WMC
Wisconsin's Chamber

July 18, 2025

Beth Finzer
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707

Sent via email only to Elizabeth.Finzer@wisconsin.gov

Comments on the draft economic impact analysis of the proposed permanent rule under Board Order DG-02-24, relating to technical corrections to clarify and correct existing language in NR 809 and modify federal Consumer Confidence Report requirements

Dear Ms. Finzer,

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to comment on the economic impact analysis prepared by the Department of Natural Resources (DNR or "the Department") for the proposed rule under Board Order DG-02-24.

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 ensuring that state agencies engaged in the administrative rulemaking process are faithfully following the requirements of Wisconsin law. WMC members are affected by state drinking water rules insofar as they are customers of a community water system or qualify as a transient or non-transient non-community water system.

WMC recognizes that, to maintain state primacy under the Safe Drinking Water Act, Wisconsin must adopt federal drinking water standards within two years of their adoption by the U.S. Environmental Protection Agency (EPA).[1] This draft rule appears to align the state code with EPA regulations without adding extra, "Wisconsin-only" requirements. WMC has long advocated that Wisconsin environmental standards be aligned with and no more stringent than corresponding federal requirements.

The draft rule also proposes to add a practical definition for a term ("service connection") that is used throughout this part of the Wisconsin Administrative Code but is currently undefined. WMC supports efforts to improve clarity and reduce uncertainty for regulated entities by providing clear standards, expectations, and definitions.

At this juncture, WMC is not commenting or expressing a position on the content of the draft rule. These comments address the Department's economic impact analysis and the methodology used to develop it. WMC strongly disagrees with DNR's interpretation of how agencies are required to assess the economic impact of a proposed rule.

[1] 42 U.S. Code § 300g-2(a)(1)

State Law on EIAs and DNR's Approach

Under Wis. Stat. § 227.137, state agencies must prepare an economic impact analysis (EIA) for each proposed rule. Specifically, the EIA must include "[a]n estimate of the *total* implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, expressed as a single dollar figure."[2]

Section 9 of the EIA at issue here directly addresses this requirement, claiming that the proposed rule will have an economic impact of $0, because:

> The state is not imposing additional costs above what is required in federal rules. If these changes to the Consumer Confidence Reports were not promulgated in state administrative code, public water systems in Wisconsin would still be obligated to comply with these requirements under the federal Safe Drinking Water Act. There are no costs of implementing and complying with the proposed state rule.

Section 14 of the EIA furnishes what the Department characterizes in Section 9 as "cost estimates for implementing the federal requirements under the Safe Drinking Water Act in Wisconsin."

Statute Does Not Distinguish or Exempt Types of Costs for EIAs

Regardless of the genesis of a rulemaking (e.g., incorporating federal regulations into the state code), agencies are directed to prepare an economic impact analysis; nothing more, nothing less.[3] This statutorily required analysis "shall include:"[4]

> An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule…[5]

If regulated entities will incur implementation and compliance costs by following the requirements of a proposed rule, then those costs must be included in the agency's EIA, irrespective of whether those requirements originated with the federal government or are duplicated elsewhere. Statute does not differentiate among agency rules that may originate from state or federal law or a combination of the two, and state law demands an estimate of the costs of a proposed rule on businesses, local government units, and individuals. Therefore, state agencies may not misrepresent or devalue the regulatory costs of a proposed rule by attributing those costs to federal regulations.

Statute Requires EIAs Include Total Compliance Costs

As emphasized above, statute requires an EIA to estimate the "*total* implementation and compliance costs" of the proposed rule, not only costs that are attributable to certain aspects of the rule nor excluding federal compliance costs. It may be true that a state and federal regulation are identical and

[2] Wis. Stat. § 227.137(3)(b)1. (emphasis added)
[3] Wis. Stat. § 227.137(2)
[4] Wis. Stat. § 227.137(3)
[5] Wis. Stat. § 227.137(3)(b)

the state rule carries no *additional* implementation and compliance costs compared to the federal rule, but it also remains true that the *total* costs of a proposed state rule *include* any costs attributable to the matching federal rule. In the case of this EIA, those are the costs listed in Section 14.

Compliance with State Regulations Begets Costs Attributable to State Regulations

In this context specifically, the federal Safe Drinking Water Act requires that, to attain and maintain primary enforcement responsibility, a *state* must adopt regulations "that are no less stringent than the national primary drinking water regulations" and then adequately enforce those *state* regulations.[6] Wisconsin law explicitly authorizes the establishment of exactly such a *state* regulatory program.[7]

The Department notes in the EIA that if it "does not promulgate this proposed state rule, the federal rules will still apply to all Wisconsin public water systems." That's true, but so long as the state maintains primacy, then regulated entities in Wisconsin that are affected by drinking water standards must comply with *state* regulations under threat of enforcement from a *state* agency. Regardless of federal regulations, the estimated costs of complying with this proposed state rule should be reflected in this EIA.

Indeed, violations of the state's drinking water regulations can result in administrative forfeitures assessed by the Department against the owner or operator of a water system,[8] reinforcing the notion that the state is acting as the primary regulator and cannot pass the buck on regulatory costs to the federal government. If the state allowed its primacy to lapse, then drinking water enforcement authority including the levying of fines would revert to the EPA, and those fines would be paid to the federal government rather than to the state of Wisconsin.

Conclusion

It is fundamentally important to a democratic society and the rule of law that state agencies comply with the laws and procedures that govern administrative rulemaking. Accordingly, WMC urges DNR to correct this EIA such that the estimated cost figure given in Section 9 reflects the *total* estimated implementation and compliance costs, including those described in Section 14.

Thank you for your consideration of these comments. Please contact me with any questions.

Respectfully submitted,

Adam Jordahl
Director of Environmental & Energy Policy
Wisconsin Manufacturers & Commerce

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[6] 42 U.S. Code § 300g-2(a)(1) and (2)
[7] Wis. Stat. § 281.17(8)(a)
[8] Wis. Stat. § 281.99