

CR 94-197



George E. Meyer  
Secretary

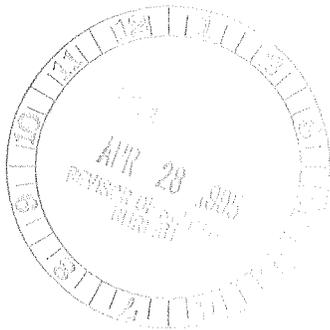
**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )      SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, 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. WR-55-94 was duly approved and adopted by this Department on February 23, 1995. 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 21<sup>st</sup> day of April, 1995

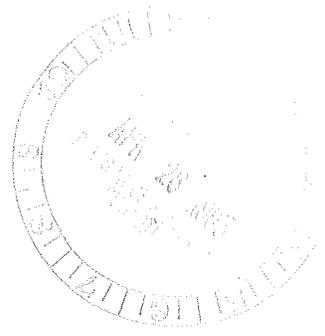
*George E Meyer*  
George E. Meyer, Secretary

(SEAL)

7-1-95



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



The Wisconsin Natural Resources Board proposes an order to repeal NR 119.07(3), 119.08(3), and 119.09(6); to renumber NR 119.01, 119.03 to 119.07(2), (4) and (5), 119.08(1) and (2), 119.09(1) to (5) and (7) to (13), 191.03(5) to (13), 191.07(3) and 191.08(4); to renumber and amend NR 119.02, 191.04(2); to amend NR 1.91(2)(d), 191.01, 191.02, 191.04(1)(c), 191.06(2)(a)(intro.) and 191.06(2)(b)2.; to repeal and recreate NR 191.04(1)(intro.); and to create NR 190.03(5), 190.04(8), 190.06(3), 190.08(3), and (4), 190.10, 191.03(5) and (8), 191.04(intro.)(2),(3), 191.06(2)(a)3, 191.06(2)(b)10, 191.07(3), 191.08(4),(5) and 191.105 relating to lake management planning grants and lake protection grants.

WR-55-94

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 144.253, 144.254(3) and 227.11(2)(a), Stats.  
Statutes interpreted: ss. 144.253 and 144.254, Stats.

The objectives of the order for ch. NR 119 are to:

1. Renumber the chapter series from NR 119 to NR 190 to place it with the companion protection grants code NR 191.
2. Include nonprofit conservation organizations as eligible sponsors at such time that state statutes are amended to allow it.
3. Remove restrictions on the use of federal and other nondepartment state funds as part of the local share.
4. Remove restrictions which limit a lake to \$10,000 in one biennium and increase the \$30,000 lifetime cap to \$50,000.
5. Give preference to first time projects and establish criteria for ranking grant applications.
6. Remove the public access requirement as a grant requirement and give applications for lakes with minimum public access as defined in NR 1.91(4) priority.
7. Include a variance provision.
8. Make minor clarifications to remove obsolete language and make proper citations.

These changes have been proposed based upon discussions with state lake management staff, University Extension lake management staff, representatives from the Wisconsin Association of Lakes and others at various meetings over the last two years.

A consensus resulting from these discussions was to make the program more accessible to a wider range of lake communities, (increase the number of potential sponsors), enable larger scale

planning, allow planning to continue by previously successful sponsors as well as preserve opportunities for smaller first time projects.

The public access requirement was identified as an obstacle to obtaining lake grants, especially for northern smaller lakes. This requirement was dropped but retained as a priority criterion. This is consistent with s. NR 1.91 pertaining to resource protection activities. Easing restrictions on the use of federal and other nondepartment state funds is intended to allow lakes which have difficulty raising the necessary cash match requirement to participate in the program.

State statutes were recently amended to include nonprofit conservation organizations as eligible sponsors under ch. NR 191 lake protection grants and similar legislative changes will be sought to include them under ch. NR 119. We have provisionally included nonprofit conservation organizations as eligible dependent upon the passage of such legislation. The language used is consistent with the department's stewardship grant program.

