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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **09-073**

AN ORDER to repeal and recreate chapters NR 809 and 811; and to create chapter NR 810, relating to safe drinking water design requirements for community water systems, and requirements for the operation and maintenance of public water supply systems.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

09-03-2009 RECEIVED BY LEGISLATIVE COUNCIL.

10-01-2009 REPORT SENT TO AGENCY.

RS:REL, LAK, DLL, JES

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 09-073

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

General Comment

In many of the comments in this report, one example of an error is given, but there may be numerous other occurrences of the error. The entire rule should be reviewed for other occurrences of the cited error. If structural or stylistic aspects of the rule are a result of applying s. 227.14 (1m), Stats., the department should so state in its report to the Legislature.

2. Form, Style and Placement in Administrative Code

a. The tables of contents in the rule should be compared with the titles in the text of the rule in order to ensure consistency. For example, in the table of contents, the title to s. NR 809.25 should not include commas and the title to s. NR 809.32 should show the phrase “microbiological source water” in lower case.

b. Section NR 809.01 cites s. 281.12, Stats., as statutory authority for ch. NR 809. This statement and the statement of statutory authority in the rule preface should be made consistent.

c. In s. NR 809.03, the phrase “as defined in this chapter” is unnecessary and should be deleted.

d. Definitions should be in alphabetical order. See, for example, s. NR 809.03 (13), (38), (73), (83), (84), (86), and (91).

e. In s. NR 809.04 (38), the correct cross-reference is “ss. NR 809.11 (2) (b) and 809.20 (1) (b).”

f. Section NR 809.04 (40) includes substantive requirements that should not be placed in a definition.

g. Is it the department's intent that the running annual average under s. NR 809.04 (68) ever be calculated with less than four calendar quarter sample results? If not, the first sentence should be revised. If so, the denominator in this calculation should be allowed to be less than four if less than four samples are used. See for example s. NR 809.117 (1) (b) and (c).

h. In s. NR 809.04 (74), the word "means" should be replaced by the word "includes."

i. In s. NR 809.05 (2), to what does the phrase "such regulations" refer?

j. The definition of MCLG in s. NR 809.04 (49) declares that MCLGs are "non-enforceable health goals" yet s. NR 809.07 (5) (d) allows the department to require treatment or replacement of the water source when a contaminant is detected above MCLG but below MCL for that contaminant. These provisions appear to conflict and should be reconciled or explained.

k. In s. NR 809.115 (1) (b), and in other places in the rule, the phrase "herein called the sampling point" is used. The term "sampling point" should be defined in s. NR 809.04.

l. In s. NR 809.115 (2) (a), the word "Unless" should be shown in lower case.

m. In s. NR 809.119, the subunits should be renumbered as subs. (1) to (7).

n. In s. NR 809.205 (6), the word "defined" should be replaced by the word "provided."

o. In s. NR 809.325 (2) (c), the notation "sub." should be replaced by the notation "par." In sub. (5), the notation "s." should be inserted before the reference "NR 809.95." In sub. (6), the notation "pars." should be replaced by the notation "subs." and the word "must" should be replaced by the word "shall."

p. In s. NR 809.327 (3) (b) (intro.), the notation "s." should be inserted before the reference "NR 809.325." In sub. (4), the paragraph titles should be shown in italics.

q. Section NR 809.328 should be restructured so that there is more than one subsection. Also, in sub. (1) (d), the notation "s." should be inserted before the reference "NR 809.952."

r. In s. NR 809.329 (1) (intro.), the word "Department" should be shown in lower case. See also sub. (1) (b).

s. Section NR 809.33 should be reviewed for replacing the word "must" by the word "shall."

t. In s. NR 809.331 (1) (d) 4., the notation "par." should be replaced by the word "paragraph." In sub. (1) (e), the notation "subds." should be replaced by the notation "par." In sub. (5) (b), the word "must" should be replaced by the word "shall."

u. In s. NR 809.332 (1) (d), the notation "NR" should be inserted before the reference "809.331 (2)."

v. In s. NR 809.333 (5) (b) (intro.), the word "must" should be replaced by the word "shall." [See also s. NR 809.336.]

