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STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
NOTICE OF HEARING

RULES RELATED TO GRANTS TO ETHANOL PRODUCERS

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed rule (proposed ATCP 161, subchapter III, Wis. Adm. Code) relating to annual grants to ethanol producers. The hearing will be held:

Wednesday, January 24, 2001, 1:30 p.m.  
Wisconsin Department of Agriculture, Trade and Consumer Protection  
Board Room (SR-106)  
2811 Agriculture Drive  
Madison, WI 53718-6777.

The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until January 31, 2001, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708 or by calling (608)224-4928. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this public hearing. Please make reservations for the hearing interpreter by January 3, 2001 either by writing to Kevin LeRoy, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708, (608/224-4928), or TDD at (608/224-5058). Handicap access is available at the hearing.

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Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection

Statutory authority: ss. 93.07(1) and 93.75(3), Stats.  
Statutes interpreted: s. 93.75, Stats.

The legislature, in 1999 Wisconsin Act 55, created an ethanol grant program under s. 93.75, Stats. The legislature authorized the department of agriculture, trade and

consumer protection (DATCP) to make grants to ethanol producers in this state. The legislature has not yet provided any funding for the grant program. This rule implements the grant program, subject to legislative funding. The ethanol grant program is scheduled to sunset on July 1, 2006.

### **Statutory Requirements**

To be eligible for a grant under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period unless DATCP specifies a different amount by rule. The ethanol producer must also purchase commodity inputs from "local sources" as defined by DATCP rule.

Under s. 93.75, Stats., an ethanol producer is eligible for grant payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed DATCP to pay 20 cents per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. DATCP must adopt rules to prorate grant payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

### **Rule Contents**

#### **Annual Grants to Ethanol Producers**

Under this rule, an ethanol producer may apply by April 1 of each year to receive an ethanol production grant for any consecutive 12-month period ending within a year prior to that April 1. (The applicant chooses the consecutive 12-month period.) Subject to available funding, DATCP will award to each eligible applicant a grant of 20 cents per gallon for up to 15 million gallons of "eligible ethanol" produced during the consecutive 12-month period identified in the grant application.

#### **Eligible Producer**

An ethanol producer is eligible for an annual grant if all the following apply:

- The producer produced at least 10 million gallons of "eligible ethanol" during the consecutive 12-month period identified in the grant application.
- DATCP has not previously awarded a grant to the ethanol producer for ethanol produced during the consecutive 12-month period identified in the grant application.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of consecutive 12-month period identified in the grant application.

#### **Eligible Ethanol**

Under this rule, DATCP will make grant payments only for "eligible ethanol" production. "Eligible ethanol" means ethanol that the ethanol producer produces in this state from

commodities purchased from local sources. A “commodity” includes grain and other starch or sugar crops. A “commodity purchased from a local source” means any of the following:

- A commodity that the ethanol producer purchases from a person who grew that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

### **Grant Application**

An ethanol producer must submit a grant application in writing, on a form provided by DATCP. The application must specify all the following:

- The consecutive 12-month period for which the applicant seeks a grant.
- The total gallons of “eligible ethanol” that the applicant produced during that consecutive 12-month period.
- The name and address of each supplier from whom the applicant purchased a commodity used to produce the “eligible ethanol.” The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant’s federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

### **DATCP Action on Grant Applications**

DATCP must award grants by June 1 of each year, and must make grant payments by June 30 (the end of the state fiscal year). If DATCP denies a grant application, or awards a smaller prorated amount (see below), DATCP must explain its action in writing.

DATCP may require an applicant to provide additional information, and may deny a grant application if the applicant fails to honor DATCP’s reasonable request for relevant information. DATCP may exercise its authority under ch. 93, Stats., to verify a grant application, or to verify the applicant’s eligibility for a grant.

DATCP may deny a grant application, or recover grant payments made to an applicant, if DATCP finds that the applicant has materially misrepresented any information related to a grant application.

### **Prorating payments**

Under this rule, if grant awards in any state fiscal year exceed the grant funds appropriated for that fiscal year, DATCP must prorate grant awards based on each applicant's eligible ethanol production during the consecutive 12-month period identified in the applicant's grant application. An ethanol producer who receives a pro-rated grant may *not* apply for the balance of that grant in the next fiscal year.

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### **FISCAL ESTIMATE**

This proposed rule was initiated when the legislature passed 1999 Wis. Act 55. This act created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the program. Administrative costs associated with this program should be minimal and easily absorbed into the agency's general duties.

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### **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1999 Wis. Act 55 created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the grant program.

To be eligible for a payment, the ethanol producer must produce at least ten million gallons of ethanol per year. The legislation requires the department to pay ethanol producers who meet the statutory and proposed rule criteria 20¢ per gallon for not more than 15 million gallons.

Ethanol producers may only apply for a grant payment if they have been in business for sixty months or less. The entire program is scheduled to sunset on July 1, 2006.

There is little chance that any ethanol producer who can produce the minimum ten million gallons per year would also meet the state's definition of a "small business" contained in s. 227.114(1)(a). Stats. In that statutory section, "small business" means a business entity, including its affiliates, which is independently owned and operated and is not dominant in its field, and which employs fewer than twenty-five full time employees or which has gross annual sales of less than \$2,500,000. Consequently, the department expects this program to have minimal impact on small business in the ethanol production industry.

The grant program should have a major impact on the prices for agricultural crops used in the production of ethanol. By providing another market for these agricultural crops, the

prices for those crops should increase. The increase in prices will benefit Wisconsin farmers. Since the grant program is designed to promote the purchase of crops grown in Wisconsin, there will be a benefit to Wisconsin small businesses derived from this program and rule.

Dated this 30 day of Nov, 2000

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel, Secretary

DNR 200

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SEP 08 1999

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
RENUMBERING, RENUMBERING AND AMENDING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to renumber NR 200.02(2) to (6) and (8) to (10); to renumber and amend NR 200.02(7) and 200.08; to amend ch. NR 200 (title), 200.01, 200.03(1)(a) and (3)(f), 200.05 (intro.), (1)(b) and (4)(intro.), 200.07(2), (3) and (4) and 200.09; and to create NR 200 subch. I (title), 200.02(2), (5), (6), (7), (8), (10), (15), (16), (17) and (18), 200.027, NR 200 subch. II (title), 200.03(3)(i), 200.06(4), 200.065, 200.10(5) and NR 200, subch. III relating to applications for discharge permits and water quality standards variances.

WT-39-98

Analysis prepared by the Department of Natural Resources

Statutory authority: ss. 227.11(2), 283.15(2)(b)1. and 283.31, Wis. Stats.

Statutes interpreted: ss. 227.116, 283.15, and 283.37, Wis. Stats.

This action will add language to ch. NR 200 to specify effluent monitoring and other application requirements for various categories of dischargers to reflect what has become common practice by Department staff. Other minor clean-up changes will also be made. New subchapters will be created to; 1) specify application requirements for variances to water quality standards to reflect statutory language and staff experience and 2) to define terms and conditions that apply throughout the chapter.

SECTION 1. Chapter NR 200 (title) is amended to read:

CHAPTER NR 200

APPLICATION FOR DISCHARGE PERMITS AND WATER QUALITY STANDARDS  
VARIANCES

SECTION 2. Subchapter I (title) of ch. NR 200 [precedes NR 200.01] is created to read:

SUBCHAPTER I - PURPOSE, DEFINITIONS AND GENERAL PROVISIONS

SECTION 3. NR 200.01 is amended to read:

NR 200.01 PURPOSE. The purpose of this chapter is to:

(1) To set forth the requirements for filing applications for the discharge permits required by s. 283.31, Stats., to prescribe the form of such applications pursuant to s. 283.37, Stats., and to specify the number of business days within which the department will publish a public notice

indicating its intended action on a Wisconsin pollutant discharge elimination system permit application or request for modification pursuant to s. ~~227.0105~~ 227.116, Stats. Section ~~283.37~~ 283.31, Stats., requires a permit for the lawful discharge of any pollutant into the waters of the state, which include groundwaters by the definition set forth in s. 283.01(13), Stats. The federal water pollution control act of 1977, P.L. 95-217; 33 USC 466 et. seq., requires a permit for the lawful discharge of any pollutant into navigable waters. Therefore in Wisconsin, permits are required for discharges from point sources to surface waters of the state and additionally to land areas where pollutants may percolate, seep to, or be leached to groundwaters. This includes the land application of sludge.

(2) To set forth the requirements for filing applications for variances to water quality standards allowed by s. 283.15, Stats.

SECTION 4. NR 200.02(1) is amended to read:

NR 200.02(1) "Business days" means each day except Saturday; Sunday; January 1; the third Monday in January, which shall be the day of celebration for January 15; the last Monday in May, which shall be the day of celebration for May 30; July 4; the first Monday in September; the 4th Thursday in November; December 24; December 25; December 31; and the day following if January 1, July 4 or December 25 falls on Sunday; after 12 noon on Good Friday, in lieu of the period specified in s. 757.17, Stats; and December 24 and 31.

SECTION 5. NR 200.02(2) to (10) are renumbered NR 200.02(3), (4), (9), (11), (12), (13), (14), (19) and (20) and NR 200.02(13), as renumbered, is amended to read:

NR 200.02(13) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, outfall, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants may be discharged either into the waters of this state or into a publicly owned treatment works. ~~"Point source" shall not include diffused surface drainage or any ditch or channel which serves only to intermittently drain excess surface water from rain or melting snow and is not used as a means of conveying pollutants into waters of the state. "Point source" shall not include uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the department as a significant contributor of pollution, except for a conveyance that conveys only storm water.~~

SECTION 6. NR 200.02(2), (5), (6), (7), (8), (10), (15), (16), (17) and (18) are created to read:

NR 200.02(2) "Cooling water" means water which has been used primarily for cooling but which may be contaminated with process waste or airborne material. Examples are the discharge from barometric condensers or the blowdown from cooling towers.

(5) "Limit of detection" means the lowest concentration level that can be determined to be statistically different from a blank.

(6) "Limit of quantitation" means the level above which quantitative results may be obtained with a specified degree of confidence.

Note: The limit of quantitation is 10/3 or 3.333 times the limit of detection.

(7) "Major municipal discharge" means a point source discharge with an average daily volume equal to or greater than one million gallons per day of either municipal wastewater from a publicly owned treatment works or of domestic wastewater from a privately owned treatment works.

(8) "Minor municipal discharge" means a point source discharge with an average daily volume less than one million gallons per day of either municipal wastewater from a publicly owned treatment works or domestic wastewater from a privately owned treatments works.

(10) "Noncontact cooling water" means water used for cooling which does not come into contact with any raw material, intermediate or finished product, or waste and has been used in heat exchangers, air or refrigeration compressors, or other cooling means where contamination with process waste is not normally expected.

(15) "Primary industry" means an industrial facility or activity that is encompassed by one of the industrial categories listed in 40 CFR 122, Appendix A.

(16) "Results" includes measurements, determinations and information obtained or derived from tests.

(17) "Secondary industry" means an industrial facility or activity that is not classified as a primary industry.

(18) "Surface waters" means waters of the state except wells and other groundwater. Cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters are also excluded from this definition.

