



February 8, 2022

Submitted Via Email

Wisconsin Natural Resources Board
c/o Laurie Ross, Board Liaison
P. O. Box 7921
Madison, Wisconsin 53707-7921

Laurie.Ross@wisconsin.gov

**RE: Comments on DG-24-19
Revisions to ch. NR 809 related to the promulgation of new drinking water MCLs
for PFOA and PFOS**

Dear Chairman Kazmierski and Board Members:

The League of Wisconsin Municipalities, Municipal Environmental Group - Water Division, and Wisconsin Rural Water Association have each filed comments asking the Department to wait for EPA to promulgate federal drinking water standards before proceeding to adopt state drinking water standards for PFOA and PFOS. Wisconsin has never before adopted a state drinking water standard in the absence of a federal standard and we are concerned with the precedent that this proposal would establish. Copies of the comments that the League, MEG-Water and WRWA previously submitted to the Department on this proposed rule are attached.

This letter responds to statements made by DNR Staff at the Natural Resources Board's December 2021 meeting. At that meeting, DNR Staff suggested that waiting for EPA to promulgate a federal standard for PFOA and PFOS could take many years and jeopardize the ability of water utilities to use new federal funding for PFAS. These comments are not accurate.

Anticipated Federal Standards for PFOA/PFOS

EPA has indicated that it intends to issue a proposed PFOA/PFOS regulation in Fall 2022 and a final regulation in Fall 2023. *EPA, PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024, p. 12-13.*

In just seven to eight months, therefore, we should know the federal drinking water standards for PFOA/PFOS that EPA proposes be applied throughout the United States. This is not too long to wait in order to ensure that PFOA/PFOS drinking water standards in Wisconsin are consistent with national standards applicable throughout the United States.

In less than two years, we should have a final federal drinking water standard for PFOA/PFOS. The federal PFOA/PFOS rule will set a time by which water systems are to be in compliance with the new standards. Typically this compliance date is 3 years after the regulations are finalized unless the EPA Administrator determines an earlier compliance date is practicable. (SDWA § 1412(b)(1); 42 U.S.C. § 300g-1(b)(10).)

Federal Funding and PFAS Standards

Wisconsin communities will be able to access PFAS related funding under the federal Bipartisan Infrastructure Law even if state drinking water standards for PFOA/PFOS are not adopted now.

The Infrastructure Law specifically includes \$4 Billion to address emerging contaminants (like PFAS) through the Drinking Water State Revolving Fund. Funding is to be provided to States over a five-year period and Wisconsin's estimated 2022 allotment of this funding is \$12.85 Million.

The Infrastructure Law provides that this allocation is "to address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances through capitalization grants under section 1452(t) of the Safe Drinking Water Act for the purposes described in section 1452(a)(2)(G) of such Act." Section 1452(a)(2)(G) of the SDWA requires that these funds only be used to provide grants for the purpose of addressing emerging contaminants with a focus on perfluoroalkyl and polyfluoroalkyl substances. This funding is not contingent upon PFAS standards being in place.

This PFAS funding is in addition to the \$11.7 Billion included under the Infrastructure Law for the Drinking Water State Revolving Loan Fund generally. This Revolving Loan Fund provides funding for drinking water projects eligible under each State's separate Revolving Loan program. Under Wisconsin's Drinking Water State Revolving Loan Fund program, drinking water projects that address PFAS are eligible for funding. With regard to PFAS, Wisconsin's plan provides that:

In addition, we are clarifying that projects that address PFAS or other emerging contaminants currently are eligible projects under the SDWLP. Until an MCL has been established, these projects would receive points under Section I (Risk to Human Health) as an anticipated exceedance. For PFAS, a project would receive 20 points as an anticipated exceedance of a Synthetic Organic Chemical (SOC) under question HH2 d. Once an MCL has been established, a PFAS project could receive up to 250 points under question HH1 d. for elimination of an MCL violation of a chronic contaminant (SOC).

State of Wisconsin, Drinking Water Loan Program Intended Use Plan for FFY 2021 Funds for the SFY 2022 Funding Cycle, page 12. Enforceable PFAS standards, therefore, are not required to access these funds either.

Conclusion

Thank you for the opportunity to provide the Natural Resources Board with this additional information. If you have any questions, please do not hesitate to contact any one of us.

