



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-063

AN ORDER to create chapter NR 173, relating to the administration of the brownfield green space and public facilities grant program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-02-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-20-02 REPORT SENT TO AGENCY.

RS:MCP:tlu;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. NR 173.03, the definition of the term "eligible site or facility" should follow the definition of the term "eligible project" in order to present the definitions in an alphabetized format.

b. In s. NR 173.05 (2) (intro.), the phrase "all of" should be inserted after the word "meet." Also, sub. (2) (a) should begin with the phrase "the end use" and par. (b) should begin with the phrase "A phase."

c. In s. NR 173.13 (1) (intro.), the phrase "any of" should be inserted after the word "for." In sub. (2) (intro.), the phrase "including any of the following" should be inserted after the word "department." Finally, sub. (2) provides that certain costs will be determined to be ineligible by the department. When these costs are determined to be ineligible, they should be included in the administrative code.

d. In s. NR 173.15 (2) (intro.), the phrase "any of" should be inserted before the phrase "the following."

e. In s. NR 173.17 (intro.), (1) (intro.), and (2) (intro.) and (b) (intro.), the appropriate use of the phrase "all of" should be inserted in the introductory material.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. NR 173.07 (1), the phrase "from the legislature" should be deleted.
- b. Are there circumstances in which a grant may be awarded but no funding provided? [See s. NR 173.07 (6).]
- c. Section NR 173.09 (2) (h) appears to imply that the local governmental unit or private nonprofit organization must own the property or have initiated the process to acquire the property. However, the rule does not expressly state that it is a condition of receiving a grant that the local governmental unit or private nonprofit organization must ultimately own the property. If this is the intent, it should be clearly expressed.
- d. In s. NR 173.13 (1) (a), reference is made to county machinery rates established annually by the Department of Transportation. A note to the rule should indicate where the reader may locate these rates.
- e. The term "geotechnical" in s. NR 173.13 (2) (m) is a technical term that could readily be expressed in plain language.
- f. In s. NR 173.17 (1) (c), the word "has" should be replaced by the word "have." Also, in sub. (2) (c), the rule provides that a grantee's records are subject to department review. Is it necessary that the rule indicate how long the records should be maintained by a grantee? [For example, see s. 19.21, Stats.]

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create ch. NR 173 relating to the administration of the brownfield green space and public facilities grant program.

RR-25-02

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 292.79 and 227.11(2), Stats.

Statutes Interpreted: s. 292.79, Stats.

This rule implements the brownfield green space and public facilities grant program. Created in the 2001-2003 biennial state budget bill (2001 Wisconsin Act 16), the brownfield green space and public facilities grant program provides grants to eligible local governmental units to fund the costs of environmental remediation activities at eligible sites or facilities that will have a long-term public benefit, including the preservation of green space, the development of recreational areas, or use of a property by a local government. Eligible activities include actions to remedy environmental contamination at brownfields. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities and housing authorities. The legislature appropriated \$1 million for these grants during the 2001-2003 biennium. Local governments, or an appropriate private non-profit organization in partnership with a local government, are required to contribute matching funds as cash or in-kind, or both, equal to 20%, 35% or 50%, depending upon the amount of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that at least 20% of the funds be allocated to grants of \$50,000 or less.

SECTION 1. Chapter NR 173 is created to read:

NR 173.01 Purpose and applicability. The purpose of this chapter is to establish procedures for implementing a brownfield green space and public facilities grant program as provided for in s. 292.79, Stats. Grants made under this program will assist local governmental units in remediating environmental contamination on eligible brownfield sites or facilities. Projects are eligible if they have a long-term public benefit, including the preservation of green space, the development of recreational areas or use of the property by the local government.

NR 173.03 Definitions. In this chapter:

- (1) "Applicant" means a local governmental unit seeking a grant under this chapter.
- (2) "Delinquent taxes" means the unpaid property taxes, penalties and interest included in the delinquent tax bill.
- (3) "Department" means the department of natural resources.
- (4) "Eligible site or facility" means sites or facilities that are brownfields, as defined in s. 560.13, Stats.

Note: Section 560.13 (1) (a), Stats., defines "brownfields" to mean abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(5) "Eligible activities" means activities eligible for funding under this chapter, limited to remedial actions as defined in s. NR 700.03 (48) and implemented to remedy environmental contamination at an eligible site or facility.

Note: Section NR 700.03(48) defines "remedial action" to mean "those response actions, other than immediate or interim actions, taken to control, minimize, restore or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment".

(6) "Eligible project" means the remediation and redevelopment of an eligible site or facility that has a long-term public benefit, including the preservation of green space, the development of recreational areas, or the use of a property by the local government.

(7) "Grantee" means a local governmental unit that has applied for and been awarded a grant under this chapter, and whose grant contract has been signed by the department.

(8) "Investigation" means an investigation undertaken in conformance with ch. NR 716.

(9) "Local governmental unit" has the meaning given 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. 66.1333, Stats., community development authority created under s. 66.1335, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield green space and public facility grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(10) "Matching funds" means the cash or in-kind contribution, or both, as provided in s. NR 173.15.

(11) "Person" has the meaning specified in s. 299.01 (10), Stats.

Note: Section 299.01 (10), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency".

(12) "Phase 1 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."

(13) "Phase 2 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."

(14) "Private non-profit organization" means a nonprofit corporation, a charitable trust or other nonprofit association that is described in section 501 (c) (3) of the federal internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

NR 173.05 Eligibility. (1) The department may award grants under this chapter 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. Grants may be awarded if the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that person, or another person, has conducted or agreed to fund the minimum necessary remedial action.

(2) Grants may be awarded to eligible applicants for eligible sites or facilities that meet the following conditions:

(a) ~~Where~~ the end use will have a long-term public benefit, including preservation of green space, development of recreational areas or use by a local government.

(b) ~~Only if~~ a phase I environmental assessment and a phase II environmental assessment have been completed for that eligible site or facility.

(3) As part of the application, applicants shall provide proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application.

NR 173.07 Allocation of funds. (1) For the 2001-2003 biennium, all grant funds shall be allocated through the application process to eligible applicants for eligible projects and awarded during the 2003 fiscal year. For future fiscal years, 50% of the funds appropriated to this grant program in a biennium shall be allocated through the application process to eligible applicants during the first fiscal year of the biennium and 50% shall be allocated during the second fiscal year of the biennium. All allocations are based on the availability of funds (from the legislature).