The current \$10,000 per lake, per biennium cap and \$30,000 program lifetime per lake cap were identified as obstacles to comprehensive planning, particularly on larger lakes. The caps limit the ability to develop detailed diagnostic and feasibility plans necessary to be eligible for phase II EPA implementation grants and proposed state lake improvement grants. Also, several lakes are nearing the \$30,000/three grant lifetime cap and it was felt unfair to end assistance to these lakes when they still have legitimate planning needs. Therefore, changes have been made to allow a lake to receive up to a maximum of \$50,000 under separate grants to facilitate more detailed studies.

This order also reflects the inclusion of a weighted scoring process for ranking grant applications that expands upon the original code citations. These criteria have been under development since the program was first initiated.

Finally, to address rare situations where flexibility is needed to fund a good project, a variance section has been added. All changes are intended to have a positive impact on lake organizations and local government.

The order will result in the following changes to ch. NR 191:

1. Make qualified nonprofit conservation organizations grant eligible to comply with a recent statutory amendment.
2. Remove restrictions on the use of other nondepartment state funds as part of the local share.
3. Include lake and watershed improvement projects and the necessary studies and plans as cost-sharable activities.
4. Establish guidelines for the development and approval of studies, plans and lake improvement projects.
5. Establish that lake protection activities are a higher priority for funding than lake improvement projects.
6. Clarify which projects require public access and give applications for lakes with minimum public access as defined in NR 1.91(4) priority. An amendment to NR 1.91(2)(d) is also proposed to make proper cross-reference.

These changes will bring the code into compliance with state statutes and create a mechanism to fund properly planned lake improvement projects.

Recent amendments to s. 144.254, Stats., include nonprofit conservation organizations as eligible sponsors for lake protection grants. This order implements this change and references the department's stewardship grant program, ch. NR 51 regarding the application requirements for nonprofit conservation organizations.

The enabling statute contains a provision, s. 144.254(3)(b)4., Stats., to allow a grant to be awarded to fund any lake improvement that is approved by the department and is needed to implement a plan to improve or protect a lake or its ecosystem. Originally, rules were not written to implement this authority in order to initially promote the planning and protection aspects of the new program.

This order proposes rules that describe how an applicant can obtain approval for a lake improvement project. The process requires the project be recommended in a diagnostic/feasibility study or other plan that has been approved by the department. A specific project plan is then required as part of the application. Diagnostic/feasibility studies, engineering plans and construction plans are also grant eligible. Dredging; design, installation, operation and maintenance of sanitary sewers; and the routine management of aquatic vegetation by chemical or mechanical means are not eligible lake improvement activities under the proposed rules. The two-step process requiring a phase I diagnostic/feasibility study and a phase II implementation project plan is consistent with procedures under the USEPA Clean Lakes Program.

The advisory group believes that the greatest benefit to the state's lakes is in planning and protection activities. To continue to promote planning and protection, a provision is included which states a funding priority for those activities over improvement projects.

These proposed rules have been developed with the assistance of district lake management staff, University of Wisconsin lake management staff, the Wisconsin Association of Lakes and staff from Southeast Wisconsin Regional Planning Commission (SEWRPC).

SECTION 1. NR 1.91(2)(d) is amended to read:

NR 1.91(2)(d) "Natural resources enhancement services" means funding or activities that increase the recreational or environmental values of a waterway. These services include but are not limited to fish stocking, removal or other fish population management, habitat development, financial assistance for aquatic plant harvesting and lake restoration grants- as defined in NR 191.03(5).

SECTION 2. NR 119.01 is renumbered NR 190.01.

SECTION 3. NR 119.02 is renumbered NR 190.02 and amended to read:

NR 190.02 APPLICABILITY. This chapter applies to all counties, cities, townships, villages, qualified lake associations, ~~and~~ public inland lake protection and rehabilitation districts, town sanitary districts and other local governmental units as defined in s. 66299(1)(a), Stats., that are established for the purposes of lake management, applying for financial assistance under s. 144.253, Stats., for a planning project for a public inland lake. Qualified nonprofit conservation organizations also are eligible when state statutes are amended to specify their eligibility.

