

Report From Agency

REPORT TO LEGISLATURE

NR 809, Wis. Adm. Code
IESWTR, LT1, DDBP, PN, CCR, radionuclide and total coliform rules and
updating of analytical methods for public water systems

Board Order No. DG-33-06
Clearinghouse Rule No. 07-025

Basis and Purpose of the Proposed Rule

The United States Environmental Protection Agency (USEPA) published amendments to 40 CFR parts 141 and 142. Section 281.17(8), Stats., and our primacy agreement with US EPA require the Department to adopt rules at least as stringent as federal regulations. These proposed amendments are necessary to assure that the Department's administrative rules are consistent with federal regulations.

On January 14, 2002, US EPA published National Drinking Water Regulations for Long-Term 1 Enhanced Surface Water Treatment (LT1); these changes impact all public drinking water systems using surface water or groundwater under the direct influence of surface water (GWUDI) and serving fewer than ten thousand (10,000) people. This rulemaking will also include revisions to correct minor errors in and updates to the following:

- the existing interim enhanced surface water treatment rule (IESWTR);
- the stage 1 disinfection and disinfection byproducts rule (DDBPR);
- the lead and copper rule (LCR);
- the drinking water public notification rule (PNR);
- the radionuclide rule;
- analytical methods; and

Additionally, language has been clarified in regard to the total coliform rule (TCR) maximum contaminant level (MCL) determinations impacting systems collecting less than 40 samples per month.

In order to maintain primacy, Wisconsin must adopt all federal requirements under the Safe Drinking Water Act (SDWA) or have requirements that are equal to or more stringent than the SDWA. In the case of the LT1 regulation there were two alternatives available for Wisconsin to meet this requirement:

1. Full adoption of the LT1 rule for surface water and groundwater under the direct influence of surface water (GWUDI) systems with populations of 10,000 or less. Or,
2. Amending the state version of the Interim Enhanced Surface Water Treatment Rule (IESWTR) to apply to all surface water and GWUDI systems.

Alternative #1 required incorporation of rule language that would not be used by any drinking water systems and would have added confusion in understanding ch. NR 809 requirements. Only two systems in Wisconsin would fall under the LT1 requirements and, in reality, the LT1 rule would not apply to either. The first system, Wisconsin Veterans Home at King will be using all groundwater by the end of 2007. The second system, Ashland Water Utility, uses an alternative technology (membrane filtration) and is required to meet standards of the IESWTR by virtue of their plan of operation. Wisconsin has no systems that are considered GWUDI under the federal regulations.

Alternative #2 changed the application of the IESWTR to all surface water and GWUDI systems rather than just those serving population of 10,000 and over. This is consistent with current practice. The requirements of the LT1 were developed based on the IESWTR, but were modified by USEPA to reduce

the burden on small systems. Since there are no Wisconsin systems to be burdened, it was not necessary to promulgate additional rule language.

The recommendation was use alternative #2 for meeting the primacy requirement to adopt rules at least as stringent as the federal rules; that the IESWTR apply to all surface water and GWUDI systems in Wisconsin.

All the minor errors and additions edits have been identified by USEPA in various primacy reviews and are required to be completed.

The existing language on non-acute or monthly TCR MCL determination was not clear and needed elucidation, the actual meaning was not changed.

Summary of Public Comments

The department received one public comment on the updating of analytical methods.

Paul Junio of Test America Laboratory commented: "While NR 809 has a revision proposed to it, DNR has been unlucky in its timing. EPA released the Methods Update Rule on March 12, 2007 (MUR), which was after DNR opened NR 809 for comments. The methods tables contained in the MUR include additional methods that are not currently a part of NR809, either in the current form or in its revised form. I strongly encourage the WDNR to incorporate those methods included in the MUR into ch. 809 at this time."

Modifications Made

The department incorporated the March 12, 2007 Methods Update Rule into the applicable tables contained in this order.

Appearances at the Public Hearing

On April 11, 2007 public hearings were held in person in Madison and by video feed in Eau Claire, Spooner, Milwaukee and Green Bay. No one attended any of the hearings.

Changes to Rule Analysis and Fiscal Estimate

No changes were required.

Response to Legislative Council Rules Clearinghouse Report

The recommendations have been accepted and incorporated into the rule.

Final Regulatory Flexibility Analysis

Typically, the Department has little flexibility with drinking water regulations since State rules can be no less stringent than the federal regulation. Flexibility in the rule will be used to reduce monitoring costs and complexity wherever possible.