(2) In any first fiscal year of a biennium, if funds remain after regular application cycles, as identified in s. NR 173.09(3), the department may accept and fund additional applications and grant amendment requests through an additional grant cycle, or the remainder may be carried over to the next fiscal year.

(3) Of the funds appropriated for the grant program per biennium, at least 20% shall be awarded for grants of \$50,000 or less.

(4) No grant award may exceed \$200,000.

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

(6) If sufficient funds are not available to fund a grant in its entirety, the department shall offer the eligible applicant the option of receiving partial or no funding.

(7) The department may not award more than one grant under this chapter for an eligible site or facility in any application cycle, as identified in s. NR 173.09(3).

NR 173.09 Grant application. (1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the brownfields green space and public facilities grant manager, to the address stated on the provided form.

Note: Grant application forms may be obtained as follows:

Mailing Address

Phone

Department of Natural Resources
Bureau for Remediation and Redevelopment
P.O. Box 7921
Madison, WI 53707

(608) 266-2111

Web Site

www.dnr.state.wi.us/org/aw/rr/

(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) The street address of the eligible site or facility.
- (c) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.
- (d) A resolution that designates an authorized local governmental unit representative, commits the applicant to completing the activities listed in the grant application if awarded funds, commits the applicant to maintain the property for the end use specified in the application and grants the department access to the site or facility and grant records.
- (e) A description of the proposed grant activities, including:
 1. The eligible activities for which the applicant is seeking funds, including a detailed description of the remedial action proposed at the site or facility.
 2. An itemized estimate of the cost of each activity proposed using the grant.
 3. A description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.
 4. If matching funds are contributed by a person other than the applicant, a signed letter from that person explaining their commitment to providing matching funds for the grant and a description of the funds.
- (f) Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications required by local, state and federal law.
- (g) A map showing the location of the eligible site or facility.

(h) Proof of current ownership of the eligible site or facility, including information indicating how the local governmental unit or private non-profit organization acquired the property, or has initiated the formal acquisition process, if applicable.

(i) 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.

(j) Information showing that the person who 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. In the alternative, information showing that the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that a person has conducted or agreed to fund the minimum necessary remediation.

(k) A copy of the phase 1 environmental assessment and the phase 2 environmental assessment reports that have been conducted at the site or facility.

(L) A summary of environmental activities that have been conducted and reports that have been prepared on the eligible site or facility, including any additional environmental investigation information that has been collected which is not described in the phase 1 and phase 2 environmental assessment reports.

(m) Any additional information that the department determines is necessary to document factors described in s. NR 173.11 that are considered when the grant applications are scored.

(3) APPLICATION CYCLE. The department shall establish application due dates. The department shall have at least one funding cycle each state fiscal year that funds are available. If funds are available after the first funding cycle, there may be additional application cycles, or the available funds may be carried over to the second fiscal year of the biennium.

(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 not be considered. The application is considered complete when the additional or correct information requested by the department is received within the time period specified by the department. The department may not fund incomplete applications.

NR 173.11 Application scoring. (1) GENERAL. When ranking and scoring eligible and complete applications under s. NR 173.07(5), the department shall use the criteria in this section. The criteria shall be applied on a statewide basis.

(2) POINT AWARDS. The department shall award points to the grant applications according to the following scoring criteria:

(a) The demonstrated need for the project based on factors including, but not limited to:

1. Public benefit of the project.
2. Demonstrated need for this type of property or facility in the neighborhood and community.
3. Economic hardship and distress in the neighborhood and community where the site or facility is located.

(b) The commitment of an applicant to the project based on factors including, but not limited to:

1. Community support for the project.
2. Community partnerships.
3. Property ownership.
4. Public participation and planning.

(c) Environmental benefits of the project based on factors including, but not limited to:

1. Health and environmental risks posed by contamination at the eligible site or facility.
2. Likelihood that the grant activities will assist in obtaining closure of the site.
3. Degree to which a community is prepared to implement the eligible activities.
4. Extent of blight or slum conditions at the property.

(d) The applicant's financial commitment to the project based on factors including, but not limited to:

1. Matching funds provided beyond the minimum required in s. NR 173.15(1).
2. Past costs paid on the project.
3. Extent to which the applicant is financially prepared to complete the project.

(3) When making a determination under sub. (2), the department shall accord a 25% weight to the criterion under par. (a), a 15% weight to the criterion under sub. (2)(b), a 35% weight to the criterion under sub. (2)(c) and a 25% weight to the criterion under sub. (2)(d).

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

NR 173.13 Eligible and Ineligible costs. (1) ELIGIBLE COSTS. Grant funding provided under this chapter may be used for the following expenses:

(a) The actual costs of services and equipment provided by employees of the grantee for the implementation of the grant agreement. Equipment rental rates may not exceed the county machinery rates established annually by the Wisconsin department of transportation. *where?*

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

(c) Costs for laboratory analysis and professional services contracts associated with grant activities.

(d) The costs of necessary equipment and facilities used to carry out activities in the grant agreement.

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

(f) Costs to prepare a remedial action plan in accordance with ch. NR 722.

(g) Other costs, approved in advance by the department, that the department determines are necessary to carry out the eligible activities.

(2) INELIGIBLE COSTS. Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities as defined under this chapter or established in s. NR 173.13(1), as determined by the department. → :

(a) Costs incurred outside the grant period stated in the grant contract.

(b) Costs reimbursed by any other local, state or federal programs.

(c) Costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act, and dry cleaner environmental response program.

(d) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.

(e) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.

(f) Costs of capital equipment.

(g) Costs of licenses, application, permit fees and department review fees.

(h) Legal fees.

(i) Phase I and II environmental site assessments.

(j) Chapter NR 716 site investigations.

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

(L) Planning, design or construction of public use facilities.

(m) Geotechnical engineering costs not associated with a remedial action.

*tech. term -
dandy*

NR 173.15 Matching of grants. (1) DEFINITION. Local governmental units shall match funds provided through this chapter as follows:

(a) At least 20% of the grant request for grants of \$50,000 or less.

(b) At least 35% of the grant request for grants of greater than \$50,000 and less than \$100,000.

(c) At least 50% of the grant request for grants of at least \$100,000, up to \$200,000.

