WMC
Wisconsin's Chamber

TO: Members, Assembly Committee on Environment

FROM: Scott Manley, Executive Vice President of Government Relations

DATE: September 25, 2025

SUBJECT: Testimony on and Request for Modifications to CR 23-010, a Proposed Permanent Rule to Revise Wisconsin's Water Quality Antidegradation Policy and Procedures

---

Chair Goeben and Members of the Committee:

My name is Scott Manley, and I serve as the Executive Vice President of Government Relations for Wisconsin Manufacturers & Commerce (WMC). WMC appreciates the opportunity to testify on Clearinghouse Rule 23-010, a proposed permanent rule to revise Wisconsin's water quality antidegradation policy and procedures.

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, WMC's mission has been to make Wisconsin the most competitive state in the nation to do business. That mission includes advocating for environmental regulations that are fair, cost-effective, and no more stringent than necessary to achieve the actual policy objective, including by aligning Wisconsin's regulatory code with corresponding federal regulations and avoiding the cost and complexity of "Wisconsin-only" standards.

Background on the Antidegradation Rule and Rulemaking Process

Under the Clean Water Act, the Wisconsin Department of Natural Resources (DNR) must maintain an antidegradation policy for state surface waters. According to the Department, Wisconsin's antidegradation policy was first established in 1973 and has been updated several times since then, and this rulemaking is supposed to incorporate relevant updates to federal regulations.

Antidegradation review applies to point source discharges to surface waters, including both wastewater and storm water discharges. A variety of businesses must have a wastewater or storm water permit to conduct their operations and therefore may be subject to antidegradation regulations, including many kinds of manufacturers, papermakers, food processors, and farms, including but not limited to large animal feeding operations ("CAFOs"). The current state code applies antidegradation procedures to new or increased discharges under individual wastewater permits, while this rulemaking expands those procedures to also apply to all general wastewater permits and storm water permits.

This rulemaking began in 2021 under Scope Statement 051-21. In 2023, the Department submitted a draft rule to the Legislature for review following approval by the Natural Resources Board. During

review. Clarity about the expectations and processes that regulated entities must follow should be added to ensure that these rules are not applied arbitrarily or capriciously.

Section 2

This section seeks to establish the Department's new "antidegradation policy." The section uses an undefined term, "source of degradation," that should be better defined, and there needs to be an explanation of how the Department would require an antidegradation review (and who would be required to conduct that review) if a "source of degradation" was found to be lowering the quality of a "high quality" waterbody. Also, the application of the rule to "other high quality waters" on a parameter-by-parameter basis is unclear and its impact is unknown, in part because information about many parameters may not already be available for most waterbodies. Both concepts need to be clarified to give regulated entities the ability to anticipate the Department's expectations and ensure they are in compliance when subject to an antidegradation review.

Additionally, this section of the rule would lower the "assimilative capacity" threshold that triggers antidegradation review from 33 percent to 10 percent for any one pollutant. DNR claimed in its February 2025 testimony to this committee that it receives "very few" requests for antidegradation review each year. However, it is inevitable that the number of requests for review will increase under the rule because of this reduction in the threshold that triggers an antidegradation review, even if the total number of waterbodies subject to this review does not change.

Section 10

The definition of "parameter" includes a note indicating that biological metrics "are *typically not* applied for purposes of antidegradation review for wastewater discharges" (emphasis added). The use of a "note" does not provide regulatory certainty and potentially allows for conflicting interpretations or differential application of these regulations instead of a clear and consistent policy.

Section 11

WMC and other stakeholders identified many issues with this section. Notably, the definition of "practicable" needs to be clarified or further explained; in particular, how the Department will determine whether an alternative is "economically viable" for an applicant. Also, we continue to contend that concentrated animal feeding operations (CAFOs) ought to be explicitly exempt from these rules. There is no basis for requiring any CAFO to undergo an antidegradation review, because CAFO permits already contain discharge limitations that must be sufficient to prevent degradation. As we commented in a letter to DNR last year: "It is unclear why an unknown number of CAFOs must subject themselves to additional red tape for no environmental benefit, as DNR already acknowledges that the existing, exhaustive regulations on CAFOs are sufficient."