SECTION 7. NR 200.027 is created to read:

NR 200.027 ANALYTICAL METHODS AND LABORATORY REQUIREMENTS. (1) Methods used for analysis of samples shall be those specified as approved in ch. NR 219. Where more than one approved method exists, the department may require the applicant to repeat testing using a more sensitive approved method if results are reported as not detected.

(2) The applicant shall submit, with all monitoring results, appropriate quality control information, as specified in the permit application or s. NR 200.22(1)(f).

(3) The applicant shall report numerical values for all monitoring results greater than the limit of detection, as determined by a method specified by the department, unless analyte-specific instructions in the current WPDES permit specify otherwise. The applicant shall appropriately identify all results greater than the limit of detection but less than the limit of quantitation.

(4) Except for those tests excluded in s. NR 219.06, laboratory testing shall be performed by a laboratory registered or certified under ch. NR 149.

SECTION 8. Subchapter II (title) of ch. NR 200 [precedes NR 200.03] is created to read:



**SUBCHAPTER II - APPLICATION FOR DISCHARGE PERMITS**

SECTION 9. NR 200.03(1)(a) and (3)(f) are amended to read:

NR 200.03(1)(a) ~~Direct discharge~~ Discharge of any pollutant to any surface water.

(3)(f) The disposal of solid wastes, including wet or semi-liquid wastes, at a site or operation licensed pursuant to chs. NR 500 to 536, except as required for municipal sludge in ch. NR 204 or where storm water permit coverage is required under ch. NR 216.

SECTION 10. NR 200.03(3)(i) is created to read:

NR 200.03(3)(i) Discharges of storm water permitted under ch. NR 216.

SECTION 11. NR 200.05 (intro.), (1)(b), and (4) (intro.) are amended to read:

NR 200.05 REPORTING OF NEW DISCHARGES. Pursuant to s. ~~147.14~~ 283.59, Stats.:

(1)(b) If the new or increased discharge will not result in exceeding or violating any effluent limitations of the permit, the permittee shall give notice in the form of a letter addressed to the ~~Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, Wisconsin 53707 and to the appropriate district office department.~~ The letter shall refer to the number and expiration date of the existing permit, describe the proposed expansion, production increase, or process modification, and include a statement that no effluent limitation of the permit will be exceeded or violated. The letter of notification shall be signed in accordance with s. NR 200.07(4).

Note: The letter required in par. (b) may be mailed to the appropriate regional office or to the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707.

(4)(intro.) Any person discharging, or intending to commence discharging, into a publicly or privately owned treatment works who is or will become subject to the discharge reporting requirements of s. ~~147.025(4)~~ 283.37(4), Stats., shall give notice of the following, to the department and owner or operator of the treatment works, using the form prescribed in ch. NR 202, at least 180 days prior to:

SECTION 12. NR 200.06(4) is created to read:

NR 200.06(4) The department may require an applicant to report on application forms any information the department needs to correspond with the applicant or assemble the permit components or conditions appropriate for the particular discharge including:

(a) General facts about the applicant or facility, including coverage under other environmental permits, sources of wastewater and information on the treatment system for which a permit is requested.

(b) Data available to the applicant through information searches or measurements taken by the applicant.

(c) Information obtained by the applicant as a result of requirements in previous permits.

(d) Information on results of testing, including quality control information, obtained by the applicant through investigations, such as pilot studies or effluent or ambient monitoring.

SECTION 13. NR 200.065 is created to read:

**NR 200.065 APPLICATION MONITORING REQUIREMENTS FOR DISCHARGES TO SURFACE WATERS.** (1) **EXISTING DISCHARGES.** An applicant for permit issuance or reissuance with an existing discharge to surface waters shall monitor as follows and report the monitoring results on application forms:

(a) Samples shall be as representative of normal effluent quality as possible.

(b) Minimum monitoring requirements for each type of point source that conveys a wastewater discharge are specified in Table 1.

Table 1 - Minimum monitoring requirements

Wastewater discharge type	Number of monitoring tests	Pollutants required to be monitored
Major municipal discharge	1	Pollutants listed in s. NR 215.03 excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
	4	Copper, ammonia, phosphorus and hardness
	1	Chloride and whole effluent toxicity
Minor municipal discharge	4	Copper, ammonia, phosphorus and hardness
	1	Chloride, arsenic, cadmium, chromium, lead, nickel and zinc
Primary industry process discharge	1	Pollutants listed in s. NR 215.03 <sup>1</sup> excluding asbestos, 2-chloroethyl vinyl ether and dioxin; pollutants listed in ch. NR 105 <sup>1</sup> , Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102 <sup>1</sup> , Table 1
	4	Copper, ammonia, phosphorus and hardness
	3	Mercury

	1	BOD <sub>5</sub> (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature (summer and winter) and total phenols
	1	Fecal coliform and pollutants listed in s. NR 215.06 excluding TOC (total organic carbon) when the applicant believes the pollutant is present in the discharge for reasons other than its presence in the intake water
Secondary industry process discharge or cooling water discharge, or both	4	Copper, ammonia, phosphorus and hardness
	1	BOD <sub>5</sub> (five-day biochemical oxygen demand), COD (chemical oxygen demand), chloride, total residual chlorine, oil and grease, pH, total suspended solids, temperature (summer and winter), arsenic, cadmium, chromium, lead, mercury, nickel, zinc
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1
Noncontact cooling water discharge	1	Ammonia, BOD <sub>5</sub> (five-day biochemical oxygen demand), chloride, oil and grease, pH, phosphorus, total suspended solids and temperature (summer and winter)
	1	Any of the following pollutants that the applicant believes is present in the discharge for reasons other than its presence in the intake water: Pollutants listed in ss. NR 215.03, 215.05 and 215.06 excluding 2-chloroethyl vinyl ether, dioxin, asbestos and TOC (total organic carbon); pollutants listed in ch. NR 105, Tables 1 through 9 excluding bis(chloromethyl) ether, dichlorodifluoromethane, dioxin and trichlorofluoromethane; and pollutants listed in ch. NR 102, Table 1

<sup>1</sup> Primary industries are required to test only those GC/MS fractions that are specified in 40 CFR 122, Appendix D, revised Table 1.

(c) Persons collecting multiple samples for a pollutant shall allow at least a 24 hour interval between consecutive samples.

(d) The department may require the applicant to monitor 11 times for chloride for major municipal discharges or minor municipal discharges when the source of wastewater is from hard water communities, or for industrial process wastewater discharges from dairies, canneries, meat processors, water utilities that utilize ion-exchange water softening and other industrial categories expected to have high chloride levels.

(e) The department may require the applicant to monitor 4 times for the metals arsenic, cadmium, lead, nickel and zinc for major municipal discharges or minor municipal discharges when levels of those metals measured in the wastewater treatment system sludge from a facility are abnormally high compared with other similar facilities in the state.

(f) The department may require the applicant to monitor for the dioxin and furan congeners listed in s. NR 106.16(2) for a major municipal discharge or minor municipal discharge when sources of wastewater include a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer or for a primary industrial discharge if the industry is a pulp or paper mill or both, a leather tannery, a petroleum refinery or an organic chemical manufacturer.

(g) The department may require monitoring for any other pollutant not specified in Table 1 if its presence could be reasonably expected based on wastewater sources.

(h) An applicant for permit reissuance may apply test data collected to fulfill current permit required monitoring or data collected for other reasons to fulfill these requirements if:

1. No more than 5 years have elapsed since the monitoring; and
2. No operational changes have occurred since the monitoring.

(i) Unless the monitoring is required by federal regulations, the department may exempt applicants from some or all of the monitoring requirements in this subsection for reasons including, but not limited to, any of the following:

1. Parameters such as flow, hardness or pH measured in the discharge or receiving water would result in proposed effluent limitations for a pollutant much greater than anticipated discharge levels for that pollutant, based upon measurements from similar discharges.

2. Proposed effluent limitations for a pollutant would be much greater than anticipated discharge levels for that pollutant, based on previous measurements made since significant facility changes have occurred.

3. Previous monitoring from similar facilities indicate the absence of significant quantities of a pollutant or class of pollutants.

(2) **NEW DISCHARGES.** The department may require a person applying for a new discharge permit to conduct pilot studies or other tests or provide effluent data from similar facilities to project pollutant levels in the proposed discharge.

SECTION 14. NR 200.07(2) to (4) are amended to read:

NR 200.07(2) Application forms may be obtained ~~from the district offices of~~ by contacting the department or the Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, Wisconsin 53707.

Note: Persons may obtain application forms by writing to the department regional office or the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, Wisconsin 53707 or by calling one of those offices. Persons requesting an application form should say they wish to apply for a WPDES permit and provide their name, address, telephone number and a brief description of the facility which will generate the wastewater discharge.

(3) Application forms shall be filed with the ~~Department of Natural Resources, WPDES Permit Section, Box 7921, Madison, Wisconsin 53707, or appropriate district office~~ department at the address provided on the application.

(4) ~~Application~~ Persons submitting application forms or electronic permit application agreements submitted to the department shall be signed as follows: sign the form or agreement and certify to the accuracy of the information pursuant to s. NR 205.07(1)(g).

~~(a) In the case of a corporation, by a principal executive officer of at least the vice president, or by his or her authorized representative responsible for the overall operation of the point source for which a permit is sought,~~

~~(b) In the case of a partnership, by a general partner,~~

~~(c) In the case of a sole proprietorship, by the proprietor, or~~

~~(d) In the case of a publicly owned treatment works, by a principal executive officer, ranking elected official, or other duly authorized employee.~~

SECTION 15. NR 200.08 is renumbered NR 200.024 and NR 200.024(1), as renumbered is, amended to read:

NR 200.024 USE OF INFORMATION. (1) Data submitted in the applications or as part of additional information submittals shall be used as a basis for issuing discharge permits or variances. The department may request additional information relating to the discharges from the applicant's facility. Such additional information shall be submitted in accordance with s. NR 200.09.

SECTION 16. NR 200.09 is amended to read:

NR 200.09 INCOMPLETE APPLICATION. The department may require an applicant to submit data necessary to complete any deficient application, may require any additional data other than that requested in the application or may require the applicant to submit a complete new application where the deficiencies are extensive or the appropriate form has not been used. Within 60 days of the date of receipt of a request from the department for additional data, the applicant shall submit the data. A permit may not be issued until a complete application is submitted to the department. A permit application will not be considered complete until the requirements of s. 23.11, Stats., and ~~s. NR 150.04~~ ch. NR 150 are met, and all required information is submitted.

SECTION 17. NR 200.10(5) is created to read:

NR 200.10(5) The time deadlines in sub. (2) are not applicable if the department determines, pursuant to s. 283.53, Stats., that the permittee is not in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expiring permit.

SECTION 18. NR 200, Subchapter III is created to read:

**SUBCHAPTER III - APPLICATION FOR WATER QUALITY STANDARDS VARIANCES**

**NR 200.20 GENERAL.** (1) When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13(5), Stats., the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

(2) In order to obtain a variance, a permittee shall demonstrate, by the greater weight of credible evidence, that attaining the water quality standard is not feasible because of one or more of the following:

(a) Naturally occurring pollutant concentrations prevent the attainment of the standard.

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements.

(c) Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(d) Dams, diversions or other types of hydrological modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the standard.

(e) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

(f) The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

**NR 200.21 TIME DEADLINE FOR FILING VARIANCE REQUESTS.** A permittee who wishes to apply for a variance shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit.