(2) COSTS AND SERVICES ELIGIBLE AS MATCHING FUNDS. Local governmental units receiving grants under this chapter may count as matching funds the value of costs and services incurred during the grant period by the grantee or a private non-profit organization in partnership with the grantee, including but not limited to, the costs of the following:

- (a) Eligible activities as defined under this chapter.
- (b) Acquisition of the eligible site or facility.
- (c) Payment or cancellation of delinquent taxes.
- (d) Maintenance and security of the site or facility.
- (e) Costs of completing a ch. NR 716 site investigation.
- (f) Planning and design for green space, recreational area or use by a local government at an eligible site or facility.
- (g) Demolition of any structures or existing improvements on the eligible site or facility.
- (h) Asbestos abatement activities, associated with demolition, as defined in s. 254.11(2), Stats.
- (i) Removal of underground hazardous storage tank systems.
- (j) Removal of underground petroleum product storage tank systems.
- (k) Removal of abandoned containers as defined in s. 254.11(2), Stats.
- (L) Removal and disposal of debris, solid waste and scrap materials on the eligible site or facility.

(3) COSTS AND SERVICES INELIGIBLE AS MATCHING FUNDS. Ineligible costs for matching funds include, but are not limited to, costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act, and dry cleaner environmental response program.

NR 173.17 Grant conditions. Each grant awarded under this chapter shall be subject to the following conditions:

(1) Before the department may reimburse a local governmental unit receiving funds under this chapter, the grantee shall demonstrate:

(a) A local governmental unit or private non-profit organization owns or has long-term control over the eligible site or facility.

(b) A deed restriction has been placed on the deed for the property where the eligible site or facility is located, and recorded at the county register of deeds office, limiting the use of the

property to the end use specified in the agreement for at least 20 years from the date that the grant agreement is signed by both parties. This deed restriction shall remain in place for 20 years.

(c) A ch. NR 716 site investigation and a ch. NR 722 remedial action plan ^{have} ~~has~~ been approved by the department. *Y*

(2) A grantee shall ~~also~~ ^{all of} comply with the following conditions:

(a) The grant period is 24 months from the date of the department's signature on the grant contract, unless extended under par. (g)

(b) The grantee shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides clear references, particularly to source or original documents. Records shall reflect the following minimum requirements: *all of*

1. Project accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed and identified in sufficient detail to reflect their source and purpose. Proof of payment, such as canceled checks or receipts from vendors, shall be maintained.

(c) All of the grantee's records pertaining to the grant are subject to department review. Grant payments by the department are contingent upon review of grantee records and may be adjusted if costs are determined to be ineligible. *how long? 19.21 enough?*

(d) The department may conduct compliance inspections, or may require the grantee to conduct compliance inspections, on properties for which assistance has been provided under this chapter.

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

(f) The grantee 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. Amendments are subject to department approval and availability of funds.

(g) Prior to the end of the grant period stated in the grant agreement, the grantee may request that the department extend the grant period. The request shall be in writing and describe the reasons for the time extension.

(h) The grantee shall provide to the department a final written 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 173.19 Grant enforcement and termination (1) PENALTIES. If a local governmental unit receiving grants under this chapter fails to comply with the provisions of this chapter, the department may take one or more of the following actions:

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

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

(c) Seek reimbursement of all or a portion of the state's grant award.

(2) **TERMINATION.** 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 grantee, 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.

NR 173.21 Variances. (1) VARIANCE APPROVALS. The department may approve a variance from a requirement of this chapter if all of the following conditions are met:

(a) The grantee's written request for a variance clearly explains the circumstances justifying the variance.

(b) The department takes into account factors such as good cause and circumstances beyond the control of the grantee.

(c) The department determines that a variance is essential to effect necessary grant actions or where special circumstances make a variance in the best interest of the program or the state, in accordance with the program's goals to remedy environmental contamination of brownfields for projects with a long term benefit.

(2) **VARIANCE DISAPPROVAL.** The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

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 _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. RR-25-02

Legislative Council Rules Clearinghouse Number 02-063

Subject of Rules Administration of the Brownfield
green space and public facilities grant
program

Date of Transmittal to Presiding Officers August 28, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 173, Wis. Adm. Code
Administration of the brownfield green space
and public facilities grant program

Board Order No. RR-25-02
Clearinghouse Rule No. 02-063

Statement of Need

In the 2001-2003 biennial budget, the Legislature authorized creation of the Brownfields Green Space and Public Facility Grant Program. The program allows the Department to award \$1 million in grants to local governments for the remediation of brownfields sites where the end use will have a long-term public benefit, including the preservation of green space, the development of recreational areas or public use by a local government. The grant program is designed to encourage communities to cleanup and reuse brownfield properties in Wisconsin. This grant program will help fill a gap in the current brownfield programs. The program works in conjunction with the brownfields site assessment grant to conduct site assessment, site investigation and other preliminary actions at the brownfield property and then receive a brownfields green space and public facilities grant to conduct the environmental cleanup of the property.

Proposed ch. NR 173 includes the following elements:

1. Eligible activities include actions to remedy environmental contamination.
2. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities and housing authorities.
3. Eligible projects are brownfields where the end use will promote the preservation of green space, the creation of a recreational area or another use by a local government.
4. Local governments, or an appropriate private non-profit organization in partnership with a local government, are required to contribute matching funds as cash or in-kind contributions, or both, equal to 20%, 35% or 50%, depending upon the amount of the grant.
5. A grant may not be awarded for more than \$200,000.
6. The rule specifies that at least 20% of the funds be allocated to grants less than \$50,000.
7. If there are more requests for grants than funding allows, applications will be scored on a variety of criteria, including the severity of the environmental contamination, the applicant's financial commitment, the need of the community for the proposed end use and the community's commitment to the project.

Modifications as a Result of Public Hearing

There were no modifications made as a result of public comment.

Appearances at the Public Hearing and Their Position

In support:

Mawa Lealy, Milwaukee Community Service Corps, 1275 N. 17th Street, Milwaukee, WI 53205
Benjamin Timm, Milwaukee Redevelopment Authority, 809 N. Broadway, Milwaukee, WI 53202
Matt Haessly, City of Milwaukee, 809 N. Broadway, Milwaukee, WI 53202

In opposition – None

As interest may appear - None

Response to Legislative Council Rules Clearinghouse Report

The recommendations have been accepted, except for:

5.b. Section NR 173.07(6) specifies that if there is not enough funding to fund a grant request in its entirety, the Department would give the applicant the option to receive a grant with partial funding or to not accept any funding for the grant application. There would not be situations when a grant would be awarded but no funding provided since a grant award letter and grant agreement would only be issued by the Department if grant funding is being provided to an applicant.

