

October 3, 2025

VIA EMAIL ONLY

Department of Natural Resources
Attn: Constantine Tsoris Constantine.Tsoris@wisconsin.gov
P O Box 7921
Madison, WI 53707-7921

RE: Comments on Board Order DG-02-24
Object to the Deletion of NR 809, Subch. VI

Dear Mr. Tsoris:

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.

MEG - Water objects to the Department's proposed deletion of NR 809, Subch. VI, in DG-02-24. Section 809.90 (one of the sections in NR 809, Subch. VI) currently permits a public water system to apply to the Department for a conditional waiver (i.e. an extension) from a nonmicrobial contaminant MCL or treatment technique requirement for a period up to 3 years if certain requirements are met.

The authority to apply for a Safe Drinking Water Act (SDWA) waiver or exemption is explicitly recognized by the Safe Drinking Water Act, §§ 1415 and 1416 (42 U.S.C. §§ 300g-3 and 300g-4) and is already included in NR 809.90.

While the use of SDWA waivers and exemptions has not been extensively exercised in the past, news reports indicate that EPA's current administration is evaluating options to provide water utilities with flexibility to meet compliance challenges associated with certain regulatory timelines and is considering the use of its authority under §§ 1415 and 1416 of the SDWA.

The Department's proposed rescission of NR 809.90 (as part of NR 809, Subch. VI) would eliminate the ability of Wisconsin public water systems to utilize one of the tools EPA may rely upon to provide regulatory flexibility throughout the rest of the country.

Beyond this harm to Wisconsin's public water systems, the deletion of NR 809, Subch. VI is procedurally flawed as it goes beyond the Statement of Scope for this proposed rule. In the Statement of Scope for DG-02-24, the Department states:

2. Detailed description of the objective of the proposed rule:

The Wisconsin Department of Natural Resources' (department) objective for the proposed rule is to amend ch NR 809, Wis. Adm. Code to do the following:

- *Clarify and correct existing requirements to meet the requirements of the Environmental Protection Agency (EPA) and the Safe Drinking Water Act (SDWA).*
- *Add a definition of "Service Connection." This phrase is used throughout the code but is not defined in ch. NR 809, Wis. Adm. Code.*
- *Make additional rule changes within ch. NR 809, Wis. Adm. Code to address redundancies and omissions, clarify to improve understanding and readability, and correct grammatical, spelling, and punctuation errors.*
- *Update Consumer Confidence Report (CCR) requirements to be consistent with new federal regulations under the SDWA.*

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

There are two types of modifications to ch. NR 809 being proposed. First, the rule will make technical edits to add clarity, eliminate minor errors in the text, and add a practical definition for "service connection," an otherwise undefined term in ch. NR 809. These modifications are not intended to change current department policy.

Second, the rule will amend ch. NR 809 to comply with recent changes to federal regulations governing CCRs, which EPA finalized in May 2024. Currently, all community public drinking water systems deliver a CCR to their customers once per year. The new CCR requirements will increase reporting frequency to twice per year for community water systems with a population of greater than 10,000 persons. Systems serving 100,000 or more persons must also develop a plan for providing assistance to consumers with limited English proficiency.

Rulemaking related to the content of the CCR for the Lead and Copper Rule revisions will be included in Board Order DG-04-24.

Nowhere in the Statement of Scope is the Department authorized to propose a rule that would rescind a water system's existing ability to apply to the Department for a conditional waiver or a compliance extension. This is not a technical edit to meet EPA and SDWA requirements. This is an elimination in Wisconsin law of a feature of the SDWA.

Wisconsin water systems deserve the ability to utilize the same compliance flexibilities as other water systems throughout the country. The Department should not be eliminating this existing authority.

Since the Department's deletion of NR 809, Subch. VI, in DG-02-24 is not included in the original statement of scope for the rule, the Department should eliminate this change from the proposal. The only other alternative provided by Wis. Stat. § 227.135(4) would be to start the rulemaking process over with a revised statement of scope.

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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 blue ink, appearing to read "Lawrie Kobza". The signature is fluid and cursive, with a large initial "L" and a long, sweeping underline.

Lawrie J. Kobza
Legal Counsel

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