**NR 200.22 INFORMATION TO BE INCLUDED IN AN APPLICATION FOR A VARIANCE.** (1) A permittee applying for a variance shall supply the following information:

(a) Facility name, address and WPDES permit number.

(b) The name, address and telephone of a facility contact person.

(c) The date the permit was issued, reissued or modified which gives rise to the request for a variance.

(d) Each water quality standard, pollutant and corresponding effluent limitation for which a variance is being requested.

(e) Results of monitoring data for the pollutant for which the permittee is seeking a variance which represents the past and current levels of effluent quality. Monitoring shall conform with the following.

1. The submittal shall specify sample location, sample type, sampling dates, analysis dates and laboratory name and certification number.

2. Data quantity shall be sufficient to allow appropriate statistical treatment to characterize effluent quality over time.

3. Samples shall be collected on days when contributions from industrial, commercial or other processes or sources of wastewater are expected to be at normal levels.

4. Results of monitoring shall be summarized in tabular or graphical format or both.

5. Any changes, such as changes in contract lab or method of analysis or treatment or process changes that occurred which may have affected results or could explain data trends shall be noted and an explanation provided.

6. In addition, for this data to be considered to be representative, the permittee shall supply information to demonstrate that:

a. Sample results fall above the limit of quantitation for the analytical method used or that the most sensitive approved analytical method listed for the pollutant in ch. NR 219 was used with proper technique to produce the results.

b. Proper laboratory quality control procedures were used to generate the data. To make this demonstration, the permittee shall supply, for several representative analytical runs, the raw data for samples, calibrations, calibration verifications and quality control steps. The raw data for quality control steps shall include results of replicate samples, identity of samples used for replicate samples, matrix spikes, matrix spike concentrations used, reagent blanks, method blanks and quality control limits. Raw data, replicate sample, matrix spike and quality control limit have the meanings specified in s. NR 149.03.

c. Proper sampling quality control procedures designed to minimize sample contamination were used. This demonstration shall include a description of sampling procedures and submittal of results of field blanks. A field blank is a volume of reagent grade water which is handled in such a way so as to duplicate as closely as possible the exposure of a water sample to potential sources of contamination during sampling, preservation and transportation to the laboratory.

(f) Changes which could be made to enhance treatment or source reduction of flows coming to the treatment facility or which would reduce the level of toxicity or the discharge of the pollutant for which the permittee is seeking a variance. This information shall include the following:

1. An estimate of capital and operating costs for the changes and a reasonable schedule for planning and accomplishing the work.

2. If the source of the pollutant is believed to be from dissolution of metals from water supply distribution piping materials:

a. Information on past and current water supply treatment practices which may increase or decrease the corrosive nature of the water supply including what changes have been made and when.

b. Data on the water supply stability or corrosivity, using one of various methods of determination, for the raw and treated water supply.

c. Other potential water sources or methods of water supply treatment as an alternative.

(g) Information which establishes the significance of industrial and commercial wastewater sources versus domestic wastewater sources of the pollutant for which a variance is requested. This may include an approximate mass-balance calculation of treatment system loadings from all sources.

(h) For facilities which monitor the treatment system sludge pursuant to requirements in ch. NR 204 or 214 for the pollutant for which a variance is requested, results of the most recent 3 years of sludge testing, along with volumes disposed of so as to perform an approximate mass balance of the pollutant entering and leaving the plant.

(i) If a variance is being requested for whole effluent toxicity in conjunction with a specific chemical pollutant or if whole effluent toxicity failures have been experienced and they are believed to have resulted from the pollutant for which the variance is being requested, evidence which points to the pollutant as the cause of the whole effluent toxicity failures.

(j) Effluent limitations which the permittee believes it can currently achieve.

(k) Effluent limitations which the permittee believes it can achieve at some later date during the term of the variance and the corresponding schedule which would be followed to meet these limitations.

(l) Whether the permittee believes it can meet the effluent limitations that give rise to the variance request at any time during the term of the permit.

(m) A detailed discussion of evidence and reasons why the permittee believes a variance is warranted based on one or more of the grounds listed in s. NR 200.20(2).

(n) Demonstration that the variance requested conforms with antidegradation requirements specified in ch. NR 207.



(o) Characterization of the extent of any increased risk to human health and the environment associated with granting the variance so as to allow the department to decide if such increased risk is consistent with protection of the public health, safety and welfare.

(p) For variance requests based on s. NR 200.20(2)(f), the permittee shall conduct a financial impact analysis which shall include an estimate of the capital, operation and maintenance and financing costs, translated into an annualized cost, of potential changes identified in par. (g) compared with an analysis of financial affordability. The analysis of financial affordability shall include:

1. For publicly owned systems, an estimate of how much annual municipal revenue would need to increase, taking into account any offsetting state shared revenues if the most cost-effective pollutant control option was implemented and how this would affect user fees if user fees were used to finance the costs. This analysis shall also compare projected user fees with user fees in similar communities. If industrial or commercial contributions comprise a significant source of the pollutant, information requested in subd. 2 shall also be provided.

2. For privately owned systems or if the most cost-effective pollutant control option for a publicly owned system involves additional regulation of privately owned contributors as the impacted parties, an estimate of how implementing the most cost-effective pollutant control option would affect profitability and other financial health indicators of the private entity.

3. An analysis of the socioeconomic impacts to the community where the entity is located.

Note: Permittees may find helpful a United States Environmental Protection Agency publication titled *Interim Economic Guidance for Water Quality Standards - Workbook*, EPA-823-B-95-002, March 1995. Information on ordering EPA publications can be found on the World Wide Web at <http://www.epa.gov/>.

(2) In addition to the information required in sub. (1), the permittee may, within the 60-day time limits specified in s. NR 200.21, submit to the department any other information to support the request for a variance.

**NR 200.23 SIGNATURE OF AUTHORIZED REPRESENTATIVE.** Pursuant to s. NR 205.07(1)(g), a person submitting an application for a variance shall include a signed statement by an authorized representative that certifies to the accuracy of the information.

**NR 200.24 APPLICATION COMPLETENESS.** When the department receives an application for a variance:

(1) The department may request additional information from the permittee within 30 days after receiving the application. The permittee shall provide the additional information within 30 days of receipt of the department's request. An application is not complete until the additional information is provided to the department.

(2) If the permittee does not provide information as required under s. NR 200.22 or sub. (1), the department shall deny the application.

NR 200.25 TIME PERIODS FOR DEPARTMENT ACTION ON APPLICATIONS. The department shall adhere to the time deadlines specified in s. 283.15, Stats., in making determinations of application completeness and tentative and final decisions on variance requests.

Note: These time deadlines are as follows: (1) Public notice of receipt of an application for a variance within 30 days after receipt of the information specified in s. NR 200.22 or 200.24(1), if applicable. (2) Public notice of a tentative decision within 120 days after receipt of the information specified in s. NR 200.22 or 200.24(1), if applicable. (3) Final decision within 90 days after expiration of the 30-day public notice comment period under sub. (2).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 30, 1999.

The rule 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

September 3, 1999

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

George E. Meyer  
George E. Meyer, Secretary

(SEAL)

25.8

SEP 08 RECD

SEP 08 1999

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 485.04 Table 1 (5); to **amend** NR 485.04 Table 1 (4) (intro.); and to **repeal and recreate** NR 485.04 Table 3 (1) (a), (2) (a) and (3) (a) relating to emission limitations for motor vehicles.

AM-16-99

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2) (a) and 285.11(1) and 285.30(2), Stats.

Statutes interpreted: s. 285.11(6) and 285.30(2), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

The proposed rule will revise the motor vehicle emission limitations for hydrocarbons, carbon monoxide and oxides of nitrogen in Table 1 of s. NR 485.04, Wis. Adm. Code. These emission limitations are used in the state's motor vehicle emission inspection and maintenance (I/M) program which is operating in seven southeastern Wisconsin counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha).

Under the current rule, the final phase of emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, is scheduled to take effect on December 1, 1999. This final phase implements more restrictive emission limitations for model year 1980 to 1986 light-duty vehicles (passenger cars), 1984 to 1986 light-duty trucks, and 1979 to 1986 heavy-duty trucks. For the other vehicles, the emission limitations in the final phase are identical to the emission limitations in the next-to-final phase (the "current" phase for inspections conducted between December 1, 1998 and November 30, 1999).

The proposed rule will repeal the final phase of emission limitations in the current rule and indefinitely extend the time period covered by the next-to-final phase in the current rule. (That is, the next-to-final phase of emission limitations in the current rule will, in this revised rule, apply to inspections conducted on and after December 1, 1998).

The proposed rule will also revise some of the fast-pass emission limitations in Table 3 of s. NR 485.04, Wis. Adm. Code, to reflect the most recent U.S. Environmental Protection Agency technical guidance.

SECTION 1. NR 485.04 Table 1 (4) (intro.) is amended to read:

NR 485.04 Table 1 (4) (intro.) MOTOR VEHICLES INSPECTED ~~BETWEEN~~ ON AND AFTER DECEMBER 1, 1998 ~~AND NOVEMBER 30, 1999.~~

SECTION 2. NR 485.04 Table 1 (5) is repealed.

SECTION 3. NR 485.04 Table 3 (1)(a), (2)(a) and (3)(a) are repealed and recreated to read:

NR 485.04 Table 3 (1)(a) *Motor vehicles having composite hydrocarbon emission limitations in Table 1 of at least 0.60 grams/mile but less than 0.80 grams/mile.*

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.093	N/A	83	0.247	N/A
31	0.095	N/A	84	0.250	N/A
32	0.097	N/A	85	0.252	N/A
33	0.101	N/A	86	0.254	N/A
34	0.105	N/A	87	0.257	N/A
35	0.110	N/A	88	0.260	N/A
36	0.113	N/A	89	0.263	N/A
37	0.115	N/A	90	0.267	N/A
38	0.117	N/A	91	0.269	N/A
39	0.120	N/A	92	0.270	N/A
40	0.124	N/A	93	0.272	N/A
41	0.127	N/A	94	0.275	N/A
42	0.129	N/A	95	0.278	N/A
43	0.130	N/A	96	0.279	N/A
44	0.133	N/A	97	0.282	N/A
45	0.148	N/A	98	0.291	N/A
46	0.150	N/A	99	0.297	N/A
47	0.156	N/A	100	0.304	N/A
48	0.166	N/A	101	0.308	N/A
49	0.174	N/A	102	0.308	N/A
50	0.176	N/A	103	0.309	N/A
51	0.179	N/A	104	0.310	N/A
52	0.180	N/A	105	0.316	N/A
53	0.182	N/A	106	0.321	N/A
54	0.185	N/A	107	0.323	N/A
55	0.187	N/A	108	0.341	N/A
56	0.189	N/A	109	0.344	0.012
57	0.196	N/A	110	0.347	0.014
58	0.203	N/A	111	0.348	0.017
59	0.207	N/A	112	0.350	0.019
60	0.209	N/A	113	0.351	0.019
61	0.210	N/A	114	0.353	0.020
62	0.212	N/A	115	0.366	0.021
63	0.212	N/A	116	0.385	0.023
64	0.213	N/A	117	0.404	0.026
65	0.214	N/A	118	0.421	0.028
66	0.215	N/A	119	0.433	0.028
67	0.216	N/A	120	0.435	0.029
68	0.218	N/A	121	0.440	0.031
69	0.221	N/A	122	0.446	0.032
70	0.222	N/A	123	0.452	0.033
71	0.224	N/A	124	0.458	0.034
72	0.225	N/A	125	0.461	0.034
73	0.227	N/A	126	0.468	0.034
74	0.228	N/A	127	0.471	0.036
75	0.230	N/A	128	0.474	0.037
76	0.231	N/A	129	0.478	0.037
77	0.231	N/A	130	0.481	0.040
78	0.231	N/A	131	0.482	0.041
79	0.236	N/A	132	0.483	0.042
80	0.240	N/A	133	0.484	0.044
81	0.243	N/A	134	0.485	0.044
82	0.245	N/A	135	0.488	0.044