League of Wisconsin Municipalities:
Municipal Environmental Group – Water Division
Wisconsin Rural Water Association

Toni Herkert, 608-267-3294
Lawrie Kobza, 608-283-1788
Cathy McDermott, 608-258-9506

Sincerely,

LEAGUE OF WISCONSIN MUNICIPALITIES

/s/ Toni Herkert

Toni Herkert
Government Affairs Director, Wisconsin League of Municipalities

MUNICIPAL ENVIRONMENTAL GROUP – WATER DIVISION

/s/ Lawrie J. Kobza

Lawrie J. Kobza
Legal Counsel

WISCONSIN RURAL WATER ASSOCIATION

/s/ Caty McDermott

Caty McDermott
Registered Lobbyist



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

December 8, 2021

Department of Natural Resources
Attn: Adam DeWeese– DG/5
P.O. Box 7921
101 S. Webster Street
Madison, WI 53703

Via Email – Adam.DeWeese@wisconsin.gov and DNRAdministrativeRulesComments@wisconsin.gov

RE: Comments on DG-24-19 Revisions to ch. NR 809 Related to the Promulgation of Drinking Water MCLs for PFOA and PFOS

Mr. DeWeese:

The League of Wisconsin Municipalities, a nonprofit and nonpartisan association of 594 cities and villages, welcomes the opportunity to submit the following comments on the proposed revision of ch. NR 809 related to the promulgation of new drinking water maximum contaminant levels for PFOA and PFOS.

It needs to be emphasized at the outset of our comments that the fundamental and most important goal of municipal water systems throughout the state is the provision of safe reliable drinking water to their customers. There are approximately 514 municipal water utilities in Wisconsin. Each of these systems tests its water to ensure the protection of public health. In the 2020 Annual Drinking Water Report, DNR noted that more than 98% of Wisconsin's public water systems provided water that met all health-based maximum contaminant level standards.

Timing:

The League supports the establishment of federal drinking water standards for PFAS but does not support the Department's creation of state standards at this time. EPA is moving forward to regulate PFAS in drinking water. On March 3, 2021, EPA published its final regulatory determination to regulate PFOA and PFOS under the Safe Drinking Water Act (SDWA). On October 18, 2021, EPA announced its PFAS Strategic Roadmap, which included issuing a proposed rule establishing federal maximum contaminant levels (MCLs) for PFOA and PFOS by fall 2022 with a final rule issued by fall 2023. The League recommends the Department wait for EPA to promulgate federal drinking water MCLs before proceeding to adopt state standards.

To date, all drinking water MCLs have been first established by EPA pursuant to the Safe Drinking Water Act (SDWA) process and then adopted by the State of Wisconsin. It is our understanding that Wisconsin has never adopted a drinking water MCL without a federal counterpart adopted prior to state action.

Unknown Costs Associated with the Recommended Standards:

Based on the final EIA, the League would contest that the department has insufficiently examined the overall economic impact of the PFOA and PFOS maximum contaminant levels. This does a disservice to

YOUR VOICE. YOUR WISCONSIN.

the state and our member utilities that Wisconsin residents rely upon to provide them with safe drinking water. An accurate economic impact of PFAS regulation is necessary to understand the level of economic assistance and/or ratepayer support that will be required for communities and water utilities to respond and continue to provide the public the safe drinking water we all expect.

The environmental impact assessment developed for the rule revision utilizes the third Unregulated Contaminant Monitoring Rule (UCMR 3), tested between January 2013 and December 2015, when making predictions on percentage of systems that will have a result greater than the proposed standard of 20 ppt. However, on March 11, 2021, EPA published the fifth Unregulated Contaminant Monitoring Rule (UCMR 5), which requires sample collections for 30 chemical contaminants between 2023 and 2025. Since the time of the testing associated with UCMR 3, the Safe Drinking Water Act was amended to require data not only from large systems serving over 10,000 people and a random sample of small systems to now include all small systems serving 3,300 to 10,000 and a random sample of systems serving less than 3,300. Therefore, with an increased number of systems that will soon test with more advanced testing methodologies, the number of exceedances for PFOA and PFOS (and other PFAS compounds) and the costs that are necessary to remediate those systems will certainly increase. The information from UCMR 5 has yet to be collected, but nevertheless, the department is moving forward with statewide regulatory standards despite an incomplete picture of the overall statewide problem and the costs associated.

The League believes the department needs to follow EPA's lead and wait for the federal process to unfold. The department is currently working with water utilities to monitor and test for PFAS. Our municipal water utilities have provided and will continue to provide safe drinking water for our communities and to our residents. We can wait for the federal safe drinking water process to be completed and for federal maximum contaminant levels (MCLs) to be promulgated.

The department should continue working with communities. It should be prepared to analyze the results of the UCMR 5 testing when it is available. It should support and evaluate additional research and development of effective treatment and disposal options. It should better evaluate the capital costs (regardless of Safe Drinking Water loans) to construct or install treatment methods, including secondary capital costs associated with treatment related to additional piping, connection systems, pumping facilities, and disposal costs. But the department should not promulgate state PFAS drinking water standards at this time.