SECTION 4. NR 119.03(1) to (7) are renumbered NR 190.03(1) to (4) and (6) to (8) and NR 190.03(3) and (4), as renumbered, are amended to read:

NR 190.03(3) "Local share" means that portion of the cost of the project borne by the grant recipient. ~~Federal and state funds are not considered local share~~ other than state funds administered by the department.

(4) "Management unit" means a county, township, village, city, public inland lake protection and rehabilitation district or qualified lake association, as defined in s. ~~30.92(1)(b)~~ 144.253(1), Stats.

SECTION 5. NR 119.04 and 119.05 are renumbered NR 190.04 and 190.05.

SECTION 6. NR 119.06(1) to (4) are renumbered NR 190.06(1), (2), (4) and (5).

SECTION 7. NR 119.07(1) is renumbered NR 190.07(1) and as renumbered, amended to read:

NR 190.07(1) Following receipt of the application, the department shall make a determination of planning project eligibility. The department may accept the application and include the project in the priority list developed under s. NR ~~119.08~~ 190.08, or deny the request for funding based on consideration of the factors identified in s. 144.253 (1) or (3), Stats.

SECTION 8. NR 119.07(2) is renumbered NR 190.07(2) and as renumbered, is amended to read:

NR 190.07(2) The total state share of the cost of a ~~planning projects for one lake~~ project may not exceed \$10,000 ~~in any one state biennial budget period.~~

SECTION 9. NR 119.07(3) is repealed.

SECTION 10. NR 119.07(4) and (5) are renumbered NR 190.07(3) and (4) and NR 190.07(3), as renumbered, is amended to read:

NR 190.07(3) The cumulative state share of the cost of planning projects for one lake may not exceed ~~\$30,000~~ \$50,000.

SECTION 11. NR 119.08(1) and (2) are renumbered NR 190.08(1) and (2).

SECTION 12. NR 119.08(3) is repealed.

SECTION 13. NR 119.09(1) to (5) are renumbered NR 190.09(1) to (5) and NR 190.09(1), as renumbered, is amended to read:

NR 190.09(1) The department shall issue grant awards based upon the planning project priority list developed under s. NR ~~119.08~~ 190.08. ~~Initial grant awards may be made December 1, 1990 for accepted projects. Subsequent grant~~ Grant awards shall be made by April 1 and October 1 of each year.

SECTION 14. NR 119.09(6) is repealed.

SECTION 15. NR 119.09(7) to (13) are renumbered NR 190.09(6) to (12) and NR 190.09(11), as renumbered, is amended to read:

NR 190.09(11) The department shall withhold 25% of the state share for a final payment and ~~may~~ shall withhold final payment until it has made a determination that the planning project and any required audits have been satisfactorily completed.

SECTION 16. NR 190.03(5) is created to read:

NR 190.03(5) "Nonprofit conservation organization" has the meaning in s. 23.0955(1), Stats., and is an organization whose bylaws, charter or incorporation papers reflect as a purpose of the organization the acquisition of property for conservation purposes.

SECTION 17. NR 190.04(8) is created to read:

NR 190.04(8) The above activities may apply to groups of lakes particularly for the purpose of coordinating and organizing regional and countywide lake organization, education, monitoring, planning and protection.

SECTION 18. NR 190.06(3) is created to read:

NR 190.06(3) In addition, nonprofit conservation organizations, at such time they are made eligible by changes in the state statutes, shall follow the application instructions in s. NR 51.05(4)(a).

SECTION 19. NR 190.08(3) is created to read:

NR 190.08(3) Applications for lakes which meet the minimum boating access requirements of s. NR 1.91(4) shall receive a first priority.

