

Report From Agency

REPORT TO LEGISLATURE

NR 809, Wis. Adm. Code

Board Order No. DG-24-19
Clearinghouse Rule No. 21-088

Basis and Purpose 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). The MCL standards for PFOS and PFOA are based on the 2016 Health Advisory Levels (HALs) from the US Environmental Protection Agency (EPA) set at 0.000070 mg/L (70 parts per trillion (ppt)) for PFOA and PFOS individually and a combined standard for PFOA and PFOS of 0.000070 mg/L (70 ppt).

The proposed rule establishes initial and routine monitoring cycles for community and non-transient non-community public water systems to test for PFOA and PFOS and establishes approved methodology for PFOA and PFOS sampling. The proposed rule also creates a waiver application process for systems to waive routine monitoring under certain conditions. Systems that exceed the MCL standards for PFOA and PFOS will be required to take measures to return to compliance, which may include drilling a new well or installing a treatment system.

The U.S. Environmental Protection Agency (EPA) and numerous states, including Wisconsin, have identified PFAS as a persistent contaminant that threatens the environment, including surface water and groundwater resources. PFAS in surface water and groundwater sources is a threat 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.

Summary of Public Comments

See attached "DG-24-19Response-to-Comments."

Modifications Made

None.

Appearances at the Public Hearing

First Name	Last Name	Would you like to register your position as:	If you are the authorized representative of an organization, provide its name:

Paul	Mathewson	In support	Clean Wisconsin
Larry	nesper	In support	
Karen	Ecklund	In support	
Lance	Green	In support	
John	Robinson	In support	Wisconsin's Green Fire
Duane	Nessman	In support	
Heather	DeLuka	In support	Airport Neighborhood Association
PAULA	MOHAN	In support	
Waltraud	Brinkmann	In support	
Bill	Verschay	In support	
Caryl	Terrell	In support	League of Women Voters of Wisconsin
Doug	Oitzinger	In support	
Abby	Ross	In support	
James	St. Vincent	In support	
Kimberly	Hollis	In support	
Susan	Davidson	In support	Wisconsin Environmental Health Network
Michael	Pamperin	In support	
Peter	Burress	In support	
Mitch	Hubert	In opposition	Hubert Fire Consulting LLC
Kayla	Furton	In support	
Laura	Olah	In support	Citizens for Safe Water Around Badger (CSWAB)
Daniel	Lawrence	In support	
Tim	Hayden	In opposition	City of Fort Atkinson Water Utility
Harry	Richardson	In support	no
Joey	Prestley	In support	
Ed	Cohen	In support	
Christopher	Donahue	In support	Town of Campbell Board
Tehmina	Islam	In support	
Rob	Lee	In support	Midwest Environmental Advocates
Cheryl	Nenn	In support	Milwaukee Riverkeeper
Margaret	Larson	In support	
Meghan	Williams	In support	
Marcia	Gibson	In support	
Jill and Mike	Mitchler	In support	
Tom	Trainor	In support	WIDNR

Changes to Rule Analysis and Fiscal Estimate

The department proposed health-based standards based on recommendations from the Department of Health Services. The Natural Resources Board amended the standards to reflect the EPA HAL of 70 ppt for PFOA and PFOS individually and combined.

Significant updates to the draft fiscal estimate were made based on stakeholder comments. The cost of a new well at a small other-than-municipal community public water system was added. These systems are generally very small mobile home parks with 25 or more residents. One stakeholder indicated this could be as much as \$50K per well. That number is now part of the estimate.

Additionally, a more robust review of other states occurrence data and the national Unregulated Contaminant Monitoring Rule data was conducted to create a better estimate of the potential PFAS occurrence in Wisconsin. Treatment costs were also amortized over the 20-year life span of a Safe Drinking Water Act loan.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style and placement; 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.

Final Regulatory Flexibility Analysis

After removing large community water systems from the data set, the remaining small community water systems (other-than municipal community systems) and non-transient non-community systems were considered to be small business entities for the purpose of this analysis. The department estimated the compliance cost of these entities to be 70% of the total public water systems that may be subject to these MCLs. Thus, the monitoring costs for this subgroup are also expected to be approximately 70% of the total. On average, monitoring costs for small community water systems and non-transient non-community systems are estimated to be \$1 million in the first year.

The proposed rule allows public water systems to apply for monitoring waivers to reduce the frequency of required monitoring when initial monitoring results show no detection levels of PFAS. A detailed assessment of regulatory flexibility is presented in Attachment A of the economic impact analysis, question #4. This includes waivers and staggered monitoring schedules.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.