

CR 90-56



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary  
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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES ) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. FM-54-89 was duly approved and adopted by this Department on April 26, 1990 and June 28, 1990. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed the  
official seal of the Department at  
the Natural Resources Building in  
the City of Madison, this 9<sup>th</sup>  
day of August, 1990.

*Bruce B. Braun*  
Bruce B. Braun, Deputy Secretary

(SEAL)

11-1-90

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

.....  
IN THE MATTER of creating ch. NR 122 .  
of the Wisconsin administrative code .  
relating to the nitrate removal pilot .  
program for municipal water systems. .  
.....

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CA-12-90

Analysis Prepared by the Department of Natural Resources

Statutory authority: section 3040 (3p) of 1989 Wisconsin Act 31 and s.  
227.11(2), Stats.

Statutes interpreted: section 3040 (3p) of 1989 Wisconsin Act 31

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Section 3040 (3p), 1989 Wisconsin Act 31 establishes the Nitrate Removal Pilot Program. This program, administered by the Department, provides financial assistance in the form of grants to municipalities for the planning, design and construction of pilot projects to evaluate methods of removing nitrates from municipal drinking water systems. Chapter NR 122, Wis. Adm. Code, implements the Nitrate Removal Pilot Program authorized under section 3040 (3p) of 1989 Wisconsin Act 31. Proposed ch. NR 122, Wis. Adm. Code, would do the following:

1. Establish a state program to test and evaluate methods of removing nitrates from municipal water supplies and to disseminate the findings to other municipalities that are experiencing or are at risk of excessive nitrate levels.
2. Specify project eligibility, cost eligibility and application requirements.

3. Establish the criteria and the process for evaluating and selecting eligible projects.
4. Specify the process and the procedures for administering the grants and making payments to participating municipalities.

SECTION 1. Chapter NR 122 is created to read:

CHAPTER NR 122 (title)

NITRATE REMOVAL

NR 122.01 PURPOSE. The purpose of this chapter is to establish rules under section 3040 (3p) of 1989 Wisconsin Act 31 for the administration of a financial assistance program for pilot testing of methods to remove nitrate from municipal water systems. Financial assistance under this chapter is intended to evaluate the use of nitrate removal technology by providing grant support to municipalities for the planning, design, engineering, construction and other activities associated with an approved pilot project.

NR 122.02 APPLICABILITY. This chapter applies to all applicants for, and recipients of, grant funding made pursuant to section 3040 (3p) of 1989 Wisconsin Act 31. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under section 3040 (3p) of 1989 Wisconsin Act 31.

NR 122.03 DEFINITIONS. For purposes of this chapter:

- (1) "Bench scale test" means a method of evaluating nitrate removal by using small capacity treatment units of 1 to 10 gpm.
- (2) "Department" means the department of natural resources.

(3) "Full scale on-line test" means a method of testing nitrate removal, using production size treatment units, under which the treated water is made available for human consumption.

(4) "Mg/l" or "milligrams per liter" means the concentration level of a pollutant in a liter of water.

(5) "Municipal water system" means a public water system owned and operated by a municipality.

(6) "Municipality" means a city, town, town sanitary district or village.

(7) "Project" means the set of specific activities, proposed by a municipality and approved by the department, to test one or more methods of nitrate removal. A project may be either a bench scale test or full scale on-line test of a particular nitrate removal technology or method.

(8) "Public water system" means a system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

NR 122.04. ELIGIBILITY FOR GRANT ASSISTANCE. (1) ELIGIBLE APPLICANT.

Any municipality which owns and operates a public water system that utilizes wells as the primary water source is eligible to apply for financial assistance under this chapter.

(2) ELIGIBLE PROJECTS. A project submitted by an eligible applicant is eligible for grant assistance if, based on the information provided, the department determines that at least one of the following conditions is met:

(a) The untreated water from at least one well within the municipal water system currently exceeds the maximum contaminant level of 10.0 mg/l for nitrate established in ch. NR 109.

NOTE: Under enforcement procedures nitrate concentrations of 10.5 mg/l or greater are necessary to take action.

(b) The untreated water from at least one well within the municipal water system contains a nitrate level of at least 7.5 mg/l and there is documented evidence of recent increase in the nitrate level.

(c) The municipality submits other evidence which documents the presence of a substantial risk of future well nitrate levels at or in excess of the maximum contaminant level established under ch. NR 109.

(3) ELIGIBLE COSTS. The applicant's reasonable and necessary costs, which are within the scope of the approved project and not specifically made ineligible under this chapter, are eligible for grant assistance. Eligible costs as determined by the department, may include, but are not limited to:

(a) Costs of studies, investigations, surveys, planning and other steps necessary to determine the economic and engineering feasibility of an approved project.

(b) Costs of engineering, architectural and other technical services associated with final engineering reports, design of facilities, preparation of plans and specifications, inspection and supervision of construction and any other service necessary for the approved project. Where the services are provided by municipal employees under a force account, the allowable costs may not exceed the actual amount incurred.