SECTION 20. NR 190.08(4) is created to read:

NR 190.08(4) When developing a priority list, the department shall rank all applications according to the total score received based upon the following point system:

(a) The degree to which the project provides a holistic set of alternatives to assist local decision making or formation of a strategy to enhance or maintain a lake's quality. When ranking applications, scores shall be assigned as follows:

1. No effort towards development of a comprehensive lake management plan - 0 points.
2. Provides one distinct component of a comprehensive lake management plan such as water quality data base, watershed inventory, aquatic plant survey or sociological survey - 1 point.
3. Provides multiple components of a comprehensive lake management plan or conducts comprehensive sociological survey and activities to identify lake management objectives and identify comprehensive lake management goals - 2 points.
4. Develops a comprehensive lake management plan or is being used as matching funds to participate in the U.S. environmental protection agency clean lakes program - 3 points.

(b) The degree to which the planning project will enhance knowledge and understanding of a lake's water quality. When ranking applications, scores shall be assigned as follows:

1. No water quality monitoring or less effort than described in subd. 2 - 0 points.
2. Ambient lakes water chemistry protocol for summer months plus weekly secchi depth monitoring or comprehensive assessment in an aquatic ecosystem component - 1 point.
3. Ambient lakes water chemistry protocol or more than one comprehensive assessment in the other components of the aquatic ecosystem such as phytoplankton and zooplankton, aquatic plant community, fish community or sediment monitoring - 2 points.
4. Extensive aquatic ecosystem evaluation monitoring protocol similar to U.S. environmental protection agency phase I diagnostic and feasibility study. Ambient lakes protocol where no previous water quality data has been collected in the last 15 years or existing water quality data is not comparable with ambient lakes protocol - 3 points.

(c) The degree to which the planning project will enhance knowledge and understanding of a lake's watershed conditions that affect or have potential to affect a lake's water quality. When ranking applications, scores shall be assigned as follows:

1. No watershed considerations - 0 points.
2. Delineate watershed boundary, map land uses and associated acreage, and estimate annual phosphorus load using runoff coefficients - 1 point.
3. Delineate watershed boundary, map land uses and associated acreage, estimate annual phosphorus load using runoff coefficients, identify surface runoff patterns and delineate environmentally sensitive areas in the watershed such as wetlands and steep slopes; or delineate watershed boundary, map land uses and associated acreage, and estimate annual phosphorus load using runoff coefficients when no previous watershed land use information exists - 2 points.
4. Determine annual estimated nutrient or sediment loadings using USGS gauging station or equivalent monitoring effort or conduct watershed inventory using department nonpoint source program watershed inventory techniques and protocol - 3 points.

(d) The degree to which the proposed planning project enhances local understanding of the lake's water quality, potential uses and factors which affect a lake's water quality. When ranking applications, scores shall be assigned as follows:

1. No effort for public involvement - 0 points.

2. Issue a news release and mail summary report to all lake management organization members - 1 point.

3. Issue a news release and mail summary report to all lake management organization members plus conduct a public informational meeting presenting completed project results or develop semi-annual newsletter for lake related information - 2 points.

4. In addition to subd. 3, hold an additional public meeting prior to project start-up presenting goals, objectives, etc. and issue a news release about completed projects results via a second media - 3 points.

(e) The availability of public access to, and public use of, the lake. When ranking applications, scores shall be assigned as follows:

1. Inadequate public access as defined in s. NR 1.91(4) - 0 points.

2. Public access planning is part of the planning project application or the applicant can demonstrate to the department that progress is being made towards minimum public access as defined in s. NR 1.91(4) - 1 point.

3. Minimum public access as defined in s. NR 1.91(4) - 2 points.

4. More public access than the minimum defined in s. NR 1.91(4) - 3 points.

5. More public access than the minimum defined in s. NR 1.91(4) and significant portion of the shoreline in public ownership or extensive public use by non-riparian users - 4 points.

(f) The degree to which the proposed planning project complements other lake management efforts or other local community funds for the project. When ranking applications, scores shall be assigned as follows:

1. Project objectives do not consider any other on going lake management activities - 0 points.

2. Project only considers other lake management efforts within applying management unit - 1 point.

3. Project considers all lake management activities among all lake management units and other local interest groups - 2 points.

