

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

CR 89-56

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CA-24-89 was duly approved and adopted by this Department on June 29, 1989. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 21st day of August, 1989.

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AUG 23 1989

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Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

11-1-89

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES
BOARD CREATING RULES

.....
IN THE MATTER of creating ch. NR 161 of the .
Wisconsin Administrative Code pertaining to the .
program for Clean Water Fund assistance for Water .
Pollution Control Facilities. .
.....

CA-24-89

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 144.241(2) and 227.11(2)(a), Stats.
Statutes interpreted: s. 144.241, Stats.

Section 144.241, Stats., establishes the Clean Water Fund Financial Assistance Program. This program, administered by the Department, provides financial assistance to municipalities for planning, designing and constructing wastewater treatment facilities and nonpoint source control projects. Chapter NR 161, Wis. Adm. Code, is one of three new administrative codes developed to implement the Clean Water Fund under s. 144.241, Stats.

Proposed ch. NR 161 would do the following:

1. Establish a priority system for ranking projects seeking Clean Water Fund financial assistance
2. Define a procedure for determining and updating project priority values
3. State that annual funding policies are established in conjunction with the project priority list.

As required in s. 144.241(10), Stats., ch. NR 161 addresses the following criteria in establishing priority ranking:

1. the type of project
2. the impact of the project on groundwater and surface water quality
3. the impact of the project on public health
4. any other factors the department believes are necessary.

NR 161 includes the following seven factors, and associated potential scores, in assigning each project a priority value:

- | | |
|---------------------------------------------------|----------------|
| 1. project type factor | 0 to 50 points |
| 2. human health factor | 0 to 50 " |
| 3. fish and aquatic life factor | 0 to 45 " |
| 4. wild and domestic animal factor | 0 to 5 " |
| 5. outstanding/exceptional resource waters factor | 0 to 5 " |
| 6. septage/leachate factor | 0 to 2 " |
| 7. population factor | 0 to 1 point. |

With these seven factors, the proposed system places heaviest emphasis on project type, human health impacts, and water quality impacts. Altogether, these three aspects (factors 1 through 4) account for 150 out of 158 potential points. The remaining 8 points possible for factors 5, 6, and 7 represent the small weight given to the "other" factors.

Within the project type factor, the largest score is awarded to compliance maintenance projects and smallest score to violators. This ranking is in concert with s. 144.241(10)(a)1, Stats. It also promotes the Department's WPDES permit program goal of prevention under compliance maintenance.

Projects necessary to meet new toxics limits or to protect groundwater receive emphasis in human health and water quality related factors. These factors also consider the impact of conventional pollutants on receiving waters. They define a scoring mechanism for the impact of nonpoint sources on water quality. The human health factor weighs both the severity of the health hazard and the population affected.

Highest priority for funding under ch. NR 161 will generally be given to compliance maintenance projects and projects resulting from new or changed effluent limits. These projects and some unsewered municipalities with the most severe health hazards are projected to have the highest priority values under ch. NR 161. Projects which are violating effluent limits generally will have the lowest priority values and therefore the lowest priority for funding.

This priority system is a major change from ch. NR 160, the current priority system used for distributing EPA and Wisconsin Fund grants. Compared to ch. NR 160, proposed ch. NR 161: 1) gives more emphasis to human health and water quality impacts and 2) places less emphasis on population and project type. The new priority system will replace ch. NR 160 during FY 1990-91. The existing priority system (ch. NR 160) will be used for ranking Clean Water Fund "transition loans", i.e., loans for projects ready to proceed in FY 1989-90 for which grant funding is not available. All "post-transition" Clean Water Fund loans beginning in FY 1990-91 will use the new system proposed in ch. NR 161.

SECTION 1. Chapter NR 161 is created to read:

CHAPTER NR 161

PRIORITY SYSTEM FOR CLEAN WATER FUND

Table of Contents

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NR 161.01 PURPOSE. The purpose of this chapter is to establish a priority system for the distribution of clean water fund financial assistance as provided in s. 144.241, Stats., except for loans for transition projects as provided in s. 144.241(20), Stats. Priority for transition projects shall be based on the system in ch. NR 160.

NR 161.02 DEFINITIONS. For purposes of this chapter:

(1) "Applicant" means any municipality that applies for financial assistance under ch. NR 162.

