



January 21, 2026

Submitted Via Email

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

[DNRNRBLiaison@wisconsin.gov](mailto:DNRNRBLiaison@wisconsin.gov)

**RE: Comments on DG-02-24, providing technical corrections to chapter NR 809 to clarify and correct existing language and add Consumer Confidence Report Requirements**

**DNR Rulemaking and Deletion of SDWA Variance and Exemption Language**

Dear Chairman Smith 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 remove the proposed deletion of Wis. Admin. Code NR 809.90 from rule DG-02-24 and to continue pursuing primacy authority to issue variances and exemptions under the Safe Drinking Water Act. Removing this authority would take away a useful compliance tool for Wisconsin public water systems at a time when requirements and costs are increasing.

Background

Wisconsin has more than 11,000 public water systems. This includes 610 municipal community systems that provide water to 70% of the state's population.

Requirements for public water systems come from the Safe Drinking Water Act (SDWA), which was first passed in 1974. The SDWA established national limits for contaminants in drinking water to protect public health. These limits, known as maximum contaminant levels (MCLs), are health-based standards specific to each contaminant. For two contaminants -- lead and copper -- the SDWA establishes "action levels" instead of MCLs. Exceeding an action level does not cause a SDWA violation but does require a water system to conduct additional monitoring and take steps to control levels of the contaminant in the drinking water supply.

The SDWA requires all public water systems to test their water for contaminants and report the results to their regulatory body and consumers. Monitoring determines whether a system's water quality meets all MCL limits and action levels. Exceeding an MCL requires a water system to take action to correct the problem. Exceeding an action level requires a water system to take additional steps to control contaminant levels.

In 2024, the U.S. Environmental Protection Agency (EPA) finalized two new and costly drinking water rules: one rule regulates PFAS and the other revises EPA's existing lead and copper rule.

In the PFAS rule, EPA established exceedingly low MCLs for six PFAS in drinking water. The rule requires public water systems to complete initial monitoring for these contaminants by 2027 and if monitoring shows MCLs exceedances, to implement solutions to reduce these PFAS by 2029. In the lead and copper improvement rule, EPA requires public water systems to identify and replace all lead pipes by December 31, 2037, among other necessary interim steps.

### DNR Primacy and SDWA Variances and Exemptions

The SDWA provides states with primary enforcement responsibility – like Wisconsin – the authority to grant individual public water systems a variance or exemption under certain conditions to help the system achieve compliance with MCLs. This authority is found in 42 U. S. C. §§ 300g-4 and 300g-5.

The Wisconsin Department of Natural Resources (DNR) has primary enforcement responsibility for the SDWA in Wisconsin and its administrative rules enforcing the SDWA are in Wis. Admin. Code NR 809. Section NR 809.90, Conditional Waivers, includes language that reflects but is not wholly consistent with the variance language in 42 U.S.C. §300g-4 and the exemption language in 42 U.S.C. §300g-5.

In 2011, DNR submitted an application to EPA, Region 5, for primacy to enforce the variance and exemption provisions of 42 U. S. C. §§ 300g-4 and 300g-5. In 2015, EPA informed DNR that its application must be corrected and clarified before EPA could recommend that DNR be granted final primacy to issue variances. In a February 2017 letter to EPA, DNR acknowledged EPA's comments and indicated an intent to submit a revised primacy application package by June 2017. DNR further indicated that in the meantime it would “continue to forgo issuing variances and exemptions until after we have submitted a complete application.”

### Current Rulemaking

Now, instead of revising its primacy application to gain authority to issue a variance or exemption to a public water system who needs and is eligible for a variance or exemption under the SDWA, the DNR seeks to completely delete NR 809.90 and abandon its request for primacy authority to issue variances and exemptions. It's the opinion of our organizations which collectively represent Wisconsin's public water systems that this is the wrong approach for the DNR to take.

As raised in our comment letters to DNR, nowhere in the Statement of Scope for DG-02-24 did the Department identify that the rule would rescind the existing framework for seeking variances. This is not a technical edit to meet EPA and SDWA requirements. This is an elimination in Wisconsin law. The Board should not approve the elimination of NR 809.90 through a rule that did not include the deletion in its original statement of scope.

The DNR should continue to seek primacy authority to issue variances and exemptions in appropriate circumstances. Such authority does not require the DNR to issue variances or exemptions. But it does give Wisconsin public water systems the opportunity to request a variance and/or exemption and make its case on why such a request should be granted. The DNR should not eliminate a SDWA tool that is available to other systems, including systems directly regulated by EPA.

We respectfully ask that the deletion of NR 809.90 be removed from proposed rule DG-02-24 and that the DNR be encouraged to restart discussions with EPA to develop acceptable language that would permit DNR to grant variances and exemptions as permitted by the SDWA.

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:	Toni Herkert, 608-267-3294
Municipal Environmental Group – Water Division	Jared Walker Smith, 608-286-7171
Wisconsin Rural Water Association	Caty 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/ Jared Walker Smith*

Jared Walker Smith  
Legal Counsel

WISCONSIN RURAL WATER ASSOCIATION

*/s/ Caty McDermott*

Caty McDermott  
Registered Lobbyist