February 12th, 2025

Department of Natural Resources
Attn: Michael Schmit
P.O. Box 7921
101 S. Webster Street
Madison, WI 53707-7921

Submitted via email to DNRAdministrativeRulesComments@wisconsin.gov

Re: League of Wisconsin Municipalities and Wisconsin Counties Association Comments on WA-08-24

Mr. Schmit,

The League of Wisconsin Municipalities and the Wisconsin Counties Association ("groups") appreciate the opportunity to submit written comments on the proposed permanent administrative rule WA-08-24 relating to an alternative method for a municipality to establish proof of financial responsibility required for a solid waste disposal facility.

Our groups write today in support of the draft rule proposed after the passage of 2023 Wisconsin Act 107. As noted in the Department of Natural Resources' (DNR) Fiscal Estimate and Economic Impact Analysis on WA-08-24, the cost savings that municipalities may achieve under this rule are not insignificant with an estimated $1.6 million to $4.6 million annually in reduced costs. Additionally, aligning state solid waste disposal facility financial responsibility options with federal law to provide more regulatory consistency is a positive step forward for our members.

While our groups appreciate the DNR's work to propose this rule, we do respectfully submit the following request for changes for the Department's consideration.

In s. NR 520.06 (6m) (h) 4., the draft rule states that a municipality is not eligible to establish proof of financial responsibility using the alternative method if the municipality receives a qualified opinion, except that the Department may evaluate qualified opinions on a case-by-case basis to determine if the qualification is insufficient to warrant disallowance. While our groups understand the gravity of financial responsibility for solid waste disposal facilities, and ensuring the financial stability of municipalities looking to use the alternative method is crucial for future projected and potential costs, a qualified opinion on municipal financial statements should not in itself be viewed as potentially disqualifying.

According to the Public Company Accounting Oversight Board, a qualified opinion "states that, except for the effects of the matter to which the qualification relates, the financial statements present fairly, in all material respects, financial position, results of operations, and cash flows in conformity with generally accepted accounting principles." The Wisconsin Legislative Audit Bureau (LAB) has a similar definition,

where they state that a qualified opinion (emphasis added) "means that the audit found **minor issues** with the financial statements, but **the overall statements are accurate**."

It's our belief that qualified opinions on financial statements should not be viewed equally with adverse opinions or disclaimers of opinion. In fact, previous LAB reports have found qualified opinions for numerous state agencies and their programs. This does not reflect waste, fraud or abuse, but rather minor human error that's insignificant in the broader scope of the financial statements.

Our groups would request that qualified opinions are removed from sub. (h) 4. to ensure that minor issues do not cause major problems for Wisconsin's municipalities. Additionally, we would request that if the solid waste disposal facility is operating financially independent of a municipality's general fund, and if the independent account, typically an enterprise fund, has the financial capacity to meet the criteria necessary for the alternative method, that adverse opinions, disclaimers of opinion, or qualified opinions on a municipality's financial statements not directly tied to the fund that services the solid waste disposal facility do not disqualify the municipality from the ability to utilize the alternative method.

Alternatively, if the Department would prefer to keep qualified opinions in sub. (h) 4., we would request that the language is changed as follows to ensure that DNR staff will review qualified opinions every time one is submitted so municipalities will consistently receive a thorough review in their pursuit of utilizing the alternative method:

"… The department ~~may~~ shall evaluate qualified opinions on a case-by-case basis…"

Finally, to ensure that qualified opinions on a municipality's financial statements are not otherwise viewed as disqualifying in the draft rule, our groups would request that s. NR 520.06 (6m) (j) 2. is altered to account for the allowance of qualified opinions for the alternative method, either outright or on a case-by-case basis, along with adverse opinions or disclaimers of opinion that are not tied to the operation of the solid waste disposal facility, pending consideration of the comments above. As presently written, the draft rule only accounts for the reference to unqualified opinions being placed in a facility's operating plan.

Once again, the League of Wisconsin Municipalities and the Wisconsin Counties Association appreciate the opportunity to submit comments and a request for changes on the proposed permanent administrative rule WA-08-24. If you have questions regarding our request, please do not hesitate to contact us to request clarification.

Sincerely,

Toni Herkert

Toni Herkert
Government Affairs Director
League of Wisconsin Municipalities

Collin Driscoll

Collin Driscoll
Government Affairs Associate
Wisconsin Counties Association