



TONY KURTZ

STATE REPRESENTATIVE • 50th ASSEMBLY DISTRICT

2019 Assembly Bill 148

The Clean Water Health and Wellness Act

Relating to: nitrate testing pilot program, granting rule-making authority, and making an appropriation.

Assembly Committee on Environment

Thank you, Representative Kitchens for holding a public hearing on Assembly Bill 148 and thank you to the members of the committee for hearing my testimony today.

A little over half, or sixty percent, of the homes in Wisconsin have drinking water that comes from a public water supply. The 1972 Safe Drinking Water Act requires the Environmental Protection Agency to set safe levels for contaminants in drinking water and other subsequent federal laws determine how often public water supplies are tested and reported back to consumer and government agencies. However, a little under half, or about forty percent, of the homes in Wisconsin have drinking water that comes from a private well. And although the Wisconsin Department of Natural Resources requires testing for newly drilled wells, there are no requirements for continued monitoring. Therefore, many well owners do not test their well regularly, if they even know to do so at all.

Nitrate is the most commonly found contaminate in Wisconsin's groundwater and it is estimated that about one third of well owners have never tested for it. The national maximum contaminate level for nitrate is 10 parts per million (10 ppm). Individuals should avoid long term consumption of drinking water with more than 10 ppm. Populations who should especially avoid drinking or eating foods prepared with contaminated water are women who are pregnant, who may become pregnant, and infants.

Under this bill private well owners can contact a local health department to have nitrate levels tested for their well. The local health department will then collect the sample, submit it to a state certified laboratory for testing, report the results to the Wisconsin Department of Health Services (DHS) and the well owner. The results will need to include a statement of fees for the testing that the well owner can receive reimbursement for and, if needed, a recommendation for a remediation approach. Private well owners can apply for a grant to assist with the associated costs and can receive only one grant per parcel up to \$2,500 to assist with costs associated with the testing of private wells, installation of a filtration system, payment for well repair, or

payment to replace an existing well. Under this bill, preference would be given to applications who have a member of their household who is pregnant, breast-feeding, a young child or an elderly adult. Maintaining this program at DHS allows more targeted program in other agencies to continue to carry out their original mission while also properly addressing the nitrate issue as a public health concern. The size of the allocation is to go along with the perceived size of problem.

Additionally, after the public hearing in the Senate a couple issues were raised and then addressed with the amendment I recently introduced. In addition to local health departments, licensed well drillers, pump installer and plumbers would also be able to complete authorized testing. To put more emphasis on the more vulnerable populations, one-third of the grant money will be reserved for households that have a member who is pregnant, breast-feeding, a young child or an elderly adult. The grant funds can also be used for repairing a well, not just for testing. Finally, the amendment allows DHS to promulgate emergency rules that can remain in effect.

I thank you for your time and for listening to my testimony. I would be honored to have earned your support of AB 148 and hope to answer any questions you may have at this time.



State of Wisconsin
Governor Tony Evers

Department of Health Services

Andrea Palm, Secretary

Department of Natural Resources

Preston D. Cole, Secretary



Assembly Committee on Environment

2019 Assembly Bill 148

Relating to a new Nitrate Testing Pilot Program

September 3, 2019

Good morning Chairman Kitchens and members of the Committee. The Wisconsin Department of Health Services and the Department of Natural Resources are pleased to provide joint comments for your consideration on Assembly Bill 148 (AB 148) and proposed Assembly Amendment 1, which relates to the development of a new Nitrate testing pilot program to be located at DHS. Thank you for the opportunity to offer this testimony for informational purposes.

DHS and DNR appreciate the legislature's interest in supporting the health of Wisconsin citizens by helping private well owners learn about and address nitrate in their drinking water. We believe this bill addresses an important public health issue facing many private well owners and has the potential to significantly increase testing across the state. As we have heard throughout the course of the Speaker's Task Force on Water Quality hearings, individuals and families who get their water from private wells would benefit from this program.

As currently written, the bill requires DHS to provide grants for well remediation. Although DHS could potentially do this, DHS is not well-positioned to manage this type of program. Well remediation has traditionally been managed by DNR, given the agency's expertise in this area. Providing remediation funds to existing well programs at DNR (such as the Well Compensation grant program), or creating a new program at DNR, will be more efficient and avoid duplicative work across state agencies and potential confusion and frustration for private well owners.

