



July 18, 2025

Briana Harter
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707

Sent via email only to Briana.Harter@wisconsin.gov

Comments on the draft economic impact analysis of the proposed permanent rule under Board Order DG-04-24, relating to updating lead and copper requirements for public drinking water in order to be consistent with revised federal requirements

Dear Ms. Harter,

These comments are submitted on behalf of the Midwest Food Products Association (MWFP), Wisconsin Manufacturers & Commerce (WMC), and the Wisconsin Paper Council (WPC). On behalf of our members, our organizations appreciate 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-04-24.

Introduction

Founded in 1905, **MWFP** represents food processors and their allied industries throughout Illinois, Minnesota and Wisconsin. MWFP advocates on behalf of its members on policy issues such as food safety, sanitation, environmental regulations, and more. Wisconsin is among the leading states for vegetable growing and processing, second only to California in vegetable production nationally.

Water is an essential ingredient for the agriculture and food industries. Food manufacturers use water in many stages of production, including for cleaning, heating, and steaming raw products. MWFP supports efforts to manage and ensure access to clean, healthy water, while also recognizing the need to proceed carefully to ensure new regulations are based on sound science and effective in addressing problems where they exist.

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.

WPC is the premier trade association that advocates for the papermaking industry before regulatory bodies, and state and federal legislatures to achieve positive policy outcomes. WPC also works to educate the public about the social, environmental, and economic importance of paper, pulp, and forestry production in Wisconsin and throughout the Midwest. The pulp and paper sector employs over 30,000 people in Wisconsin and has an annual payroll of \$2.5 billion.

Wisconsin is the number one paper-producing state in the United States, with the output of paper manufactured products estimated to be over \$18 billion.

Collectively, our 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.

Our organizations acknowledge 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 The current draft rule appears to generally align the state code with EPA regulations without adding extra, “Wisconsin-only” requirements.² Our organizations agree with this approach and have long advocated that Wisconsin environmental standards be aligned with and no more stringent than corresponding federal requirements.

These comments are not intended to take issue with the general policy of this proposed rule, to control lead and copper in drinking water, in particular by requiring public water systems to replace lead service lines and certain galvanized service lines within 10 years. Rather, these comments address the Department’s economic impact analysis and the methodology used to develop it. Our organizations strongly disagree with DNR’s interpretation of how agencies are required to assess the economic impact of a proposed rule.

State Law on EIAs and DNR’s Approach

The present rulemaking generally seeks to adopt into the Wisconsin Administrative Code the requirements of two EPA rules, the 2021 Lead and Copper Rule Revisions (LCRR) and the 2024 Lead and Copper Rule Improvements (LCRI).

Under Wis. Stat. § 227.137, state agencies must prepare an economic impact analysis (EIA) of 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.”³

Section 9 of the EIA at issue here directly addresses this requirement, claiming that “this state rulemaking will have no implementation and compliance costs beyond the baseline costs that are already required by federal law.” DNR implies that the total costs of its proposed rule are therefore \$0. Section 14 of the EIA furnishes what the Department characterizes as “the baseline costs from the federal rules.”

¹ 42 U.S. Code § 300g-2(a)(1)

² Section 6 of the Department’s analysis of the draft rule notes several areas where DNR’s proposed language departs from the language of the federal rule. The only policy identified by DNR as being more stringent than the federal rule is the “copper public education” requirement. This and the other differences listed in Section 6 are not of significant concern to our organizations and do not appear to materially affect the estimated cost of the proposed rule.

³ Wis. Stat. § 227.137(3)(b)1. (emphasis added)

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.⁴ This statutorily required analysis “shall include:”⁵

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...⁶

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 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.⁷ Wisconsin law explicitly authorizes the establishment of exactly such a *state* regulatory program.⁸

It is true that public water systems in Wisconsin would have to obey the LCRR and LCRI even if DNR failed to promulgate those requirements. However, 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

⁴ Wis. Stat. § 227.137(2)

⁵ Wis. Stat. § 227.137(3)

⁶ Wis. Stat. § 227.137(3)(b)

⁷ 42 U.S. Code § 300g-2(a)(1) and (2)

⁸ Wis. Stat. § 281.17(8)(a)

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,⁹ 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.

Amortization of Implementation and Compliance Costs

Notwithstanding its claim that the proposed rule carries no costs “beyond the baseline costs that are already required by federal law,” the Department provides an analysis in Section 14 of the EIA estimating that public water systems in Wisconsin will have to spend over \$124 million to implement and comply with the requirements of the proposed rule. As explained above, our organizations do not agree with this approach. Therefore, we treat the analysis in Section 14 of the EIA as the analysis that should have been provided in Section 9.

Most of the estimated costs of these regulatory changes are due to the required replacement by public water systems of all lead and certain galvanized service lines. Those replacements must occur within 10 years of November 1, 2027. The Department's analysis amortizes these costs over a 25-year period by assuming that public water systems will finance the replacement costs using 20-year loans undertaken within the first five years of the compliance period.

Our organizations do not believe that state agencies can use an assumption about how the costs of a rule may be financed by regulated entities to artificially reduce the estimated annual cost of a rule. Agencies are required to assess whether a proposed rule will cost regulated entities \$10 million or more over any 2-year period, and the law on EIA requirements does not mention or explicitly authorize any amortization of these costs. It simply asks whether implementation and compliance costs will reach a certain threshold in a certain time frame.¹⁰

It may or may not be true that service line replacements will be financed in the manner DNR suggests. However, nearly all the actual costs of implementing and complying with this rule must be undertaken over the 10-year period ending November 1, 2037, the date by which all lead service lines must be replaced.

Based on the Department's figures, regulated entities will have to collectively spend an estimated \$105 million just on service line replacement over the first 10 years or so of this rule. This averages out to an annual cost of \$10.5 million, or \$21 million over any two years. Therefore, the EIA for this proposed rule ought to trigger the requirements of Wis. Stat. § 227.139.

⁹ Wis. Stat. § 281.99

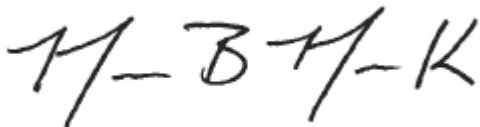
¹⁰ Wis. Stat. § 227.137(3)(b)2.

Conclusion

Along with EPA, DNR, and the general public, our organizations share the goal of ensuring that drinking water is safe. Yet, good intentions do not relieve the Department of its responsibility to comply with the law. 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, we urge 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. Further, the determination in Section 10 as to whether the proposed rule triggers the requirements of Wis. Stat. § 227.139 must be reevaluated.

Thank you for your consideration of these comments. Please do not hesitate to contact us with any questions.

Respectfully submitted,

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Nick Novak
President
Midwest Food Products Association

A handwritten signature in black ink, appearing to read "Adam Jordahl".

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

A handwritten signature in blue ink, appearing to read "Scott Suder".

Scott Suder
President
Wisconsin Paper Council