

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

Item No. 4.J.

Amended on June 14, 2021 to include summary of written comments.

SUBJECT: Request that the Board approve the Statement of Scope for Board Order DG-22-20 and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for proposed rules affecting chapter NR 811 to update, correct and clarify existing code requirements and add requirements for new technologies related to community drinking water system sources, source water quality, storage, treatment, and distribution.

FOR: JUNE 2021 Board meeting

PRESENTER'S NAME AND TITLE: Cathy Wunderlich, Public Water Engineering Section Chief

SUMMARY:

The primary objectives of ch. NR 811, Wis. Adm. Code, revisions are to correct, clarify and update design and construction standards and address new technologies related to community drinking water systems. Specific objectives include:

- a. Modify, add and clarify NSF/ANSI Standard 61 certification requirements for all materials or products coming in contact with finished water.
- b. Modify, add and clarify groundwater well design including siting, construction, rehabilitation, reconstruction and abandonment.
- c. Modify, add and clarify groundwater and surface water treatment facility design including construction, reconstruction, treatment technologies, facility layout, equipment, piping, storage and disposal of waste.
- d. Modify, add and clarify finished water storage design including siting, construction, rehabilitation, reconstruction and decommissioning.
- e. Modify, add and clarify distribution and transmission system design including separation distance to potential contamination sources, installation, construction, location of appurtenances, rehabilitation technologies, testing and abandonment.
- f. Modify, add and clarify drinking water system building construction requirements.
- g. Modify, add and clarify source water quality treatment requirements.
- h. Modify, add and clarify exemptions or alternative code requirements for other-than-municipal community drinking water systems.
- i. Remove code requirements that may be conflicting or are no longer applicable.
- j. Address grammatical errors and inconsistencies.

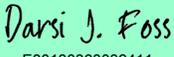
A preliminary public hearing on the scope statement was held on June 7, 2021. A recording of the hearing is available at: <https://widnr.widen.net/s/td7knnrhtj>. Thirteen members of the public attended the preliminary public hearing. No attendees provided testimony. The deadline for written comments was June 9, 2021. No written comments were received.

If the scope statement for Board Order DG-22-20 is approved, the department may begin drafting the rule language. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. Once the rule is drafted, the department will seek public comment on the economic impact of the rule and on the proposed rule language. The 30-month time frame for submission of a final rule to the legislature for approval expires on October 19, 2023.

RECOMMENDATION: That the Board approve the Statement of Scope for Board Order DG-22-20, and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background memo Statement of scope
 Governor approval of statement of scope

| Approved by | Signature | Date |
|---|---|--------------------------|
| Steven B. Elmore, Drinking Water and Groundwater Program Director |  | 6/14/2021 3:01 PM CDT |
| Darsi J. Foss, Environmental Management Division Administrator |  | 6/14/2021 3:06 PM CDT |
| Preston D. Cole, Secretary |  | 6/15/2021 12:00 PM CDT |

by Todd Amb's

cc: Board Liaison - AD/8

DS


Program attorney – LS/8

Department rule officer – LS/8

CORRESPONDENCE/MEMORANDUM

DATE: June 14, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on preliminary public hearing and public comments received on the scope statement for Board Order DG-22-20, relating to revisions to ch. NR 811, Wis. Adm. Code, to update, correct and clarify existing code requirements and add requirements for new technologies related to community drinking water system sources, source water quality, storage, treatment, and distribution.

On April 28, 2021, the co-chair of the Joint Committee for the Review of Administrative Rules (JCRAR) requested that the Department hold a preliminary public hearing and comment period on the scope statement for Board Order DG-22-20, pursuant to s. 227.136(1), Wis. Stats. The statement of scope contemplates rulemaking to revise ch. NR 811, Wis. Adm. Code, to update, correct and clarify existing code requirements and add requirements for new technologies related to community drinking water system sources, source water quality, storage, treatment, and distribution.