5.c. The intent of the rule is that the property does not need to be owned by the local governmental unit or a nonprofit organization in order to be eligible to receive a grant. The applicant must, however, have access to the property to conduct the grant activity in order to receive a grant. Also, the proposed rule specifies in s. NR 173.17(1)(a) that a grantee cannot receive reimbursement from the Department for a grant until a local governmental unit or a private nonprofit organization owns or has long term control over the property. Section NR 173.09(2)(h) refers to the information that must be provided in the grant application. As stated in the comment, this section is somewhat misleading in that it could be interpreted to imply that the local governmental unit or nonprofit organization must own the property in order to be eligible for a grant, even though this is not the case. As a result, the language in this section of the rule has been modified. The new language clarifies that the applicant provide information about ownership and acquisition of the property, but that ownership of the property is not necessary to be eligible for the grant. The reason information about ownership and acquisition of the property is necessary is to assist with scoring and to help the department determine who may be legally responsible for the cleanup at the property.

5.e. The term "geotechnical" has been removed so that the rule specifies that any engineering costs not associated with the remedial action would not be eligible for funding.

5.f. The requested change has been made. This section was intended to specify that records should be available to the department, not how long these records should be maintained. Section NR 173.17(2)(b)2. requires that proof of payment records be maintained for 3 years after final payment. However, the Department does not intend to specify a new requirement for local governments regarding records retention for other records. Grantees should follow appropriate local ordinances and general state regulations regarding the retention of records which should be sufficient for the needs of the Department.

Final Regulatory Flexibility Analysis

The Department does not expect any impact on small businesses as a result of this action since it is a grant program that impacts local governments.

**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to create ch. NR 173 relating to the administration of the brownfield green space and public facilities grant program.

RR-25-02

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 292.79 and 227.11(2), Stats.

Statutes Interpreted: s. 292.79, Stats.

This rule implements the brownfield green space and public facilities grant program. Created in the 2001-2003 biennial state budget bill (2001 Wisconsin Act 16), the brownfield green space and public facilities grant program provides grants to eligible local governmental units to fund the costs of environmental remediation activities at eligible sites or facilities that will have a long-term public benefit, including the preservation of green space, the development of recreational areas, or use of a property by a local government. Eligible activities include actions to remedy environmental contamination at brownfields. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities and housing authorities. The legislature appropriated \$1 million for these grants during the 2001-2003 biennium. Local governments, or an appropriate private non-profit organization in partnership with a local government, are required to contribute matching funds as cash or in-kind, or both, equal to 20%, 35% or 50%, depending upon the amount of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that at least 20% of the funds be allocated to grants of \$50,000 or less.

SECTION 1. Chapter NR 173 is created to read:

NR 173.01 Purpose and applicability. The purpose of this chapter is to establish procedures for implementing a brownfield green space and public facilities grant program as provided for in s. 292.79, Stats. Grants made under this program will assist local governmental units in remediating environmental contamination on eligible brownfield sites or facilities.

NR 173.03 Definitions. In this chapter:

- (1) "Applicant" means a local governmental unit seeking a grant under this chapter.
- (2) "Delinquent taxes" means the unpaid property taxes, penalties and interest included in the delinquent tax bill.
- (3) "Department" means the department of natural resources.

(4) "Eligible activities" means activities eligible for funding under this chapter, limited to remedial actions as defined in s. NR 700.03 (48) and implemented to remedy environmental contamination at an eligible site or facility.

Note: Section NR 700.03(48) defines "remedial action" to mean "those response actions, other than immediate or interim actions, taken to control, minimize, restore or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment".

(5) "Eligible project" means the remediation and redevelopment of an eligible site or facility that has a long-term public benefit, including the preservation of green space, the development of recreational areas, or the use of a property by the local government.

(6) "Eligible site or facility" means sites or facilities that are "brownfields," as defined in s. 560.13, Stats.

Note: Section 560.13 (1) (a), Stats., defines "brownfields" to mean abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(7) "Grantee" means a local governmental unit that has applied for and been awarded a grant under this chapter, and whose grant contract has been signed by the department.

(8) "Investigation" means an investigation undertaken in conformance with ch. NR 716.

(9) "Local governmental unit" has the meaning given 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. 66.1333, Stats., community development authority created under s. 66.1335, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield green space and public facility grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(10) "Matching funds" means the cash or in-kind contribution, or both, as provided in s. NR 173.15.

(11) "Person" has the meaning specified in s. 299.01 (10), Stats.

Note: Section 299.01 (10), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency".

(12) "Phase 1 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."

(13) "Phase 2 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."

(14) "Private non-profit organization" means a nonprofit corporation, a charitable trust or other nonprofit association that is described in section 501 (c) (3) of the federal internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

NR 173.05 Eligibility. (1) The department may award grants under this chapter 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. Grants may be awarded if the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that person, or another person, has conducted or agreed to fund the minimum necessary remedial action.

(2) Grants may be awarded to eligible applicants for eligible sites or facilities that meet all of the following conditions:

(a) The end use will have a long-term public benefit, including preservation of green space, development of recreational areas or use by a local government.

(b) A phase I environmental assessment and a phase II environmental assessment have been completed for that eligible site or facility.

(3) As part of the application, applicants shall provide proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application.

NR 173.07 Allocation of funds. (1) For the 2001-2003 biennium, all grant funds shall be allocated through the application process to eligible applicants for eligible projects and awarded during the 2003 fiscal year. For future fiscal years, 50% of the funds appropriated to this grant program in a biennium shall be allocated through the application process to eligible applicants during the first fiscal year of the biennium and 50% shall be allocated during the second fiscal year of the biennium. All allocations are based on the availability of funds.

(2) In any first fiscal year of a biennium, if funds remain after regular application cycles, as identified in s. NR 173.09(3), the department may accept and fund additional applications and grant amendment requests through an additional grant cycle, or the remainder may be carried over to the next fiscal year.

(3) Of the funds appropriated by the legislature for the grant program per biennium, at least 20% shall be awarded for grants of \$50,000 or less.

(4) No grant award may exceed \$200,000.

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

(6) If sufficient funds are not available to fund a grant in its entirety, the department shall offer the eligible applicant the option of receiving partial or no funding.

(7) The department may not award more than one grant under this chapter for an eligible site or facility in any application cycle, as identified in s. NR 173.09(3).

NR 173.09 Grant application. (1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the brownfields green space and public facilities grant manager, to the address stated on the provided form.

