



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

the legislative review period, the Assembly Committee on Jobs, Economy and Small Business Development voted unanimously to request modifications to the rule and to direct the Department to hold further discussions with affected stakeholders.

Our organization, joined by several other stakeholders, invested considerable time and effort into working with DNR to improve this rule and to mitigate its negative impacts on Wisconsin businesses. Pursuant to WMC's mission, we have sought to ensure that this rule aligns with federal regulations and does not create requirements that are more costly than necessary to achieve the intended purpose.

The 2023-24 session ended before the rule could be completed, and so this rulemaking was carried over into the current session. In its testimony before this committee on February 27, 2025, the Department stated it would be submitting germane modifications in response to the unanimous vote by the committee last session. These changes reflect the outgrowth of discussions and meetings between DNR and stakeholders. Specifically, those items DNR stated would be included as a germane modification to the rule before this committee are:

- Clarifying the definitions of “parameter” and “water quality standards.”
- Allowing an applicant to use the “streamlined approach” more than once.
- Increasing the allowed temporary discharge from 90 to 180 days for storm water discharges from construction projects.

We are incredibly disappointed to learn that three weeks ago the DNR decided to backtrack on its testimony to this committee earlier this year, and has resubmitted the rule with none of modifications the agency publicly stated they would make. This is a breach of good faith with the public and stakeholders, as well as the members of the committee who voted unanimously to request changes last session.

At a minimum, we ask that members of Assembly Committee on Environment vote to request germane modifications to the rule that are consistent with the changes that the DNR has already publicly stated they would make. We do not think it's asking too much of an agency to simply keep their word.

Beyond those changes, we have noted several other areas where additional clarity for the regulated community are warranted. The following items, arranged by section in the proposed rule, represent additional opportunities for the Committee to consider requesting germane modifications.

Section 1

The definition of “criteria” appears to contemplate the enforcement of unspecified “narrative criteria.” The Department should either exclude narrative criteria from triggering an antidegradation review, or at a minimum, identify all narrative criteria that could trigger a review and specify how the Department can make such a determination. The definition of “water quality standards” needs to be updated to ensure that it does not purport to give the Department the authority to enforce federal standards that do not appear in the state administrative code or have not otherwise been authorized by state statute. Along similar lines, the Department should consider specifying that a water quality standard must have been promulgated by statute or rule to be considered during an antidegradation

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.