w. In s. NR 809.541 (4) (a) 2., the word "Copper" should be shown in lower case.

x. In s. NR 809.542 (2) (intro.), the notation "par." should be replaced by the notation "pars."

y. In s. NR 809.545 (1), the notation "ss." should be replaced by the notation "s." In sub. (2), each occurrence of the notation "par." should be replaced by the notation "sub."

z. In s. NR 809.546 (1), the titles of the paragraphs should be shown in italics. In sub. (1) (a) (intro.), the notation "subd." should be replaced by the notation "subds." In sub. (2), the paragraphs should consistently begin either with a title or a complete sentence. In sub. (4), the titles to the paragraphs should be shown in italics.

aa. In s. NR 809.547 (3), the word "Department" should be shown in lower case.

bb. In s. NR 809.546 (2) (d) 7., periods should be inserted after the citations to other subdivisions. [See also s. NR 809.546 (2) (h).]

cc. In general, the rule is written in the active voice, clearly stating who may or shall do what (e.g., "A system shall..."). The numerous lapses in this drafting rule, though, warrant revision (e.g., "Monitoring plans shall be revised..." in s. NR 809.62 (3) (intro.), "Monitoring may be reduced..." in s. NR 809.63 (1) (intro.); "A system may be returned to routine monitoring by the department..." in s. NR 809.63 (4)--compare this last example to "The department may return a system to routine monitoring..." in s. NR 809.63 (1) (f)). In s. NR 810.14 (5), instead of providing that a report form shall be submitted, the rule should state "_____ shall submit..." [See s. 1.01 (1), Manual.]

dd. The rule makes excessive use of acronyms, generally without sufficient definition. Note that using a term in the text of a rule and following it with a parenthetical indication of the acronym for the term does not constitute a definition of the acronym. In some subchapters, an appendix listing acronyms is provided, which is helpful but, too, does not constitute definition of the terms.

ee. Test methods and other technical procedures referenced in the rule must be incorporated into the rule by reference, with the permission of the Attorney General. [See s. 2.08, Manual.] Each reference to the method should include information on how and where to find documentation on the method, or a cross-reference to this information. For one model of how to do this, see ch. NR 484.

ff. All tables should be numbered. For example, while the tables following s. NR 809.563 (2) and (3) are numbered, those following s. NR 809.563 (4) (d) and (e) are not.

gg. According to s. NR 809.03, the rule applies to all public water systems, but the language applying individual requirements is inconsistent. It applies the same definition to "public water system," "system," and "PWS"; it also applies the same definition to "supplier of

water” and “water supplier,” but also uses the phrases “owner or operator of a public water system” and “public water system owner or operator,” which are essentially the definition of “supplier of water” and “water supplier.” Further, while the first set of terms would appear to refer to the physical system and the latter set of terms to the operator of the system, “system” is frequently referred to as a person, as when the rule establishes duties of a system. So, in total, the rule uses at least five defined and two undefined terms to refer to the owner or operator of a public water system. The department should select one term for this purpose, define it (if necessary), and use it consistently throughout the rule.

hh. The phrase “except as otherwise provided” is too vague to be useful to the reader. See, for example, s. NR 809.565 (4) (intro.). Rather, these provisions should indicate, by cross-reference, the specific rules that provide otherwise.

ii. It is not clear why the information in footnotes 1 and 2 to the table following s. NR 809.569 (1) (b) is placed in footnotes. It appears to be a substantive provision, not an interpretation of the table, and should be in the text of the rule.

jj. Notes to rules are explanatory and may not include substantive requirements. The note following s. NR 809.74 (1) (b) 2. appears to include substantive provisions that should be placed in the text of the rule.

kk. In the definition of terms for the formula in s. NR 809.80 (6) (b) 8. f., the cross-references should be to “this subd. 8. a.,” “this subd. 8. b.,” etc. The same applies to the cross-reference in subd. 8. g. and to the parallel provisions in s. NR 809.80 (7). [See s. 1.07 (2), Manual.]

ll. The entire rule should be reviewed for instances of abbreviations like “i.e.,” “e.g.,” and “etc.” and those abbreviations should be deleted. In many cases, “including” could be used. For example, see ss. NR 809.205 (4) (b) 6., 809.54 (3), 809.55 (1) (c), and 809.953 (3) (a) 2.