(c) Costs of contracts for construction or installation services, equipment and materials necessary for the approved project provided the procurement was done in accordance with the requirements of ch. 59, 60, 61 or 62, Stats., whichever is applicable.

(d) Costs incurred by a municipality, including laboratory and other analysis necessary to prepare and submit project reports required by the department.

(4) INELIGIBLE COSTS. Costs outside the scope, not directly associated with or necessary for an approved project, or unreasonable in amount are not eligible for grant assistance. The following cost items are ineligible for grant participation:

(a) The costs of site acquisition, easements, right-of-ways or other estate or interest in property, and any associated cost.

(b) Direct or indirect administrative costs; such as the provision of office space, telephone service and any additional municipal personnel.

(c) Interest on any form of indebtedness.

(d) Damage awards arising out of the construction, equipping or operation of the project, regardless of how the awards are determined.

(e) Costs incident to normal operating costs of government, including the salaries and expenses of statutory officials such as the mayor, city manager or other official.

(f) Bonus payments made to a contractor for completing work in advance of a specified time.

(g) Costs determined by the department to be unreasonable in amount.

(h) Costs incurred for projects which commenced without departmental approval of plans and specifications.

(i) Costs for which the municipality receives federal assistance or other state assistance other than a loan which is to be repaid by the municipality.

(j) Costs associated with contract procurements not in compliance with the requirements of ch. 59, 60, 61 or 62, Stats., whichever is applicable.

NR 122.05 DISTRIBUTION OF GRANT ASSISTANCE. (1) GENERAL. Grant funds shall be allocated to eligible projects in the ranking order sequence established as a result of the department's evaluation of project applications. If grant funding available for a particular project is less than 40% of the eligible project costs proposed in the application for the project, the department may offer a reduced grant share or consider changes in the project as proposed by the applicant.

(2) GRANT APPLICATION REQUIREMENTS. Eligible municipalities shall submit applications for grant funding in accordance with the instructions supplied by the department. Applications shall be updated as necessary to keep required information current and each applicant shall submit, in a timely manner, any additional information requested by the department. The required information shall be submitted by the due date established by the department. Failure to provide the necessary information or to meet the due date may result in the application being rejected from funding consideration. Each application shall include:

(a) A certified copy of the resolution by the applicant's governing body authorizing the filing of the application and designating a specific municipal official to act as the authorized representative.

(b) A description of the project to include:

1. A discussion of the nature and extent of the current nitrate contaminant levels within the municipal water system, any expected changes in



nitrate levels in the future and the expected impact on the municipal water system and its users.

2. A description of the nitrate removal methodology proposed, discussion of alternatives considered and the reasons for selecting the proposed methodology. This description shall include a discussion of the use of the proposed methodology at other locations, including experimental tests, and the success of the methodology in nitrate removal.

3. A description of the chemical parameters/characteristics of the raw water supply and their impacts on the nitrate removal methodology's effectiveness and costs.

(c) An itemized estimate of the total project costs broken down between planning, architectural and engineering design, construction or installation, and evaluation of the nitrate removal methodology. If all or part of the project work is to be contracted, bid tabulations may be submitted with the application, if available.

(d) Documentation of department approval of plans and specifications for the project or the date on which approvable plans and specifications for the project were, or will be, submitted to the department. Applicants who do not have project plan and specification approval prior to grant application submission shall submit approvable plans and specifications no later than 30 days after the municipality is notified of funding.

(e) A description of the evaluation and water quality analysis to be done before, during and after treatment to determine the effectiveness of the removal methodology.

(f) A list of places with previous experience with the proposed removal methodology.

(g) A copy of contract documents and provisions for any construction, installation, engineering or other technical services expected to be procured for the project.

(h) A description of the experience and other factors which reflect the capabilities of the municipality and its contractors to successfully complete the proposed pilot project.

(i) A commitment to submit a final report on the project within 60 days of the specified project completion date, including a description of the project, along with findings, conclusions and recommendations.

(3) GRANT APPLICATION EVALUATION. (a) Each grant application received on or before the established due date shall receive a screening assessment to determine whether the content requirements in sub. (2) have been met. If an application does not contain all of the required information, the municipality shall be notified in writing and shall have 15 days, from receipt of notice, to provide the required information to the department. Applicants which do not provide the information in a timely manner may have their application denied.

