

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order DG-02-22, 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: May 2022 Board meeting

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

SUMMARY:

The Joint Committee for Review of Administrative Rules (JCRAR) has requested a preliminary public hearing and comment period on the scope statement for Board Order DG-02-22. If the preliminary hearing notice for DG-02-22 is approved by the board, the department will hold a preliminary public hearing and comment period on the scope statement. After the hearing is held and the public comment period closes, the department will bring the scope statement before the Board for approval. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. The 30-month time frame for submission of a final rule to the legislature for approval expires on October 4, 2024.

Section 281.348, Wis. Stats., requires the department to promulgate rules to 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. Currently there is no rule to support water supply service area planning and DNR review process, as required by the statute. The proposed rule would outline plan requirements, the DNR review process, and modifications to existing plans for communities that have to prepare a water supply service area plan.

RECOMMENDATION: That the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order DG-02-22.

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

- Statement of Scope
Governor's Approval of Statement of Scope
Public Comments Summary
JCRAR Letter
(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, Secretary.

for

by Sarah Barry

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

Handwritten initials DS and WR in a box.

Program attorney - LS/8

Department rule officer - LS/8

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Notice of Preliminary Hearing on Statement of Scope

The Department of Natural Resources announces that it will hold a preliminary public hearing on Statement of Scope SS 025-22 (Board Order DG-02-22) for proposed rules creating chapter NR 854 related to statewide water supply service area planning for municipalities serving populations greater than 10,000 people. In accordance with s. 227.136, Wis. Stats., the DNR is seeking public comment and feedback on Statement of Scope SS 025-22 at the time and virtual location shown below.

This hearing will also include:

- Statement of Scope SS 026-22 (Board Order DG-03-22), proposed creation of chapter 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.

Hearing Information

Date: June 3, 2022

Time: 10:00 a.m.

Virtual Location:

- Online via Zoom: <https://us02web.zoom.us/j/82411527746>
- Meeting ID: 824 1152 7746
- Join by Telephone: (312)-626-6799

Rule Information

The objective is to create a new rule (ch. NR 854, Wis. Adm. Code) as required by s. 281.348, Wis. Stats. Section 281.348(3)(a)1 Wis. Stat. requires the department to establish by rule, 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. 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. The rule would outline statutory requirements, the DNR review process, and the process for modifying existing plans.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access

these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. Pre-registration is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, either use the Zoom link above prior to the day of the hearing or download and complete the fillable [hearing appearance form](#) and send it to Nicole.Clayton@wisconsin.gov.

Comments on the proposed scope statement must be received on or before June 3, 2022. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing.

Written comments and any questions on the proposed scope statement should be submitted to:

Department of Natural Resources
Attn: Nicole Clayton – DG/5
P.O. Box 7921
101 S. Webster Street,
Madison, WI 53707-7921
Nicole.Clayton@wisconsin.gov

The scope statement may be viewed at:

<https://dnr.wisconsin.gov/news/input/ProposedPermanent.html>

Comments can be made at: DNRAAdministrativeRulesComments@wisconsin.gov

The scope statement may be reviewed, and comments made at:

https://docs.legis.wisconsin.gov/code/scope_statements/comment.

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:

A7D70DC3770642F...
For Preston D. Cole, Secretary
3/15/2022 | 5:02 PM CDT
Date Submitted

From: Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>

Sent: Monday, April 11, 2022 10:59 AM

To: Cole, Preston D - DNR <preston.cole@wisconsin.gov>

Cc: Kennedy, Sean P - DNR <seanp.kennedy@wisconsin.gov>; Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>; Rep.Neylon - LEGIS <Rep.Neylon@legis.wisconsin.gov>; Grosz, Scott A - LEGIS <scott.grosz@legis.wisconsin.gov>; Kauffman, Jill - LEGIS <jill.kauffman@legis.wisconsin.gov>; Duchek, Mike - LEGIS <michael.duchek@legis.wisconsin.gov>

Subject: JCRAR Directive to Hold Preliminary Hearings on Scope Statements SS 025-22 & SS 026-22

April 11, 2022

Preston Cole, Secretary
Department of Natural Resources
101 S. Webster St. (GEF 2)
P.O. Box 7921
Madison, WI 53707-7921

**RE: SS 025-22 – Statewide Water Supply Service Area Planning for Municipalities
SS 026-22 – Management of Transfers of Water from the Great Lakes Basin**

Dear Secretary Cole:

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the Department of Natural Resources (DNR) to hold preliminary public hearings and comment periods on Scope Statements SS 025-22 and SS 026-22, which were published in the Wisconsin Administrative Register on April 4, 2022.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by the Secretary of the Department of Natural Resources (DNR) or other boards and individuals within the department until after the preliminary public hearing and comment period are held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

Please confirm receipt of this letter directing a preliminary hearing and comment period on the above scope statement.

Sincerely,

Steve Nass

Senator Steve Nass

Co-Chair, JCRAR

– Sent via e-mail –



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 (schmelzerji@doj.state.wi.us)
Emma Esch, DNR (emma.esch@wisconsin.gov)