Note: Grant application forms may be obtained as follows:

Mailing Address

Phone

Department of Natural Resources
Bureau for Remediation and Redevelopment
P.O. Box 7921
Madison, WI 53707

(608) 266-2111

Web Site

www.dnr.state.wi.us/org/aw/rr/

(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) The street address of the eligible site or facility.
- (c) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.
- (d) A resolution that designates an authorized local governmental unit representative, commits the applicant to completing the activities listed in the grant application if awarded funds, commits the applicant to maintain the property for the end use specified in the application and grants the department access to the site or facility and grant records.
- (e) A description of the proposed grant activities, including:
 - 1. The eligible activities for which the applicant is seeking funds, including a detailed description of the remedial action proposed at the site or facility.
 - 2. An itemized estimate of the cost of each activity proposed using the grant.
 - 3. A description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.
 - 4. If matching funds are contributed by a person other than the applicant, a signed letter from that person explaining their commitment to providing matching funds for the grant and a description of the funds.
- (f) Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications required by local, state and federal law.
- (g) A map showing the location of the eligible site or facility.
- (h) Information about the current ownership of the eligible site or facility and information about initiation of the formal acquisition process, if applicable. If a local governmental unit owns the site or facility, information about how the local governmental unit acquired title to the property.
- (i) 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.
- (j) Information showing that the person who 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. In the alternative, information

showing that the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that a person has conducted or agreed to fund the minimum necessary remediation.

(k) A copy of the phase 1 environmental assessment and the phase 2 environmental assessment reports that have been conducted at the site or facility.

(L) A summary of environmental activities that have been conducted and reports that have been prepared on the eligible site or facility, including any additional environmental investigation information that has been collected which is not described in the phase 1 and phase 2 environmental assessment reports.

(m) Any additional information that the department determines is necessary to document factors described in s. NR 173.11 that are considered when the grant applications are scored.

(3) APPLICATION CYCLE. The department shall establish application due dates. The department shall have at least one funding cycle each state fiscal year that funds are available. If funds are available after the first funding cycle, there may be additional application cycles, or the available funds may be carried over to the second fiscal year of the biennium.

(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 may not be considered. The application is considered complete when the additional or correct information requested by the department is received within the time period specified by the department. The department may not fund incomplete applications.

NR 173.11 Application scoring. (1) GENERAL. When ranking and scoring eligible and complete applications under s. NR 173.07(5), the department shall use the criteria in this section. The criteria shall be applied on a statewide basis.

(2) POINT AWARDS. The department shall award points to the grant applications according to the following scoring criteria:

(a) The demonstrated need for the project based on factors including, but not limited to:

1. Public benefit of the project.
2. Demonstrated need for this type of property or facility in the neighborhood and community.
3. Economic hardship and distress in the neighborhood and community where the site or facility is located.

(b) The commitment of an applicant to the project based on factors including, but not limited to:

1. Community support for the project.
2. Community partnerships.
3. Property ownership.
4. Public participation and planning.

(c) Environmental benefits of the project based on factors including, but not limited to:

1. Health and environmental risks posed by contamination at the eligible site or facility.
2. Likelihood that the grant activities will assist in obtaining closure of the site.
3. Degree to which a community is prepared to implement the eligible activities.
4. Extent of blight or slum conditions at the property.

(d) The applicant's financial commitment to the project based on factors including, but not limited to:

1. Matching funds provided beyond the minimum required in s. NR 173.15(1).
2. Past costs paid on the project.
3. Extent to which the applicant is financially prepared to complete the project.

(3) When making a determination under sub. (2), the department shall accord a 25% weight to the criterion under sub. (2)(a), a 15% weight to the criterion under sub. (2)(b), a 35% weight to the criterion under sub. (2)(c) and a 25% weight to the criterion under sub. (2)(d).

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

NR 173.13 Eligible and ineligible costs. (1) ELIGIBLE COSTS. Grant funding provided under this chapter may be used for the following expenses:

(a) The actual costs of services and equipment provided by employees of the grantee for the implementation of the grant agreement. Equipment rental rates may not exceed the county machinery rates established annually by the Wisconsin department of transportation.

Note: Current equipment rates can be obtained from the Wisconsin Department of Transportation, Division of Transportation Infrastructure Development, Bureau of Highway Operations, 4802 Sheboygan Avenue, Room 501, PO Box 7986, Madison, WI 53707, (608) 266-8370.

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

(c) Costs for laboratory analysis and professional services contracts associated with grant activities.

(d) The costs of necessary equipment and facilities used to carry out activities in the grant agreement.

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

(f) Costs to prepare a remedial action plan in accordance with ch. NR 722.

(g) Other costs, approved in advance by the department, that the department determines are necessary to carry out the eligible activities.

(2) INELIGIBLE COSTS. Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities as defined under this chapter or established in s. NR 173.13(1), as determined by the department, including any of the following:

(a) Costs incurred outside the grant period stated in the grant contract.

(b) Costs reimbursed by any other local, state or federal programs.

(c) Costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act and dry cleaner environmental response program.

(d) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.

(e) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.

(f) Costs of capital equipment.

(g) Costs of licenses, application, permit fees and department review fees.

- (h) Legal fees.
- (i) Phase I and II environmental assessments.
- (j) Chapter NR 716 site investigations.
- (k) The demolition of any structures, buildings or other existing improvements.
- (L) Planning, design or construction of public use facilities.
- (m) Engineering costs not associated with a remedial action.

NR 173.15 Matching of grants. (1) DEFINITION. Local governmental units shall match funds provided through this chapter as follows:

- (a) At least 20% of the grant request for grants of \$50,000 or less.
- (b) At least 35% of the grant request for grants of greater than \$50,000 and less than \$100,000.
- (c) At least 50% of the grant request for grants of at least \$100,000, up to \$200,000.

(2) COSTS AND SERVICES ELIGIBLE AS MATCHING FUNDS. Local governmental units receiving grants under this chapter may count as matching funds the value of costs and services incurred during the grant period by the grantee or a private non-profit organization in partnership with the grantee, including but not limited to, the costs of any of the following:

- (a) Eligible activities as defined under this chapter.
- (b) Acquisition of the eligible site or facility.
- (c) Payment or cancellation of delinquent taxes.
- (d) Maintenance and security of the site or facility.
- (e) Costs of completing a ch. NR 716 site investigation.
- (f) Planning and design for green space, recreational area or use by a local government at an eligible site or facility.
- (g) Demolition of any structures or existing improvements on the eligible site or facility.
- (h) Asbestos abatement activities, associated with demolition, as defined in s. 254.11(2), Stats.

- (i) Removal of underground hazardous storage tank systems.
- (j) Removal of underground petroleum product storage tank systems.
- (k) Removal of abandoned containers as defined in s. 254.11(2), Stats.
- (L) Removal and disposal of debris, solid waste and scrap materials on the eligible site or facility.