mm. Rules do not address what a person should do, but what a person shall do or may do. In light of this, s. NR 809.833 (7) (c) should be reduced to the requirement that a system (or water supplier or owner or operator) provide non-English versions of its public confidence reports in languages of groups representing at least 5% of the population. Any encouragement by the department to do more should be placed in a note.

nn. In s. NR 809.837 (7) (intro.), “par. (1)” should be changed to “sub. (1).”

oo. With reference to s. NR 809.837 (7), as an exception to the general rule on capitalization, “Governor” is capitalized when referring to the Governor of Wisconsin.

pp. Section NR 809.956 (1) uses an incorrect format for referring to the Code of Federal Regulations. The correct format is [title number] CFR [section number].

qq. The history note following s. NR 809.957 should be deleted.

rr. Titles are not a part of the rule, but this rule on occasion assumes that they are, effectively leaving the subject of the rule provision out of the rule. For example, in s. NR

809.960 (intro.). "the special notice" should be replaced with a description of the notice intended (presumably the notice described in the title). Subsequent units of that section can refer to "the notice required under this section."

ss. Most of the citations in appendix A to subch. VII of ch. 809, are incomplete. Are these references to the Wisconsin Statutes, the Wisconsin Administrative Code, the U.S. Code, the Code of Federal Regulations, or something else?

tt. There is only one subsection to s. NR 809.973. Consequently, each subunit should be elevated one organizational level (i.e., s. NR 809.973 (1) (intro.) becomes s. NR 809.973 (intro.), all paragraphs become subsections, etc.).

uu. All rule text must flow logically and grammatically from any introductory language that precedes it. Language that does not comply with this requirement should be reworded to comply or placed in a separate subunit of the unit in question. Examples of text that do not comply are in s. NR 809.973 (1) (a) 2. b. to f., (b) 3. h., and (c) 2. to 6.

vv. In s. NR 809.973 (1) (b), there are two subdivisions numbered 2.

ww. In s. NR 810.02 (1), the address of the American National Standards Institute should be moved to a note. The same problem occurs in subs. (2), (4), (5), and (30). In sub. (6) (intro.), "includes" should be changed to "shall include" and that sentence and pars. (a) to (d) should be moved to a substantive part of the rule. In sub. (12) (a), the parentheses should be removed and it appears that "(septum)" should be replaced with ", or septum." [See s. 1.01 (6) Manual.] This problem also occurs in s. NR 810.38 (2) (d) 1. In sub. (29), the examples provided in the definitions should be moved to a note. [See s. 1.09 (1), Manual.] The same problem occurs in sub. (40) and s. NR 810.09 (5).

xx. In s. NR 810.09 (1) (c), it appears that "will normally" should be changed to "may." In sub. (2) (b) 3., it appears that the notation "i.e." should be changed to "including."

yy. In s. NR 810.12, subunits (a) to (f) should be renumbered as (1) to (6).

zz. In s. NR 810.13 (1) (intro.) "all of" should be added before "the following." Introductory material usually contains words like "all of the following" or "any of the following." [See s. 1.03 (2) (h), Manual.] This problem occurs in sub. (2) (intro.) and s. NR 810.14 (2) (b), (c) and (d).

aaa. In s. NR 810.17 (3) (b), the notation "NR" should be added before "810.09 (4)."

bbb. In s. NR 810.23 (1), "can" should be changed to "may." [See s. 1.01 (2), Manual.] Also, the use of slashed alternatives such as "hardened/protected" should be avoided. [See s. 1.01 (9) (a) Manual.]

ccc. In s. NR 810.29 (5), "will" should be changed to "shall." [See s. 1.01 (2), Manual.]

ddd. In s. NR 810.34 (2) (c), "i.e., collect" should be changed to "collecting."

eee. In s. NR 810.37 (3), the footnote in the table should be changed from "a" to "1" for consistency with other tables.

fff. In s. NR 810.45 (2) (d) (intro.), in the second sentence, "In this subsection" should be inserted before "A direct integrity test." Also, "is defined as" should be changed to "means." The same problems occur in sub. (2) (e) (intro.). [See s. 1.01 (7), Manual.]

