

December 7, 2021

***Filed Via Email***

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[DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov)

Department of Natural Resources  
Attn: Adam DeWeese - DG/5  
P.O. Box 7921  
101 S. Webster Street  
Madison, WI 53707-7921

**RE: Comments on DG-24-19  
Revisions to ch. NR 809 related to the promulgation of new drinking water MCLs  
for PFOA and PFOS**

Dear Mr. DeWeese:

These comments are filed on behalf of the Municipal Environmental Group - Water Division (MEG - Water). MEG - Water is an association of 69 municipal water systems that provides input on legislative and regulatory issues involving water supply.

MEG - Water supports the establishment of federal drinking water standards for PFAS but does not support the Department's establishment of state standards at this time. EPA has made it clear that it is moving ahead to regulate PFAS in drinking water. On March 3, 2021, EPA published its final regulatory determination to regulate PFOA and PFOS under the Safe Drinking Water Act (SDWA). On October 18, 2021, EPA announced its PFAS Strategic Roadmap which included issuing a proposed rule establishing federal maximum contaminant levels (MCLs) for PFOA and PFOS by fall 2022 with a final rule issued by fall 2023. MEG - Water asks the Department to wait for EPA to promulgate federal drinking water MCLs before proceeding to adopt state standards.

When EPA promulgates federal drinking water standards, EPA follows the SDWA standard-setting process. Under the SDWA standard-setting process, a health goal is set that considers risks to the most sensitive populations including infants, pregnant women, and the immunocompromised. The next step sets the enforcement standard (the MCL) to be as close to the health goal as feasible, considering available treatment technologies and costs. This cost-benefit analysis is a critical component of the SDWA standard-setting process.

Under the SDWA standard-setting process, drinking water standards are not set at the lowest possible level regardless of cost, treatment feasibility, and relative health benefit returns. The SDWA cost-benefit analysis provides assurance that the health benefits achieved by a new

standard justifies the cost of meeting that standard, and that comparable health benefits could not be achieved with a higher standard that would be less costly to meet.

The Department did not follow the SDWA standard-setting process in proposing the state standards for PFOA and PFOS in Rule No. DG-24-19. Instead, the Department set the proposed standards for PFOA and PFOS based on the Wisconsin Department of Health Services' proposed groundwater standards without conducting a cost-benefit analysis of the proposed state standards. The Department did not consider whether comparable health benefits could be achieved with a higher standard and a lower cost.

MEG - Water is concerned with the Department's proposal to establish drinking water standards without weighing the relative costs and benefits of those standards and the precedent that this may set for establishing future state drinking water standards for other emerging contaminants. MEG - Water questions the Department's authority to establish state drinking water standards in this way. While Wis. Stat. § 281.17(8)(a) provides that "the department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j-26," this subsection does not provide permission for the Department to set state drinking water standards where there is no comparable federal drinking water standard.

Under Wis. Stat. § 227.10(2m) an agency is prohibited from implementing any standard unless that standard "is explicitly required or explicitly permitted by statute or by a rule." To MEG - Water's knowledge, no statutory or regulatory authority explicitly permits the Department to establish a state drinking water standard in the absence of a federal drinking water standard. This likely explains why the Department has never before adopted a drinking water standard without there first being a federal drinking water standard in place.

MEG - Water supports the development and implementation of federal PFAS MCLs using the SDWA rulemaking process. MEG - Water also supports the Department's efforts to obtain additional information about the presence of PFAS in Wisconsin, to provide public information about PFAS, and to encourage action where PFAS levels are elevated. But MEG - Water does not support establishing state PFAS standards in the absence of federal drinking water standards nor in a manner that is inconsistent with the SDWA standard-setting process and that does not consider the relative costs and benefits of the proposed standards.

Public water systems are charged with protecting public health and they take this responsibility extremely seriously. Public water systems currently face a host of expensive challenges to ensure the continued protection of public health – like eliminating lead service lines, replacing old infrastructure, implementing corrosion control treatment to prevent leaching from lead pipes, and treating for contaminants like radium, arsenic, and nitrate. At the same time, there are concerns about public water supply remaining affordable.

As we respond to emerging contaminants, like PFAS, it is important that these emerging contaminants receive the same scrutiny and analysis as was given to the contaminants that already have MCLs. This is best done by having EPA develop federal drinking water standards for PFAS using the SDWA standard-setting process. If drinking water standards for PFAS are

Department of Natural Resources  
December 7, 2021  
Page 3

established based upon the same uniform and consistent methodology used to establish standards for other drinking water contaminants, public water systems and the public at large can be assured that PFAS and all drinking water contaminants with federal standards are receiving the attention and resources that they deserve.

Thank you for this opportunity to provide the Department with our additional input. If you have any questions, please do not hesitate to contact us.

Sincerely,

MUNICIPAL ENVIRONMENTAL GROUP – WATER DIVISION



Lawrie J. Kobza  
Legal Counsel

cc: MEG - Water Members (*via email*)

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