(3) COSTS AND SERVICES INELIGIBLE AS MATCHING FUNDS. Ineligible costs for matching funds include, but are not limited to, costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act, and dry cleaner environmental response program.

NR 173.17 Grant conditions. Each grant awarded under this chapter shall be subject to all of the following conditions:

(1) Before the department may reimburse a local governmental unit receiving funds under this chapter, the grantee shall demonstrate all of the following:

(a) A local governmental unit or private non-profit organization owns or has long-term control over the eligible site or facility.

(b) A deed restriction has been placed on the deed for the property where the eligible site or facility is located, and recorded at the county register of deeds office, limiting the use of the property to the end use specified in the agreement for at least 20 years from the date that the grant agreement is signed by both parties. This deed restriction shall remain in place for 20 years.

(c) A ch. NR 716 site investigation and a ch. NR 722 remedial action plan have been approved by the department.

(2) A grantee shall also comply with the following conditions:

(a) The grant period is 24 months from the date of the department's signature on the grant contract, unless extended under par. (f)

(b) The grantee shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides clear references, particularly to source or original documents. Records shall reflect all of the following minimum requirements:

1. Project accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed and identified in sufficient detail to reflect their source and purpose. Proof of payment, such as canceled checks or receipts from vendors, shall be kept and made available for inspection for 3 years after final payment.

(c) All of the grantee's records pertaining to the grant are subject to department review. Grant payments by the department are contingent upon review of grantee records and may be adjusted if costs are determined to be ineligible.

(d) The department may conduct compliance inspections, or may require the grantee to conduct compliance inspections, on properties for which assistance has been provided under this chapter.

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

(f) The grantee may request, for good cause and prior to the end of the grant period, an amendment for: changes to increase the grant award up to 10% of the original grant amount, changes to the project scope or an extension of the grant period. The request shall be in writing and describe the reasons for the request. Amendments are subject to department approval and availability of funds.

(g) The grantee may request a maximum of 2 partial payments per year 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.

Note: Forms are available upon written request to the following address: BF Green Space and Public Facilities Grant Manager – RR/3, DNR Bureau for Remediation and Redevelopment, Box 7921, Madison, WI 53707

(h) The grantee shall provide to the department a final written report of the activities completed with the funds awarded under this chapter, on a form provided by the department. The report shall be submitted to the department along with the final request for reimbursement under the grant contract.

NR 173.19 Grant enforcement and termination. (1) PENALTIES. If a local governmental unit receiving grants under this chapter fails to comply with any provisions of this chapter, the department may take one or more of the following actions:

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

(b) Seek reimbursement of all or a portion of the state's grant award.

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

(2) TERMINATION. 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 grantee, 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.

NR 173.21 Variances. (1) VARIANCE APPROVALS. The department may approve a variance from a requirement of this chapter if all of the following conditions are met:

(a) The grantee's written request for a variance clearly explains the circumstances justifying the variance.

(b) The department takes into account factors such as good cause and circumstances beyond the control of the grantee.

(c) The department determines that a variance is essential to effect necessary grant actions or where special circumstances make a variance in the best interest of the program or the state, in accordance with the program's goals to remedy environmental contamination of brownfields for projects with a long-term public benefit.

(2) VARIANCE DISAPPROVAL. The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2002.

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 _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to create ch. NR 173 relating to the administration of the brownfield green space and public facilities grant program.

RR-38-02(E)

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 292.79, 227.11(2) and 227.24, Stats.

Statutes Interpreted: s. 292.79, Stats.

This rule implements the brownfield green space and public facilities grant program. Created in the 2001-2003 biennial state budget bill (2001 Wisconsin Act 16), the brownfield green space and public facilities grant program provides grants to eligible local governmental units to fund the costs of environmental remediation activities at eligible sites or facilities that will have a long-term public benefit, including the preservation of green space, the development of recreational areas, or use of a property by a local government. Eligible activities include actions to remedy environmental contamination at brownfields. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities and housing authorities. The legislature appropriated \$1 million for these grants during the 2001-2003 biennium. Local governments, or an appropriate private non-profit organization in partnership with a local government, are required to contribute matching funds as cash or in-kind, or both, equal to 20%, 35% or 50%, depending upon the amount of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that at least 20% of the funds be allocated to grants of \$50,000 or less.

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NR 173.01 Purpose and applicability. The purpose of this chapter is to establish procedures for implementing a brownfield green space and public facilities grant program as provided for in s. 292.79, Stats. Grants made under this program will assist local governmental units in remediating environmental contamination on eligible brownfield sites or facilities.

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Note: Section NR 700.03(48) defines "remedial action" to mean "those response actions, other than immediate or interim actions, taken to control, minimize, restore or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment".

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(7) "Grantee" means a local governmental unit that has applied for and been awarded a grant under this chapter, and whose grant contract has been signed by the department.

(8) "Investigation" means an investigation undertaken in conformance with ch. NR 716.

(9) "Local governmental unit" has the meaning given 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. 66.1333, Stats., community development authority created under s. 66.1335, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield green space and public facility grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(10) "Matching funds" means the cash or in-kind contribution, or both, as provided in s. NR 173.15.

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Note: Section 299.01 (10), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency".

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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."

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(2) Grants may be awarded to eligible applicants for eligible sites or facilities that meet all of the following conditions:

(a) The end use will have a long-term public benefit, including preservation of green space, development of recreational areas or use by a local government.

(b) A phase I environmental assessment and a phase II environmental assessment have been completed for that eligible site or facility.

(3) As part of the application, applicants shall provide proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application.

NR 173.07 Allocation of funds. (1) For the 2001-2003 biennium, all grant funds shall be allocated through the application process to eligible applicants for eligible projects and awarded during the 2003 fiscal year. For future fiscal years, 50% of the funds appropriated to this grant program in a biennium shall be allocated through the application process to eligible applicants during the first fiscal year of the biennium and 50% shall be allocated during the second fiscal year of the biennium. All allocations are based on the availability of funds.

(2) In any first fiscal year of a biennium, if funds remain after regular application cycles, as identified in s. NR 173.09(3), the department may accept and fund additional applications and grant amendment requests through an additional grant cycle, or the remainder may be carried over to the next fiscal year.

(3) Of the funds appropriated by the legislature for the grant program per biennium, at least 20% shall be awarded for grants of \$50,000 or less.

(4) No grant award may exceed \$200,000.