ggg. In s. NR 810.46 (1) (b), the phrase "...where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume.", should be changed to a separate sentence as follows: "In this section, "disinfection segment" means a treatment unit process with a measurable disinfectant residual level and a liquid volume." [See s. 1.01 (7) (c), Manual.]

hhh. In s. NR 811.02 (54), "as designated" should be changed to "given." This problem also occurs in subs. (55) and (72).

iii. In s. NR 811.12 (15) (a), the sentence that begins, "A copy of the AWWA standard is available...", should be moved to a note. [See s. 1.09 (2), Manual.]

jjj. In s. NR 811.28 (6) (e), "should" should be changed to "shall." [See 1.01 (2), Manual.]

kkk. In s. NR 811.35 (4) (c), the first occurrence of the term "per" should be replaced by the word "under." The second occurrence of the term should be replaced by the phrase "as required under."

lll. In s. NR 811.47 (7) (c), the phrase "flocculation shall mean" should be replaced by the phrase "In this paragraph 'flocculation' means." However, because the term is used elsewhere in the rule (for example, par. (d)), the term should be included in a general definitions provision.

mmm. In s. NR 811.48 (5) (h), the last sentence should be placed in a note to the rule. [See also ss. NR 811.49 (1) (d) 14. and 811.52 (1) (d) 3. b.]

nnn. In s. NR 811.56 (1) (intro.), the phrase "This process" should be replaced by the phrase "Sequestration by polyphosphates."

ooo. In s. NR 811.64 (4) a) 5., the notation "par." should be replaced by the notation "pars."

ppp. The preferred drafting style is to place information on where copies of materials or standards referenced in a rule may be obtained in a note rather than the text of the rule. See s. 1.09 (1), Manual. This style was not followed in describing the availability of Wisconsin wetland inventory maps in s. NR 811.70 (3).

qqq. In s. NR 811.73 (3) (intro.), a period should be inserted after the notation "sub."

rrr. In s. NR 811.851, the phrase "department of commerce" is unnecessary and should be deleted.

sss. In s. NR 811.91 (4) (d), the phrase "such as, but not limited to," should be replaced by the word "including." [See also s. NR 811.93 (5) (c).]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Since this proposed rule repeals and recreates ch. NR 809, any references outside that chapter to specific provisions in ch. NR 809 need to be checked to ensure that they are correct. For example, see ss. NR 114.03 (3m) and 149.19 (6) (c) and (d). This comment also applies to external references to provisions in ch. NR 811. For example, see ss. NR 166.09 (2), 815.11 (1), and 845.04 (5).

In addition, other agencies have promulgated rules that refer to provisions in ch. NR 811. If those references are no longer correct, the department should alert those agencies that their rules need to be corrected. For example, see ss. Comm 82.365 (3) (f) 2. (note) and 82.40 (3) (c) 1.

b. In s. NR 810.32 (2) (c) 2., it appears that the notation, "as determined under sub. (1) (b)," should be added after "significant change."

c. In s. NR 810.38 (1) (intro.), it appears that "sub.(1)" should be changed to "this subsection."

d. The statutory references in s. NR 811.02 (54) note and (55) should be followed by "Stats."

e. In s. NR 811.02 (61), "s. NR 811.02 (42)" should be changed to "sub. (43)."

f. In s. NR 811.25 (3) note, it would be helpful if the rule provided specific citations to state codes that may apply. This problem also occurs in subs. (4) note and (5).

g. In the analysis accompanying the rule, the list of statutes providing authority for the rule and the list of statutes interpreted by the rule should include s. 160.257 (2), Stats., in light of the provisions in subch. XIII of ch. NR 811 regulating aquifer storage recovery wells.

h. The department should review the entire rule to ensure that references to requirements in other rules, statutes, or technical standards are specific as possible. Examples of vague references in the rule include the references to the following:

- (1) The general protocol and sampling schedule in the U.S. EPA Membrane Filtration Guidance Manual in s. NR 811.50 (3).
- (2) Applicable AWWA standards for sodium fluoride, sodium silicofluoride, and fluorosilicic acid in s. NR 811.51 (intro.).
- (3) The reference in s. NR 811.63 (1) (b) to the definition of "regional flood elevation" in ch. NR 116 (rather than s. NR 116.07 (4)).