4. Project considers all lake management activities among all lake management units, other local interest groups and all lake management activities within the department, county agencies and federal agencies - 3 points.

(g) The level of support for the planning project from other affected management units. When ranking applications, scores shall be assigned as follows:

1. No indication of support from other management units - 0 points.

2. Letters of support from one-half of other eligible management units - 1 point.

3. Letters of support from all eligible management units - 2 points.

4. Letters of support from all eligible management units and significant financial support from other eligible management unit or other local interest group, civic organization or sportsman's club - 3 points.

(h) The importance of the information obtained from a planning project to the state as identified in areawide water quality management plans developed under ch. NR 121. When ranking applications, scores shall be assigned as follows:

1. No relationship to a department basin plan - 0 points.

2. Provides significant information towards development of the lakes element of a department basin plan at the time of the next plan update - 1 point.

3. Implementation of specific monitoring recommendations from the basin plan - 2 points.

4. Implementation of specific monitoring recommendations from the basin plan and implementation of other plan recommendations or completion of a comprehensive lake management plan which will be amended to the basin plan at the time of the next update - 3 points.

(i) When ranking applications, assign 3 points to eligible first time projects for a lake.

SECTION 21. NR 190.10 is created to read:

NR 190.10 VARIANCES. The department may approve in writing a variance from a requirement of this chapter upon the written request of a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause and circumstances beyond the control of the sponsor. The department may not grant variances from statutory requirements.

SECTION 22. NR 191.01 is amended to read:

NR 191.01 PURPOSE. The purpose of this chapter is to establish procedures for implementing a lake protection and improvement grant program as provided for in s. 144.254, Stats. Grants made under this program will assist lake protection and restoration projects. They will assist lake management organizations by helping to provide protection and improvement of critical watershed areas and lake use activities which benefit the quality of water in lakes or the natural ecosystem of lakes.

SECTION 23. NR 191.02 is amended to read:

NR 191.02 APPLICABILITY. This chapter applies to all counties, cities, towns, villages, tribes, qualified lake associations as defined in s. 144.253(1), Stats., town sanitary districts, other local governmental units as defined in s. 66.299(1)(a), Stats., which are established for the purpose of lake management, ~~and~~ public inland lake protection and rehabilitation districts and qualified nonprofit conservation organizations, as defined in s. 23.0955(1), Stats., which are

applying for financial assistance under s. 144.254, Stats., for a protection project for a public inland lake.

SECTION 24. NR 191.03(5) to (13) are renumbered to NR 191.03(6), (7) and (9) to (15), and NR 191.03(6), (11), (14) and (15), as renumbered, are amended to read:

NR 191.03(6) "Local share" means that portion of the cost of the project ~~borne by the sponsor. State funds are not considered local share~~ other than state funds administered by the department.

(11) "Protection project" or "project" means a specific ~~protection~~ activity or set of activities to provide for protection or improvement of the quality of water in public inland lakes or their natural ecosystems, their shorelands, or their watershed areas that have, or could have, an effect on the quality of lakes or natural ecosystems, or public or private use activities on the lakes that will benefit the quality of water in public inland lakes or the natural lake ecosystems.

(14) "Sponsor" means the management unit or nonprofit organization that is applying for and receiving a grant under s. 144.254, Stats., and this ~~subchapter~~ chapter.

(15) "Wetlands" means any ~~wetland~~ area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions as defined in s. 23.32(1), Stats., ~~which is above the ordinary high water mark of the lake.~~

SECTION 25. NR 191.03(5) and (8) are created to read:

NR 191.03(5) "Lake restoration grants" for the purposes of this chapter and NR 1.91(2)(d) mean funding in-lake improvement activities which increase the recreational or environmental values of a lake. They include funding for the following natural resource enhancement activities: aeration, aquatic plant management, alum or lime treatments, artificial circulation, biomanipulation, dilution/flushing, drawdown, fishery rehabilitation, habitat restoration, harvesting lake plants, hypolimnetic withdrawal, and sediment covers, oxidation, removal or tilling.