(b) All applications determined by the department to be acceptable for further consideration shall be formally evaluated by the department to determine a ranking order for grant funding. To perform the funding evaluation, the department may utilize department staff or persons not employed by the department, who are knowledgeable of public water systems and nitrate removal technology. The evaluation shall consider the following factors in determining the rank order for each application:

1. The project may be assigned from 0 to 10 points based on an overall assessment of the project, taking into consideration:

- a. The technical design;
  - b. The extent to which the proposed design meets the intent of the pilot project program;
  - c. The applicability of the proposed nitrate removal methodology to other public water systems;
  - d. The capability of the municipality and its staff, contractors or consultants to successfully complete the project;
  - e. The use and success of the methodology by other water systems; and
  - f. The ease of operation and maintenance of the proposed methodology.
2. The extent to which untreated water from one or more of the wells of the municipal water system has a nitrate level of 10.0 mg/l or greater. The project may be assigned from 0 to 10 points based on this factor.
3. The nitrate level in one or more of the wells of the municipal water system exceeds 7.5 mg/l but is less than 10.0 and the applicant provides other evidence which documents a substantial risk of the nitrate levels in the municipal water system increasing to or exceeding the maximum contaminant level. The project may be assigned from 0 to 5 points based on this factor.
4. The nitrate level in one or more of the wells of the municipal water system is less than 7.5 mg/L and there is clear evidence of a substantial risk of future nitrate levels reaching or exceeding the maximum contaminant level. The project may be assigned from 0 to 5 points based on this factor.
5. The total eligible costs of the proposed project compared to the total eligible costs of the other proposed projects that the department determines to be comparable. The determination of comparability shall be based on the proposed nitrate removal methodology and the evaluation results

for the other factors contained in this section. The project may be assigned from 0 to 5 points based on this factor.

(4) PRIORITY RANKING AND NOTICE OF FUNDING ALLOCATION. (a) Upon completion of its evaluation of all acceptable project applications, the department shall prepare a list of the projects ranked in funding priority order. The list shall show the rank for each project, the amount of grant funding requested, and the cumulative total grant funding requested and remaining after each project. This list shall be distributed to all project applicants and other interested parties.

(b) The department shall determine which projects, in accordance with the priority ranking, can be funded with the available funds and notify each applicant of the funding allocation for its project. If the project has not been bid, the applicant shall be advised to do so and submit the bid results and tentative contract awards to the department within 60 days. Applicants who do not submit this information within the 60 day period may be removed from the funding list and not be given further funding consideration.

NR 122.06 GRANT AWARD. (1) GRANT CONDITIONS. Each grant awarded under this chapter shall be subject to the following conditions:

(a) The municipality agrees to pay all of the non-state grant costs associated with the project and commits to completion of all project work.

(b) The municipality agrees that department representatives will have access to the project work whenever it is in preparation or progress. The municipality further agrees to allow department representatives access to any books, documents, plans, reports, papers and other records which are pertinent to the project, whether these records are maintained by the municipality or its contractors.

(c) In the case of a project involving construction or installation of equipment, the municipality agrees to provide construction or installation inspection adequate to insure that all project work conforms with approved plans and specifications.

(d) For any project involving procurement of equipment or contract services, the municipality agrees to comply with the requirements of ch. 59, 60, 61 or 62, Stats., whichever is applicable.

(2) GRANT OFFER. All grant offers shall be made after bids have been received and the municipality has made tentative contract awards conditioned upon a state grant under this chapter, or in the event of force account performance, an estimated price agreed to by the municipality and the department. No grant offer shall be made for a project unless the project has been determined to be entitled to priority over other eligible projects. The grant offer shall be signed by the authorized official of the department and shall set forth the terms and conditions of the offer.

(3) AMOUNT OF GRANT. The state grant offer shall not exceed 40% of the total eligible project cost.

(4) GRANT ACCEPTANCE. Acceptance of a grant offer shall be made by signature of the authorized representative of the municipality on documents provided by the department. If a grant offer is not accepted within 30 days from the date of offer, the department may withdraw the offer, offer the funds to another eligible applicant and remove the affected project from the funding list.

NR 122.07 GRANT PAYMENTS. (1) The municipality shall be paid the state grant share of eligible project costs incurred within the scope of an approved project, up to the total grant amount in the grant agreement.

(2) In order to receive grant payment, the municipality shall submit an itemized payment request form, with backup documentation of all eligible costs incurred, in accordance with the instructions provided by the department.

(a) The municipality may request interim grant payments, when documented as above, and be paid up to a cumulative amount totalling 95% of the total grant award.

(b) The final grant payment request shall be labeled as such by the municipality and submitted with all remaining documentation. Upon completion of the final inspection and acceptance of any outstanding project reports, the department shall make the final grant payment.

NR 122.07. RECORDS RETENTION AND AUDITING. The municipality shall retain all records pertaining to the project and make them available to the department on request for 3 years after the date of the final grant payment.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on May 24, 1990.

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The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro), Stats.

Dated at Madison, Wisconsin August 9, 1990.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny  
Carroll D. Besadny, Secretary

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State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary

Box 7921

Madison, Wisconsin 53707

TELEFAX NO. 608-267-3579

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August 9, 1990

Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
Suite 702  
30 W. Mifflin Street

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AUG 10 1990

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Bureau

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CA-12-90. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

A handwritten signature in cursive script that reads "C. D. Besadny".

C. D. Besadny  
Secretary

Enc.