Second	Composite (grams)	Phase 2 (grams)
136	0.494	0.045
137	0.497	0.045
138	0.500	0.045
139	0.501	0.048
140	0.503	0.049
141	0.504	0.049
142	0.506	0.049
143	0.509	0.051
144	0.511	0.052
145	0.513	0.053
146	0.515	0.053
147	0.516	0.054
148	0.518	0.055
149	0.519	0.056
150	0.521	0.057
151	0.522	0.058
152	0.524	0.058
153	0.525	0.059
154	0.527	0.059
155	0.528	0.060
156	0.530	0.062
157	0.531	0.064
158	0.533	0.066
159	0.534	0.066
160	0.537	0.070
161	0.563	0.077
162	0.588	0.087
163	0.604	0.093
164	0.630	0.099
165	0.640	0.103
166	0.656	0.129
167	0.677	0.151
168	0.683	0.153
169	0.686	0.162
170	0.687	0.178
171	0.689	0.191
172	0.698	0.200
173	0.711	0.208
174	0.737	0.216
175	0.764	0.229
176	0.770	0.239
177	0.776	0.253
178	0.788	0.258
179	0.806	0.262
180	0.813	0.273
181	0.824	0.280
182	0.841	0.284
183	0.849	0.291
184	0.864	0.314
185	0.871	0.322
186	0.876	0.324
187	0.881	0.326
188	0.886	0.328

Second	Composite (grams)	Phase 2 (grams)
189	0.891	0.339
190	0.902	0.348
191	0.914	0.358
192	0.925	0.370
193	0.938	0.383
194	0.941	0.395
195	0.944	0.406
196	0.949	0.413
197	0.960	0.415
198	0.970	0.416
199	0.976	0.418
200	0.985	0.420
201	0.993	0.427
202	0.999	0.438
203	1.006	0.443
204	1.018	0.448
205	1.031	0.453
206	1.044	0.456
207	1.056	0.459
208	1.067	0.463
209	1.075	0.466
210	1.082	0.469
211	1.090	0.482
212	1.097	0.490
213	1.101	0.497
214	1.103	0.504
215	1.106	0.508
216	1.109	0.517
217	1.111	0.521
218	1.113	0.521
219	1.115	0.523
220	1.118	0.527
221	1.120	0.531
222	1.128	0.537
223	1.142	0.544
224	1.160	0.547
225	1.162	0.554
226	1.172	0.562
227	1.181	0.568
228	1.184	0.569
229	1.188	0.574
230	1.192	0.574
231	1.193	0.574
232	1.197	0.575
233	1.199	0.575
234	1.203	0.576
235	1.208	0.577
236	1.209	0.577
237	1.210	0.577
238	1.211	0.578
239	1.211	0.580

(2)(a) Motor vehicles having composite carbon monoxide emission limitations in Table 1 of at least 10.0 grams/mile but less than 15.0 grams/mile.

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.462	N/A	83	1.485	N/A
31	0.515	N/A	84	1.491	N/A
32	0.558	N/A	85	1.495	N/A
33	0.567	N/A	86	1.508	N/A
34	0.569	N/A	87	1.514	N/A
35	0.571	N/A	88	1.523	N/A
36	0.600	N/A	89	1.533	N/A
37	0.640	N/A	90	1.539	N/A
38	0.689	N/A	91	1.551	N/A
39	0.713	N/A	92	1.553	N/A
40	0.717	N/A	93	1.554	N/A
41	0.722	N/A	94	1.563	N/A
42	0.735	N/A	95	1.565	N/A
43	0.741	N/A	96	1.570	N/A
44	0.743	N/A	97	1.597	N/A
45	0.771	N/A	98	1.634	N/A
46	0.896	N/A	99	1.672	N/A
47	0.988	N/A	100	1.727	N/A
48	1.020	N/A	101	1.773	N/A
49	1.028	N/A	102	1.833	N/A
50	1.035	N/A	103	1.942	N/A
51	1.047	N/A	104	2.108	N/A
52	1.063	N/A	105	2.113	N/A
53	1.089	N/A	106	2.131	N/A
54	1.123	N/A	107	2.192	N/A
55	1.126	N/A	108	2.279	N/A
56	1.129	N/A	109	2.391	0.115
57	1.133	N/A	110	2.397	0.119
58	1.149	N/A	111	2.427	0.163
59	1.235	N/A	112	2.493	0.183
60	1.248	N/A	113	2.579	0.192
61	1.248	N/A	114	2.585	0.200
62	1.248	N/A	115	2.623	0.216
63	1.267	N/A	116	2.677	0.227
64	1.278	N/A	117	2.707	0.237
65	1.296	N/A	118	2.709	0.240
66	1.333	N/A	119	2.719	0.245
67	1.373	N/A	120	2.760	0.252
68	1.376	N/A	121	2.790	0.267
69	1.384	N/A	122	2.799	0.280
70	1.403	N/A	123	2.803	0.318
71	1.411	N/A	124	2.808	0.330
72	1.417	N/A	125	2.821	0.348
73	1.420	N/A	126	2.865	0.356
74	1.425	N/A	127	2.896	0.359
75	1.435	N/A	128	2.907	0.361
76	1.447	N/A	129	2.911	0.363
77	1.459	N/A	130	2.913	0.364
78	1.467	N/A	131	2.915	0.364
79	1.475	N/A	132	2.957	0.367
80	1.475	N/A	133	3.015	0.378
81	1.481	N/A	134	3.016	0.381
82	1.481	N/A	135	3.017	0.405

Phase 2			Phase 2		
Second	Composite (grams)	(grams)	Second	Composite (grams)	(grams)
136	3.021	0.423	189	15.917	8.258
137	3.023	0.439	190	16.012	8.361
138	3.028	0.449	191	16.309	8.600
139	3.035	0.455	192	16.457	8.655
140	3.036	0.469	193	16.621	8.674
141	3.036	0.478	194	16.792	8.693
142	3.036	0.486	195	16.979	8.778
143	3.036	0.495	196	17.085	8.867
144	3.036	0.508	197	17.164	8.924
145	3.036	0.510	198	17.233	8.973
146	3.036	0.510	199	17.316	9.045
147	3.036	0.512	200	17.427	9.098
148	3.036	0.514	201	17.483	9.215
149	3.036	0.516	202	17.559	9.386
150	3.036	0.524	203	17.698	9.463
151	3.037	0.542	204	17.879	9.579
152	3.037	0.543	205	18.035	9.680
153	3.043	0.546	206	18.262	9.773
154	3.075	0.549	207	18.334	9.911
155	3.223	0.553	208	18.421	9.961
156	3.801	0.578	209	18.535	10.152
157	3.894	0.680	210	18.635	10.242
158	4.113	0.713	211	18.803	10.248
159	4.447	0.932	212	19.029	10.315
160	4.950	1.000	213	19.331	10.458
161	5.586	1.062	214	19.333	10.630
162	6.432	1.253	215	19.337	10.687
163	7.279	1.887	216	19.387	10.754
164	8.105	2.111	217	19.521	10.971
165	8.487	2.496	218	19.655	11.012
166	8.554	3.095	219	19.823	11.250
167	8.595	3.402	220	19.869	11.327
168	8.621	3.610	221	19.881	11.353
169	9.135	3.937	222	19.898	11.390
170	9.426	4.157	223	19.908	11.463
171	9.976	4.351	224	19.915	11.511
172	10.469	4.459	225	20.005	11.522
173	10.835	4.669	226	20.084	11.546
174	11.271	4.950	227	20.085	11.587
175	11.770	5.600	228	20.085	11.652
176	12.013	5.654	229	20.139	11.652
177	12.233	5.898	230	20.209	11.654
178	12.447	6.046	231	20.215	11.672
179	12.648	6.078	232	20.217	11.729
180	12.819	6.124	233	20.245	11.744
181	13.415	6.267	234	20.274	11.806
182	13.603	6.549	235	20.277	11.808
183	13.836	7.046	236	20.285	11.809
184	14.456	7.463	237	20.287	11.810
185	14.637	7.555	238	20.301	11.845
186	15.100	7.699	239	20.325	11.934
187	15.326	7.911			
188	15.690	8.172			

(3)(a) Motor vehicles having composite oxides of nitrogen emission limitations in Table 1 of at least 1.5 grams/mile but less than 2.0 grams/mile.

Second	Composite (grams)	Second	Composite (grams)
30	0.125	83	0.536
31	0.133	84	0.543
32	0.141	85	0.553
33	0.161	86	0.560
34	0.174	87	0.561
35	0.180	88	0.561
36	0.182	89	0.561
37	0.184	90	0.561
38	0.185	91	0.561
39	0.185	92	0.561
40	0.188	93	0.561
41	0.195	94	0.561
42	0.208	95	0.561
43	0.233	96	0.561
44	0.246	97	0.561
45	0.257	98	0.561
46	0.269	99	0.563
47	0.280	100	0.573
48	0.287	101	0.592
49	0.289	102	0.617
50	0.300	103	0.650
51	0.308	104	0.679
52	0.326	105	0.694
53	0.348	106	0.716
54	0.354	107	0.739
55	0.360	108	0.745
56	0.368	109	0.746
57	0.375	110	0.747
58	0.380	111	0.758
59	0.382	112	0.771
60	0.384	113	0.776
61	0.387	114	0.783
62	0.389	115	0.794
63	0.392	116	0.806
64	0.397	117	0.810
65	0.400	118	0.810
66	0.401	119	0.811
67	0.405	120	0.818
68	0.413	121	0.822
69	0.422	122	0.833
70	0.431	123	0.842
71	0.441	124	0.851
72	0.450	125	0.854
73	0.452	126	0.854
74	0.453	127	0.854
75	0.460	128	0.854
76	0.468	129	0.854
77	0.485	130	0.854
78	0.488	131	0.854
79	0.494	132	0.854
80	0.505	133	0.854
81	0.522	134	0.854
82	0.530	135	0.854



Second	Composite (grams)	Second	Composite (grams)
136	0.870	189	2.171
137	0.881	190	2.198
138	0.887	191	2.228
139	0.898	192	2.265
140	0.917	193	2.308
141	0.941	194	2.349
142	0.954	195	2.389
143	0.965	196	2.414
144	0.978	197	2.451
145	0.980	198	2.474
146	0.984	199	2.513
147	0.988	200	2.555
148	0.991	201	2.600
149	0.994	202	2.623
150	0.996	203	2.636
151	0.999	204	2.638
152	1.004	205	2.639
153	1.008	206	2.642
154	1.013	207	2.659
155	1.018	208	2.678
156	1.024	209	2.700
157	1.034	210	2.714
158	1.061	211	2.729
159	1.100	212	2.765
160	1.136	213	2.799
161	1.169	214	2.843
162	1.193	215	2.875
163	1.231	216	2.918
164	1.289	217	2.949
165	1.333	218	2.970
166	1.374	219	2.998
167	1.439	220	3.010
168	1.479	221	3.026
169	1.510	222	3.029
170	1.575	223	3.038
171	1.650	224	3.050
172	1.688	225	3.053
173	1.703	226	3.054
174	1.726	227	3.054
175	1.739	228	3.055
176	1.751	229	3.055
177	1.762	230	3.055
178	1.790	231	3.055
179	1.817	232	3.056
180	1.847	233	3.056
181	1.877	234	3.056
182	1.909	235	3.056
183	1.940	236	3.057
184	1.970	237	3.057
185	2.005	238	3.057
186	2.062	239	3.057
187	2.103		
188	2.138		

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 30, 1999.