Economic Impact Analysis

Finally, it must be noted that the economic impact analysis (EIA) prepared by DNR for this rulemaking differs significantly from cost estimates compiled by the industries that will actually be subject to these regulations.

According to the Department's EIA based on the 2023 draft rule, "The maximum annual cost is estimated to be $1,669,284," most of which (over $1 million) would be borne by industrial permittees. As the Department itself acknowledged in that EIA, industrial point sources in Wisconsin, which are the private facilities that will bear most of the burden of these rules, are mostly small businesses (72 percent of them).

Meanwhile, industry cost estimates are significantly higher. In 2023, WMC and other industry groups compiled an estimate suggesting compliance costs of $56.7 million in the first two years of the rule. This estimate was driven by significant capital and operating costs relating to wastewater treatment, sampling, consultant fees, and other related costs. Following the February 27, 2025, hearing of this committee, WMC reached out to committee members to provide a copy of those 2023 comments, including our analysis of the potential compliance costs.

As indicated above in relation to Section 11, without a CAFO exemption, this rule is all but certain to impose the totally *unnecessary* costs of an antidegradation review on at least a few CAFOs, even though this is not necessary for any environmental policy purpose.

Conclusion

WMC respectfully asks the Assembly Committee on Environment to make a request for germane modifications to this rule to address the concerns discussed above.

Thank you for your consideration of this testimony. I am happy to answer any questions or to follow up with your offices later with additional information.

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
Karen Hyun Ph.D., Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711

Assembly Committee on Environment

Final CR 23-010

Updating Wisconsin's Water Quality Antidegradation Policy

September 25, 2025

The Wisconsin Department of Natural Resources (DNR) welcomes the opportunity to provide written testimony on the final CR 23-010, related to updating Wisconsin's water quality antidegradation policy and procedures.

Under the Clean Water Act, every state is required to have an "antidegradation" policy to prevent degradation of the state's lakes, rivers, and streams over time. Wisconsin's antidegradation policy was established in 1973 and its implementation procedures have been in place since 1989, with minor updates since that time. In 2015, the U.S. EPA updated the federal regulations relating to antidegradation. Our revisions during this rulemaking are to incorporate the EPA requirements to ensure consistency with federal code and maintain our delegated authorities under the Clean Water Act.

Antidegradation procedures are applied when a facility discharging wastewater or storm water requests to increase the amount of their discharge or to create a new discharge. The department typically receives just a few of these requests each year. Because increased discharges have the potential to lower water quality, certain requirements must be met before DNR can approve such a request. For many waterbodies, the antidegradation policy allows for a new or increased discharge if it is necessary and if the waterbody receiving the discharge can assimilate the additional effluent while still attaining its water quality standards. However, for certain types of waterbodies, lowering of water quality is not allowed. These include the state's Outstanding or Exceptional Resource Waters, and waters that are already impaired for a given pollutant, with certain exceptions. These overarching principles of the antidegradation policy are the same as those found in the current state and federal codes.

In this rulemaking, we added language to clarify how the antidegradation rule will be implemented for additional types of permits. Previously, Wisconsin's code only specified implementation procedures for wastewater discharges with an individual permit. However, because the federal code applies to all point sources, this rule package addresses both wastewater and storm water, and adds provisions for general permits.

- For wastewater, the overall process remains largely the same as before, with the same required steps and application materials. Some elements were revised in accordance with federal requirements, which I'll discuss further in a moment.
- For storm water, the rule establishes implementation procedures similar to those used for wastewater, though they are specific to the storm water program where necessary. Storm water discharges requiring an individual permit may require antidegradation review. However, most storm water permittees are covered under general permits and will see little change.
- General permits for stormwater or wastewater cover multiple dischargers within a category. This rule establishes processes internal to DNR, applied when the department issues general permits. However, applicants who certify that they can comply with the conditions of the general permit do not require further review.

- We also evaluated whether additional requirements were necessary for concentrated animal feeding operations, or CAFOs, and determined that existing CAFOs and most new operations already meet antidegradation requirements under existing code.

Federal regulations have always required a facility seeking a new or increased discharge to submit certain application materials, which include a demonstration that the new or increased discharge will accommodate important social or economic development. Additionally, an alternatives analysis must be completed demonstrating that the facility will implement practices to lower the impact of the discharge if a practicable option is available.

