

## Plumbing Board Request for Action

PRINT IN INK or TYPE

<b>NAME OF SUBMITTER</b> Alex Bartley	<b>PURPOSE OF REQUEST</b> (check all that apply): <input type="checkbox"/> New Code <input checked="" type="checkbox"/> Code Amendment <input type="checkbox"/> Repeal of an existing Rule
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The Minnesota Plumbing Code (MN Rules, Chapter 4714) is available at <http://www.dli.mn.gov/CCLD/PlumbingCode.asp>.

**Specify the purpose of the proposal:** (If recommendation for code change for fixture, appurtenance, material, or method, check all that apply)

Appurtenance (e.g., water conditioning equipment)  Test Method

Other (describe)

Chapter 2: Definition for "Water for human consumption" and revise "Potable Water" definition.

**Does your submission contain a Trade Secret?**  Yes  No

If Yes, mark "**TRADE SECRET**" prominently on each page of your submission that you believe contains trade secret information. Minnesota Statutes, section 13.37, subdivision 1(b), defines "trade secret" as follows:

"Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Note that, although "trade secret" information is generally not public, the Board and its committees may disclose "trade secret" information at a public meeting of the Board or committee if reasonably necessary for the Board or committee to conduct the business or agenda item before it (such as your request.) The record of the meeting will be public.

**Describe the proposed change.** The Minnesota Plumbing Code (Minnesota Rules Chapter 4714) is available via the World Wide Web at <http://www.revisor.leg.state.mn.us/arule/4714/>

### NOTE:

- Please review the Minnesota Plumbing Code and include all parts of the Code that require revision to accomplish your purpose.
- The proposed change, including suggested rule language, should be *specific*. If modifying existing rule language, underline new words and ~~strike through deleted words~~. Please list all areas of the Minnesota Plumbing Code that would be affected.

### 4714.0218 TERMS DEFINED BEGINNING WITH P.

UPC section 218.0 is modified by amending the following definitions:

**Plumbing System** - Includes all potable water, building supply, and distribution pipes; all plumbing fixtures and traps; all drainage and vent pipes; and all building drains and building sewers, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises and shall include potable water piping, potable water treating or using equipment, and nonpotable water piping serving plumbing fixtures.

**Potable Water** - Water that is ~~satisfactory for drinking, culinary, and domestic purposes and~~ intended for drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene, and that meets the requirements of the Health Authority.

**Private Sewage Disposal System** - A subsurface sewage treatment system designed for use apart from a public sewer as regulated under the rules administered by the Pollution Control Agency.

### 4714.0025 TERMS DEFINED BEGINNING WITH W

UPC section 225.0 is modified by adding the following definition:

**Water for Human Consumption.** See Potable Water.

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RFA File No. <b>PB0134</b>	Date Received by DLI	Dated Received by Committee	Date Forwarded to Board
Title of RFA	By:		
Committee Recommendation to the Board: <input type="checkbox"/> Accept <input type="checkbox"/> Reject <input type="checkbox"/> Abstain			
Board approved as submitted: <input type="checkbox"/> Yes <input type="checkbox"/> No		Board approved as modified: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>This material can be made available in different forms, such as large print, Braille or audio. To request, call 1-800-342-5354.</b>			

**Need and Reasons For the Change.** Thoroughly explain the need and why you believe it is reasonable to make this change. During a rulemaking process, the need and reasonableness of all proposed rule changes must be justified; therefore, a detailed explanation is necessary to ensure the Board thoroughly considers all aspects of the proposal.

604.2 Lead Content refers to plumbing “intended to convey or dispense water for human consumption” and “piping systems that convey or dispense water for human consumption”. “Water for human consumption” is Safe Drinking Water Act language, with a specific definition. However it is not defined in the code.

“Potable Water” is defined in our amended MN Rules 4714.0218 as “Water that is satisfactory for drinking, culinary, and domestic purposes and that meets the requirements of the Health Authority.” And this definition also fits “water for human consumption” which is defined in the SDWA (the SDWA is administered in the state by the Health Authority). However, the use of “domestic purposes” is unclear and may exclude water supplies used for human consumption or include water supplies not used for consumption, depending on the reading.

If your product/method standard(s) is not currently listed in both national codes, your Request For Action will not be considered by the Board or its committees, however, you are welcome to present at any Board meeting during the Open Forum section of the Agenda.

