

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the Statement of Scope for Board Order DG-02-22 and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for proposed rules creating chapter NR 854 related to statewide water supply service area planning for municipalities serving populations greater than 10,000 people

FOR: June 2022 Board meeting

PRESENTER'S NAME AND TITLE: Adam Freihoefer, Water Use Section Chief

SUMMARY:

The objective is to create a new rule (ch. NR 854, Wis. Adm. Code) as required by s. 281.348, Wis. Stats. The rule would establish a continuing water supply service area planning process for persons operating public water supply systems in Wisconsin that serve a population of 10,000 or more, most persons proposing a new or increased diversion, and persons proposing certain new or increased withdrawal from the Great Lakes basin. Section 281.348, Wis. Stats. requires certain public water systems to prepare water supply service area plans by December 31, 2025, and the process outlined in this rule would aid those public water systems in meeting this statutory deadline. The rule would reflect 2021 Wisconsin Act 126, enacted February 4, 2022, which amended s. 281.348, Wis. Stats.

A preliminary public hearing on this scope statement was held on June 3, 2022. A recording of the hearing is available at: https://widnr.widen.net/view/video/acvgnhghj/NR854_Public-Hearing_6_3_2022.mp4.

If the scope statement for Board Order DG-02-22 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 4, 2024.

RECOMMENDATION: That the Board approve the Statement of Scope for Board Order DG-02-22 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):

- Statement of Scope
Governor's Approval of Statement of Scope
Public Comments Summary
Background memo
(insert document name)
(insert document name)

Table with 3 columns: Approved by, Signature, Date. Rows include Steven B. Elmore, Gail E. Good, and Preston D. Cole.

by Sarah Barry

cc: Board Liaison - AD/8
Department Tribal Liaison - AD/8

Handwritten initials 'DS' and 'KLE' in a box.

Program attorney - LS/8

Department rule officer - LS/8

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CORRESPONDENCE/MEMORANDUM

DATE: June 6, 2022

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-02-22, proposed rules creating chapter NR 854 related to statewide water supply service area planning for municipalities serving populations greater than 10,000 people

On April 11, 2022, 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-02-22, pursuant to s. 227.136(1), Wis. Stats. The statement of scope contemplates rulemaking to create ch. NR 854, Wis. Adm. Code, for statewide water supply service area planning for municipalities serving populations greater than 10,000 people.

Public Hearing

The department held an online preliminary public hearing on the statement of scope on June 3, 2022 at 10 a.m. One member of the public attended the hearing. The department received zero comments at the hearing.

Written Public Comment

The public comment period ended on June 3, 2022. The department received zero written comments on the proposed statement of scope.

A recording of the preliminary hearing is available at:

https://widnr.widen.net/view/video/acvgnhqjh/NR854_Public-Hearing_6_3_2022.mp4

Drafter: Nicole Clayton

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: DG-02-22

Relating to: Creation of ch. NR 854 for statewide water supply service area planning for municipalities serving populations greater than 10,000 people

Rule Type: Permanent

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

The rule will be proposed as a permanent rule.

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

The objective is to create a new rule (ch. NR 854, Wis. Adm. Code) as required by s. 281.348, Wis. Stats. The rule would establish a continuing water supply service area planning process for persons operating public water supply systems in Wisconsin that serve a population of 10,000 or more, most persons proposing a new or increased diversion, and persons proposing certain new or increased withdrawal from the Great Lakes basin. Section 281.348, Wis. Stats. requires certain public water systems to prepare water supply service area plans by December 31, 2025, and the process outlined in this rule would aid those public water systems in meeting this statutory deadline. The rule would reflect 2021 Wisconsin Act 126, enacted February 4, 2022, which amended s. 281.348, Wis. Stats.

A water supply service area plan shall document long-term planning to demonstrate that a public water supply system can supply an adequate and sustainable amount of water in a manner that meets the requirements of s. 281.348, Wis. Stats., and where applicable, the requirements of the Great Lakes – St. Lawrence River Basin Water Resources Compact. Persons operating a public water supply system shall ensure that the plans are consistent with applicable comprehensive plans and include an analysis of public water supply infrastructure and options for supplying water for the period covered by the plan.

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:

This is the first rulemaking effort establishing a procedure for water supply service area plans for public water systems. Section 281.346(4), (4s), and (5), Wis. Stats., require department-approved water supply service area plans for purposes of completing certain applications for diversions and withdrawal permits. Chapter NR 860, Wis. Adm. Code, currently requires certain water use permits to comply with approved water supply service area plans, however, it does not address the process for developing a water supply service area plan. Amendments to Chapter NR 860,

Wis. Adm. Code may be included in this rule to ensure consistency between the administrative code chapters.

The proposed rule would establish a continuing water supply service area planning process for persons that operate water supply systems that serve a population of 10,000 or more. Communities requiring a new or increased diversions of Great Lakes water, or a new or increased withdrawal from the Great Lakes basin, are required to obtain prior department approval of a water supply service area plan. Section 281.348, Wis. Stats., requires all other communities serving a population of 10,000 or more to prepare a plan, however, department approval is not required.