(8) "Nonprofit conservation organization" has the meaning in s. 23.0955(1), Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the acquisition of property for conservation purposes.

SECTION 26. NR 191.04(intro.) is created to read:

NR 191.04 ELIGIBLE ACTIVITIES. (intro.) Eligible activities are:

SECTION 27. NR 191.04(1)(intro.) is repealed and recreated to read:

NR 191.04(1)(intro.) Lake protection, which includes:

SECTION 28. NR 191.04(1)(c) is amended to read:

NR 191.04(1)(c) The development of local regulations or ordinances, which will prevent degradation of a lake's water quality or its natural ecosystem, including limitations on the uses made of a lake, and the educational activities necessary for the initiation of their implementation. ~~Water safety patrols, as defined in s. 30.79(1)(b), Stats., are not eligible activities for funding under this section.~~

SECTION 29. NR 191.04(2) is renumbered NR 191.04(4) and amended to read:

NR 191.04(4) ~~Dam~~ Activities not eligible for funding under this section include: dam repair or operation or removal or the purchase of property on which a dam is located is not eligible for funding under this section.; dredging; design, installation, operation or maintenance of sanitary sewers; the routine chemical treatments or mechanical harvesting of aquatic plants and water safety patrols.

SECTION 30. NR 191.04(2) is created to read:

NR 191.04(2) Lake improvement activities that are recommended in a department-approved plan. Activities may include, but are not limited to:

(a) Diagnostic/feasibility studies, engineering or landscape design plans and the preparation of construction plans and specifications which are necessary to determine appropriate options and recommendations for lake protection or improvement.

(b) In-lake restoration activities, as defined in s. NR 191.03(5), and watershed management including pollution prevention and control practices.

SECTION 31. NR 191.04(3) is created to read:

NR 191.04(3) The department will only participate in a project that is specified in a department approved plan and which the department determines meets all of the following criteria.

1. The sources or causative factors of the problems to be remediated have been or very likely will be controlled prior to in-lake improvement activities.

2. The proposed activities have a good likelihood of successfully meeting the project plan objectives.

3. All the necessary permits and approvals for the project have been obtained.

SECTION 32. NR 191.06(2)(a)(intro.) is amended to read:

NR 191.06(2)(a) *Organizational - part I.* (intro.) The organizational application part is required only for qualified lake associations, nonprofit conservation organizations or for management units organized under s. 66.299(1)(a), Stats. It may be submitted at any time to obtain prior approval of the organization's eligibility to obtain a protection grant. This part shall include:

SECTION 33. NR 191.06(2)(a)3. is created to read:

NR 191.06(2)(a)3. Nonprofit conservation organizations shall follow the application instructions in s. NR 51.05(4)(a).

SECTION 34. NR 191.06(2)(b)2. is amended to read:

NR 191.06(2)(b)2. An estimate of the cost of the project including land acquisition, land stabilization, wetland restoration and construction, labor, supplies and materials, laboratory costs, sub-contracts and annual maintenance, education or management costs, and a general time frame for project implementation and completion.

SECTION 35. NR 191.06(2)(b)10. is created to read:

NR 191.06(2)(b)10. For lake improvement projects, a department approved project plan.

Note: Assistance in developing a scope of study is available through the department. A written request to the department from the sponsor may be made anytime before the application process described herein. The department will review the request and respond to the sponsor within 30 days as to its availability to assist.

SECTION 36. NR 191.07(3) is renumbered to NR 191.07(4)

SECTION 37. NR 191.07(3) is created to read:

NR 191.07(3) The department may only provide lake restoration grants for lakes which meet the minimum public boating access criteria to qualify for resource enhancement services under s. NR 1.91(4).

SECTION 38. NR 191.08(4) is renumbered NR 191.08(6).

SECTION 39. NR 191.08(4) is created to read:

NR 191.08(4) Lake protection activities shall receive first priority.

SECTION 40. NR 191.08(5) is created to read:

NR 191.08(5) Applications for lakes which meet the minimum boating access criteria of s. NR 1.91(4) shall receive first priority.

