

**SUBJECT:**

Request that the Board approve the statement of scope for DG-15-13, proposed rules affecting Chapter NR 809 related to safe drinking water.

**FOR: JUNE 2013 Board meeting**

**PRESENTER'S NAME AND TITLE:** Lee Boushon, Chief, Public Water Supply Section

**SUMMARY:**

The Department needs to amend Chapter NR 809, Safe Drinking Water, to incorporate revisions made by EPA in February 2013 to the Total Coliform Rule (TCR) under the Safe Drinking Water Act (SDWA). By revising Chapter NR 809, the Department will be promoting greater public health protection and will retain the primacy it has been granted by EPA to administer the SDWA in Wisconsin.

The revised TCR establishes compliance based on the presence of E.coli and eliminates the existing maximum contaminant level (MCL) for total coliforms. E. coli is a more specific indicator of fecal contamination and other potential pathogens than total coliforms. The revised TCR requires systems that exceed specified frequencies of total coliform occurrence to conduct assessments of the sanitary integrity of water supplies.

During this revision, the Department will also update Chapter NR 809 to comply with other changes made by EPA after the Chapter's last revision, and to make corrections to improve its accuracy and parity with federal regulations.

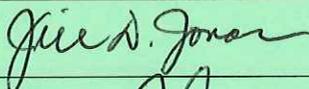
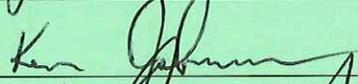
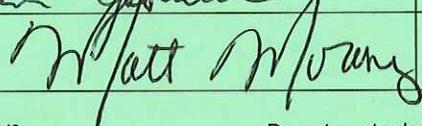
The Department periodically needs to revise Chapter NR 809 to incorporate changes made to corresponding Federal regulations. The Natural Resources Board has endorsed previous revisions to the Chapter proposed by the Department for the same purpose.

The rule is not likely to have an economic impact on small businesses.

**RECOMMENDATION:** That the Board approve the statement of scope for DG-15-13.

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- memo to the Board (for scope statement approval)
- Statement of scope
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Governor approval of statement of scope
- Environmental assessment or impact statement
- Board order/rule

Approved by	Signature	Date
Jill D. Jonas, Bureau Director		5/21/13
Ken Johnson, Administrator		5/22/13
Cathy Stepp, Secretary		5/30/13

cc: Board Liaison - AD/8

Program attorney – LS/8

Department rule coordinator – LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: DG-15-13

Relating to: Chapter NR 809, Safe Drinking Water

Rule Type: Permanent

**1. Finding/nature of emergency (Emergency Rule only):**

NA

**2. Detailed description of the objective of the proposed rule:**

The proposed revisions to Chapter NR 809 seek to incorporate recently promulgated amendments made by the Environmental Protection Agency (EPA) to the Total Coliform Rule (TCR), adopt changes to other rules made by EPA that were not addressed during the last revision of the Chapter, and make corrections that will improve its utility and concordance with counterpart federal regulations.

The Department needs to update Chapter NR 809 to promote greater public health protection and by doing that, maintain the primacy that EPA grants Wisconsin to administer the provisions of the Safe Drinking Water Act (SDWA).

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The revised TCR requires public water systems that are vulnerable to microbial contamination to identify and fix conditions causing that vulnerability, and establishes criteria for systems to qualify and remain on a reduced monitoring frequency that will lessen their regulatory burden. The rule establishes compliance based on the presence of *E. coli* and eliminates the existing maximum contaminant level (MCL) for total coliforms. This change is more protective of public health because *E. coli* is a more specific indicator of fecal contamination and potential harmful pathogens than total coliforms. Under the revised TCR, systems that exceed a specified frequency of total coliform detection must conduct sanitary assessments and correct any deficiencies found. By establishing a more precise indicator of pathogenic contamination, requiring more frequent monitoring, and requiring rigorous assessment of the sanitary integrity of a supply system when any coliforms are detected, the revised TCR enhances public health directly and addresses conditions that may lead to potential public health risks.

Other revisions to Chapter NR 809 covered under this scope do not encompass changes to existing policies and only change the chapter to update it with revisions made by EPA since the last chapter's revision or to make minor corrections needed to make Chapter NR 809 more accurate.

The Department needs to amend Chapter NR 809 to maintain its primacy to administer the SDWA. Alternative policies are not applicable since those would jeopardize the Department's delegated authority to implement the SDWA.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 281.17 (8) (a), Stats:

"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."

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

This rule effort will require approximately 700 hours of state employees' time. Of that estimate, approximately 500 hours will be spent by the principal drafter of the TCR and the section's rule coordinator. The remaining hours are those projected to be spent by other participants of this rule revision team and our legal counsel.

**6. List with description of all entities that may be affected by the proposed rule:**

All public water supply systems in Wisconsin:

- Municipal
- Other than Municipal (OTM)
- Transient, non-community (TN)
- Non transient, non-community (NN)

Laboratories providing analyses to public water systems

Consultants providing services to public water systems

Department of Agriculture, Trade, and Consumer Protection (DATCP)

Department of Health Services (DHS)

Consumers of potable water

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

This scope does not specifically address rule development; it only seeks authorization to initiate rule development. The Department will strive to propose regulatory language that mirrors relevant existing federal regulations and will offer a comparison addressing this item at the time the rule language is developed.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

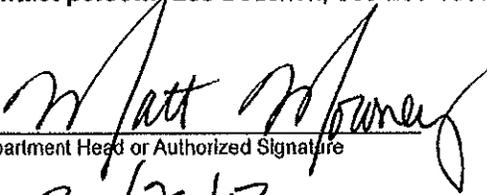
The projections offered here are solely related to this proposed revision to the TCR and do not represent the total costs of implementing the complete TCR.

The anticipated economic impact of implementing the revised TCR will be borne by stakeholders and the Department. The exact distribution of the economic impacts will depend on which option, among those available in the TCR, the Department proposes for final implementation.

The proposed rule will have a moderate (Level 2) economic impact. The anticipated economic impact is provided as a range of cost estimates that bracket the implementation options available. For the first cost option the cost will be borne largely by the Department in the form of additional site visits. It is anticipated that this option will involve adding staff, or contracting for additional staff services, at a cost of approximately \$1,200,000 per year. For the second cost option, the cost will be borne largely by water systems in the form of increased cost for sample analysis and shipping. It is anticipated that these costs will be approximately \$5,700,000 per year. These cost estimates represent the minimum and maximum costs; other available options could balance the costs between the Department and the water systems but would not result in overall costs of less than \$1,200,000 per year.

The rule is not likely to have an effect impact on small businesses. However, if an implementation option is chosen, where the costs are largely borne by the water system, small businesses may see additional costs of \$600.00 per year. Purveyors of analytical services may see a beneficial positive increase in demand, while a small percentage of OTM, TN, and NN systems may experience operational cost reductions that offset the systems' potential increase in monitoring costs.

**Contact person:** Lee Boushon; 608-266-0857

  
Department Head or Authorized Signature

3/28/13  
Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

May 17, 2013

Cathy Stepp  
Secretary  
Wisconsin Department of Natural Resources  
101 South Webster St.  
P.O. Box 7921  
Madison, WI 53707-7921

**RE: Scope Statement for DG-15-13 relating to safe drinking water**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on April 1, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 809 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "S. Walker".

Scott Walker  
Governor