

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING AND RECREATING AND CREATING RULES

The Natural Resource Board proposes an order to repeal and recreate NR 809.80(4) and to create NR 809.12(9)(f) relating to reporting of analytical data to the department and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite, or combined nitrate and nitrite standards.

DG-33-04

Analysis prepared by Department of Natural Resources

Statutory authority: ss.280.11 and 281.17 (8), Stats.

Statutes interpreted: ss.280.11 and 281.17(8), Stats.

Explanation of Authority: 280.11 - The department shall, after a public hearing, prescribe, publish and enforce minimum reasonable standards and rules and regulations for methods to be pursued in the obtaining of pure drinking water for human consumption and the establishing of all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption.

281.17(8) - 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.

Plain Language analysis: Section NR 809.80(11), Wis. Adm. Code provides that the department may specify the format for reporting analytical results to the department. The department intends to clarify that laboratories must electronically submit analytical data to the department. The department has received numerous requests from private laboratories to adopt electronic reporting of analytical data. Further, the Department believes electronic reporting offers significant advantages and efficiencies to both laboratories and the department in terms of more timely reporting data, more accurate data, more timely responses to violations and lower data processing time costs.

Chapter NR 809, Wis. Adm. Code specifies procedures for determining compliance with the maximum contaminant level (MCL) for nitrate, nitrite or combined nitrate and nitrite. The department intends to also specify procedures for returning to compliance following a nitrate, nitrite or combined nitrate and nitrite MCL violation.

Summary and comparison of federal regulations: Federal regulations do not directly address either of the issues in this proposal. However, USEPA is currently considering a request by the Association of State Drinking Water Administrators (ASDWA), to mandate electronic reporting for all drinking water analytical results through USEPA laboratory certification rules.

Comparison to other states: All other states in USEPA Region 5 either have a requirement for electronic reporting of drinking water analytical data or are pursuing such a requirement. In addition, at the national level, the Association of State Drinking Water Administrators (ASDWA) has petitioned USEPA to include a mandate in EPA's laboratory certification code to require electronic reporting of drinking water compliance data.

Only Minnesota mandates a year of quarterly sampling prior to a return to compliance with the Nitrate or Nitrite MCL. All other states in USEPA Region 5 require more extensive monitoring for an undefined period prior to returning to compliance. For example, Illinois, Indiana, and Ohio mentioned that they often require weekly monitoring for several months or in some cases, indefinitely if a system exceeds the nitrate standard and wants to return to compliance without installing treatment or drilling a new well. Michigan also mandates significant additional monitoring but does not specify either periodicity or duration in their code.

Analysis in support:

No rigorous analysis was used. The changes to nitrate regulations should have no effect since it has been our policy to bring systems back into compliance under the scenario that is now proposed to be codified. As such, this should simply make the procedure clearer and more consistent statewide.

Laboratories have requested electronic reporting for several years. This proposed code change will simply provide what most of the contract private labs in the state that do significant business in the public drinking water field have been asking for over the past 5 to 7 years.

Summary of data and methodologies: not applicable

Analysis to determine affect on small business: As stated above, no analysis was performed. The first change simply codifies existing procedures; the second change is essentially at the behest of small business in the first place. Switching to electronic reporting will potentially save the department ½ FTE worth of data entry work.

Anticipated costs to private sector: Essentially no cost other than to adopt reporting format. Ultimately, the proposed reporting change should save money since it mandates a single consistent means of reporting all public drinking water compliance data that every certified laboratory would use.

Effects on small business: Should lower operational costs and level playing field for all laboratories reporting public water system compliance data to the department. Once implemented, the proposed change will mandate all laboratories report compliance data in exactly the same way. Enforcement will be through water utilities and not directly against laboratories. Basically, if a water utility has problems with one laboratory, they would likely shift their analytical contract to another laboratory that provides better and more reliable service.

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SECTION 1. NR 809.12(9)(f) is created to read:

NR 809.12(9)(f) Systems remain out of compliance with the MCLs for nitrate, nitrite, or combined nitrate and nitrite until the results of 4 consecutive quarterly samples are less than the MCL. The department may specify alternate means for returning to compliance with the MCLs for nitrate, nitrite, or combined nitrate and nitrite.
Alternate compliance agreements shall be in writing.

SECTION 2. NR 809.80(4)(a) through (c) is repealed and recreated to read:

NR 809.80(4)(a) When determining compliance with any water quality monitoring, or drinking water maximum contaminant levels specified in this chapter, the department shall accept analytical results only from laboratories that report results directly to the department in a department approved electronic format and are certified under ch. ATCP 77 or ch. NR 149 for safe drinking water analyses.

(b) Results of microbiological samples collected to satisfy requirements of subch. I, shall be reported to the department and the water supplier within 24 hours of the time the results are obtained by the laboratory. When results are obtained on a weekend or holiday, the results shall be provided to the water supplier and the department as soon as practicable.

(c) Analytical results other than those under par. (b) obtained to satisfy requirements of this chapter shall be reported as required under subs. (1) and (2).

(d) The department may approve submission of compliance data required under this chapter in alternate formats on a case-by-case basis if the alternate format does not create a delay in determining compliance with any requirement in this chapter or have the potential for delaying response to a public health threat.

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 26, 2005.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)