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

(6) If sufficient funds are not available to fund a grant in its entirety, the department shall offer the eligible applicant the option of receiving partial or no funding.

(7) The department may not award more than one grant under this chapter for an eligible site or facility in any application cycle, as identified in s. NR 173.09(3).

NR 173.09 Grant application. (1) **GENERAL.** Applications for grants under this chapter shall be on forms provided by the department and submitted to the brownfields green space and public facilities grant manager, to the address stated on the provided form.

Note: Grant application forms may be obtained as follows:

Mailing Address

Phone

Department of Natural Resources
Bureau for Remediation and Redevelopment
P.O. Box 7921
Madison, WI 53707

(608) 266-2111

Web Site

www.dnr.state.wi.us/org/aw/r/r/

(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) The street address of the eligible site or facility.
- (c) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.
- (d) A resolution that designates an authorized local governmental unit representative, commits the applicant to completing the activities listed in the grant application if awarded funds, commits the applicant to maintain the property for the end use specified in the application and grants the department access to the site or facility and grant records.
- (e) A description of the proposed grant activities, including:
 - 1. The eligible activities for which the applicant is seeking funds, including a detailed description of the remedial action proposed at the site or facility.
 - 2. An itemized estimate of the cost of each activity proposed using the grant.
 - 3. A description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.
 - 4. If matching funds are contributed by a person other than the applicant, a signed letter from that person explaining their commitment to providing matching funds for the grant and a description of the funds.
- (f) Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications required by local, state and federal law.
- (g) A map showing the location of the eligible site or facility.
- (h) Information about the current ownership of the eligible site or facility and information about initiation of the formal acquisition process, if applicable. If a local governmental unit owns the site or facility, information about how the local governmental unit acquired title to the property.
- (i) 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.
- (j) Information showing that the person who 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. In the alternative, information

showing that the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that a person has conducted or agreed to fund the minimum necessary remediation.

(k) A copy of the phase 1 environmental assessment and the phase 2 environmental assessment reports that have been conducted at the site or facility.

(L) A summary of environmental activities that have been conducted and reports that have been prepared on the eligible site or facility, including any additional environmental investigation information that has been collected which is not described in the phase 1 and phase 2 environmental assessment reports.

(m) Any additional information that the department determines is necessary to document factors described in s. NR 173.11 that are considered when the grant applications are scored.

(3) APPLICATION CYCLE. The department shall establish application due dates. The department shall have at least one funding cycle each state fiscal year that funds are available. If funds are available after the first funding cycle, there may be additional application cycles, or the available funds may be carried over to the second fiscal year of the biennium.

(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 may not be considered. The application is considered complete when the additional or correct information requested by the department is received within the time period specified by the department. The department may not fund incomplete applications.

NR 173.11 Application scoring. (1) GENERAL. When ranking and scoring eligible and complete applications under s. NR 173.07(5), the department shall use the criteria in this section. The criteria shall be applied on a statewide basis.

(2) POINT AWARDS. The department shall award points to the grant applications according to the following scoring criteria:

(a) The demonstrated need for the project based on factors including, but not limited to:

1. Public benefit of the project.
2. Demonstrated need for this type of property or facility in the neighborhood and community.
3. Economic hardship and distress in the neighborhood and community where the site or facility is located.

(b) The commitment of an applicant to the project based on factors including, but not limited to:

1. Community support for the project.
2. Community partnerships.
3. Property ownership.
4. Public participation and planning.

(c) Environmental benefits of the project based on factors including, but not limited to:

1. Health and environmental risks posed by contamination at the eligible site or facility.
2. Likelihood that the grant activities will assist in obtaining closure of the site.
3. Degree to which a community is prepared to implement the eligible activities.
4. Extent of blight or slum conditions at the property.

(d) The applicant's financial commitment to the project based on factors including, but not limited to:

1. Matching funds provided beyond the minimum required in s. NR 173.15(1).
2. Past costs paid on the project.
3. Extent to which the applicant is financially prepared to complete the project.

(3) When making a determination under sub. (2), the department shall accord a 25% weight to the criterion under sub. (2)(a), a 15% weight to the criterion under sub. (2)(b), a 35% weight to the criterion under sub. (2)(c) and a 25% weight to the criterion under sub. (2)(d).

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

NR 173.13 Eligible and ineligible costs. (1) ELIGIBLE COSTS. Grant funding provided under this chapter may be used for the following expenses:

(a) The actual costs of services and equipment provided by employees of the grantee for the implementation of the grant agreement. Equipment rental rates may not exceed the county machinery rates established annually by the Wisconsin department of transportation.

Note: Current equipment rates can be obtained from the Wisconsin Department of Transportation, Division of Transportation Infrastructure Development, Bureau of Highway Operations, 4802 Sheboygan Avenue, Room 501, PO Box 7986, Madison, WI 53707, (608) 266-8370.

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

(c) Costs for laboratory analysis and professional services contracts associated with grant activities.

(d) The costs of necessary equipment and facilities used to carry out activities in the grant agreement.

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

(f) Costs to prepare a remedial action plan in accordance with ch. NR 722.

(g) Other costs, approved in advance by the department, that the department determines are necessary to carry out the eligible activities.

(2) INELIGIBLE COSTS. Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities as defined under this chapter or established in s. NR 173.13(1), as determined by the department, including any of the following:

(a) Costs incurred outside the grant period stated in the grant contract.

(b) Costs reimbursed by any other local, state or federal programs.

(c) Costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act and dry cleaner environmental response program.

(d) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.

(e) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.

(f) Costs of capital equipment.

(g) Costs of licenses, application, permit fees and department review fees.

- (h) Legal fees.
- (i) Phase I and II environmental assessments.
- (j) Chapter NR 716 site investigations.
- (k) The demolition of any structures, buildings or other existing improvements.
- (L) Planning, design or construction of public use facilities.
- (m) Engineering costs not associated with a remedial action.

NR 173.15 Matching of grants. (1) DEFINITION. Local governmental units shall match funds provided through this chapter as follows:

- (a) At least 20% of the grant request for grants of \$50,000 or less.
- (b) At least 35% of the grant request for grants of greater than \$50,000 and less than \$100,000.
- (c) At least 50% of the grant request for grants of at least \$100,000, up to \$200,000.