The 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.

Dated at Madison, Wisconsin September 3, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

2 S. 13 d. 1

SENATOR JUDITH B. ROBSON  
Co-CHAIR  
PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
Co-CHAIR  
PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

### JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

## *Emergency Rule Extension Motion Form*

*Last Modified May 2000*

Date 11/15/00 Location 201 SE  
Moved by Robson, Seconded by Seratti

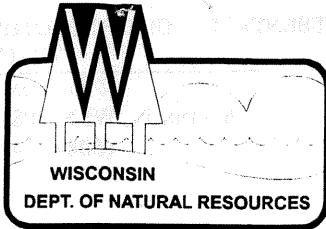
**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule NR 168 by 60 days, at the request of the Department of Natural Resources.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
* 3. Senator SHIBLISKI	✓		✓
* 4. Senator WELCH	✓		✓
* 5. Senator SCHULTZ	✓		✓
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER			✓
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

\* by polling



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY 608-267-6897

October 11, 2000

Honorable Judy Robson, Co-Chair  
Joint Committee for Review of Administrative Rules  
15 South  
State Capitol

Honorable Glenn Grothman, Co-Chair  
Joint Committee for Review of Administrative Rules  
15 North  
State Capitol

Re: Emergency Rule Extension for CF-29-00(E)

Dear Co-Chairs:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. CF-29-00(E) for 60 days. This emergency order pertaining to the brownfield site assessment grant program took effect on July 10, 2000 and is to expire on December 8, 2000.

The extension of the emergency rule is needed so that the grants which may be provided to eligible local governments to cover the costs of brownfield site assessment activities can continue to be provided until the permanent rule takes effect. The Department was directed by legislature to promulgate these rules as emergency rules. The permanent rule is scheduled to be adopted by the Natural Resources Board at its October 27, 2000 meeting and will be submitted to the legislature for review immediately after that date. A February 1, 2001 effective date is anticipated.

A copy of the emergency order is attached. If you have any questions, please contact Percy Mather, Bureau of Remediation and Redevelopment at 266-9263.

Sincerely,

George E. Meyer  
Secretary

cc: Presiding Officers of the Legislature  
Percy Mather - RR/3  
Pat Sullivan - CF-8  
Joe Renville - LS/5  
Carol Turner - LS/5

Attach.

SENATOR JUDITH B. ROBSON  
CO-CHAIR

P.O. BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

P.O. BOX 8952  
MADISON, WI 53708-8952  
(608) 264-6486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

November 16, 2000

BY INTER-D

Secretary George Meyer  
Department of Natural Resources  
101 South Webster Street  
Madison, Wisconsin

Re: Emergency Rule NR 168

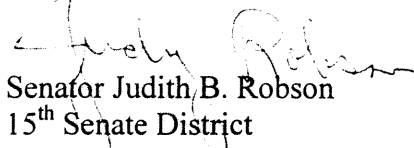
Dear Secretary Meyer:


We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on November 15, 2000. At that meeting, the JCRAR received public testimony regarding Emergency Rule NR 168, relating to the brownfield site assessment grant program administration.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule NR 168 for 60 days. The committee approved the motion on a 9 to 0 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

  
Senator Judith B. Robson  
15<sup>th</sup> Senate District

  
Representative Glenn Grothman  
59<sup>th</sup> Assembly District

JBR:GG:da

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

The Natural Resources Board proposes an order to create ch. NR 168 relating to the brownfield site assessment grant program administration.

CF-29-00(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 227.24 and 292.75, Stats., and Section 913(2) of 1999 Wis. Act 9

Statute interpreted: s. 292.75, Stats.

This rule implements the brownfield site assessment grant program. Created in the 1999-2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The legislature appropriated \$1.45 million for the 99-01 biennium for these grants. Local governments are required to contribute matching funds as cash or in-kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated to "small" grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). Act 9 required that the department promulgate these rules as necessary to administer the program, and directed the department to promulgate them as emergency rules.

Section 1. Chapter NR 168 is created to read:

**Chapter NR 168**  
**Brownfield Site Assessment Grant Program**

- NR 168.01 Purpose and applicability
- NR 168.03 Definitions
- NR 168.05 Eligibility
- NR 168.07 Allocation of funds
- NR 168.09 Eligible activities
- NR 168.11 Grant application
- NR 168.13 Application scoring
- NR 168.15 Eligible costs
- NR 168.17 Matching funds
- NR 168.19 Ineligible costs
- NR 168.21 Grant conditions
- NR 168.23 Grant termination and enforcement
- NR 168.25 Grant variances

**NR 168.01 Purpose and applicability.** (1) The purpose of this chapter is to establish procedures for implementing a brownfield site assessment grant program as provided for in s. 292.75, Stats. Grants made under this program will assist local governmental units in assessing environmental contamination and conducting eligible activities on eligible brownfield sites or facilities.

(2) This chapter applies to all cities, villages, towns, counties, tribes, redevelopment authorities created under s. 66.431, Stats., community development authorities created under s. 66.4325, Stats., or housing authorities applying for financial assistance under s. 292.75, Stats., for a brownfield site assessment grant. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

**NR 168.03 Definitions.** The following definitions are applicable to terms used in this chapter:

(1) "Applicant" means a local governmental unit seeking funds for eligible activities under this chapter.

(2) "Department" means the department of natural resources.

(3) "Eligible site or facility" has the meaning specified in s. 292.75 (1)(a), Stats.

**Note:** Section 292.75(1)(a), Stats., defines "eligible site or facility" to mean an abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(4) "Grantee or grant recipient" means an applicant that has been awarded a grant under this chapter, which has been signed by the department.

(5) "Investigation of environmental contamination" means activities associated with conducting, documenting or completing a phase I environmental assessment, a phase II environmental assessment or a site investigation.

(6) "Large grant" means a grant award to a local governmental unit, for an amount greater than \$30,000 but not more than \$100,000 of state funds under this chapter.

(7) "Local governmental unit" has the meaning specified in s. 292.75 (1)(b), Stats.

**Note:** Section 292.75(1)(b), Stats., defines "local governmental unit" to mean a city, village, town, county, redevelopment authority created under s. 66.431, Stats., community development authority created under s. 66.4325, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site

assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(8) "Matching funds" means the cash or in-kind contribution, or both, required under s. 292.75 (7), Stats., which shall be incurred during the grant period by a local governmental unit and for which it has not and may not receive any other state or federal grant funds.

(a) "In-kind contributions" are services performed by employees of the grantee.

(b) "Cash contributions" are costs and services incurred by but not performed by the grantee.

(9) "Petroleum product" has the meaning given in s. 101.143 (1) (f), Stats.

**Note:** Section 101.143 (1) (f), Stats., defines "petroleum product" to mean "gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil."

(10) "Phase I environmental assessment" has the meaning given in s. NR 750.03 (5).

**Note:** Section NR 750.03 (5) defines "phase I environmental assessment" to mean "an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site."

(11) "Phase II environmental assessment" has the meaning given in s. NR 750.03 (6).

**Note:** Section NR 750.03 (6) defines "phase II environmental assessment" to mean "an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site."

(12) "Removal of abandoned containers" means the removal of abandoned containers and the proper disposal or treatment of abandoned containers.

(13) "Removal of an underground hazardous substance tank system or an underground petroleum product storage tank system" means the removal of the system and the proper disposal or treatment of the system.

(14) "Site investigation" means an investigation undertaken in accordance with ch. NR 716.

(15) "Small grant" means a grant award to a local governmental unit, for an amount of at least \$2,000 but no more than \$30,000, under this chapter.

(16) "Submittal date" includes postmark date, fax date or electronic transmittal date.

(17) "Underground hazardous substance storage tank system" has the meaning given in s. 292.75 (1) (d), Stats.

**Note:** Section 292.75 (1) (d), Stats., defines "underground hazardous substance storage tank system" as "an underground storage tank used for storing a hazardous substance other than a



petroleum product together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground."

(18) "Underground petroleum product storage tank" has the meaning given in s. 101.143 (1) (i), Stats.

**Note:** Section 101.143 (1) (i), Stats., defines "underground petroleum product storage tank" to mean "an underground storage tank used for storing petroleum products together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground."

**NR 168.05 Eligibility.** (1) Only local governmental units that have not caused the environmental contamination that is the basis for the grant request are eligible for this grant program.

(2) Grants may be awarded to a local governmental unit only if the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located or is financially unable to pay the cost of the eligible activities.

**NR 168.07 Allocation of funds.** (1) Fifty percent of the funds appropriated to the grant program under s. 20.370(6)(et), Stats., shall be allocated through the application process to qualified applicants during the first fiscal year of the biennium.

(2) Of the funds appropriated for this grant program, categories shall be established as follows: 70% shall be designated to fund small grants, and 30% shall be designated to fund large grants.

(3) In any given fiscal year, if there are remaining funds after regular application cycles, the department may accept and fund applications and grant amendment requests as they are submitted, for either grant category. In the event that multiple applications or requests have the same submittal date, the department shall give preference to applications or requests in the same category as the category of available funds.

(4) The total amount of all grants awarded to an applicant in a fiscal year under this chapter shall be limited to an amount equal to 15% of the available funds appropriated under s. 20.370 (6) (et), Stats., for the fiscal year.

(5) If sufficient funds are available in a grant category, the department shall fund all eligible, complete applications without ranking them. If sufficient funds are not available in a grant category, the department shall score and rank all eligible, complete applications and award grants in descending order.

(6) If sufficient funds are not available to fully fund a grant, the department shall offer the applicant the choice of receiving partial funding or withdrawing the application.

(7) The department may not award more than one grant to an eligible site or facility in any application cycle.

(8) The department may not award funds for asbestos abatement unless it is a necessary part of demolition activities.

**NR 168.09 Eligible activities.** Activities eligible for funding under this chapter include the following activities at an eligible site or facility:

(1) The investigation of environmental contamination on an eligible site or facility for the purposes of reducing or eliminating environmental contamination.

(2) The demolition of any structures, buildings or other existing improvements.

(3) The removal of abandoned containers, as defined in §. 292.41 (1), Stats.

(4) Asbestos abatement activities, as defined in s. 254.11 (2), Stats.

(5) The removal of underground hazardous substance storage tank systems.

