontact Cooling Water or Condensate & Boiler Water
- Nonmetallic Mining Operations
- Petroleum Contaminated Water
- Pit/Trench Dewatering
- Potable Water Treatment & Conditioning
- Short Duration Discharge
- Sodium Cycle Ion Exchange Water Treatment Units
- Wastewater from the Outside Washing of Vehicles, Equipment and Other Objects

* General Permit prohibition applies to discharges to ORW waters only.

What will happen to the water quality-based effluent limits (WQBEL) for Bioaccumulative Chemicals of Concern (BCCs) and metals at facilities where the stream designation changes to ERW?

The effluent limits will remain the same unless a change in the operation occurs. If a change occurs and the facility requests increased limitations, a demonstration of need must be satisfied according to the provisions of NR 207.04. Note: If a facility discharging anywhere within the Lake Superior or Lake Michigan drainage basin requests an increase in limits for BCCs, the resulting limitation for the increased load may not exceed the most stringent water quality criteria contained in Chapter NR 105.

Will it be harder to justify an increased discharge if the surface water is designated as ERW versus warm water sport fish?

No. An increased discharge to an ERW would be treated the same as if it were Warm Water Sport Fish community. A new discharge, on the other hand, would be harder to justify, because they would have to demonstrate that the discharge is needed to correct an existing surface water or ground water contamination problem.

REQUIREMENTS FOR EXISTING DISCHARGES TO STREAMS PROPOSED FOR DESIGNATION AS:	
OUTSTANDING RESOURCE WATER	EXCEPTIONAL RESOURCE WATER
<ul style="list-style-type: none"> ▪ Maintain original water quality based effluent limits (WQBELs) based on original flow ▪ WQBELs for increased portion of discharge based on background water quality, proportional to increased flow [s. NR 207.03(3)] ▪ Not eligible for a general permit 	<ul style="list-style-type: none"> ▪ WQBELs for increased discharge are based on fish and aquatic life waters procedures [s. NR 207.03(4)(c)] ▪ Not eligible for a general permit unless preventing or correcting a public health or existing groundwater contamination problem

REQUIREMENTS FOR NEW DISCHARGES TO STREAMS PROPOSED FOR DESIGNATION AS:	
OUTSTANDING RESOURCE WATER	EXCEPTIONAL RESOURCE WATER
<ul style="list-style-type: none"> ▪ WQBELs must be set equal to background water quality [s. NR 207.03(3)] ▪ Not eligible for a general permit 	<ul style="list-style-type: none"> ▪ WQBELs must be set equal to background water quality [s. NR 207.03(4)(b)], UNLESS <ol style="list-style-type: none"> 1) new discharge is needed to prevent or correct existing surface water/groundwater contamination situation, OR 2) new discharge is needed to prevent or correct public health problem ▪ If either of the two above conditions are met, WQBELs are determined based on fish and aquatic life waters procedures [s. NR 207.03(4)(a)] ▪ Not eligible for a general permit unless preventing or correcting a public health or existing groundwater contamination problem

Notes:

- An increased discharge as defined in s. NR 207.02 “means any change in concentration, level or loading of a substance which would exceed an effluent limitation specified in a current WPDES permit.” It 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.
- Fish and aquatic life waters procedures are defined in s. NR 207.04. These procedures would be used to evaluate limitations for any new or increased discharges to all waters not currently listed in chs. NR 102 or NR 104.