

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: DG-24-19

Relating to: Revisions to Wis. Admin. Code chapter NR 809 related to the promulgation of new drinking water maximum contaminant levels for Per- and Polyfluoroalkyl Substances (PFAS) including Perfluorooctanesulfonic acid (PFOS) and Perfluorooctanoic acid (PFOA).

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 of the proposed rule is to amend ch. NR 809, Wis. Adm. Code, to establish drinking water standards, referred to as Maximum Contaminant Levels (MCLs), for certain Per- and Polyfluoroalkyl substances (PFAS) including the contaminant compounds perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). PFAS contaminants have been identified as emerging contaminants by the EPA and numerous states, including Wisconsin, due to their persistence in and threats to the environment, including surface water and groundwater resources. The impacts to surface water and groundwater sources are threats to public health, welfare and safety in obtaining drinking water. Establishing drinking water standards for certain PFAS contaminants in this rule will protect public health by setting MCLs that may not be exceeded. If MCLs are exceeded, a corrective action plan must be implemented to maintain protection of public health, welfare and safety in drinking water.

Because of sampling conducted pursuant to the EPA's Unregulated Contaminant Monitoring Rule 3 (UCMR 3), the PFAS contaminants PFOA and PFOS were identified in the drinking water at several Wisconsin public water systems. Subsequent environmental investigations throughout the state have identified several PFAS contaminant sources with impacts to the environment including the waters of the state. Additional drinking water monitoring of PFAS contaminants at several Wisconsin public water supply systems since completion of UCMR 3 has identified additional PFAS impacts to several drinking water sources.

Adverse health effects have been associated with exposure to PFOA and PFOS contaminants based on several studies. Adverse health effects include increase in cholesterol, liver damage, thyroid disease and a decrease in fertility and birth weight. The EPA and international studies have classified PFOA and PFOS as possibly carcinogenic to humans.

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 809, Wis. Adm. Code, promulgated consistent with the Safe Drinking Water Act, contains drinking water standards (MCLs) for more than 90 regulated contaminants. The rule amendment to add

certain PFAS contaminants, including PFOA and PFOS, to ch. NR 809, Wis. Adm. Code, is consistent with the existing policy in ch. NR 809, Wis. Adm. Code, to establish MCLs to provide minimum standards for the protection of public health, safety and welfare in the obtaining of safe drinking water. The amendment of ch. NR 809, Wis. Adm. Code, is the most efficient and effective policy alternative to add certain PFAS contaminants as regulated contaminants for the protection of public health, safety and welfare.

A policy alternative would be to wait until EPA promulgates MCLs for PFAS substances. EPA's PFAS action plan states that, by the end of the year, EPA will decide whether they will begin the process to promulgate PFOS and PFOA MCLs. Following this process, it may take five plus years for EPA and DNR to promulgate such a standard.

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

Under s. 281.17(8)(a), "the department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j-26." Establishment of drinking water MCLs for certain PFAS contaminants, including PFOA and PFOS, is consistent with the objectives of the EPA's Safe Drinking Water Act (Title 40, Chapter 1 Subchapter D Part 141 National Primary Drinking Water Regulations) and ch. NR 809, Wis. Adm. Code. The purpose of ch. NR 809 is to establish minimum standards and procedures for the protection of public health, safety and welfare in obtaining safe drinking water.

Ch. NR 809, Wis. Adm. Code, is adopted under authority granted in chs. 280 and 281, Wis. Stats. Related statutory authority includes:

Section 280.11(1), Wis. Stats., Pure drinking water. Provides department authority, after a public hearing, to prescribe, publish and enforce minimum reasonable standards and rules and regulations for methods to be pursued in the obtaining of pure drinking water for human consumption and the establishing of all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. The department has general supervision and control of all methods of obtaining groundwater for human consumption including sanitary conditions and generally to prescribe, amend, modify or repeal any rule or regulation theretofore prescribed and shall do and perform any act deemed necessary for the safeguarding of public health.

Section 281.12, Wis. Stats., provides that the department has general supervision and control over the waters of the state and is to carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of ch. 281, Wis. Stats., including to protect, maintain and improve water quality. The department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

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 925 hours of state employee time will be required to complete the promulgation of the proposed rules.

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)
- Non-transient Non-community water systems (small businesses with 25 or more employees that are not on a municipal source)
- Laboratories certified to perform PFOS and PFOA analysis in drinking water
- Wisconsin Department of Natural Resources
- Wisconsin Department of Health Services
- Wisconsin Department of Safety and Professional Services
- Treatment installation businesses

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 :

The process for the proposed amendment to ch. NR 809, Wis. Adm. Code, to establish certain MCLs for PFAS, including PFOA and PFOS standards, is consistent with the process for establishing rules for other drinking water contaminants regulated under the federal EPA Safe Drinking Water Act, specifically Title 40 - Protection of the Environment; Chapter 1 - Environmental Protection Agency; Subchapter D - Water Programs. The department has a primacy agreement with the EPA to implement the Safe Drinking Water Act.

As a result of the PFOA and PFOS findings from EPA's UCMR 3 national monitoring of public water supply systems, the EPA issued a PFOA and PFOS Health Advisory Level (HAL) in 2016. The PFOA and PFOS HAL was established based upon laboratory animal and epidemiological human studies indicating adverse health effects related to PFOA and PFOS exposure. Adverse health effects included developmental effects of fetuses during pregnancy or to breastfed infants, cancer, liver effects, immune effects and thyroid effects and other health effects.

In February 2019, the EPA released a Per- and Polyfluoralkyl Substances (PFAS) Action Plan. One of the four primary actions in the PFAS Action Plan is initiating steps to evaluate the need for a MCL as part of the Safe Drinking Water Act. The EPA is evaluating criteria to propose a national drinking water regulatory determination for PFOA and PFOS. The EPA is highlighting key PFOA and PFOS information gathered to date and additional data needs. The action plan identifies an anticipated timeline for a PFOA and PFOS regulatory determination in 2019 to proceed with the federal regulatory process.

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

We anticipate the economic impact of this rule to stakeholders including small businesses to be significant.

Testing will be required at a frequency similar to other synthetic organic compounds having Safe Drinking Water Act MCLs. This testing would occur at least every six years, but may be as often as every quarter for a small subset of public water systems, depending upon their levels of PFAS contaminants detected. This will affect approximately 2,000 public water systems. Currently the cost of this analysis is \$325 per sample.

Approximately 15 to 30 systems would need to treat their water or drill a new well (based on data from a neighboring state, Michigan, which did sampling for PFAS and PFOS at 1700 public water systems). The number of systems needing to treat their water or drill a new well may go up if additional PFAS contaminants with MCLs are detected at Wisconsin public water systems. The cost of treatment at a large municipal public water system could be at least 25 million dollars, however that figure could be much lower at smaller systems. Some systems may also choose to drill a new well if it is possible to find an

uncontaminated aquifer. The typical cost of a well at a non-transient non-community system is approximately \$11,000.

The economic benefits of the avoided cost of impacts on human health may greatly outweigh the costs of treating the water or drilling a new well. The department is still assessing the extent of the economic impact of the rule, but it is projected to be significant in the first few years of implementation and more moderate in later years once initial up-front treatment installation costs are covered.

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

The department anticipates holding four concurrent public hearings in August 2021. Hearing cities are expected to be: Eau Claire, Wausau, Green Bay, 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.

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