(6) The removal of underground petroleum product storage tank systems.

**NR 168.11 Grant application.** (1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the following address: BF SAG Manager – CF/8, Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707-7921.

(2) CONTENTS. A grant application shall include, but is not limited to, the following information:

(a) The name, address and designated contact person for the applicant.

(b) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.

(c) A resolution that designates an authorized representative, commits the applicant to completing the activities listed in the grant application if awarded funds, and grants the department access to the site or facility and grant records.

(d) A description of the proposed grant activities, including:

1. The street address of the eligible site or facility.

2. The eligible activities for which the applicant is seeking funds.

3. An itemized estimate of the proposed cost of each eligible activity.

4. An itemized description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.

5. A map showing the location of the eligible site or facility.

6. Current ownership of the eligible site or facility, including information on how the local governmental unit acquired the property, if applicable.

7. Evidence that the local governmental unit has legal access to the eligible site or facility so that it can conduct the activities stated in the grant application. The applicant shall provide this documentation to the department with the grant application or no later than 90 calendar days after the department notifies the local governmental unit that funds have been reserved pending submittal of the legal access documentation.

8. Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications.

9. Information showing that the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located, or is financially unable to pay the cost of the eligible activities.

(3) **APPLICATION CYCLE.** The department shall establish application submittal dates. The department shall have at least one application funding cycle each state fiscal year. If funds are available, there may be additional application cycles.

(4) **APPLICATION REVIEW.** The department shall review the application for completeness and may request additional information. Applications that are determined to contain incorrect or inaccurate information shall be considered incomplete. The application is considered complete the additional or correct information requested by the department is received.

**NR 168.13 Application scoring.** (1) **GENERAL.** When the department scores complete applications, as stated in s. NR 168.07 (5), it shall use the following criteria to score applications. The criteria are applied on a statewide basis.

(2) **POINT AWARDS.** The department shall award points to the applications for grants according to the following scoring criteria, listed without order of preference:

(a) Fifteen points shall be awarded to an application for an eligible site or facility that is located within 1200 feet of a school, park, residence, or public or private drinking water supply well.

(b) Fifteen points shall be awarded to an application for an eligible site or facility that has contamination or hazards either of which is readily accessible to the public.

(c) Five points shall be awarded to an application for an eligible site or facility that will be used by the general public and remain under the ownership of a local governmental unit or a non-profit organization.

(d) Ten points shall be awarded to an application for an eligible site or facility for which the local governmental unit has initiated the formal acquisition process, or 20 points shall be awarded to

an application if the applicant or another local governmental unit has title to the eligible site or facility.

(e) Up to a maximum of 40 points, one point shall be awarded for every \$2,500 in costs and services outlined in s. NR 168.03 (8), which occurred within the 5 years prior to the application due date. The applicant will only be awarded points for costs and services that have supporting documentation included with the application, and have not been reimbursed by any other grant programs.

(f) Up to a maximum of 40 points, one point shall be awarded for each additional 2% of match that is above the required 20%, as stated in s. 292.75 (7), Stats. An applicant that pledges more than the required 20% shall be responsible for providing that same percentage of the total final cost.

**(3) BONUS POINTS.** The applicant may assign 29 bonus points to an application that it considers to be a priority. This may be applied to one small application and one large application over the life of the program, for each applicant.

**(4) EQUAL SCORES.** If 2 or more applications receive the same score, applications requesting the smallest dollar amounts will be funded first.

**NR 168.15 Eligible costs.** Eligible costs include the reasonable and necessary costs incurred during the grant period associated with conducting eligible activities under this chapter as approved by the department. Eligible costs under this chapter may include, but are not limited to:

(1) Actual costs of services and equipment provided by employees of the grant recipient to carry out activities necessary for the grant. Equipment rental rates may not exceed the county machinery rates established annually by the department of transportation.

(2) Labor costs required for carrying out the eligible activities identified in the grant agreement. These costs may include salary, fringe benefits and other items determined to be appropriate by the department.

(3) Costs for laboratory analysis and professional service contracts.

(4) The costs of necessary equipment and facilities used to carry out activities stated in the grant application for the length of the grant awarded under this chapter.

(5) Costs of treatment, storage or disposal of materials that are generated as a result of conducting the eligible activities.

(6) Other costs determined by the department to be necessary to carry out the eligible activities, as approved in advance by the department.

**NR 168.17 Matching funds.** Costs and services eligible as matching funds include eligible activities listed under s. NR 168.09; costs of acquiring the eligible site or facility, specifically payment of delinquent taxes; maintenance and security of the eligible site or facility; and remediation activities on the eligible site or facility that are not listed under s. NR 168.09, if approved in advance by the department.

**NR 168.19 Ineligible costs.** Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities established in s. NR 168.09, as determined by the department. Ineligible costs for reimbursement or as matching funds include, but are not limited to:

- (1) Costs incurred outside the grant period stated in the grant contract.
- (2) Costs reimbursed by any other local, state or federal grant programs.
- (3) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.
- (4) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.
- (5) Costs of capital equipment.
- (6) Costs of license application or permit fees.
- (7) Legal fees.

**NR 168.21 Grant conditions.** (1) A grantee shall contribute matching funds of at least 20% of the grant, as stated in s. 292.75 (7), Stats. An applicant that pledges more than the required 20% shall be responsible for providing that same pledged percentage of the total final cost.

(2) An applicant shall provide the department with written proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application within 90 calendar days of notification from the department that funds have been reserved, pending submittal of the legal access documentation. If the applicant is unable to meet this condition, the department shall consider the application to be incomplete, and shall make the funds available to the next applicant established in accordance with the criteria in s. NR 168.13.

(3) The initial grant period shall be 12 months from the date of the department's signature on the grant contract.

(4) The grantee may request a maximum of 2 partial payments during the grant period on forms provided by the department and shall include documentation of work completed and eligible costs and match incurred by the grantee. The department may withhold 10% of the total grant amount stated in the grant agreement for final payment. The final payment request shall be made

on forms provided by the department no later than 6 months after the expiration date of the grant period stated in the grant agreement.

(5) Accounting for all grant funds shall be in accordance with generally accepted principles and practices, and shall be recorded by the grantee in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was awarded. All financial records, including invoices and canceled checks or bank statements that support all grant costs claimed by the grant recipient shall be kept and made available for inspection for 3 years after final payment.

(6) The grantee shall comply with applicable local, state and federal regulations concerning bidding and awarding contracts, wage and labor rates, access for the disabled, flood disaster protection, environmental quality and historical preservation.

(7) All of the grant recipient's records pertaining to the grant are subject to department review. Payments are contingent upon review by the department and may be adjusted if costs are determined to be ineligible.

(8) The department may conduct compliance inspections on properties for which assistance has been provided under this chapter. The department may require grantees to conduct self-inspections on these sites or properties.

(9) Grantees shall provide the department with a progress report, if requested.

(10) The grant recipient may request, for good cause and prior to the end of the grant period, an amendment for changes to the grant award up to 10% of the original grant amount unless the amendment would increase the award to an amount that exceeds the limit set in s. 292.75 (6), Stats. Amendments are subject to department approval and availability of funds.

(11) Prior to the end of the grant period stated in the grant agreement, the grant recipient may request an extension of the grant period for up to 12 additional months. The request shall be in writing and describe the reasons for the time extension.

(12) The grant recipient shall provide to the department a report of the activities completed with the funds awarded under this chapter. The report shall be submitted to the department along with the final request for reimbursement under the grant contract.

**NR 168.23 Grant enforcement and termination.** The department may impose the following sanctions for noncompliance with the provisions of this chapter:

(1) Costs directly related to noncompliance may be declared ineligible.

(2) Other administrative and judicial remedies may be instituted as legally available and appropriate.

(3) The department may terminate a grant awarded under this chapter for any of the following reasons:

- (a) Violation of any term or condition of the grant contract.
- (b) Lack of substantial progress by the grant recipient, without good cause.
- (c) Substantial evidence that the grant was obtained by fraud.
- (d) Substantial evidence of gross abuse or corrupt practices in the administration of the

grant activities.

(4) If a grant is terminated, repayment of some or all payments made to the grant recipient may be required.

**NR 168.25 Variances.** The department may approve a variance from a requirement of this chapter under the following conditions:

(1) A local governmental unit's written request for a variance shall clearly explain the circumstances justifying the variance.

(2) The department shall take into account factors such as good cause and circumstances beyond the control of the local governmental unit.

(3) The department determines that a variance is essential to effect necessary grant actions or program objectives or where special circumstances make a variance in the best interest of the program.

(4) The department may not grant variances from statutory requirements.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 23, 2000.

The rule shall take effect on the day of publication in the official state newspaper.

Dated at Madison, Wisconsin

June 8, 2000

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

George E. Meyer  
George E. Meyer, Secretary

(SEAL)

25.4

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

The Wisconsin Natural Resources Board proposes )  
an order to amend NR 46.15(9) Note and repeal and )  
recreate NR 46.30(2)(a) to (d) relating to the administration )  
of the Forest Crop Law and the Managed Forest Law. )

FR-21-99

SEP 08 REC'D

SEP 08 1999

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 77.06(2), 77.91(1) and 227.11(2)(a), Stats.  
Statutes interpreted: ss. 77.06(2), and 77.91(1), Stats.

**Building Clarification Note:** The note of clarification following the definition of "Developed for human residence" is modified to exclude all land converted to the Managed Forest Law from the Forest Crop Law (under the window of conversion authorized by the legislature) from the changes in human residence definition.

**Annual Stumpage Rate Adjustments:** For purposes of the Forest Crop Law and The Managed Forest Law, this rule repeals and recreates s. NR 46.30(2)(a) to (c) to revise annual stumpage values used to calculate severance and yield taxes due on timber cut during the period from November 1, 1999 through October 31, 2000. Thirteen separate zones reflect varying stumpage values for different species and products across the state. The average price change for sawtimber is a 4.38% increase over current rates. The pulpwood proposed prices are, on the average, 23.61% higher compared to current prices.

The change to 13 zones is a change in the stumpage tables. The average price increase percentages were calculated on the 12 zones due to the lack of 13 zone pricing from last year.

**Stumpage Rate Zone Changes:** In an effort to simplify and more accurately represent the actual prices received for timber cut on Forest Crop Law and Managed Forest Law lands, this rule repeals and recreates s. NR 46.30(2)(d) to create 13 new zone designations from the old 12 for the stumpage rate tables. This will eliminate the need for a 30% reduction in stumpage rates for pine cordwood in 27 counties as presently established in the 12 zone configuration.