- (4) Construction of structures in accordance with the current AWWA standards concerning steel or concrete tanks, stand pipes, reservoirs, and elevated tanks in s. NR 811.64 (1) (b).
- (5) Storage structure construction requirements including applicable portions of ch. Comm 32 and safety requirements in federal OSHA codes in s. NR 811.64 (11) (e).
- (6) Pipes, joints, fittings, valves, and fire hydrants manufactured in conformity with the latest standards issued by the AWWA in s. NR 811.69 (2).
- (7) A floodway or floodplain as defined in ch. NR 116, as specified in s. NR 811.70 (2).
- (8) Fire hydrant criteria in accordance with AWWA standards in s. NR 811.71 (2).
- (9) Installation of mains in accordance with AWWA standards in s. NR 811.73 (1).
- (10) Testing of installed water mains to meet at a minimum the applicable AWWA pressure and leakage test requirements, as specified in s. NR 811.73 (3) (b).
- (11) Monitoring well construction requirements in ch. NR 141, as specified in s. NR 811.89 (3).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. The phrase ““CT” or “CTcalc”” appears to be duplicated in s. NR 809.04 (13).
- b. In the definition of “direct filtration” under s. NR 809.04 (18), should commas be added before and after the phrase “but excluding sedimentation” to achieve the department’s intent?
- c. In s. NR 809.05 (2), to what does the phrase “such regulations” refer?
- d. In s. NR 809.115 (5) (b), should the word “ nitrate” be “nitrite”?
- e. In s. NR 809.205 (2) (a), the “the following contaminants” should be removed from the last sentence or punctuation added after this phrase.
- f. In s. NR 809.245 (3), should detection for final chloride be shown as greater than 0.0002 mg/L?
- g. In s. NR 809.30 (4), “initiate definitive action to” should be deleted. If the department intended this phrase to be an indicator of the time scale required for this action, a more specific description of this requirement should be stated.
- h. The subdivisions under s. NR 809.31 (3) (b) should be reviewed for proper sentence structure and use of punctuation.
- i. In s. NR 809.323 (1) (b), the word “method” should be replaced by the word “methods.”

j. In s. NR 809.325 (2) (a), the introduction should conclude with a colon. [See also s. NR 809.548 (1) (b) 1. (intro.).]

k. Section NR 809.561 (3) (b) is unclear. "Means" other than what? That section only specifies maximum disinfectant residual levels. It should be rewritten in the active voice.

l. In s. NR 809.566 (3) (b) 1., what constitutes an "acute" violation?

m. Section NR 809.569 (3) (c) uses the undefined term "conventional treatment." Should this be "conventional filtration treatment"?

n. In s. NR 809.65 (2), a comma should be inserted after the reference to "sub. (1)."

o. The table following s. 809.70 (1) lacks a standard for methylene-blue active substances. If this is intended as a heading, rather than a table entry, this needs to be made clear and headings for the other substances in the table should be provided.

p. Section NR 809.905 (1) is very unclear. It should be rewritten in a standard format, such as: "The department shall grant a waiver from the maximum contaminant levels for uranium if any...." Also, in pars. (a) and (b), to what does "the following" refer?

q. From footnote 1 to appendix B, it appears that the heading of the second column should refer to "MCLG" rather than "MCGL."

r. In s. NR 810.02 (7), the definition of "community water system" makes a distinction between a public water system that "serves" and one that "regularly serves." If there is a difference in meaning between these two terms, the department should clarify this in the rule. In sub. (33) (intro.), the meaning of "regularly serves" is also unclear. In sub. (33) (a), "Include" should be changed to "Includes."

s. In s. NR 810.03, "insuring" should be changed to "ensuring." A similar problem also occurs in s. NR 810.13 (intro.).

t. In s. NR 810.04 (2), "Other-than-municipal community water systems" should be changed to the defined term "Other-than-municipal water systems." This problem also occurs in s. NR 810.07 (1) (b), (3), and (5). In sub. (5), the term "operator-in-charge" should be defined.