In addition, to the comments outlined above, the League fully endorses the comments submitted by Lawrie Kobza on behalf of the Municipal Environmental Group Water Division on December 7, 2021.

Thank you for the opportunity to provide comments on NR 809 related to the promulgation of drinking water MCLs for PFOA and PFOS. The League continues to be supportive of federal safe drinking water standards and regulating these emerging compounds in a scientifically sound and technically and economically feasible manner.

Kind Regards,

Toni R Herkert

Toni Herkert, Government Affairs Director, Wisconsin League of Municipalities

December 7, 2021

Filed Via Email

Adam.DeWeese@wisconsin.gov

DNRAAdministrativeRulesComments@wisconsin.gov

Department of Natural Resources
Attn: Adam DeWeese - DG/5
P.O. Box 7921
101 S. Webster Street
Madison, WI 53707-7921

**RE: Comments on DG-24-19
Revisions to ch. NR 809 related to the promulgation of new drinking water MCLs
for PFOA and PFOS**

Dear Mr. DeWeese:

These comments are filed on behalf of the Municipal Environmental Group - Water Division (MEG - Water). MEG - Water is an association of 69 municipal water systems that provides input on legislative and regulatory issues involving water supply.

MEG - Water supports the establishment of federal drinking water standards for PFAS but does not support the Department's establishment of state standards at this time. EPA has made it clear that it is moving ahead to regulate PFAS in drinking water. On March 3, 2021, EPA published its final regulatory determination to regulate PFOA and PFOS under the Safe Drinking Water Act (SDWA). On October 18, 2021, EPA announced its PFAS Strategic Roadmap which included issuing a proposed rule establishing federal maximum contaminant levels (MCLs) for PFOA and PFOS by fall 2022 with a final rule issued by fall 2023. MEG - Water asks the Department to wait for EPA to promulgate federal drinking water MCLs before proceeding to adopt state standards.

When EPA promulgates federal drinking water standards, EPA follows the SDWA standard-setting process. Under the SDWA standard-setting process, a health goal is set that considers risks to the most sensitive populations including infants, pregnant women, and the immunocompromised. The next step sets the enforcement standard (the MCL) to be as close to the health goal as feasible, considering available treatment technologies and costs. This cost-benefit analysis is a critical component of the SDWA standard-setting process.

Under the SDWA standard-setting process, drinking water standards are not set at the lowest possible level regardless of cost, treatment feasibility, and relative health benefit returns. The SDWA cost-benefit analysis provides assurance that the health benefits achieved by a new

standard justifies the cost of meeting that standard, and that comparable health benefits could not be achieved with a higher standard that would be less costly to meet.

The Department did not follow the SDWA standard-setting process in proposing the state standards for PFOA and PFOS in Rule No. DG-24-19. Instead, the Department set the proposed standards for PFOA and PFOS based on the Wisconsin Department of Health Services' proposed groundwater standards without conducting a cost-benefit analysis of the proposed state standards. The Department did not consider whether comparable health benefits could be achieved with a higher standard and a lower cost.

MEG - Water is concerned with the Department's proposal to establish drinking water standards without weighing the relative costs and benefits of those standards and the precedent that this may set for establishing future state drinking water standards for other emerging contaminants. MEG - Water questions the Department's authority to establish state drinking water standards in this way. While Wis. Stat. § 281.17(8)(a) provides that "the department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j-26," this subsection does not provide permission for the Department to set state drinking water standards where there is no comparable federal drinking water standard.

Under Wis. Stat. § 227.10(2m) an agency is prohibited from implementing any standard unless that standard "is explicitly required or explicitly permitted by statute or by a rule." To MEG - Water's knowledge, no statutory or regulatory authority explicitly permits the Department to establish a state drinking water standard in the absence of a federal drinking water standard. This likely explains why the Department has never before adopted a drinking water standard without there first being a federal drinking water standard in place.

MEG - Water supports the development and implementation of federal PFAS MCLs using the SDWA rulemaking process. MEG - Water also supports the Department's efforts to obtain additional information about the presence of PFAS in Wisconsin, to provide public information about PFAS, and to encourage action where PFAS levels are elevated. But MEG - Water does not support establishing state PFAS standards in the absence of federal drinking water standards nor in a manner that is inconsistent with the SDWA standard-setting process and that does not consider the relative costs and benefits of the proposed standards.

Public water systems are charged with protecting public health and they take this responsibility extremely seriously. Public water systems currently face a host of expensive challenges to ensure the continued protection of public health – like eliminating lead service lines, replacing old infrastructure, implementing corrosion control treatment to prevent leaching from lead pipes, and treating for contaminants like radium, arsenic, and nitrate. At the same time, there are concerns about public water supply remaining affordable.

