NR 811 Revision Public Comments and DNR Responses
Natural Resources Board Order DG-22-20

March 2, 2023

This document presents a summary of public comments received on proposed revisions to ch. NR 811 to update, correct and clarify existing code requirements and add requirements for new technologies related to community drinking water system sources, source water quality, storage, treatment, and distribution.

OVERVIEW

The U.S. Environmental Protection Agency (EPA) granted Wisconsin primary enforcement authority (primacy) for the federal Safe Drinking Water Act, which Wisconsin does through creation, maintenance, and enforcement of state statutes and administrative rules governing safe drinking water. As a primacy state, Wisconsin must enforce state regulations that assure that the design and construction of new or modified public water system facilities will be capable of compliance with the state primary drinking water regulations. (40 CFR 142.10(b)(5)).

Chapter NR 811, Wis. Adm. Code, contains the engineering and construction requirements for community water system sources, source water quality, storage, treatment, and distribution.

During rule development, the department conducted the following outreach with stakeholders:

- A series of four preliminary stakeholder meetings where the department gathered input from water systems, consultants, and industry professionals.
- Virtual meetings with two major chemical suppliers in Wisconsin where the department gathered information regarding industry standards for chemical addition and storage.
- A call with a tank installer to discuss proposed tank design requirement changes and the associated cost.
- GovDelivery messages and direct email messages sent to stakeholders prior to stakeholder meetings and when there were opportunities for input on the code revisions.

ECONOMIC IMPACT ANALYSIS

A public comment period on the economic impact of the rule occurred from August 15 to September 14, 2022. The department received two comments on the economic impact during this comment period. The comments did not result in changes to the economic impact analysis.

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style and placement; adequacy of references; and clarity grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

Comment 5.e: In SECTION 40, the word "insure" should be revised to "ensure". Additionally, the term "other-than-municipal water systems" could be replaced with more formal language.

Department Response: "Other-than-municipal water system" is a type of water system defined by s. NR 811.02(45).

PUBLIC COMMENTS ON DRAFT RULE

A public comment period on the draft rule occurred from November 7 to December 14, 2022, with a public hearing held on December 7, 2022.

The following is a summary of comments received and the department's response.

Organization	Comment	DNR Response
Municipal Environmental Group – Water	1. Section NR 811.232(1)(c), related to the installation of a spare solution line to provide redundancy and to facilitate the use of alternate chemicals. Specifically, MEG – Water asks the Department to revise NR 811.232(1)(c) to only require a spare solution line for new installations.	1. "Non-conforming features" are drinking water system features that met code requirements at the time of a water system's construction but do not meet current code requirements. Since existing surface water intakes would be in place prior to the revised code becoming effective, the existing intakes without a spare solution line would be considered to have a non-conforming feature. Section NR 811.01, Wis. Adm. Code, requires that when water system improvements are undertaken, facilities are required to be upgraded to meet the minimum standards established in ch. NR 811, Wis. Adm. Code. The department would only require that a spare solution line be installed if major work was being performed on an existing surface water intake and for new surface water intakes. No revisions were made to the board order based on this comment.
	2. "Section NR 811.72(1), related to the installation of metal vent pipes at air-relief facilities at high points along water mains. Specifically, MEG – Water asks the Department to clarify what pipe the rule is intended to address, and if it relates to all vent pipes, revise NR 811.72(1) to allow certain vent pipes to be constructed of PVC as well as metal."	2. The proposed revision to s. NR 811.72(1), Wis. Adm. Code, is specifically referring to chamber or manhole vent pipe. However, the department's intention is also that all air-relief and air-vacuum relief valve discharge piping be metal. The department has proposed revisions to s. NR 811.37(5)(a), Wis. Adm. Code, to add further clarification. These valves are directly connected to the finished water and the department's position is that stronger, metal pipe is more protective of the finished water than plastic pipe. Additionally, the department currently requires air-relief and air-vacuum relief valve discharge piping be metal under s. NR 811.28(5)(b), Wis. Adm. Code, so this code revision is only considered a clarification of existing rules.

		Revisions were made to ss. NR 811.37(5)(a) and 811.72(1), Wis. Adm. Code, based on the comments received.
Wisconsin Manufacturers and Commerce	1. Current regulations already provide nitrate monitoring and increased nitrate monitoring frequencies if nitrate exceeds certain levels. There are also unknown costs with the proposed requirement.	1. Nitrate sampling and monitoring must be performed in a laboratory, resulting in a delay of several days before results are reported and received. Nitrate is an acute contaminant, and a continuous nitrate analyzer would provide community water system drinking water consumers additional protections by ensuring that finished water is continuously below the nitrate maximum contaminant level. Regarding the economic impact associated with the proposed rule, the department reviewed the cost of nitrate analyzers that can be used in drinking water applications directly from manufacturers/suppliers. The department does not anticipate significant operation and maintenance costs associated with the installation of a continuous nitrate analyzer. No revisions were made to the board order based on this comment.
	2. The requirement for a continuous nitrate analyzer is not consistent with the requirements in the surrounding states or the 10 States Standards.	2. The 10 States Standards, which some surrounding states use as their equivalent regulation to Wisconsin's ch. NR 811, Wis. Adm. Code, does not explicitly require continuous nitrate analyzers for systems that treat or blend for nitrate. However, Section 2.9 c. in Part 2 of the 2018 edition of the 10 States Standards states "Ion exchange plants for nitrate removal should continuously monitor and record the treated water nitrate level." As ion exchange is the most common treatment process for reducing nitrate concentration in drinking water used in Wisconsin, the proposed requirement for requiring a continuous nitrate analyzer for systems that treat or blend to reduce nitrate concentrations is similar to the requirements in the 10 States Standards. No revisions were made to the board order based on this comment.
	3. The scope statement for the proposed rule did not specifically identify nitrate analyzer	3. The nitrate analyzer requirement in the proposed rule falls within the scope of the scope statement, including but not limited

	requirements and therefore violated ch. 227, Wis. Stat.	to: "Modify, add and clarify groundwater and surface water treatment facility design including . . . treatment technologies." No revisions were made to the board order based on this comment.