u. In s. NR 810.12 (b), "assure" should be changed to "ensure."

v. In s. NR 810.14 (2) (a) (intro.), the phrase "is known to be in good condition" is vague and the rule should be changed to clarify the department's intent. In sub. (4), a note should be added that provides how and where to obtain a report form. [See s. 1.09 (2), Manual.]

w. In s. NR 810.15 (intro.), the introductory material is confusing. The department should amend this section to clarify which water systems are subject to the prohibition and requirements provided in this section.

x. In s. NR 810.16 (1), "currently used" should be deleted and replaced with "in use as of the effective date of the section [LRB inserts date]." [See s. 1.01 (9) (b).] A similar problem also occurs in s. NR 811.12 (15) (a).

y. In s. NR 810.21 (intro.), the term "water treatment plants" is used, but is not defined. This term should be defined in the rule. Also, the term "supervisory control and data acquisition (SCADA)" is used, but is not defined. This term should be defined in the rule. It is also not clear what is meant by "chapter 30 permitting."

z. In s. NR 810.22 (intro.), the meaning of the phrases "routinely used" and "normally unused" are unclear and should be clarified if possible. In sub. (2), the notation "MCL" should be clarified.

aa. In s. NR 810.24 (2) (1), the rule should define the terms "designated operator" and "certified operator." In sub. (5), the rule should specify how an owner should "acknowledge" conformance to the requirements in this subsection.

bb. In s. NR 810.28, it appears that the terms "finished water storage reservoirs" and "treatment plant basins" should be defined in the rule. This problem also occurs in s. NR 810.33 (2) (d).

cc. In s. NR 810.29 (1) (e), it appears that "an approved protocol" should be changed to "a protocol approved by the department."

dd. Section NR 810.34 applies to "filtered systems," but it is unclear what types of systems this subsection applies to because this term is not defined in the rule. The rule should either be changed to use a defined term or provide a definition of "filtered system." The same problem occurs in s. NR 810.35.

ee. In s. NR 810.38 (2) (intro.), "this section" should be changed to "all of the following."

ff. In s. NR 810.39 (1), "to the department" should be added after "s. NR 810.336." Subsections (2) and (3) should also specify that the report should be submitted to the department. In the microbial toolbox reporting requirements table under sub. (5), the punctuation should be checked to ensure that periods are used consistently.

gg. In s. NR 810.40 (2), "they" should be changed to "the systems." Subsections (2) and (3) specify that the respective records must be kept for three years, but the rule should clarify when that three-year period starts; for example, the time period could begin running from the date the results are completed.

hh. In s. NR 810.42 (1) (b) 1., "This" should be changed to "The area of influence." In sub. (1) (c), the rule should clarify whether systems with watershed control programs in existence on the effective date of the rule or systems with programs that have been in place since January 5, 2006 are eligible to seek credit.

ii. In s. NR 810.43 (3) (d), "Federal Emergency Management Agency" should be changed to the lower case. [See s. 1.01 (4) Manual.]

jj. In s. NR 810.45 (1) (d), it is not clear why "1x" is included in the formula. It seems that multiplying the other two items by one will have no effect.

kk. In s. NR 810.46 (2) (b), the comma before the period should be deleted.

ll. In s. NR 810.56, it appears that the corresponding "1.", for the footnoted information included after the table should be added to the appropriate place in the table. The same problem occurs in s. NR 810.61.

mm. In s. NR 811.01, the phrase "existing facilities" is unclear. Therefore, it appears that the phrase "existing facilities" should be replaced with the phrase "facilities in existence on the effective date of this section [LRB inserts date]."

nn. In s. NR 811.02 (26), it appears that "Efficient" should be changed to the lower case. A similar problem also occurs in sub. (73).

oo. In s. NR 811.04, "Department approved" should be changed to "Department-approved."

pp. In s. NR 811.08 (1), "community water supply system" should be changed to the defined term, "community water system." In sub. (3), the examples listed in the rule should be separated by semicolons.