As we respond to emerging contaminants, like PFAS, it is important that these emerging contaminants receive the same scrutiny and analysis as was given to the contaminants that already have MCLs. This is best done by having EPA develop federal drinking water standards for PFAS using the SDWA standard-setting process. If drinking water standards for PFAS are

established based upon the same uniform and consistent methodology used to establish standards for other drinking water contaminants, public water systems and the public at large can be assured that PFAS and all drinking water contaminants with federal standards are receiving the attention and resources that they deserve.

Thank you for this opportunity to provide the Department with our additional input. If you have any questions, please do not hesitate to contact us.

Sincerely,

MUNICIPAL ENVIRONMENTAL GROUP – WATER DIVISION



Lawrie J. Kobza
Legal Counsel

cc: MEG - Water Members (*via email*)

\\msnfs2\share\docs\WD\20211\4\A4307168.DOCX



Wisconsin Rural Water Association
350 Water Way • Plover, Wisconsin 54467
715-344-7778 • Fax: 715-344-5555 • E-mail: wrwa@wrwa.org

December 9, 2021

Department of Natural Resources
Attn: Adam DeWeese - DG/5
P.O. Box 7921
101 S. Webster Street
Madison, WI 53707-7921

Re: Comments on DG-24-19 Revisions to ch. NR 809 related to the promulgation of new drinking water MCLs for PFOA and PFOS

The Wisconsin Rural Water Association (WRWA) submits these comments relating to clearinghouse rule DG-24-19 - revisions to ch. NR 809 related to the promulgation of new drinking water MCLs for PFOA and PFOS. WRWA is a nonprofit association that represents 586 municipal water and wastewater system members and provide services to over four million Wisconsin residents and is focused on assisting small and rural communities that serve less than 10,000 people.

We understand and acknowledge the concerns of PFAS in our environment. The public wants to know what levels of PFAS in drinking water are safe or unsafe. As the public stewards of safe drinking water, our members want to address this issue – however we strongly impress that PFAS standards be based on credible science, ratepayer effects, and due deliberation of costs.

WRWA members believe the best course for the state at this juncture is to not set a state-specific standard, but rather defer to the federal government to regulate and set the PFAS standards. Since the department began the rulemaking process, EPA has taken significant steps forward to regulate PFAS in drinking water. In October 2021, EPA published a [PFAS Strategic Roadmap](#) and committed to “establishing a national primary drinking water regulation for PFOA and PFOS that would set enforceable limits and require monitoring of public water supplies, while evaluating additional PFAS and groups of PFAS.” EPA estimates the proposed rule will be released in the fall 2022 and the final rule in fall of 2023.

To date, all of Wisconsin’s drinking water standards have been set using the standard setting process under the Safe Drinking Water Act (SDWA). Under the SDWA process, the MCL is set weighing the marginal benefit of a stricter standard versus the incremental cost to meet such a standard. As such, a stricter standard will generate more costs, which could outweigh any health benefits.

This is especially critical for small systems. Currently, when the EPA sets new primary standards, they consider the compliance costs and affordability for small systems (under 10,000).

Research has found that even the known treatments for PFOA and PFOS vary depending on the type of method (e.g. granular activated carbon, ion exchange, reverse osmosis) and the corresponding MCL limit. For these reasons, WRWA requests the state adopt the federal standard to ensure that the PFAS standards are set under the SDWA process.

Revised EIA

WRWA members continue to have concerns that the fiscal estimates reflected in the revised Economic Impact Analysis are not reflective of all costs a system could face to comply.

For example, the department states in the EIA that there are three options for systems to mitigate PFAS in drinking water – 1) drill a new well, 2) abandon the affected source, or 3) install treatment. We believe this is an oversimplistic way to consider the costs to municipal water utilities, as there are other related costs with all these options.

The department assumes that a new well at a small community system is estimated to average \$50,000. This is drastically lower than the costs our members report. A basic well generally costs between \$1 million-\$1.5 million. If the well needs to be relocated some distance away from the present location this leads to land costs, test boring costs, test costs, new buildings, new treatment equipment and chemicals and could increase costs substantially. If several wells are condemned and re-built, this cost could be multiplied several times. This is a significant impact to a small community and subsequently those costs would impact the water utility's ratepayers.

WRWA appreciates the department's willingness to consider the impact on water utilities from across the state. Based on the information from the National Rural Water Association, WRWA is confident that EPA is moving expeditiously to set a MCL standard for PFOA and PFOS. WRWA supports national-based standards to avoid confusion and uniformity of testing and treatment protocols.

Thank you for your consideration of these comments.

Sincerely,

Chris Groh
Executive Director
Wisconsin Rural Water Association