(2) "Compliance maintenance project" means a project that the department determines, under ch. NR 208, is necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 147, Stats.

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

(4) "Dilution ratio" means the quotient obtained by dividing the 7-day Q_{10} of the surface waters receiving the wastewater discharge, in cubic feet per second (cfs), by the design flow of the treatment works, in million gallons per day (mgd).

Dilution ratio =
$$\frac{\text{7-day } Q_{10} \text{ of receiving water in cfs}}{\text{design flow in mgd} \times 1.55 \text{ cfs per mgd.}}$$

(5) "Design flow" means the flow specified in a WPDES permit or approved facilities plan.

(6) "Effluent limitation" has the meaning designated in s. 147.015(6), Stats.

(7) "Enforceable requirement" has the meaning designated in s. 144.241(1)(b), Stats.

(8) "High groundwater" means zones of soil saturation which include: perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated.

(9) "Multipurpose project" means a project that can be assigned to more than one of the project types listed in s. NR 161.03(1).

(10) "New or changed limits" means an effluent limitation in a WPDES permit which was newly established or modified after May 17, 1988.

(11) "7-day Q_{10} " means the average 7 day low flow which occurs once in 10 years.

(12) "Subscribing community" means a municipality which discharges or plans to discharge its wastewater or a part of its wastewater to another municipality for treatment and disposal.

(13) "Treatment work" has the meaning designated in s. 147.015(18), Stats.

(14) "Violator of an effluent limitation" means a person or municipality which cannot receive approval of an application for sanitary sewers under s. NR 110.05(3), or is not in substantial compliance with the terms, conditions, requirements and schedules of compliance of an applicable WPDES permit for a reason that the department determines is or has been within the control of the person or municipality.

(15) "Waste load allocation" has the meaning designated in s. NR 121.03(17).

(16) "WPDES permit" means a Wisconsin pollution discharge

elimination system permit issued under ch. 147, Stats.

NR 161.03 PRIORITY RATING SYSTEM. The following factors, when applied to particular projects in accordance with s. NR 161.04, shall determine the priority ranking of water pollution abatement projects for clean water fund financial assistance pursuant to s. 144.241, Stats.

(1) PROJECT CATEGORY SCORE. (a) Projects which are properly assignable to any of the project categories enumerated in this subsection shall be assigned a project score as follows:

(b) Projects necessary to comply with provisions of the compliance maintenance program under ch. NR 208 shall be assigned 50 points.

(c) Projects necessary to comply with new or changed limits shall be assigned 35 points.

(d) Projects necessary to replace malfunctioning private sewage systems shall be assigned 20 points.

(e) Projects necessary for the treatment of urban stormwater runoff to comply with requirements contained in a WPDES permit shall be assigned 10 points.

(f) Projects necessary for the control of nonpoint source pollution, other than those in par. (e), shall be assigned 5 points.

(g) Projects necessary to correct a violation of effluent limitations contained in a WPDES permit shall be assigned 0 points. In making a determination that compliance is within the control of a person or municipality, the department shall consider whether the person or municipality has taken or failed to take all actions

within its authority which could reasonably have been expected to prevent, correct or eliminate the noncompliance.

(h) A multipurpose project shall receive the project score for the project type which has the largest estimated cost as approved by the department.

(2) HUMAN HEALTH SCORE. (a) A project shall be assigned a human health score only if the project is necessary to eliminate a health hazard.

(b) The human health score (HHS) is the product of the severity subscore (SS) as defined in par. (d) and the population multiplier (PM) as defined in par. (e), expressed as follows:

$$\text{HHS} = \text{SS} \times \text{PM}$$

(c) The maximum human health score assignable to any project is 50 points. Scores shall be assigned for only those human health hazards for which the applicant submits supporting documentation and those that have occurred within 5 years prior to the applicant's submittal of a request for a priority value.

(d) A project is assigned a severity subscore which is the cumulative total of the following applicable categories:

1. Projects necessary to eliminate pollution of groundwater where contaminant levels exceed or are projected to exceed safe drinking water standards in ch. NR 109, or to eliminate discharges from private sewage systems located within 3 feet of high groundwater or crevassed bedrock, shall be assigned a score based on the percentage of the water supplies that are affected or the percentage of the private sewage systems discharging to high groundwater or crevassed bedrock, as follows:

- a. 50% or more: 15 points;
- b. 33% to 49.99%: 12 points;
- c. 20% to 32.99%: 9 points;
- d. 10% to 19.99%: 6 points;
- e. 5% to 9.99%: 3 points;
- f. less than 5%: 0 points.