qq. In s. NR 811.09 (1) (b), "cross section" should be changed to "cross-section." In sub. (1) (b) 2., is it possible to clarify what "significant drawdown" means? In sub. (3), the material in the note appears to be substantive and should be moved to the text of the rule. [See s. 1.09 (1), Manual.] This problem also occurs in the note following s. NR 811.19 (intro.).

rr. In s. NR 811.12 (2), the rule should clarify what the department considers to be a "new well" and an "existing well." Also, it appears that the note after sub. (3) should be moved to a new note under sub. (2). In sub. (5) (b), "floodplain" and "floodway" should both be defined in the rule. In sub. (5) (d) 8., "or" should be added before "POWTS." In sub. (16) (e) 1. to 10., the semicolons should be changed to periods. In sub. (20), "State" should be changed to the lower case.

ss. In s. NR 811.25 (1) (intro.), "under s. NR 811.24" should be added after "All water system related buildings." In sub. (1) (c), "SCADA" should be defined.

tt. The department should review the entire rule to ensure that all abbreviations are defined. Examples of abbreviations that are not defined include:

(1) "SCADA" in s. NR 811.39 (4) (e). (This abbreviation is defined in s. NR 810.21 (intro.) but not in ch. NR 811.)

(2) "TFE" in s. NR 811.48 (5) (g).

(3) "NTUs" in s. NR 811.49 (1) (j) 5. and (2) (a). (This abbreviation is defined in s. NR 810.29 (1) (a) but not in ch. NR 811.)

(4) "SPADNS" in s. NR 811.51 (7).

uu. The department should review the following undefined terms and, as appropriate, define them to improve the clarity and ensure the consistent application of the rule:

(1) "Jar testing" in s. NR 811.47 (7) (b) 1.

(2) "Engineer's report" in s. NR 811.57 (intro.). If this term is intended to refer to the engineering report required under s. NR 811.09 (3), then "engineering report" should be used in this provision.

vv. The department should review the following ambiguous or unclear phrases and modify them, as appropriate, to improve the clarity and ensure consistent application of the rule:

(1) The last phrase in s. NR 811.37 (5) (a). When is entrained air a concern or installation of an air release valve necessary under this provision?

(2) "3-log" and other degrees of inactivation of viruses in ss. NR 811.42 (1) and 811.860 (4) (a).

(3) "...resistant to the aggressiveness of the water and dissolved gases" in s. NR 811.45 (1) (f) and (2) (f).

(4) "Generators shall be sized to have sufficient reserve capacity so that the system does not operate at peak capacity for extended periods of time" in s. NR 811.54 (3). What is an extended period of time in this context?

(5) "...other disinfection byproduct production through this process is to be avoided by adequate bench-scale testing prior to design" in s. NR 811.59 (1). What does "avoided" mean in this context? Is disinfection byproduct production permissible if it can't be avoided?

(6) "If the water treatment plant design is such that all water passes through one ground reservoir, bypass piping, or multiple cells shall be installed to allow..." in s. NR 811.64 (6) (b). What is the noun in the independent clause in this sentence? Should the comma after "piping" be deleted?

(7) "...if sufficient protection of the water source can be assured" in s. NR 811.851. What is sufficient protection of a water source under this provision?

ww. A comma should follow the second occurrence of the word "pump" in s. NR 811.34 (5).

xx. In s. NR 811.47 (7) (c) 2., what is the meaning of the phrase "shall be considered"? Considered for what purpose and by whom?

yy. In s. NR 811.49 (1) (k) 1., what is the meaning of the phrase "may be acceptable"? Also, the recommendation included in this subdivision should be included in a note to the rule.

zz. The term "enture" preceded by a square box in s. NR 811.54 (4) (intro.) is misspelled.

aaa. In s. NR 811.55 (1) (a), what is the meaning of the phrase "consideration shall be given to"? [See also sub. (3) (a) and ss. NR 811.64 (17) (c) and 811.65 (1).]

bbb. The second "may" in the first sentence in s. NR 811.854 should be deleted.

ccc. The possessive pronoun preceding "consultant" in s. NR 811.856 (2) (b) should be in the singular ("its") rather than the plural to match the singular "water system owner."

ddd. In s. NR 811.856 (3), the note would be more helpful if it described how the department may be contacted.