The proposal must be accompanied by copies of any published standards, the results of testing, and copies of any product listings, as documentation of the health, sanitation and safety performance of any materials, methods, fixtures, and/or appurtenances. If none are available, please explain:

“Human Consumption” is defined in the Safe Drinking Water Act (SDWA) as the following:

CFR Title 40 Part 141.801 Definitions

[...]  
Human consumption means drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene.

[...]

United States v. Midway Heights County Water District, 695 F. Supp. 1072, 1074 (E.D. Cal. 1988) (“Midway Heights”)

Verdict includes the following:

[...]  
“Human consumption includes drinking, bathing and showering, cooking and dishwashing, and maintaining oral hygiene.”

[...]

Federal Register / Vol. 63, No. 150 /Wednesday, August 5, 1998 references the US v. Midway decision and adds:

[...]  
EPA has interpreted the term human consumption to include drinking, bathing<sup>4</sup>, showering, cooking, dishwashing, and maintaining oral hygiene

[...]  
<sup>4</sup>EPA interprets the term “bathing” to mean use of water for personal hygiene purposes in a home, business setting, school, etc. The term “bathing” does not refer to situations such as (1) swimming in an open canal or (2) incidental, casual contact with water from an open canal in connection with outdoor activities such as agricultural work, canal maintenance, or lawn and garden care”

[...]

Attached is Federal Register Volume. 63, No. 153, Page 41941 with text highlighted by the presenter to the Board

Please attach electronic scanned copies of any literature, standards and product approvals or listings. Printed or copyrighted materials, **along with written permission from the publisher to distribute the materials at meetings**, should be sent to the Plumbing Board, c/o Department of Labor and Industry, 443 Lafayette Road No., St. Paul, MN 55155-4344.

**Primary reason for change:** (check only one)

- |   |  |
|---|--|
| <input type="checkbox"/> Protect public, health, safety, welfare, or security | <input type="checkbox"/> Mandated by legislature       |
| <input type="checkbox"/> Lower construction costs                             | <input type="checkbox"/> Provide uniform application   |
| <input type="checkbox"/> Encourage new methods and materials                  | <input checked="" type="checkbox"/> Clarify provisions |
| <input type="checkbox"/> Change made at national level                        | <input type="checkbox"/> Situation unique to Minnesota |
| <input type="checkbox"/> Other (describe) _____                               |  |

**Anticipated benefits:** (check all that apply)

- |   |   |
|---|---|
| <input type="checkbox"/> Save lives/reduce injuries             | <input type="checkbox"/> Provide more affordable construction |
| <input type="checkbox"/> Improve uniform application            | <input type="checkbox"/> Provide building property            |
| <input type="checkbox"/> Improve health of indoor environment   | <input type="checkbox"/> Drinking water quality protection    |
| <input type="checkbox"/> Provide more construction alternatives | <input type="checkbox"/> Decrease cost of enforcement         |
| <input type="checkbox"/> Reduce regulation                      | <input type="checkbox"/> Other (describe) _____               |

**Economic impact:** (explain all answers marked “yes”)

1. Does the proposed change increase or decrease the cost of enforcement?  Yes  No If yes, explain

2. Does the proposed change increase or decrease the cost of compliance?  Yes  No If yes, explain  
Include the estimated cost increase or decrease, and who will bear the cost increase or experience the cost decrease:

3. Are there less costly or intrusive methods to achieve the proposed change?  Yes  No If yes, explain

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4. Were alternative methods considered?  Yes  No If no, why not? If yes, explain what alternative methods were considered and why they were rejected.

Yes,

Alternate 1: Define Human Consumption, rejected because adding a definition is more complex and the proposed definition for Potable Water already accomplishes the goal

Alternate 2: Replace "water for human consumption" in relevant Code sections with "potable water", rejected because future Code iterations may use "water for human consumption" elsewhere, or the Lead Content standards will change, leading to a larger number of amendments down the road. If a definition for "water for human consumption" makes it into an unamended future iteration of the UPC, we would still likely retain our amended definition because of our amended language for Potable Water

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5. If there is a fiscal impact, try to explain any benefit that will offset the cost of the change. If there is no impact, mark "N/A."

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6. Provide a description of the classes of persons affected by a proposed change, who will bear the cost, and who will benefit.

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7. Does the proposed rule affect farming operations? (Agricultural buildings are exempt from the Minnesota Building Code under Minnesota Statutes, Section 326B.121.)  Yes  No If yes, explain

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Are there any existing Federal Standards?  Yes  No If yes, list:

CFR Title 40 Part 141.801 Definitions

[...]

Human consumption means drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene.

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Are there any differences between the proposed change and existing federal regulations?