2. Projects necessary to achieve or maintain compliance with effluent limits based on human threshold or human cancer water supply standards for toxics as enumerated in ss. NR 105.08 and 105.09 shall be assigned 10 points.

3. Projects necessary to achieve or maintain compliance with effluent limits based on groundwater quality standards in ch. NR 140 shall be assigned the highest applicable score from the following:

a. Effluent limits based on public health standards under s. NR 140.10 shall be assigned 10 points;

b. Effluent limits based on public welfare standards under s. NR 140.12 shall be assigned 8 points;

c. Effluent limits based on indicator parameter standards under s. NR 140.20 shall be assigned 6 points;

d. Correction of excessive leakage from a lagoon or pond as required by a WPDES permit shall be assigned 4 points.

4. Projects necessary to eliminate the ponding or discharge of sewage onto the ground or into roadside ditches by private sewage systems shall be assigned a score based on the percentage of systems in the project area contributing to the ponding or discharge, as follows:

- a. 25% or more: 4 points;
- b. 15% to 24.99%: 3 points;
- c. 5% to 14.99%: 2 points;
- d. less than 5%: 0 points.

5. Projects necessary to eliminate or prevent category 1 bypasses and overflows, as defined in s. NR 110.05(2), from a municipal sewerage system to a watercourse or waterbody shall be assigned 4 points.

6. Projects necessary to eliminate discharges from private sewage systems to a watercourse or waterbody shall be assigned points based on the percentage of systems in the project area directly discharging, as follows:

- a. 25% or more: 4 points;
- b. 15% to 24.99%: 3 points;
- c. 5% to 14.99%: 2 points;
- d. less than 5%: 0 points.

7. Projects necessary to achieve or maintain compliance with effluent limits which are based on nonwater supply human threshold or human cancer water quality standards for toxics as defined in ss. NR 105.08 and 105.09 shall be assigned 5 points.

8. Projects necessary to eliminate basement backups caused by malfunctioning private sewage systems or overloaded sanitary sewer collection systems, except for malfunctions caused by improper maintenance, shall be assigned a score based on the percentage of residences in the project area with basement backups, as follows:

- a. 25% or more: 4 points;
- b. 15% to 24.99%: 3 points;

- c. 5% to 14.99%: 2 points;
- d. less than 5%: 0 points.

9. Projects necessary to eliminate or prevent category 2 bypasses and overflows, as defined in s. NR 110.05(2), from a municipal sewerage system to a watercourse or waterbody shall be assigned 2 points if required by an approved facilities plan.

(e) The multiplier shall be the logarithm to the base 10 (log 10) of the residential population which will initially be served by the project.

(f) A treatment plant project necessary to serve an adjacent or outlying community which has a health hazard, where the cost effective solution is expansion of the regional treatment plant by 10% or more to treat the flow from the community with the health hazard, shall be assigned the health hazard score of the subscribing community. If the regional treatment plant expansion is a multipurpose project, it shall be assigned the total human health score generated by the several purposes, except that the human health score may not exceed 50 points.

(3) FISH AND AQUATIC LIFE SCORE. (a) Projects necessary to achieve or maintain compliance with effluent limits based on a water quality standard contained in s. NR 102.04(4)(a), (b), (c) or (e) or s. NR 102.04(14) shall receive 10 points.

(b) Any project necessary to achieve or maintain compliance with effluent limits based on water quality standards contained in s. NR 102.04(4)(d) shall receive 10 points if an acute or chronic criterion contained in or calculated under s. NR 105.05 or NR 105.06 is the basis of the effluent limits.

(c) Each project where there is an existing surface water discharge shall receive a score based on the potential impact of that discharge on the receiving water and the classification of the receiving water.

