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November 9, 2022

Department of Natural Resources  
Ms. Jeanne Cargill  
Environmental Loans - CF/2  
P. O. Box 7921  
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**Via Email - [Jeanne.cargill@wisconsin.gov](mailto:Jeanne.cargill@wisconsin.gov) and [DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov)**

**RE: Comments on Clearinghouse Rule 22-068 - Chapter NR 166, relating to the Safe Drinking Water Loan Program**

Dear Ms. Cargill:

The League of Wisconsin Municipalities, a nonprofit and nonpartisan association of 600 cities and villages, welcomes the opportunity to submit these comments related to the re-creation of NR 166, the administrative rules applicable to the Safe Drinking Water Loan Program. League members own and operate nearly all of the public water systems in this state and have a strong interest in how this rule is drafted.

The League supports the comments submitted on November 7<sup>th</sup> by MEG - Water and agrees with the request that the Department delete the following two requirements included in NR 166.

1. **The legal opinion requirement on land ownership** in NR 166.09 which is also referred in NR 166.10(1)(b) and NR 166.14(1)(o). The League's largest concerns in this arena focus on lead service line replacements. It seems counterproductive to the goal of public health and safety that the code precludes distributing financial assistance for removing lead lines and laterals.
  - For a project that includes the replacement of **private lead service lines**, it would be impossible for an applicant to provide the required legal opinion because a municipality would not own or have easement rights over the private property in which a private lead lateral is located. Under the proposed revision, a project for the replacement of private lead service lines would be unable to obtain financial assistance under the SDWLP.
  - For a project that includes the replacement of **publicly-owned lead service lines**, a municipal utility may not have all the historic records documenting a utility's property rights to these service lines. It is precisely these older communities that may not have all

the records from every annexation or property acquisition that will have the most lead to be removed from the system. Why should the public suffer because the community is ineligible to receive financial assistance under the SDWLP and they can't afford the project without assistance?

2. **The executed intermunicipal agreement requirement for a project that serves two or more municipalities** as set out in NR 166.06(2)(L) and which is also referred to in NR 166.07(2)(i), NR 166.08(4)(i), NR 166.10(1)(g) and NR 166.14(1)(m). A municipal water utility's relationship with its customers (including other municipalities) is already heavily regulated. Municipal water utilities are "public utilities" and their provision of water service to customers is subject to regulation by the Public Service Commission under Wis. Stat. Chapter 196. The PSC regulates municipal water utility rates and service rules and ensures that they are reasonable, must approve service to another municipality, and approves service disconnections including those to municipalities. There is no need for this duplicative regulation to be contained within a financial administration code.

These two above requirements are created by the Department of Natural Resources and are not mandated by:

- The Safe Drinking Water Act (SDWA) which established the Drinking Water State Revolving Fund (DWSRF) program in 1996;
- The federal rules applicable to the administration of the Drinking Water State Revolving Fund (See 40 C.F.R. 35.3500 to 35.3585);
- Wisconsin State Statutes applicable to the Safe Drinking Water Loan Program (See Wis. Stat. 281.59 and 281.61); or
- The Wisconsin Department of Administration, the state agency charged with establishing the terms and conditions of financial assistance agreements under the Safe Drinking Water Loan Program (See proposed revisions to ADM 35.)

NR 166 was developed to establish a priority system for the distribution of federal safe drinking water loan program financial assistance as provided in s. 281.61, Stats, and should not impose additional mandates on municipalities seeking to utilize the grant assistance to lessen the impact to ratepayers. The mechanism for fund distribution should be expedient as it is in the public's interest to complete drinking water projects in the most cost-effective manner without additional non-required strings attached.

Thank you for the opportunity to provide comments on the recreation of NR 166 related to the Safe Drinking Water Loan Program. We appreciate your consideration of these comments. Please feel free to contact me at your convenience if you should have any questions.

Kind Regards,  
Toni Herkert, Government Affairs Director  
Wisconsin League of Municipalities