Public Hearing

The department held a virtual preliminary public hearing on the statement of scope on June 7, 2021 at 2:00 p.m.

- 13 members of the public attended the preliminary public hearing.
- 0 members of the public provided testimony at the hearing.

A recording of the preliminary public hearing is available at <https://widnr.widen.net/s/td7knnrhtj>.

Written Public Comment

No written comments were received.

Drafter: Cathy Wunderlich

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: DG-22-20

Relating to: Revisions to ch. NR 811, Wis. Adm. Code, to update, correct and clarify existing code requirements and add requirements for new technologies related to community drinking water system sources, source water quality, storage, treatment, and distribution.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not applicable. The rules will be proposed as permanent rules.

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

The primary objectives of ch. NR 811, Wis. Adm. Code, revisions are to correct, clarify and update design and construction standards and address new technologies related to community drinking water systems. Specific objectives include:

- a. Modify, add and clarify NSF/ANSI Standard 61 certification requirements for all materials or products coming in contact with finished water.
- b. Modify, add and clarify groundwater well design including siting, construction, rehabilitation, reconstruction and abandonment.
- c. Modify, add and clarify groundwater and surface water treatment facility design including construction, reconstruction, treatment technologies, facility layout, equipment, piping, storage and disposal of waste.
- d. Modify, add and clarify finished water storage design including siting, construction, rehabilitation, reconstruction and decommissioning.
- e. Modify, add and clarify distribution and transmission system design including separation distance to potential contamination sources, installation, construction, location of appurtenances, rehabilitation technologies, testing and abandonment.
- f. Modify, add and clarify drinking water system building construction requirements.
- g. Modify, add and clarify source water quality treatment requirements.
- h. Modify, add and clarify exemptions or alternative code requirements for other-than-municipal community drinking water systems.
- i. Remove code requirements that may be conflicting or are no longer applicable.
- j. Address grammatical errors and inconsistencies.

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:

Chapter NR 811, Wis. Adm. Code, contains the engineering and construction requirements for community water system sources, source water quality, storage, treatment, and distribution. Proposed revisions are intended to address two major areas:

- Clarify and update existing code requirements.
- Add requirements that allow the use of new technologies and water industry standards.

Alternatives to addressing these two areas are:

| Policy Area | Alternatives | Comments |
|---|--|--|
| Clarify language | No rule revision Program guidance Clarify language | <ul style="list-style-type: none"> • Failure to clarify code language maintains confusion for the regulated community, inconsistent implementation, and inefficiency for DNR staff. • Program guidance has been issued to provide implementation clarity but does not have force of law. |
| Address new technologies and water industry standards | No rule revision Program guidance | <ul style="list-style-type: none"> • Failure to address new technologies creates confusion on whether technologies not specifically regulated in code are compliant. • Program guidance has been issued to address some new technologies but does not have force of law. |

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11(a)(intro.), Wis. Stats., provides that a state agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute,” subject to certain restrictions.

Chapter 280, Wis. Stats., established the statutory authority and framework for regulation of community water systems. Section 280.11(1), Wis. Stats., specifically directs the department to prescribe, publish, and enforce minimum reasonable standards and rules for methods to be pursued to obtain pure drinking water for human consumption, and to establish safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. This statute gives the department general supervision and control over all methods of obtaining groundwater for human consumption, authority to prescribe, amend, modify or repeal any applicable rule and to perform any act deemed necessary for the safeguarding of public health.