Yes  No  Not applicable  Unknown

If yes, describe each difference & explain why each difference is needed & reasonable.

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Minnesota Statutes, section 14.127, requires the Board to determine if the cost of complying with proposed rule changes in the first year after the changes take effect will exceed \$25,000 for any small business or small city. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees and a small city is defined as a city with less than ten full-time employees.

During the first year after the proposed changes go into effect, will it cost more than \$25,000 for any small business or small city of comply with the change?  Yes  No If yes, identify by name the small business(es) or small city(ies).

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Will this proposed plumbing code amendment require any local government to adopt or amend an ordinance or other regulation in order to comply with the proposed plumbing code amendment?  Yes  No, If yes, identify by name the government(s) and ordinances(s) that will need to be amended in order to comply with the proposed plumbing code amendment.

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Additional supporting documentation may also be attached to this form. Are there any additional comments you feel the Committee/Board may need to consider? If so, please state them here:

**Information regarding submitting this form:**

- Submissions are received and heard by the Committee on an “as received” basis. **Any missing documentation will delay the process, and your proposal will be listed as the date it was received “Complete.”**
- **Submit any supporting documentation to be considered**, such as manufacturer’s literature, approvals by other states, and engineering data electronically to [DLI.CCLDBOARDS@state.mn.us](mailto:DLI.CCLDBOARDS@state.mn.us). Once your Request For Action form has been received, it will be assigned a file number. Please reference this file number on any correspondence and supplemental submissions.
- **For copyrighted materials that must be purchased from publishers, such as published standards, product approvals or testing data, listings by agencies (IAPMO, ASSE, ASTM, etc.,) you may send just 2 copies, *along with written permission from the publisher to distribute the materials at meetings*, via U.S. Mail to: Plumbing Board, c/o Department of Labor and Industry, 443 Lafayette Road No., St. Paul, MN 55155-4344.**
- **For materials that must be submitted by U.S. Mail, please include a copy of your “Request For Action” form originally submitted and reference your assigned RFA file number.**

**Information for presentation to the Committee and/or Board:**

- Limit presentations to 5 minutes or less.
- Be prepared to answer questions regarding the proposal and any documentation.

**Information regarding Committee and/or Board function:**

- The Plumbing Board or designated committee.

I understand that any committee action is a recommendation to the Plumbing Board and is not to be considered final action.

SUBMITTED BY NAME Alex Bartley		FIRM NAME MDH – Drinking Water Protection Section	SUBMITTER'S E-MAIL ADDRESS Alex.bartley@state.mn.us	
NAME, PHONE NUMBER & E-MAIL ADDRESS OF PRESENTER TO THE COMMITTEE (if different): Alternate 1: Anita Anderson, 218-302-6143, <a href="mailto:anita.anderson@state.mn.us">anita.anderson@state.mn.us</a> Alternate 2: David Weum, 651-201-4684, <a href="mailto:david.weum@state.mn.us">david.weum@state.mn.us</a>				
ADDRESS 625 Robert St N		CITY St. Paul	STATE MN	ZIP CODE 55155
PHONE 651-201-4699	SIGNATURE (original or electronic) Alex H. Bartley		DATE 4/19/2019	

For Assistance or questions on completing this form, contact Cathy Tran, Department of Labor and Industry at 651-284-5898.

<b>For Office/Committee Use Only</b>			
Proposal received completed? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Date Proposer notified of gaps:	Mode of notification (e.g., e-mail)	Date returned to Proposer:	Date materials re-received:

The workgroup also consulted with six organizations involved with community-based minority health and welfare issues and interviewed three persons who use canal water for human consumption. EPA published a draft of the guidance on May 8, 1998 (see 63 FR 25740-46), considered public comments on the draft, and made changes based on the public comments.

## Application of Section 1401(4)

### I. Systems Newly Defined as Public Water Systems

#### A. Statutory Language

As described above, effective August 6, 1998, Section 1401(4)(A) of the SDWA<sup>2</sup> expanded the definition of a PWS to read as follows:

The term *public water system* means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes

- (i) any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system, and
- (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

This revised definition broadens the means for delivering water that will qualify a water supplier<sup>3</sup> as being a public water system from pipes to "pipes or other constructed conveyances." Thus, as of August 6, 1998, in accordance with this provision and EPA's regulations, water systems providing water for human consumption through constructed conveyances to at least fifteen service connections or an average of twenty-five individuals daily at least 60 days per year are defined as public water systems subject to SDWA regulation. See 40 CFR § 141.2. EPA has interpreted the term *human consumption* to include drinking, bathing,<sup>4</sup> showering, cooking, dishwashing, and maintaining oral

<sup>2</sup> All references in this Guidance to Section 1401 refer to Section 1401 of the SDWA.