If AB 148 were revised to assign implementation responsibilities to DNR, there are several things to consider. Like DHS, DNR would require 1.5 two-year project positions at a cost of \$141,700 GPR in each year of the biennium in order to implement this program and conduct the necessary public outreach. If this program were to continue, these positions may need to become permanent. Emergency Rules, applications, instructions, and numerous other items would need to be developed by DNR; as well as coordination with DHS, local health departments, the State Lab of Hygiene, well drillers, and pump installers. DNR would identify the most efficient way to administer this new program which could include integrating it with an existing grant program or mirroring the new program after an existing program.

We do want to note that Assembly Amendment 1 to AB 148 makes a number of changes, and we appreciate the bill authors' willingness to take some suggestions the Departments had on the program. The proposed amendment addresses our initial concern about a potential funding gap that would occur between the end of Emergency Rule effectiveness and the state of Administrative Code effectiveness by allowing the resulting Emergency Rule to remain in place until January 1, 2021. Additionally, it reserves 1/3 of the available funding for households with individuals most at risk: pregnant women, breast feeding women, children under the age of

3, or persons over the age of 65. The amendment also removes the requirement for remediation recommendations to be made by the local health department and a few other things.

With that said, the authors may wish to consider some additional changes. We will detail those in the following points:

- The bill requires DHS to provide a recommended approach for remediation to each well owner, but allows well owners the ability to request grant funds to do something different than the recommendation. Currently, DNR only recommends well replacement or connection to a public water supply as long-term options to address nitrate contamination.
- Because the program only provides grant funding if water testing reveals nitrate levels of 10 ppm or more, this may create a financial hardship for low-income homeowners or business owners. If their test results show nitrate levels of less than 10 ppm, they will have to pay for the testing costs themselves.
- AB 148 allows anyone, regardless of income level, to apply (unlike the current Well Compensation grant program at DNR). This could result in individuals who have the financial ability to pay for their own private well costs being able to utilize state funds.
- As proposed, AB 148 does not provide funding to the State Lab of Hygiene in order to scale-up staffing levels in anticipation of increased sample submittals for places where the local health departments cannot provide water sample analysis.
- Because nitrate and bacterial contamination's (coliforms and *E. coli*) often co-occur, the bill could further promote public health by including measures of bacterial contamination, as both present risks to vulnerable populations. We note that this would likely double the amount of proposed testing funds needed.
- Rather than creating a new program, DNR recommends expanding and amending the existing Well Compensation in s. 281.75, Stats., by increasing the appropriation, expanding income eligibility, removing the statutory limitations on nitrate eligibility only for livestock water, and allow for the consideration of other well contaminants.

It is important to additionally note that the Department of Health Services and the Department of Natural Resources, and Wisconsin's local health departments work closely and collaboratively on a range of public health-related water quality issues. This includes our shared efforts responding to private well contamination.

In these situations, members of the public will often ask questions on a range of topics, including health, sources of groundwater contaminants, well construction, maintenance, and repair, and options to remediate contamination. Given our respective areas of expertise, DHS, DNR, local health departments, and, as needed, other state agencies, work together to effectively respond to questions. We want the public to have access to the right experts to assist them in addressing their situations.

As the state health department, DHS is available to provide health information and advice to families. This can include general informational materials, like fact sheets and brochures, and presentations at public meetings when there are wide-spread contamination concerns. Important for the present conversation, our work also includes direct one-on-one conversations with members of the public about their health-related questions, and, based on well water test results, the provision of health advice through drinking water health advisory letters. When the contaminants of concern are substances other than bacteria, nitrate, or arsenic, drinking water health advisory letters from DHS can be used by DNR to meet eligibility criteria for the well compensation grant program.

It is important to mention our critical relationships with our local health department partners too. In partnership with DNR and the Wisconsin State Laboratory of Hygiene, DHS administers a service enabling local health

departments to offer well testing at no cost for households with a susceptible individual, like a pregnant woman or young child, and for whom well testing would be a financial hardship. Additionally, local health departments are the first point of contact for people dealing with private well contamination. DHS works with local health departments to assure their staff are able to interpret well test results and provide direct local guidance to well owners.

This proven track record of close collaboration between DHS, DNR, and local health departments on these issues should bolster confidence that public health will be protected even if the proposed testing program were administered by DNR, as recommended by both of our agencies. As stated earlier, DHS and DNR would work together on developing the program structure to ensure solid engagement with local health departments and appropriate prioritization of most at-risk families for outreach and testing. Collaboratively, we would also work to engage local health departments about the new opportunities afforded by this program and assist with program implementation. DHS would provide ongoing public health support for this effort, including working with local health departments to take the lead on responding to follow-up health questions from affected households. DHS and DNR will work to ensure that this testing program would meet the overall goal of protecting public health, especially for those families most at-risk from the harmful impacts of private well contamination.