Section 281.41(1), Wis. Stats, gives the department authority to require complete plans of proposed system drinking water systems for extensions, maintenance, operation and other information that the department requires.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that 850-900 hours of state employee time will be required to complete the promulgation of the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will affect the following entities:

- Municipal community water systems (cities, townships, sanitary districts)
- Other-than-municipal community water systems (mobile home parks, apartment buildings, condominium associations)
- Wisconsin Department of Natural Resources
- Wisconsin Department of Safety and Professional Services
- Wisconsin Department of Agriculture, Trade and Consumer Protection
- Wisconsin Public Service Commission
- Engineering consulting firms
- Well drillers and pump installers

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal law does not directly regulate the construction of operation and design of community water systems. For public drinking water systems, Wisconsin has state primacy, with the primary responsibility to enforce state drinking water regulations consistent with the federal Safe Drinking Water Act. One federal requirement of Wisconsin's primacy role is that the state assures that the design and construction of new or modified public water system facilities will be capable of compliance with the state and federal primary drinking water regulation.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The department's preliminary determination is that the proposed rule changes to ch. NR 811, Wis. Adm. Code will have a moderate impact (\$50,000 to less than \$5 million per year and with unquantifiable human health benefits). Overall the proposed changes are expected to clarify and update existing code requirements as well as add requirements that allow the use of new technologies and water industry standards. The anticipated impact of this rule will include small business entities regulated under ch. NR 811, Wis. Adm. Code. Including small businesses, the anticipated implementation costs may include increased documentation and certification requirements. Cost savings are also anticipated by allowing increased flexibility in the selection of materials, technologies and design conditions.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding four concurrent public hearings in December 2022. Hearing cities are expected to be: Eau Claire, Wausau, Green Bay, and Madison. Video conferencing will

be used to hold all hearings concurrently, reducing DNR staff time and travel costs. These four locations are expected to provide convenient access to public hearings for interested parties around the state.

Contact Person:

Cathrine Wunderlich, Public Water Engineering Section Chief
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DocuSigned by:

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Preston D. Cole, Secretary
1/5/2021 | 11:58 AM CST

Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

April 15, 2021

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Occupational Therapists Affiliated Credentialing Board, submitted March 17, 2021, relating to continuing education (Wis. Admin. Code ch. OT 3); and
- A statement of scope by the Medical Examining Board, submitted February 17, 2021, relating to licenses to practice medicine and surgery (Wis. Admin. Code ch. Med 1); and
- A statement of scope by the Office of the Commissioner of Insurance, submitted January 13, 2021, relating to holding company system regulation amendments (Wis. Admin. Code ch. Ins 40); and
- A statement of scope by the Department of Natural Resources, submitted January 5, 2021, relating to revisions to ch. NR 811, Wis. Adm. Code, to update, correct and clarify existing code requirements and add requirements for new technologies related to community drinking water system sources, source water quality, storage, treatment and distribution (Wis. Admin. Code ch. NR 811); and
- A statement of scope by the Department of Natural Resources, submitted February 19, 2021, relating to removing shot size restrictions for hunting certain game (Wis. Admin. Code chs. NR 10 and 45); and
- A statement of scope by the Department of Health Services, submitted March 31, 2021, relating to biennial review of administrative rules under s. 227.29, stats. (Wis. Admin. Code chs. DHS 1-251).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Controlled Substances Board, submitted February 15, 2021, relating to removing FDA approved cannabidiol from schedule V and excluding FDA approved cannabidiol from schedule I (Wis. Admin. Code ch. CSB 2.75); and
- A proposed rule by the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, submitted March 29, 2021, relating to reciprocal credentials for

service members, former service members, and their spouses (Wis. Admin. Code ch. MTBT 2); and

- A proposed rule by the renewal and reinstatement of licenses, submitted April 1, 2021, relating to Psychology Examining Board (Wis. Admin. Code ch. Psy 4); and
- A proposed rule by the biennial review of administrative rules under s. 227.29, stats., submitted January 7, 2021, relating to Department of Health Services (Wis. Admin. Code chs. DHS 90, 103, 104, 105, 106, 107, 152, 250 and 251); and
- A proposed rule by the real estate appraisers, submitted February 11, 2021, relating to Department of Safety and Professional Services (Wis. Admin. Code ch. SPS 85).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,



Tony Evers
Governor

cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Katie Domina, deputy policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
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