Though wastewater permittees typically go through the full antidegradation review process and submit all of these materials, Wisconsin has always provided extra flexibility to permittees through a streamlined review for applicants whose proposed discharge is determined to be "not significant". Under the streamlined process some application materials are not required. However, U.S. EPA has determined that Wisconsin's previous threshold for qualifying for streamlined review was not sufficiently protective of water quality. Therefore, the threshold for qualifying for streamlined review was updated, and a small number of applicants that may have qualified in the past will now need to submit the full application package. We estimate that 5 to 10 wastewater facilities that may have previously qualified for the streamlined process may now need to do the full review. In the department's economic analysis, we included costs for preparing these application materials, and for selecting a more protective alternative if needed. It's important to emphasize that regardless of where this threshold is set, facilities may still be authorized to increase their discharge. It simply determines which facilities may use a more streamlined review process.

During the original rulemaking process, we established a stakeholder advisory group comprised of members representing industries, municipalities, agricultural producers, and facilities discharging storm water. During a series of meetings, we provided them with several draft versions of the rule and used their feedback to improve clarity and feasibility. We made several adjustments in response to comments, including the following:

- We identified additional instances that would not require antidegradation review. For instance, if a facility would still be able to meet their existing permit limits with an increased discharge, this review is not required. Also, the rule clarifies that temporary discharges are not subject to antidegradation review.
- We added a cost-saving option for applicants that allows a facility to elect to have DNR staff collect water quality data instead of the facility.
- We adjusted the process timeline to allow greater lead time and avoid project delays.
- We specified that certain low-cost options are acceptable as practicable alternatives, and that a facility is only required to select a practicable alternative if one is available.
- We have had additional meetings and correspondence with a variety of stakeholders from business and environmental groups. We have carefully considered their requests. As a result, we believe a majority of the concerns raised can easily be addressed through additional clarification in department implementation guidance. We anticipate that the guidance development process will include stakeholder outreach along with a public comment period, allowing for interested parties to further engage and provide input.

In closing, it's important to note that the antidegradation process only applies if an applicant wishes to increase their discharge or create a new discharge. The department receives very few of these requests each year, and for wastewater permittees the process remains largely the same as before. A small number of individual storm water applicants may also need to submit application materials if they are not eligible for coverage under a general permit. Flexibility has been built in for smaller discharges, which may be small businesses, by continuing to provide the streamlined review option, eliminating sampling costs if needed, and by allowing the application to be tailored in scope corresponding to the size of the project.

Thank you for the opportunity to provide this written testimony. If you have questions please contact Calvin Boldebuck, DNR Legislative Director, at Calvin.Boldebuck@Wisconsin.gov.

Wisconsin Farm Bureau FEDERATION

Comments on Clearinghouse Rule 23 – 010

Assembly Committee on Environment
September 25, 2025

Thank you for the opportunity to submit comments on Clearinghouse Rule 23-010 on behalf of the Wisconsin Farm Bureau Federation, the state's largest general farm organization, representing farm families of every size and commodity across the state. We greatly appreciate Chair Goeben and Members of the Assembly Committee on Environment's consideration to revise and improve this rule proposal

Wisconsin farmers already operate under some of the most rigorous water quality rules in the nation. Permits for livestock operations and nutrient management plans are designed specifically to prevent discharges that would degrade water quality. Farmers have invested heavily in facilities, conservation practices, and monitoring to comply with these rules and continue to make improvements.

This proposed rule lowers the threshold that triggers an antidegradation review from thirty-three percent to ten percent. That change will pull many more farms into lengthy and expensive reviews, even when existing permits already safeguard water quality. It is difficult to see how this added bureaucracy delivers a measurable environmental benefit.

The rule also creates confusion by relying on vague and undefined terms. Words like "source of degradation" and broad narrative criteria leave too much room for interpretation. Farmers cannot invest with confidence if the rules they must follow are unclear or subject to shifting definitions, especially when the costs are duplicative and subjective. Regulations must provide clarity so that compliance is achievable and consistent.

The Department's cost analysis for CR 23-010 does not reflect the real-world impact on farms. Compliance costs are likely to be far higher than projected, and every additional dollar spent on duplicative regulation is a dollar not invested in conservation practices, herd health, or keeping family farms viable for the next generation.