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**SECTION 1.** NR 46.15(9) Note is amended to read:

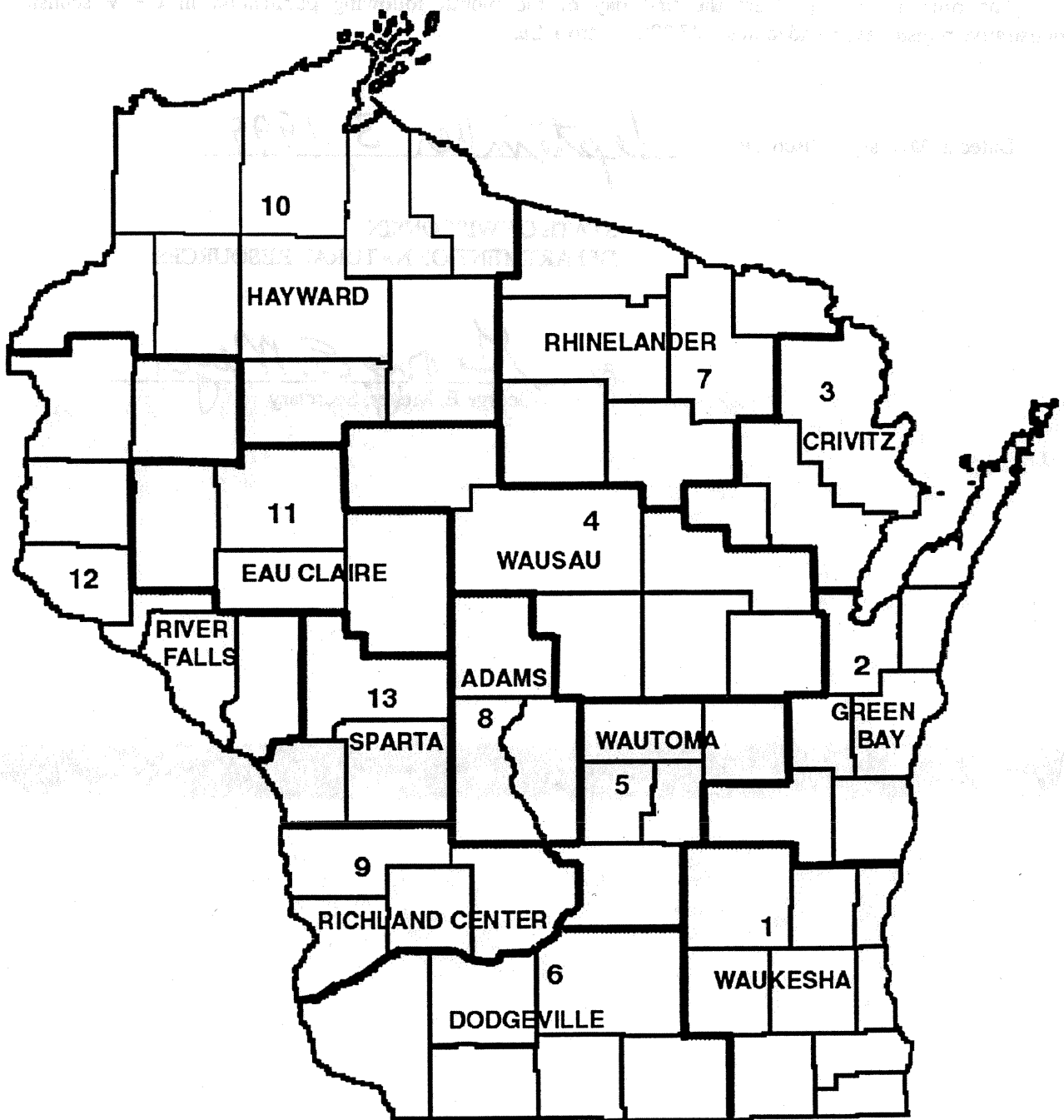
**Note:** "Developed for human residence" is not meant to include storage or workshop buildings. If there is living space as part of such buildings, the living space will be compared against the 8 characteristics. This definition does not apply to entries in effect January 1, 1999 or lands converted from the forest crop law to the managed forest law under s. 77.82(4m), Stats., except that those entries must adhere to the traditional domicile and landscaping definitions concerning buildings on MFL lands.

**SECTION 2.** NR 46.30(2)(a) to (d) are repealed and recreated to read:





(d) Map of severance and yield schedule zones



The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 30, 1999.

The rules 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.

Dated at Madison, Wisconsin September 3, 1999

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

25.4

**DATE MAILED**  
MARCH 12, 1999

MAR 15 1999

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Rule Amendment to Add Cable Operators to Wis. ADMIN.  
CODE ch. PSC 132

1-AC-182

**NOTICE OF RULEMAKING**

The Public Service Commission of Wisconsin proposes an order to amend s. PSC 132.02(3), relating to the ch. PSC 132 definition of "public utility" and cable operators' access to railroad rights-of-way.

**ANALYSIS PREPARED BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02(1) and (3), 196.04(4), and 227.11(2), Stats.  
Statutes interpreted: ss. 196.04(4), Stats.

Prior to the passage of 1997 Wisconsin Act 27, s. 196.04(4), Stats., permitted the Commission, under certain circumstances, to order the extension of a public utility or telecommunications provider's lines or a railroad's tracks on, over or under the right-of-way of any railroad, public utility, or telecommunications provider. The Commission was required to prescribe conditions and compensation that are equitable and reasonable under the circumstances.

Chapter PSC 132 was created to set forth the compensation to be paid and conditions to be met by a public utility for the construction or maintenance of facilities within a railroad right-of-way in cases where the utility and the railroad cannot agree. "Public utility" is defined in the rule to include telecommunications providers.

Section 3134mi of 1997 Wisconsin Act 27 amended s. 196.04(4), Stats., to include cable operators as defined in s. 66.082(2)(b), Stats., along with public utilities, telecommunications providers, and railroads. This rule change amends the current definition of "public utility" in s. PSC 132.02(3) to include cable operators, thereby conforming it to the amended statute.

A Statement of Scope on this rule was approved by the Commission on December 3, 1998, and was published in the Wisconsin administrative register on December 31, 1998.

**TEXT OF PROPOSED RULE**

SECTION 1. PSC 132.02(3) shall be amended to read:

(3) "Public utility" has the meaning given in s. 196.01 (5), Stats., and includes both a "telecommunications provider," as defined in s. 196.01 (8p), Stats., and a "cable operator," as defined in s. 66.082 (2) (b), Stats.

This rule 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.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

This rule will have no effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. It merely extends coverage of this rule to include cable operators. The only effect on cable operators that are small businesses will be to clarify and possibly speed up negotiations with railroads regarding rights-of-way. There are no reporting, bookkeeping, or other procedures required for compliance with the rule.

**FISCAL ESTIMATE**

This rule change has no fiscal impact independent of that of the legislation change that necessitates it. A completed Fiscal Estimate form is included as Attachment A.

**EFFECTIVE DATE**

These rules 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.

**NOTICE THAT THERE WILL BE NO HEARING**

**NOTICE IS HEREBY GIVEN** that pursuant to s. 227.16(2)(b), Stats., the Commission will **not** hold a public hearing on the proposed rule change since it merely brings an existing rule into conformity with a statute that has been changed.

Docket 1-AC-182

### CONTACT PERSON


Questions regarding this matter should be directed to Joyce S. Mahan, Legal Counsel, Telecommunications Division, at (608) 267-6919, or by email at [mahanj@psc.state.wi.us](mailto:mahanj@psc.state.wi.us). Hearing-or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs to get this document in a different format should contact Joyce S. Mahan, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin

March 11, 1999

By the Commission.

  
Lynda L. Dorr  
Secretary to the Commission

JSM::reb:G:\notice\pending\1-AC-182

1999 Session

**FISCAL ESTIMATE**  
DOA-2048 N(R10/96)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. <b>1-AC-182</b>
Amendment No. if Applicable

**Subject**  
Add Cable Operators to Ch. PSC 132

**Fiscal Effect**  
**State:**  No State Fiscal Effect  
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Create New Appropriation		

**Local:**  No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Ch. 20 Appropriations</b> 20.155(l)(g)
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**Assumptions Used in Arriving at Fiscal Estimate**

**This rule would add cable operations to the definition of "public utility" to comply with Section 3134 mi of 1997 Wisconsin Act 27 which amended 196.04(4), Stats. Chapter PSC 132 sets forth the compensation to be paid and conditions to be met by a "public utility" for the construction or maintenance of facilities within a railroad right-of-way in cases where the utility and railroad cannot agree. This change is not expected to add costs to the operation of either state or local government.**

**Long-Range Fiscal Implications**

<b>Agency/Prepared by: (Name &amp; Phone No.)</b> PSC/Gordon Grant 267-9086	<b>Authorized Signature/Telephone No.</b> <i>Gordon Grant</i>	<b>Date</b> 2/19/99
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NOV 10 2000

ORDER OF THE  
TOBACCO CONTROL BOARD  
CREATING RULES

The Wisconsin Tobacco Control Board finds that an emergency exists and that this rulemaking order is necessary for the immediate preservation of the health, safety and welfare of Wisconsin residents, particularly youth and current smokers. A statement of the facts constituting the emergency is as follows:

Analysis Prepared by the Tobacco Control Board

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3 billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures; immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease, and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in 1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board, through this order, is creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule is being promulgated under the authority of s. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

ORDER

Pursuant to authority vested in the Tobacco Control Board by ss. 255.15 (1m), 227.11 (2) and 227.24 (1) and (3), Stats., the Tobacco Control Board hereby creates rules interpreting s. 255.15 (1m), Stats., as follows:

SECTION 1. TCB 1 is created to read:



CHAPTER TCB 1

TOBACCO CONTROL BOARD ACTIVITIES

- TCB 1.01 Authority and purpose.
- TCB 1.02 Applicability.
- TCB 1.03 Definitions.
- TCB 1.04 Project eligibility.
- TCB 1.05 Application.
- TCB 1.06 Grant awards.
- TCB 1.07 Restrictions.

**TCB 1.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

**TCB 1.02 Applicability.** This chapter applies to the tobacco control board, to applicants for grants awarded by the board, and to organizations that have been awarded grants by the board.

**TCB 1.03 Definitions.** In this chapter:

(1) "Administrative costs" means indirect or direct costs, such as the provision of office space, telephone service and any existing employees associated with implementing grant objectives and activities.

(2) "Applicant" means an organization that applies for a grant from the tobacco control board to operate a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(3) "Continuation grant" means a grant awarded by the board to an applicant who received an initial grant for the current funding year and who proposes to continue to operate the same program, or that program as modified in consultation with the board, in the new funding year.

(4) "Evaluation committee" means a committee of board members and other persons invited by board members that reviews and evaluates applications.

(5) "Funding year" means the 12-month period beginning July 1.

(6) "Governmental body" means a state or local agency, board, committee, council, department or public body created by constitution, statute, ordinance, rule or other.

(7) "Grant" means a monetary award made by the board from the appropriation under s. 20.436 (1) (tc), Stats., to an applicant to help the applicant establish or support a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(8) "Initial grant" means a grant awarded for the first time to an applicant.

(9) "Public agency" has the meaning prescribed in s. 46.93 (1m) (e), Stats., namely, a county, city, village, town or school district, an agency of Wisconsin state government or an agency of a county, city, village, town or school district.

(10) "Request for proposals" or "RFP" means a document that describes a grant program, invites applications for the grant and specifies who may apply, application procedures, criteria for awarding grants and conditions and restrictions that accompany grant awards.

(11) "Tobacco control board" or "board" means the 21-member tobacco control board established under s. 15.195 (1), Stats., to carry out the responsibilities set out in s. 255.15 (1m), Stats., namely, to award and monitor grants to applicant organizations for reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(12) "Tobacco prevention and control" means anti-tobacco activities including but not limited to comprehensive efforts in prevention, cessation, policy advocacy, media and countermarketing, evaluation, monitoring, and administrative activities.