1. Impact of the discharge shall be measured using the criteria in pars. a. through f. The point values under this subdivision shall be:

- a. Waste load allocated streams: 4;
- b. Dilution ratio of 0.00 to 0.99: 4;
- c. Dilution ratio of 1.00 to 4.99: 3;
- d. Dilution ratio of 5.00 to 9.99: 2;
- e. Dilution ratio of 10.00 or greater: 1;
- f. Lakes and wetlands: 1.

2. Classification point values shall be based on the classification contained in s. NR 102.04(3). The point value shall be:

- a. Great Lakes communities and cold water communities: 6;
- b. Warm water sport fish communities: 5;
- c. Warm water forage fish communities: 4;
- d. Limited forage fish communities: 2;
- e. Limited aquatic life: 1.

3. The score for this subsection shall be the product of the dilution ratio point value and the classification point value:

Note: $\text{Score} = \text{dilution point value} \times \text{classification point value}.$

(d) Each urban stormwater or nonpoint source project shall be assigned a surface water quality score which shall be the sum of

the scores received in subds. 1. to 4.

1. A weighted water quality classification index shall be calculated as follows: The surface water quality score for this section shall be the sum of the totals calculated under subpars. a to f, divided by the total number of miles used in the calculations.

$$\text{Note: Score} = \frac{\text{sum of subpars. a to f}}{\text{sum of miles used in subpars. a to f}}$$

a. The length, in miles, of all rivers and streams in the project area which are classified as outstanding resource waters or exceptional resource waters, multiplied by 10;

b. The length, in miles, of all rivers and streams in the project area which are classified as fish and aquatic life, multiplied by 5;

c. The length, in miles, of all rivers and streams in the project area which are classified as limited forage fish communities or limited aquatic life, multiplied by 1;

d. The length, in miles, of shoreline of all lakes in the project area which have high phosphorus sensitivity or which are classified as outstanding or exceptional resource waters, multiplied by 10;

e. The length, in miles, of shoreline of Great Lakes and all other lakes in the project area which have medium phosphorus sensitivity, multiplied by 5;

f. The length, in miles, of shoreline of all lakes in the project area which have low phosphorus sensitivity, multiplied by 1;

2. Any nonpoint source or urban stormwater project mandated by

a WPDES permit shall receive 5 points.

3. Each nonpoint source or urban stormwater project shall receive a score based on the recommendation the project received in the most recently approved areawide water quality management plan under ch. NR 121, as follows:

- a. Projects with a high recommendation: 5 points;
- b. Projects with a medium recommendation: 2.5 points;
- c. Projects with a low recommendation: 0 points.

4. Each nonpoint source or urban stormwater project shall receive a score based on the percentage of the total area contributing the nonpoint source pollution which will be controlled by the project, as follows:

- a. greater than or equal to 75%: 4 points.
- b. 50% - 74.99%: 3 points.
- c. 25% - 49.99%: 2 points.
- d. less than 25%: 1 point.

(e) The fish and aquatic life score shall be the sum of the scores assigned under pars. (a) to (d).

(f) A treatment plant expansion project necessary to serve another community which has a fish and aquatic life score, where the cost effective solution is expansion of the regional treatment plant by 10% or more to serve the community with the fish and aquatic life score, shall be assigned the fish and aquatic life score of the subscribing community. If the regional treatment plant expansion is a multipurpose project, it shall be assigned the sum of the fish and aquatic life scores of the several purposes, except that the fish and aquatic life score may not exceed 45

points.

(4) WILD AND DOMESTIC ANIMAL SCORE. Projects necessary to achieve or maintain compliance with effluent limits based on a water quality standard contained in s. NR 102.04(7) shall receive 5 points.

(5) OUTSTANDING AND EXCEPTIONAL RESOURCE WATERS CATEGORY SCORE. Any water pollution abatement project currently discharging to, or which may impact, an outstanding or exceptional resource water, designated under ss. NR 102.10 and 102.11, shall be assigned 5 points.

(6) SEPTAGE AND LEACHATE SCORE. A project whose approved facilities plan includes facilities to receive and treat septage or leachate shall be assigned a score of 2 points.

(7) POPULATION SCORE. Each project shall receive a population score. The population score is the logarithm to the base 10 of the residential population to be immediately served by the project, divided by 10.