It is important to note that this rule was unanimously recommended for revision by the Assembly committee last session, yet it has been resubmitted without addressing those concerns. Wisconsin agriculture supports protecting water quality, but this rule expands costs and confusion while offering no clear benefit.

We respectfully ask the committee to request modifications from the Department of Natural Resources that address concerns by preventing duplicative reviews for farms already subject to strict environmental standards and continuing the good faith efforts to revise the rule that were called for in the previous session but absent in the Department's resubmission.

1241 John Q. Hammons Drive P.O. Box 5550, Madison, WI 53705 1.800.261.FARM (3276) wfbf.com

cleanwisconsin
your environmental voice since 1970

DATE: September 25, 2025
TO: Assembly Committee on Environment
FROM: Clean Wisconsin
RE: Written Testimony in Support of Proposed Antidegradation Rules (CR 23-010)

Clean Wisconsin is a non-profit, non-partisan environmental advocacy organization working on clean water, clean air and clean energy issues. Founded over fifty years ago with over 20,000 members and supporters around the state, we employ scientists, policy experts and attorneys to protect and improve Wisconsin's environment.

Over the course of several months, Clean Wisconsin participated in the stakeholder advisory committee alongside at least nine statewide agricultural industry organizations. DNR staff worked diligently as part of that process, provided two draft versions of the rule for review and feedback from the stakeholder advisory committee and patiently waded through the many questions, concerns, and suggestions raised during this rulemaking. The process gave Clean Wisconsin and other participants sufficient time to review draft rule language, ask questions, and suggest ways to improve it. When the Department didn't agree with our suggestions, it explained why it didn't agree.

While it is not required by law, Clean Wisconsin appreciated the department's thoughtful structure and implementation of the stakeholder advisory process.

Antidegradation is important for preserving high quality waters, and it's just smart policy. Antidegradation is important because, as the name suggests, it aims to prevent degradation of our high-quality waters. lesson

These waters sustain aquatic life. And they are the waters that Wisconsin's residents—and visitors—enjoy fishing, swimming, and paddling on.

Antidegradation is smart policy, because it's like the saying, an ounce of prevention is worth a pound of cure. It's much cheaper to *preserve* high quality waters than attempting to clean-up impaired water bodies. We've learned that the hard way having spent millions of dollars on remediation activities with limited success. The Clean Water Act recognizes the value of prevention by requiring all states to have an up-to-date antidegradation policy.

Wisconsin's antidegradation policy has been inconsistent with federal regulations for some time. This rulemaking is long overdue and required for Wisconsin's antidegradation policy to be consistent with those federal regulations. There is no reasonable disagreement about this.

Wisconsin must update its antidegradation rule; the Clean Water Act requires it, and EPA has indicated that Wisconsin needs to do better with its antidegradation policy. That's what this rule does.

The rule revision doesn't create a host of new requirements out of thin air that go beyond what federal antidegradation policy directs; it aligns our code with requirements in a federal rule that is ten years old at this point, and that our neighbor states have already come into line with.

Importantly, there are consequences if we don't update Wisconsin's antidegradation policy. EPA has a responsibility to ensure states who run their own permitting program have an adequate antidegradation policy, and the Clean Water Act gives EPA tools to get more involved if we fail to update our state policy. They are required to review our antidegradation rule, and they will not approve it if it does not meet baseline requirements. Further, if EPA fails to fulfill its Clean Water Act duties, citizens can take legal action to compel it to; this has happened in several states that did not update their antidegradation policies expeditiously enough. Nobody wants this, yet it is the logical outcome of failing to promulgate rules to get our antidegradation policy to a place where it is consistent with the Clean Water Act.

This rule is the result of compromise and balancing between the interests of a wide range of stakeholders. It's a rule Wisconsin must promulgate if we're going to have an antidegradation policy that is again consistent with federal requirements.

If you have any questions, please contact Clean Wisconsin's Government Relations Director, Erik Kanter, at ekanter@cleanwisconsin.org.

DAIRY BUSINESS ASSOCIATION | DAIRY FORWARD

September 25, 2025

Written testimony re: CR 23-010, submitted to the Assembly Committee on Environment

Chair Goeben and members of the Committee, thank you for the opportunity to provide written comments today on Clearinghouse Rule 23-010.