The purpose of water supply service area planning is to systematically evaluate water supply alternatives and to identify water supply options for a 20-year planning period. The proposed rule would contain the same water supply service area plan requirements as the criteria in s. 281.348(3), Wis. Stats.:

- Delineation of the area for which the plan is being prepared.
- Inventory of the sources and quantity of water supply in the area.
- Forecast of water demands, including population projections.
- Identification of water supply options.
- Assessment of environmental and economic impacts of carrying out the water supply service area plan.
- Demonstration that the plan will utilize existing water supply and wastewater infrastructure to the extent practicable.
- Procedures for implementing and updating the plan.
- Consistency with applicable comprehensive and areawide water quality management plans.
- Other information specified by the department.

In addition, water supply service area plans that require department approval need to include:

- Delineation of the proposed water supply service areas for each public water supply system making a withdrawal covered by the plan.
- A cost-effective analysis of regional and individual water supply and water conservation alternatives.

Section 281.348(3)(b), Wis. Stats., also requires that the rule include procedures for the following:

- Public review and comment on the proposed water supply service area plan.
- Submission of the plan to governing body(s) of municipalities whose water supply is addressed by the plan.
- Submission and approval of the plan to the department, if required.
- Reopening a previously approved plan.
- Ensuring the plan remains current.

Other department approval processes for certain specific public water system projects are governed by chs. NR 108, 810, and 811, Wis. Adm. Code, and would not be impacted by this proposed rule. Specifically, public water systems are required to obtain prior department approval when making improvements, extensions or alterations that may affect the quality or quantity of water delivered. This includes changes to water mains, storage/pressure facilities,

water treatment, and wells. Approval is also required for wellhead protection plans for new wells servicing municipal water systems.

The alternative to the proposed rule is to not proceed with rule promulgation and rely on the existing statutory language to implement water supply service area planning requirements.

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

Section 281.348, Wis. Stats., directs the department to promulgate and administer rules to develop a continuing water supply service area planning process for persons operating public water supply systems. Specifically, s. 281.348(3)(a)1., Wis. Stats., states: “The department shall establish, by rule, and administer a continuing water supply planning process for the preparation of water supply plans for persons operating public water systems.” Section 281.348(3)(b), Wis. Stats. directs the department to include certain specific procedures in the rulemaking explicitly authorized under s. 281.348(3)(a)(1). Section 281.348(3)(c)9. authorizes the department to require other information in a public water system’s water supply service area plan. Section 281.346(4), (4s), and (5), Wis. Stats., require department-approved water supply service area plans for purposes of completing certain applications for diversions and withdrawal permits.

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 approximately 800 hours of staff time will be required to complete 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:

- a) Public Water Supply Systems
- b) Regional Planning Commission(s)
- c) Municipal Environmental Group – Water Division
- d) Wisconsin Rural Water Association

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:

There are no comparable federal regulations pertaining to water supply service area planning for water withdrawal-related activities regulated under the Great Lakes – St. Lawrence River Basin Water Resource Compact.

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

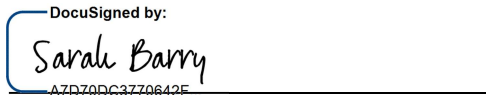
The proposed rule will affect approximately 90 public water supply systems which meet the statutory threshold of serving a population of 10,000 or more and are required by statute to prepare a water supply service area plan. Costs related to water supply service area planning are mostly related to staff time or hiring consultants to meet statutory requirements. The department

anticipates the economic impact of implementing this rule to be moderate, and the rule is not anticipated to have a significant economic impact on small businesses.

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

The department anticipates holding a public hearing in September, 2023. The hearing will be held in Madison, Wisconsin with an option to join virtually. This will provide convenient access to the hearing for interested parties around the state.

Contact Person: Chris Fuchsteiner (608) 266-9264

DocuSigned by:

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For Preston D. Cole, Secretary
3/15/2022 | 5:02 PM CDT
Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

March 24, 2022

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 Department of Justice, submitted March 10, 2022, relating to tracking of sexual assault kits in sexual assault cases (Wis. Admin. Code ch. JUS 21); and
- A statement of scope by the Department of Natural Resources, submitted March 21, 2022, relating to creation of ch. NR 851 for the management of diversions (transfers of water from the Great Lakes basin to outside of the Great Lakes basin) and intrabasin transfers including the application and review process and other related criteria (Wis. Admin. Code ch. NR 851); and
- A statement of scope by the Department of Natural Resources, submitted March 15, 2022, relating to creation of ch. NR 854 for statewide water supply service area planning for municipalities serving populations greater than 10,000 people (Wis. Admin. Code ch. NR 854).

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

Sincerely,

A handwritten signature in black ink that reads 'Tony Evers'.

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)
Jody Schmelzer, DOJ (schmelzerjj@doj.state.wi.us)
Emma Esch, DNR (emma.esch@wisconsin.gov)