<sup>3</sup> As used in this Guidance, and as indicated in Section 1401(4)(C), the term *water supplier* broadly refers to any water provider that may be subject to regulation as a public water system under the SDWA. This term should not be confused with *supplier of water*, which is defined in the SDWA as "any person who owns or operates a public water system". See SDWA Section 1401(7).

<sup>4</sup> EPA interprets the term "bathing" to mean use of water for personal hygiene purposes in a home, business setting, school, etc. The term "bathing" does not refer to situations such as (1) swimming in an open canal or (2) incidental, casual contact with water from an open canal in connection with outdoor activities such as agricultural work, canal maintenance, or lawn and garden care.

hygiene, and this interpretation has been upheld by the courts. See *United States v. Midway Heights County Water District*, 695 F. Supp. 1072, 1074 (E.D. Cal. 1988) ("*Midway Heights*").

Under the final rule published in the **Federal Register** on April 28, 1998 (63 FR 23362, at 23367), states were given two years from the date of publication to adopt the new statutory definition of public water system quoted above, or a more stringent definition, in order to obtain or maintain primacy.

#### B. Interpretation of "Constructed Conveyance"

As of August 6, 1998, systems that deliver water for human consumption through constructed conveyances other than pipes to the requisite number of connections and/or individuals are defined as PWSs subject to SDWA regulation. The term *constructed conveyance* is not limited by the SDWA as to the size of the conveyance or the character of the delivery system. The term refers broadly to any manmade conduit such as ditches, culverts, waterways, flumes, mine drains or canals. The term *constructed conveyance* does not include water that is delivered by bottle, other package unit, vending machine or cooler, nor does it include water that is trucked or delivered by a similar vehicle.<sup>5</sup>

Water bodies or waterways that occur naturally but which are altered by humans may, in some cases, be constructed conveyances. Whether a particular water body or waterway is a constructed conveyance for purposes of Section 1401(4) depends on the totality of facts that characterize whether the water body or waterway is essentially a natural water body or waterway, or whether it is essentially a manmade conduit. The primacy agency should use the following factors to decide whether a particular water body is a constructed conveyance. Specifically, the primacy agency should first decide whether a water body is manmade, or "constructed," by determining whether or not it exists in its current configuration *substantially* from human modification where activities such as mining, dredging, channelization, or bed or bank modification are of an appropriate magnitude to change the character of the water body. Second, the primacy agency should determine whether the water body is a conduit, or "conveyance," by examining who owns or controls the water and the reason

<sup>5</sup> One or more of these water delivery methods may under certain circumstances be considered public water systems under existing interpretations of other parts of the definition of a public water system.

why water is present: whether it is present perennially through natural precipitation and runoff or discharge of natural springs, or whether its flow is present primarily by human means and in order to convey the water to users as part of a network under the management of the water supplier. If a particular water body is both "constructed" and a "conveyance" based on the factors described above, at least as to particular users whose status as "connections" is in question, the water body is a constructed conveyance.

Primacy agencies should also determine whether to consider as part of a public water system, those natural waterway portions of a water delivery system composed in part of constructed conveyances.

While irrigation-related entities and their canals are likely to be the most common systems newly defined as PWSs under the expanded definition in Section 1401(4), mining and other industrial entities that convey water may also fit within the definition if their water is used for human consumption.

#### C. Identification of Public Water Systems Under the Revised Definition

Primacy agencies should examine their areas of jurisdiction to determine if there are any water suppliers providing water through constructed conveyances for human consumption that meet the new public water system definition.

The addition of "constructed conveyances" to the definition of a public water system presents new questions about how to apply two key, existing components of the definition to water suppliers using constructed conveyances. A detailed discussion of these two components is provided below.

*Providing Water.* The first component is whether the supplier is "providing" water within the meaning of Section 1401(4). New questions about this component arise because use of water from open conveyances may be less apparent than from piped systems. Thus, it is important to clarify those conditions under which a supplier of water through constructed conveyances would be considered to have "provided" certain users with water.

In describing a public water system, EPA's regulations and guidance use such terms as "serves" and "delivers"—often though not always in the context of "customers" (see, e.g., 40 CFR § 141.2). For the supplier to be providing water to users, there must be an explicit or implied arrangement or agreement of some kind between a supplier and individuals using water. A