Thank you again for the opportunity to provide joint, written comments. If you have any questions regarding this testimony please feel free to contact Department of Health Service Legislative Liaison Lisa Olson at 608-266-3262, lisaa.olson@dhs.wisconsin.gov, or Department of Natural Resources Legislative Liaison Ben Van Pelt at 608-400-2115, benjamin.vanpelt@wisconsin.gov.



**Committee on Natural Resources and Energy
AB 148 – Nitrate Testing Pilot Program
Clean Wisconsin, Submitted Testimony
Scott Laeser, Water Program Director
September 3, 2019**

Thank you for the opportunity to submit written testimony on Assembly Bill 148 relating to the nitrate testing pilot program introduced by Senator Testin, Senator Cowles, Representative Kurtz, and Representative Krug.

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air, and clean energy issues. We were founded almost fifty years ago and have 20,000 members and supporters around the state. We've been working on water pollution issues in Wisconsin since our founding, and while some of the particulars have changed, Wisconsin remains a state with abundant water resources but also abundant challenges in restoring and protecting those waters.

Clean Wisconsin employs scientists, policy experts, and legal staff to bring all the tools at our disposal to protect and improve our air and water resources. In 2014, we filed a Safe Drinking Water Act petition with the EPA when calls for action to address groundwater contamination in Kewaunee County went unanswered. We've worked closely with researchers and counties in Southwest Wisconsin to support the efforts to initiate and fund the Southwest Wisconsin Groundwater and Geology Study. And we've worked with decision makers for many years to support state financial and technical investments in protecting Wisconsin's air, water, and natural resources.

The evidence of nitrate pollution in both our private and municipal wells is growing. In the last year, reports of high nitrate levels in the Central Sands, the La Crosse area, and Southwest WI have added to the body of evidence already in existence. We also have a growing understanding of the health risks associated with exposure to nitrates; blue baby syndrome and central nervous system birth defects in fetuses or young children, and for adults, thyroid disease and colorectal cancer. Research tells us that most of the nitrates contaminating our groundwater are coming from agricultural sources. Even conservative estimates place the number of wells in Wisconsin exceeding the 10mg/l nitrate health standard at over 40,000, while other estimates are closer to 80,000 wells. It is clear, addressing this drinking water contamination is overdue and a comprehensive approach that combines efforts to provide clean drinking water to affected citizens with pollution reduction efforts is the appropriate response.

A \$10 million investment that provides access to safe drinking water for those dealing with nitrate contamination is not insignificant. As a concept, we greatly appreciate this effort. We do have concerns with some key features of the bill, including the regulating/implementing agency, limitations the grant cap places on well replacement, and confusion with the current well compensation program at DNR.

The heart of this bill is well-intentioned, and we acknowledge the need to provide access to safe drinking water to families that do not have it. It is also important to keep in mind that although this is a \$10 million investment in drinking water access, it is an investment after contamination has occurred. Without concurrently addressing the root cause of the pollution, nitrate contamination in private wells will continue to occur and spread. Clean Wisconsin advocates for a holistic approach to nitrate

contamination that provides access to clean drinking water but also ultimately prevents nitrate pollution from occurring. Without this broad effort, this \$10 million only addresses part of this complex challenge and will likely result in the continued contamination of citizens' wells.

Clean Wisconsin submits the following observations and questions concerning certain aspects of the bill:

- Under this bill, the nitrate testing pilot program is a new program created at the Department of Health Services (DHS). DNR already administers a well replacement program and creating a new structure at DHS would be very inefficient and likely confusing to people. When it comes to water quality issues and the ability to enforce groundwater standards, the Department of Natural Resources (DNR) is the agency that should be the regulatory authority over this program, which could be combined with the current well compensation program.
- We are concerned with the degree to which this bill relies on filtration systems to address this problem. Filtration systems require regular maintenance and continued investment in replacement filter cartridges. Filters also do not work in very high nitrate contamination instances.
- This bill only allows for a maximum grant of \$2500, which is not nearly enough to cover the cost of well replacement, the only solution to nitrate contamination in circumstances where the concentration is beyond what filters can treat. The existing well compensation program provides funds of up to \$12,000, almost five times the cap for this program, in recognition of the high cost of well replacement.
- In some counties, the county conservation department staff are involved in well contamination issues and have varying relationships with the local health departments. To what degree will this bill affect that work, and could the requirement a county health department request the grants be extended to include county conservation departments (perhaps one or the other, or a joint application, per county)?