**TCB 1.04 Project eligibility.** (1) The board shall do all of the following:

- (a) Fund projects that have prevention and control of tobacco use as their primary goal.
- (b) Make funds available to community coalitions such that each county of the state has the opportunity to have at least one anti-tobacco coalition ensuring tobacco prevention and control activities within its geographic borders.
- (c) Fund only programs or projects that are culturally sensitive.
- (d) Fund media activities that are conducted and evaluated according to media industry standards as identified by the board, its subcommittee, or advisory group. The standards include performance-based outcomes related to media message awareness, attitude change and behavior change. Specific performance-based standards shall be identified in each grant contract based on the scope and content of the media campaign.
- (e) Fund only programs or projects that demonstrate plans and progress toward achieving program quality criteria and indicators of success specified in the grant RFP and the board strategic plan.
- (f) Fund only programs or projects that maintain administrative costs below 10% of total costs.
- (g) Fund only programs and projects that demonstrate independence from the influence of the tobacco industry.

(2) The board may provide funding to governmental organizations performing or providing support for tobacco prevention and reduction activities, including tobacco education, cessation services, policy development, policy advocacy, monitoring, evaluation, resource distribution, program planning or project monitoring.

**TCB 1.05 Application.** (1) WHO MAY APPLY. (a) An applicant may be any of the following:

1. A public agency.
2. A legally-formed organization.
3. A coalition of organizations under the auspices of a public agency or a legally-formed organization.
4. The tribal governing body of a federally recognized Wisconsin tribe or band of Indians, or an American Indian organization appointed by the tribal governing body.

(2) SOLICITATION. (a) The board shall solicit applications for initial grants by preparing one or more RFPs, publishing a legal notice of the availability of each RFP at least twice in the official state newspaper no later than 3 weeks before the application deadline, and distributing copies of an RFP on request.

(b) Based upon satisfactory performance and availability of funds, the board may solicit applications annually for continuation grants from current grantees. The board's solicitations shall be published as a legal notice at least twice in the official state newspaper no later than 3 weeks before the application deadline. The board shall provide details of the continuation grant to interested parties upon request.

**Note:** Persons interested in the Board's solicitation of one or more continuation grants may request details of the solicitation by writing the Tobacco Control Board, 1 West Wilson Street, Room 250, P.O. Box 1190, Madison, Wisconsin 53701-1190.

(3) MAKING APPLICATION. (a) *Initial grants.* 1. An application for an initial grant shall be made on forms included in the RFP.

**Note:** Interested persons may ask to be placed on a mailing list of parties to be sent future RFPs by writing the Tobacco Control Board, 1 West Wilson Street, Room 250, PO Box 1190, Madison, Wisconsin 53701-1190.

2. The RFP shall specify a date by which the applicant must apply.
3. The application shall be submitted to the board in accordance with the deadline and processes indicated in the RFP.

(b) *Continuation grants.* 1. The board may solicit applications for continuation grants from currently-funded projects in a form determined by the board to be appropriate for the projects.

2. The continuation solicitation shall specify a date by which the applicant must apply.
3. The application shall be submitted to the board in accordance with the deadline, required format and content specifications indicated in the continuation solicitation.

(4) CONTENT OF APPLICATION. An application for an initial grant shall include all of the following:

- (a) An application summary sheet.
- (b) The application checklist included in the RFP.

- (c) An abstract that briefly describes the project and highlights the project's purpose.
- (d) A summary of the budget request.
- (e) A justification of the proposed budget detailing cost estimates used in compiling the budget request.
- (f) A narrative description of the program.

(g) A statement of assurance of compliance with applicable federal statutes and regulations and state statutes and rules, including the requirements of this chapter and the RFP.

(5) REVIEW OF APPLICATIONS. (a) *Applications for initial grants.* 1. Preliminary review. All initial grant applications shall include all of the application contents specified in sub. (4) and, if applicable, the RFP. The board or its designated review committee shall review each application for compliance with the format and content specifications of sub. (4) and the RFP. Applications that fail to meet all of the criteria may not be approved by the board. Rejection of an application for failure to meet form and content specifications is not subject to appeal.

2. Evaluation criteria. The board or its designated evaluation committee shall evaluate initial grant applications that receive a favorable preliminary review as specified in subd. 1. against criteria specified in this subdivision and the RFP. The criteria shall include all of the following:

- a. The applicant's organizational and programmatic capacity to implement the proposed project.
- b. The applicant's understanding and ability to communicate the needs of the target population.
- c. The applicant's stated purpose and objectives for the program and methods and timetable for implementing the program.
- d. The extent to which the applicant's proposed budget is clear and justified.
- e. An evaluation plan for the project.

(b) *Criteria for evaluating continuation applications.* The board or its designated evaluation committee shall evaluate continuation grant applications against all of the following criteria:

- 1. The applicant's understanding and capacity to communicate the needs of the target population.
- 2. The applicant's timetable for implementing the continuation of the current program.
- 3. The quality of the program as measured by program objectives and methodology, evaluation methodology and outcomes, fiscal management, documentation of program services, and the involvement of community partners.

(6) RANKING APPLICATIONS. (a) *Ranking applications for initial grants.* 1. The board or its designated evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. The criteria weighting shall be provided in the RFP.

2. Using the evaluation criteria specified in subs. (4) and (5), the board or its designated evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets each criterion up to the maximum number of points specified in the RFP. The total points assigned to the application for all applicable criteria will be the score for each application.

3. The board shall numerically rank each application for each RFP and for continuation grants.

(b) *Ranking applications for continuation grants.* 1. Using evaluation criteria specified in sub. (5) (b), the board or its designated evaluation committee shall evaluate each application through a non-competitive process.

2. The board or its designated evaluation committee shall award continuation grants based upon the applicant's demonstration of effective grant administration and achievement of program outcomes during the previous funding period.

**TCB 1.06 Grant awards.** (1) **MAKING AWARDS.** (a) *Initial grants.* For a given RFP, the board shall award a grant to the applicant with the highest numerical score pursuant to s. TCB 1.05 (6), except that:

1. The board or its designated evaluation committee may reject any application failing to meet the content specifications under s. TCB 1.05 (4). Rejection of an application for failure to meet the content specifications under s. TCB 1.05 (4) is not subject to appeal.

2. The board may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a grant to an applicant.

3. The board or its designated evaluation committee may reject applications submitted by organizations that or individuals who have a contractual, corporate, organizational or business responsibility to promote or assist in the promotion of, the use of or the sale of tobacco products for a company involved in the production, distribution or marketing of tobacco products.

(b) *Continuation grants.* The board may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a continuation grant to an applicant.

(c) *Intergovernmental procurements.* In accordance with s. 16.75 (a) and (b), Stats., the board may perform an intergovernmental procurement for purchases of supplies, materials, equipment or contractual services other than printing and stationary, from the federal government, from another state, or from county, city, village, town or other governmental body in the state.

(2) **NOTIFICATION.** The board shall notify all applicants, in writing, within 60 days of the deadline stated in the RFP for an initial grant, or within 30 days of the expiration of an existing grant, of awards for the new funding agreement.

(3) **APPEAL.** An applicant for either an initial grant or a continuation grant may appeal to the board an adverse decision of the board. The appeal shall be in writing and shall fully identify all contested issues. The appeal shall be filed with the board within 10 working days of the date on which the notice of awards is postmarked.

(4) **CONTRACT.** The board shall make all grant awards through a contract between the board and each applicant selected to receive a grant.

(5) **AVAILABILITY OF FUNDS.** (a) The board shall decide in advance of the funding year the amount of funds available for grants from the expected appropriation under s. 20.436 (1) (tc), Stats., and shall announce the availability of funds in one or more RFPs.

(b) All funding decisions shall be contingent upon availability of funds under s. 20.436 (1) (tc), Stats. Any changes in the amount of funds available which were unforeseen at the time of the board's release of an RFP or continuation grant materials shall be accommodated by the board, as appropriate, by means of reduction, elimination or increase in existing awards, by awarding of funds to applicants previously denied due to insufficient funds, or by release of a new RFP or new continuation grant application materials.

(c) The board may reallocate any funds that become available due to any of the following reasons:

1. The board denies an award to a selected grantee as a result of failure of the selected grantee to sign the required agreement.
2. Termination of a project by the board or grantee.
3. A selected grantee refuses a grant or returns grant monies.
4. The board withdraws grant monies.

**TCB 1.07 Restrictions.** (1) **PROHIBITED USE OF FUNDS.** The following activities are prohibited under any grant awarded by the tobacco control board:

- (a) Purchasing tobacco use cessation medications.
- (b) Developing, implementing and evaluating of non-tobacco related activities and programs.
- (c) Supplanting existing anti-tobacco resources and activities.

(2) **VIOLATION OF PROHIBITED ACTIVITIES.** If a grantee conducts prohibited activities, the board may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant contract.

(3) **GRANTEE ADMINISTRATION.** (a) A grantee may not use grant funds to supplant existing employe salaries. Grant funds may be used to hire a person who will work 40 or fewer hours per week or to increase the hours of existing employes currently working less than 40 hours per week.

(b) A grantee may not use grant funds to purchase capital equipment without the prior written approval of the board, although funds may be used to rent capital equipment. In this paragraph, "capital equipment" means equipment having a value greater than \$5000 and a useful life of more than one year.

(c) Grant recipients shall annually furnish the board with an independent certified audit of grant expenses within 30 days after receipt of the report from the audit firm but no later than 90

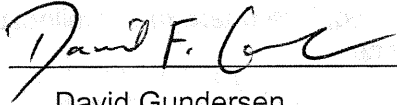
days after completion of the grant recipient's fiscal year. The cost of the audit may be included in an applicant's budget.

(d) Grant recipients shall maintain records and provide information to the board as required by the board for purposes of program and fiscal audits and, at the request of the board, shall appear before the board to respond to any questions about the project and use of the grant monies.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Tobacco Control Board

Dated: November 3, 2000

By: 

David Gundersen  
Executive Director

SEAL:

SENATOR JUDITH B. ROBSON  
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

June 23, 2000

Edward Chin, State Director  
Wisconsin Technical College System Board  
310 Price Place, P.O. Box 7874  
Madison, WI 53707-7874

Dear Director Chin:

The Joint Committee for the Review of Administrative Rules met in Executive Session on June 21, 2000 and adopted the following motion:

### Emergency Rule TCS 16

### Relating to grants to students. Submitted by the Wisconsin Technical College Board.

Moved by Senator Robson, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of TCS 16 by 60 days, at the request of the Wisconsin Technical College Board, except for the second TCS 16.02(2) relating to eligibility and TCS 16.06 relating to deferment. JCRAR will also communicate with the standing committees that the appeal process in ss. 16.08 should be in rule form.

Ayes: (8) Representatives Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

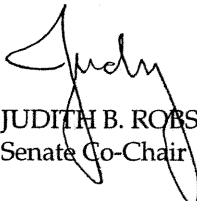
Noes: (2) Representatives Grothman and Kreuser

Absent: (0)

Motion Carried: Extension Granted.  
8 Ayes, 2 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

  
JUDITH B. ROBSON  
Senate Co-Chair

  
GLENN GROTHMAN  
Assembly Co-Chair

JBR:GSG:mjg

Cc: Secretary of State Doug LaFollette  
Revisor of Statutes Gary Poulson