

July 17, 2025

VIA EMAIL ONLY

Department of Natural Resources DNRDGNR809LCComments@wisconsin.gov
Attn: Ms. Briana Harter - DG/5 Briana.Harter@wisconsin.gov
P O Box 7921
Madison, WI 53707-7921

**RE: Comments on Economic Impact Analysis for DG-04-24
 Revisions to ch. NR 809 related to updating lead and copper requirements for public
 drinking water systems**

Dear Ms. Harter:

These comments are filed on behalf of the Municipal Environmental Group - Water Division (MEG - Water). MEG - Water is an association of 79 municipal water systems that reviews and comments on legislation and administrative rules that impact municipal water systems.

The proposed rule updates NR 809 to incorporate the requirements of the federal Lead and Copper Rule Revisions (LCRR) and Lead and Copper Rule Improvements (LCRI), adopted pursuant to the Safe Drinking Water Act (SDWA). Wisconsin has primary enforcement responsibility (primacy) for new federal SDWA regulations and is required to adopt new federal requirements as state rules within two years after the EPA regulation is finalized, although an extension for rulemaking may be granted.

MEG - Water's members are committed to protecting public health through the provision of safe drinking water, including by controlling lead in their systems through physical and chemical means. Wisconsin water utilities are recognized as national leaders in identifying and removing lead from their systems and MEG - Water continues to advocate for and support efforts for systems to become lead free. However, these efforts do come at a significant cost to municipalities, public water utilities, and their ratepayers.

The Department has prepared a draft Economic Impact Analysis (EIA) for DG-04-24 and is soliciting comments and additional information before finalizing its EIA and submitting it to the Legislative Council. Wisconsin Statute § 227.137(3)(b) requires the Department to provide an estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local government units, and individuals as a result of the proposed rule. The Department must also make a determination as to whether \$10 million or more in implementation or compliance costs are reasonably expected to be incurred by or passed along to businesses, local government units, and individuals over any 2-year period as a result of the proposed rule. Wis. Stat. § 227.137(3)(b)2.

The Department's EIA separately estimates the total statewide cost of the federal Lead and Copper Rule Improvements (LCRI) and "the additional cost of Wisconsin's rule." This treatment resulted in the Department finding that "this state rulemaking will have **no implementation and compliance costs** beyond the baseline costs that are already required by federal law" (emphasis added). Therefore, the Department contends that implementation of the rule is not \$10 million or more over any 2-year period, avoiding the requirement in Wis. Stat. § 227.139(1) that the Department stop work on the proposed rule until the legislature acts to authorize the promulgation.

Absent this interpretation of Wis. Stat. § 227.137(3)(b), the proposed rule would clearly require legislative approval. The EIA estimates that the total annual cost for all municipally owned systems in Wisconsin to comply with the federal regulation will be \$67.5 million per year for the first 10 years (\$675 million total), and \$51.77 million per year for the next 15 years (\$517.7 million total). The vast majority of this cost is related to "Service Line Inventory and Replacement" (\$54.48 million per year in years 1-10, and \$49.81 million per year in years 11-25). The Department, however, estimates the total cost of the state rules for these periods to be zero.

MEG - Water questions the Department's interpretation of Wis. Stat. §§ 227.137(3)(b)2 and 227.139(1) to exclude costs that the Department attributes solely to compliance with federal requirements. Nothing in the statutes direct the Department to exclude costs to comply with federal requirements from the assessment. Furthermore, the fact that the Legislature specifically exempted proposed state rules to implement federal clean air act rules from the requirement of Wis. Stat. § 227.139(1) strongly indicates that other state rules adopted to meet federal laws are not similarly exempt.

It appears, therefore, that the Department's interpretation of Wis. Stat. §§ 227.137(3)(b)2 and 227.139(1) which distinguishes between federally-imposed costs and state-imposed costs is contrary to the plain language and intent of the statutes. Regardless of the reason that this rule is being proposed for adoption, the Department is obligated to follow Wisconsin's rule-making process.

MEG - Water also questions the Department's assertion that the proposed state rule will be no more strict than federal law. The Department's proposed rule and EIA do not recognize, or contemplate, that potential changes to the federal LCRI may result in costly components of the Department's proposed rule no longer being federally required.

On December 13, 2024, the American Water Works Association (AWWA) filed a lawsuit against the United States Environmental Protection Agency (EPA) challenging the federal LCRI's requirement to replace private lead service lines and to replace all lead lines within 10 years (or less). *American Water Works Association v. United States Environmental Protection Agency, et al.*, USCA Case #24-1376. In its lawsuit, the AWWA contends that EPA exceeded its authority to mandate replacement of private lead service lines not owned by a utility and impose requirements that are not feasible, including the 10-year mandatory service line replacement deadline. The case is temporarily on hold as EPA evaluates the position it may take in the litigation. The Department of Justice has told the court that it is possible that after its review, EPA could take further action that may obviate the need for judicial resolution of some or all of the disputed issues.

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If portions of the federal LCRI are subsequently vacated or rescinded by reason of AWWA's litigation or other federal action, Wisconsin systems would remain subject to the vacated or rescinded requirements if the Department's rules are finalized first. While Wisconsin rules must be no less stringent than federal standards to maintain primacy, they are permitted to be more stringent. And, given SDWA's anti-backsliding provision, the Department may not be allowed to revise state rules to match less restrictive federal rules. If this situation occurs, it will be Department rules that will be imposing a substantial portion of the identified \$67 million a year costs on Wisconsin's municipal-owned water systems, not the federal rules.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions about them.

Sincerely,

MUNICIPAL ENVIRONMENTAL GROUP - WATER DIVISION

A handwritten signature in black ink, appearing to read "Jared Walker Smith", with a stylized flourish at the end.

Jared Walker Smith
Legal Counsel

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