Note: Population score = $\frac{\log_{10} \text{residential population}}{10}$

NR 161.04 PROJECT PRIORITY VALUE. (1) A project priority value (PV) shall be assigned by the department to each project for which a completed priority evaluation review form (PERF) has been submitted pursuant to s. NR 161.05. The project priority value shall be determined using the following formula:

$$PV = A + B + C + D + E + F + G$$

where A = Project category score
B = Human health score
C = Fish and aquatic life score
D = Wild and domestic animal score

E = Outstanding and exceptional resource waters score
F = Septage and leachate score
G = Population score.

(2) In computing the project priority value, the department shall consider only those scores properly assignable to a particular project. If a project does not satisfy the necessary criteria associated with the assignment of a particular score, a score of zero will be recorded for that particular factor.

(3) A subscribing community shall receive the same priority value as the receiving community to which it will discharge if all of the following conditions are met:

(a) The receiving community needs to expand its treatment facility's design flow by 10% or more to treat the flow from the subscribing community.

(b) An approved facilities plan or WPDES permit requires the receiving community facility expansion and subscribing community project to occur concurrently.

(c) The receiving community and subscribing community have certified to the department that they will prepare and submit an intermunicipal agreement to the department prior to the award of financial assistance for construction of the project.

NR 161.05 PROCEDURE FOR DETERMINATION AND UPDATING OF PROJECT PRIORITY VALUE. (1) An applicant intending to apply for clean water fund assistance under ch. NR 162 for the first time shall submit to the department a written request for priority determination on a priority evaluation review form (PERF).

Note: A PERF is available from the bureau of community assistance management of the department.

(2) No project shall be assigned a priority value or be placed on the project priority list, until a completed PERF for the project has been submitted by the applicant and evaluated by the department.

(3) Upon completion of the review and determination of priority value, the department shall notify the applicant in writing of the determination.

(4) Annually, the department may review, and if necessary under the requirements of this chapter, recalculate priority values to assure accuracy and timeliness of information. The department shall notify the applicant in writing of any change in priority value.

(5) After approval of a facilities plan, the department shall reevaluate the priority value of the project, making revisions if necessary. The department shall notify the applicant in writing of any change in priority value.

(6) If the applicant objects to the department's determination of the priority value in sub. (3), (4) or (5), the applicant shall notify the department in writing within 30 days. The notice shall state the specifics of the objection. The applicant shall submit any information which supports the objection and the priority value which the applicant believes should be assigned to the project based on this information.

(7) Upon receipt of a notice under sub. (6), the department shall reevaluate its determination of the project priority value and shall notify the applicant. If the department denies the requested priority value, it shall state the reasons in writing.

(8) Notwithstanding sub. (6), an applicant may request a reevaluation of its project priority value or any factor thereof at any time. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (3).

NR 161.06 PROJECT RANKING SYSTEM. (1) The department shall maintain a project priority list which shall rank the projects for which priority values have been determined. The projects shall be ranked in the order of descending priority value, with the project with the highest priority value ranked first.

(2) In case 2 or more projects have the same priority value, the project serving the larger population, as based on the population factor score, shall be considered to have the higher priority.

(3) The project priority list shall be prepared annually by the department. Subject to public hearing and natural resources board approval, it shall be used for allocating clean water fund assistance to eligible projects.

NR 161.07 ANNUAL FUNDING POLICIES. The department shall establish annual funding policies under ch. NR 162 and in conjunction with the project priority list under s. NR 161.06. The funding policies shall be subject to public hearing and endorsement by the natural resources board.

The rules were approved and adopted by the State of Wisconsin
Natural Resources Board on June 29, 1989.

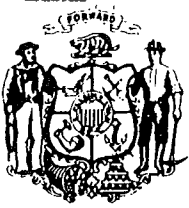
The rules shall take effect on the first day of the month following
publication in the Wisconsin administrative register as provided in
s. 227.22(2)(intro), Stats.

Dated at Madison, Wisconsin August 21, 1989.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

August 22, 1989

In reply refer to: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
Suite 702
30 W. Mifflin Street

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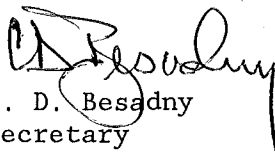
Revisor of Statutes
Bureau

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CA-24-89. These rules were reviewed by the Assembly Committee on Environmental Resources and Utilities and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. A summary of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

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

Sincerely,


C. D. Besadny
Secretary

Enc.