Families need access to clean drinking water now and they need to know their leaders are working to clean up the pollution contaminating their wells. We need to do a better job using the tools we already have to protect our water from agricultural pollution sources. All Wisconsin farms should meet a minimum standard set of conservation practices on their land. Currently, only 36% of agricultural lands in the state are covered by a Nutrient Management Plan. We need to invest in preventing nitrate pollution from contaminating wells in the first place, and if we are truly going address the widespread well contamination from nitrates, we will need to consider new steps. This could include limiting the amount of nitrogen we put on certain fields – to balance the importance of the continued success of the agricultural industry in our state with our obligation to provide access to clean drinking water.

Clean Wisconsin appreciates the significant investment in a nitrate testing pilot program and subsequent grant program for affected well owners. However, the concerns about the administration of this new proposal should be addressed to ensure we are maximizing the assistance we are delivering to families plagued by polluted water. We must take additional steps to prevent nitrate contamination from occurring in the first place and affecting these same families, or their neighbors, in the future. While immediate access to clean drinking water is an important step, it is only one part of a bigger solution to nitrate contamination that stops pollution in the first place.



Water Quality Association

of Wisconsin

POSITION PAPER: WISCONSIN WATER QUALITY ISSUES

WQAW POSITION STATEMENT: The final barrier to ensuring clean drinking water is through water treatment systems either point of entry (POE) or point of use (POU). For most regulated and non-regulated contaminants, certified (state approved) water treatment devices can reduce these contaminants below the EPA guidelines.

Issue:

Wisconsin is facing a water quality crisis: lead in municipal systems, bacterial and chemical contamination in southwest Wisconsin, high nitrate levels throughout the sandy agriculture areas, radium in some wells and municipal systems, arsenic in the fox valley and throughout the state, and the emergence of perflourinated compounds or PFAS.

As the state Legislature looks to address Wisconsin's water issues, we believe water treatment systems are integral to the safety of Wisconsinite's drinking water and as a permanent solution to many of these water concerns.

Background/Talking Points:

- Final Barrier Treatment is water technology installed either at the point of use (POU) where water is consumed including: pour-through pitchers, countertop units, faucet-attached devices, under-the-sink filters, refrigerator filters and reverse osmosis technology units; or point of entry (POE) where water enters the home: ion exchange, carbon, filtration, or whole house reverse osmosis.
- Contaminants commonly found in Wisconsin include arsenic, copper, nitrate, lead, radium, and volatile organic compounds (VOCs). According to the CDC, POU systems using technologies such as reverse-osmosis, ultra-filtration, distillation, ion exchange or carbon filters will treat the majority of these contaminants. In others, POE devices using similar technologies are needed.

- **Municipal Water Systems** treat water to drinking water quality as defined by the Federal Safe Water Drinking Act. However, despite central treatment certain contaminants may still be present including pharmaceuticals and pesticides. In addition, after central treatment there are additional points of contamination such as lead and copper corrosion, as well as cross connections with waste. Since only a small percentage of all municipal water is used for drinking purposes (less than 1%), and contaminants are localized to only some areas serviced by municipal systems, POU systems represent a far more focused alternative at a far more affordable cost.
- **Forty percent of Wisconsin residents** use private drinking wells that rely on groundwater which contains natural impurities and contaminants. In addition, groundwater can be affected by fertilizers and pesticides, household and industrial waste, and storm-water drains. Homeowners are responsible for the safety of their water and need to ensure testing is done annually.
- **Wisconsin law** requires all new wells to be tested and also after repairs or other changes to the well. Wisconsin DNR also recommends wells are tested annually. However, materials and recommendations from the Wisconsin DNR indicate that testing must be done by a certified laboratory with costs as much as \$300 per test.
- **Wisconsin's Well Contamination Grant Program** provides grants to landowners, with specific requirements and income thresholds, to construct or reconstruct contaminated wells or connect to an existing private or public water supply. The Well Contamination Grant Program will provide reimbursement for water treatment equipment, only if no other option is feasible. Oftentimes in these situations, the problem is the groundwater and a well is not a viable option. The only solution in these situations is water filtration products.
- **The costs to construct or reconstruct a well** can range from \$1,500 to \$12,000 and does not ensure safe drinking water. On the other hand, water treatment products range in cost and options and can be obtained through certified water treatment professionals and usually cost a fraction of the repairs or reconstruction costs.
- **The WQAW** is made up of professional manufacturers, suppliers, and dealers who all adhere to the WQA code of ethics. Simply stated, they are dedicated to promoting the highest principles of honesty, integrity, fair dealing and professionalism in the water quality improvement industry.
- **WQAW members** are dedicated to preserving the consuming public's right to quality water and will provide testing, recommendations and advice to any Wisconsinite looking for information. In addition, WQAW seeks to be a resource for legislators as they discuss water quality issues and to assist with constituent concerns if needed.