My name is Chad Zuleger. I am Executive Director of the Dairy Business Association. DBA represents dairy farmers across Wisconsin, including concentrated animal feeding operations (CAFOs) regulated under state and federal law.

We have significant concerns with this proposed rule, particularly as it applies to agriculture and CAFOs.

Under existing law, large livestock operations are already strictly regulated through the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program, authorized under Wis. Stat. § 283.31 and implemented in Wis. Admin. Code ch. NR 243. These permits contain specific effluent limitations and management requirements to prevent discharges that would cause or contribute to water quality degradation. In other words, the statutory framework already ensures that CAFOs cannot discharge pollutants at a level that would violate water quality standards.

Despite this, the Department's draft rule would impose an additional antidegradation review requirement on CAFOs. We see no statutory basis for this. Section 283.13, Wis. Stats**.**, directs the Department to include effluent limitations "necessary to meet applicable water quality standards," and NR 243 already does so comprehensively. Forcing CAFOs into another antidegradation review process is duplicative, burdensome and unnecessary, because their permits already contain the protections required by both state and federal law.

This added review would not provide any measurable environmental benefit. What it would do is increase costs and add layers of red tape for farmers who are already navigating some of the most detailed environmental compliance obligations of any sector in Wisconsin. The Department's economic impact analysis estimated modest costs statewide, but other independent estimates suggest first-year compliance costs alone could exceed $50 million. Even if only a portion of that fell on livestock operations, the impact could be devastating.

We respectfully request that the Department modify CR 23-010 to exempt CAFOs from additional antidegradation review**.** Doing so would be consistent with Wis. Stat. ch. 283, which already requires CAFO permits to contain effluent limits protective of water quality, and it would prevent duplicative regulation that does not improve environmental outcomes.

In short, Wisconsin farmers take their stewardship role seriously, and they are already operating under a regulatory framework that ensures compliance with the Federal Clean Water Act and stringent state water quality standards. Adding another review on top of this framework only adds cost without benefit.

For these reasons, DBA urges the Committee to request modifications to this rule before it advances.

Thank you for your time and consideration.

2763 Manitowoc Rd Ste B | Green Bay, WI 54311 | 920.883.0020 | dairyforward.com

Antidegradation Rule (CR 23-010) – Impact on CAFOs

Current Law vs. Proposed Rule

Current Law / Existing Requirements	Proposed Changes in CR 23-010	DBA Position
Wis. Stat. § 283.31(1) & (3) – Requires WPDES permits for point source discharges, including CAFOs. Permits must contain effluent limitations and conditions necessary to meet state water quality standards.	Expands antidegradation reviews to apply to *all* individual and general wastewater permits, including CAFO WPDES permits.	CAFO permits already contain water quality-protective limitations. Additional antidegradation review is duplicative.
Wis. Stat. § 283.13(5) – DNR must adopt effluent limitations "necessary to meet water quality standards" under ch. 283 and the federal Clean Water Act.	Would effectively re-evaluate standards already built into CAFO permits, requiring another layer of review.	This adds cost but no new environmental protection.
Wis. Admin. Code NR 243.14 – Requires nutrient management plans meeting NRCS 590 standards for all CAFOs. These plans regulate land application of manure and process wastewater to protect surface and groundwater.	Antidegradation review could require duplicative analysis of nutrient impacts already covered under NR 243.	This is unnecessary; NR 243 plans already ensure no degradation of waters.
Wis. Admin. Code NR 243.15(3) – Prohibits manure or process wastewater discharge to waters of the state except under specific emergency conditions.	CR 23-010 could trigger antidegradation review even though discharges are prohibited under existing rules.	An added review makes little sense when discharges are already banned.
Wis. Admin. Code NR 243.17 – Requires design, construction, and maintenance standards for manure storage facilities to prevent discharges.	Antidegradation review would overlap with existing engineering and construction standards.	Redundant and costly.
Wis. Admin. Code NR 243.19 – Requires monitoring, recordkeeping, and annual reporting to DNR to ensure ongoing compliance.	CR 23-010 could add more reporting and consultant requirements without improving environmental outcomes.	Compliance obligations are already extensive under NR 243.