SECTION 41. NR 191.105 is created to read:

NR 191.105 GRANT AWARDS FOR LAKE IMPROVEMENT PROJECTS. (1) The department shall issue grant awards by March 1 of each year for projects based upon the project priority list.

(2) The grant award may not exceed the state share of the estimated costs of the project as set out in the grant application. Estimated costs may include:

(a) Labor costs for activities identified in the grant agreement if the activities require additional staff or increased hours of existing staff. Labor costs of additional staff needed to offset the work hours spent by existing staff on the activities identified in the grant agreement. Costs of additional staff positions or increased staff hours shall be based on the sponsor's rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for construction activities, surveys, newsletters, brochures, mailings, professional services contracts and other items approved by the department.

(c) Other costs determined by the department to be necessary to carry out an adequate diagnostic/feasibility study or lake improvement project.

(3) Lake improvement projects shall require the preparation of a project plan based upon a recommended alternative in a department approved diagnostic/feasibility study subject to the following conditions:

(a) Diagnostic/feasibility studies shall follow specifications provided by the department to ensure that sufficient information exists for determining the feasibility of alternative remedial measures, including: costs; the relative permanence of alternative measures; the potential for long-term control of the causes of degradation as well as the baseline data required to measure subsequent changes. Studies previously developed under ch. NR 190 lake management planning grants or for other purposes may qualify as feasibility studies with the written approval of the department.

(b) Upon the department's written approval of the feasibility study, the sponsor may select and adopt, subject to the provisions of s. NR 191.11(5)(b) and (c), a proposed project plan based upon the recommended alternatives of the diagnostic/feasibility study.

(c) Following selection of the proposed lake improvement project plan by the sponsor, the sponsor shall submit the project plan to the department for approval.

(d) The department shall provisionally indicate if the proposed plan requires the preparation of an environmental impact report (EIR) by the applicant or an environmental assessment (EA) by the department, or both. If an EA is required, the sponsor's formal adoption of a proposed plan by resolution cannot take place until the EA has been completed and circulated; the period for public comment has ended; and the EA has been certified as being in compliance with the Wisconsin environmental policy act (WEPA) 1.11, Wis. Stat.

(e) When the department certifies that a lake improvement project plan complies with the provisions of WEPA, the sponsor may submit the lake improvement project plan to the department for its approval.

(f) The department may hold a public informational meeting on the project plan. The department will set a time and place for the public meeting in the project vicinity within 10 days after receipt of the proposed plan and convene the meeting within 90 days after notice of meeting. The meeting will be for the purpose of receiving testimony regarding:

1. The environmental assessment prepared by the department if required, and the project plan;
2. The issuance of required permits;
3. The potential for long-range environmental pollution if the project is implemented;
4. Views of the appropriate land conservation board;
5. Views of the appropriate regional planning commission;
6. The likelihood that sources of continuing lake degradation will be substantially eliminated.

(g) If necessary to an orderly presentation, the department may receive testimony on applications for permits independently of the other issues specified in par. (e)

(h) The department shall approve, approve with modification or disapprove the project plan within 60 days of receipt or within 60 days after the public meeting. The department shall state the reasons if a plan is disapproved and provide alternatives if modification is recommended. For approved plans, the department will concurrently issue its decision on the applications for permits.

(i) Following department approval of a project plan, the sponsor may by resolution adopt the approved or modified project plan, and a copy of the plan and resolution shall be submitted to the department. The adopted project plan may then be implemented, subject to any conditions in the grant agreement where an offer of financial assistance has been made by the department and accepted by the sponsor.

(4) Only lake improvement project activities approved by the department shall be considered for lake protection grants.

(5) The local share of the project cost may not be less than 50% of the eligible project costs.

(6) The department may withhold 10% of the state share for a final payment and may withhold final payment until it has made a determination that the project and any required audits have been satisfactorily completed.

(7) A grant awarded under this section may be terminated by the department for violation of any term or condition of the grant contract.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 23, 1995.

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 4/21/95

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

