

**Summary of Comments and DNR Responses
Natural Resources Board Order DG-02-22
Ch. NR 854 – Water Supply Service Area Plans**

December 14, 2023

This document presents a summary of public comments received on proposed rules related to creation of ch. NR 854 for statewide water supply service area planning for municipalities serving populations greater than 10,000.

OVERVIEW

Section 281.348, Wis. Stats., requires certain public water systems to prepare water supply service area plans by December 31, 2025. A water supply service area plan is intended to be a high level planning aid 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 will establish a continuing water supply service area planning process for public water supply systems in Wisconsin that withdraw water and serve a population of 10,000 or more.

The department held the following public input opportunities:

- June 3, 2022 – Public hearing (virtual) on the proposed rule’s scope (this was held jointly with proposed ch. NR 851). The department received zero comments on the rule’s scope.
- December 7, 2022 – The department held an informational meeting to share ideas and to gather input and answer questions on proposed rule. Thirty-five members of the public attended the meeting.
- July 10-24, 2023 – Public Comment opportunity on draft rule’s Economic Impact Analysis
- September 5 – October 12, 2023 – Public comment period on proposed rule ch. NR 854. The department received a total of 6 comments summarized below.
- October 5, 2023 – Public hearing (virtual) on proposed permanent rule ch. NR 854. Twenty people attended.

In addition to the formal comment periods associated with economic impact analysis and the draft board order, the department conducted the following outreach to gather input for this rule:

- Interviewed entities that had followed the statute and previous completed a Water Supply Service Area plan and took their ideas into consideration while drafting the EIA and draft rule language (ex., Village of Somers, City of Waukesha).
- Sent updates via our Great Lakes Compact listserv (~7,200 people) any time there was an update in the department rulemaking process, opportunity for public information, or comment periods related to the proposed rule.

ECONOMIC IMPACT ANALYSIS

A public comment period on the draft economic impact analysis (EIA) occurred from July 10-24, 2023. The department received four comments on the draft EIA during this period, but no comment resulted in revisions to the EIA, as the comments received did not deal with the economic effect of the proposed rule.

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. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

Comment 5.b.: The Legislative Council Rules Clearinghouse questioned whether the use of the term “largely” in the definition of “Public Water Supply System” in s. NR 854.03 (18) (a), is sufficiently clear for the proposed rule.

Response: The department feels the term is sufficiently clear. The term “largely” was chosen for consistency purposes, as the term “largely” is also used in the statutory definition of “Public Water Supply” in s. 281.346 (1) (pm), Wis. Stats.

PUBLIC COMMENTS ON DRAFT RULE

The department accepted public comments on the draft rule from September 5 to October 12, 2023 and held a public hearing on October 5, 2023. Twenty members of the public attended the public hearing. Two persons provided oral comments at the hearing. Out of those who registered and attended the hearing, two people were in opposition, two people were in support, and the remainder were listening in for informational purposes. The department received a total of 6 written comments on the proposed permanent rule, ch. NR 854. The following is a summary of comments received and the department’s response.

Comment: The department received comments on grammatical and statutory reference clarifications.

Response: The department has revised the rule to incorporate these edits where appropriate.

Comment: The rule should consider lowering the population threshold under which a person operating a public water supply system would be required to develop a water supply service area plan from 10,000 to 1,000 persons served.

Response: The threshold of “serving 10,000 persons or more” to develop a water supply service area plan is required under s. 281.348 (3) (a) 2., Wis. Stats., and the proposed permanent rule is consistent with the statute.

Comment: The department should not promulgate new rules because they will result in harm to waters of the state.

Response: Comment noted.

Comment: Chapter NR 854 needs to expressly acknowledge Wis. Stat. 281.348 (3) (cr).

Response: Section NR 854.05 (2) (c) 3. implements s. 281.348 (3) (cr), Wis. Stats. Consistent with the statute, s. NR 854.05 (2) (c) 3. states that if the Great Lakes council approves a diversion area, then that approved diversion area must be used as the delineated water supply service area.

Comment: Amendments to a water supply service area plan where the Great Lakes Council has set a diversion area should have an exemption from the proposed ch. NR 854 plan requirements or a reduced

set of requirements because the decisions of the Great Lakes Council supersede any planning done through ch. NR 854.

Response: Comment noted. Section 281.348 (3) (cr), Wis. Stats., requires that when there is a diversion area established by the Great Lakes Council, that diversion area is used as the water supply service area for purposes of developing a water supply service area plan. Section NR 854.10 has been revised to specify the revision process for approved water supply service area plans where the compact council has approved a diversion area.

Comment: The public participation process in ch. NR 854 should be more clearly established for the development of a water supply service area plan.

Response: Section NR 854.08 has been revised.

Comment: Given the challenges of projecting water demands and environmental impacts the level of detail requested in ss. NR 854.05 and 854.06 should be re-evaluated.

Response: Comment noted. Sections NR 854.05 and 854.06 have been revised.

Comment: An analysis of the financial impact on rate-payers including impacts to low-income households should be included in an analysis of the costs of water supply options in s. NR 854.05 (8) (e).

Response: Water supply service area plans are meant to be a high level planning document and not have the level of detail in plans and specification that would be necessary to establish the financial impact to various rate-payer classes. That level of detail would be incorporated to a corresponding 'Rate Case' or 'Construction Authorization' with the Public Service Commission.

Comment: The definition of "public water supply system" in NR 854.03 (18) should be revised to clearly refer to the facilities not the water.

Response: Section NR 854.03 (18) has been revised to clarify that "public water supply system" refers to the facilities.

Comment: Section NR 854.03 (18) (b) should be revised to add "joint local water authorities" established under Wis. Stat. s. 66.0823 to the list of applicable entities.

Response: "Joint local water authorities" has been added to s. NR 854.03 (18) (b).

Comment: Section NR 854.05 (2) (a) is not clear on whether it includes consecutive systems.

Response: Section NR 854.05 (2) (a) has been revised to clarify that it refers to areas receiving retail water service from the public water supply system.

Comment: The term "shall conform" in s. NR 854.05 (6) (c) is unnecessarily limiting.

Response: The department has revised s. NR 854.05 (6) (c) to remove "shall conform" and replace with "shall consider."

Comment: Section NR 854.05 (8) (d) should be revised to make clear the extent of information to be included in an environmental assessment, considering the long term nature of the planning document.

More thorough economic information will need to be developed in the future to obtain department and the Public Service Commission approval for the recommendations.

Response: Section NR 854.05 (8) (d) has been revised to state that subdivisions 1. to 11. are factors to consider and the plan does not require an environmental assessment of all those factors.

Comment: Revise s. NR 854.05 (12) to be consistent with Wis. Stat. s. 281.348 (3) (c) 7, by replacing the term “enforcing” with “updating”.

Response: Section NR 854.05 (12) has been revised to incorporate this change.

Comment: The description of the public participation process in s. NR 854.08 (1) contains information that seems more suited for a guidance document than an administrative rule.

Response: Section NR 854.08 (1) has been revised.

Comment: Reference to “violations of this chapter” in s. NR 854.12 (1) is very broad.

Response: Section 281.98, Wis. Stats., contains the enforcement authority for this administrative rule. The proposed rule simply restates that enforcement authority.