(2) COSTS AND SERVICES ELIGIBLE AS MATCHING FUNDS. Local governmental units receiving grants under this chapter may count as matching funds the value of costs and services incurred during the grant period by the grantee or a private non-profit organization in partnership with the grantee, including but not limited to, the costs of any of the following:

- (a) Eligible activities as defined under this chapter.
- (b) Acquisition of the eligible site or facility.
- (c) Payment or cancellation of delinquent taxes.
- (d) Maintenance and security of the site or facility.
- (e) Costs of completing a ch. NR 716 site investigation.
- (f) Planning and design for green space, recreational area or use by a local government at an eligible site or facility.
- (g) Demolition of any structures or existing improvements on the eligible site or facility.
- (h) Asbestos abatement activities, associated with demolition, as defined in s. 254.11(2), Stats.

- (i) Removal of underground hazardous storage tank systems.
- (j) Removal of underground petroleum product storage tank systems.
- (k) Removal of abandoned containers as defined in s. 254.11(2), Stats.
- (L) Removal and disposal of debris, solid waste and scrap materials on the eligible site or facility.

(3) COSTS AND SERVICES INELIGIBLE AS MATCHING FUNDS. Ineligible costs for matching funds include, but are not limited to, costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act, and dry cleaner environmental response program.

NR 173.17 Grant conditions. Each grant awarded under this chapter shall be subject to all of the following conditions:

(1) Before the department may reimburse a local governmental unit receiving funds under this chapter, the grantee shall demonstrate all of the following:

(a) A local governmental unit or private non-profit organization owns or has long-term control over the eligible site or facility.

(b) A deed restriction has been placed on the deed for the property where the eligible site or facility is located, and recorded at the county register of deeds office, limiting the use of the property to the end use specified in the agreement for at least 20 years from the date that the grant agreement is signed by both parties. This deed restriction shall remain in place for 20 years.

(c) A ch. NR 716 site investigation and a ch. NR 722 remedial action plan have been approved by the department.

(2) A grantee shall also comply with the following conditions:

(a) The grant period is 24 months from the date of the department's signature on the grant contract, unless extended under par. (f)

(b) The grantee shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides clear references, particularly to source or original documents. Records shall reflect all of the following minimum requirements:

1. Project accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed and identified in sufficient detail to reflect their source and purpose. Proof of payment, such as canceled checks or receipts from vendors, shall be kept and made available for inspection for 3 years after final payment.

(c) All of the grantee's records pertaining to the grant are subject to department review. Grant payments by the department are contingent upon review of grantee records and may be adjusted if costs are determined to be ineligible.

(d) The department may conduct compliance inspections, or may require the grantee to conduct compliance inspections, on properties for which assistance has been provided under this chapter.

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

(f) The grantee may request, for good cause and prior to the end of the grant period, an amendment for: changes to increase the grant award up to 10% of the original grant amount, changes to the project scope or an extension of the grant period. The request shall be in writing and describe the reasons for the request. Amendments are subject to department approval and availability of funds.

(g) The grantee may request a maximum of 2 partial payments per year 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.

Note: Forms are available upon written request to the following address: BF Green Space and Public Facilities Grant Manager – RR/3, DNR Bureau for Remediation and Redevelopment, Box 7921, Madison, WI 53707

(h) The grantee shall provide to the department a final written report of the activities completed with the funds awarded under this chapter, on a form provided by the department. The report shall be submitted to the department along with the final request for reimbursement under the grant contract.

NR 173.19 Grant enforcement and termination. (1) PENALTIES. If a local governmental unit receiving grants under this chapter fails to comply with any provisions of this chapter, the department may take one or more of the following actions:

- (a) Costs directly related to noncompliance may be declared ineligible.
- (b) Seek reimbursement of all or a portion of the state's grant award.

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

(2) TERMINATION. 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 grantee, 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.

NR 173.21 Variances. (1) VARIANCE APPROVALS. The department may approve a variance from a requirement of this chapter if all of the following conditions are met:

- (a) The grantee's written request for a variance clearly explains the circumstances justifying the variance.
- (b) The department takes into account factors such as good cause and circumstances beyond the control of the grantee.
- (c) The department determines that a variance is essential to effect necessary grant actions or where special circumstances make a variance in the best interest of the program or the state, in accordance with the program's goals to remedy environmental contamination of brownfields for projects with a long-term public benefit.

(2) VARIANCE DISAPPROVAL. The department may not grant variances from statutory requirements.

Statement of Emergency: This rule is being promulgated as an emergency rule in accordance with s. 227.24, Stats. This rule sets forth the procedures required to award grants that will be used to remediate environmental contamination in order to protect public health and restore the environment. It is necessary to follow the emergency rule procedures because if the standard procedures were followed the rule would not take effect in time to have the money awarded and encumbered within the 2003 fiscal year. As a result, the appropriation would lapse and funding would not be available to fund the environmental remediation of properties around the state.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2002.

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

Dated at Madison, Wisconsin

August 20, 2002

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

Darrell Bazzell
Darrell Bazzell, Secretary

(SEAL)

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Subject
 Fiscal estimate for new rule ch. NR 173, creating the Brownfields Green Space and Public Facilities Grant Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Summary:

This rule includes details about eligibility requirements, scoring criteria and application procedures for the Brownfields Green Space and Public Facilities Grant Program. The Department was directed to create this program in the 2001-2003 state budget, 2001 Wisconsin Act 16, allowing the Department to award \$1 million to local governmental units for the cleanup of brownfields with a specific end use. Eligible end uses include the preservation of green space, the development of recreational areas and use by a local government.

Fiscal Estimate for State Costs:

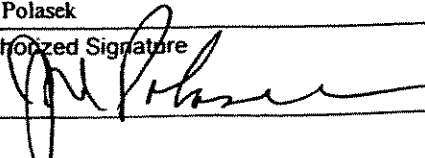
There will be a one-time cost to develop this rule. At a rate of \$22 per hour for 800 hours, plus a 39% fringe rate, the total one time cost would be approximately \$25,000.

It will take one FTE's worth of time to implement this program on an annual basis. At a rate of \$22 per hour for 2080 hours, plus a 39% fringe rate and \$4000 allotted for supplies and travel, the total cost would be approximately \$68,000. This time will be absorbed into the current staffing levels.

Fiscal Estimate for Local Government:

Local governments have the option for applying for a portion of the \$1 million available for this grant program. There will be a match required that must be paid during the grant period by either the local governmental unit or a cooperating non-profit organization. The match level depends upon the grant request, and is 20% for grants up to \$50,000, 35% for grants greater than \$50,000 and below \$100,000, and 50% for grants above \$100,000. A grant award cannot exceed \$200,000. Without this grant, communities would be paying 100% of these costs.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	07-08-02

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Subject

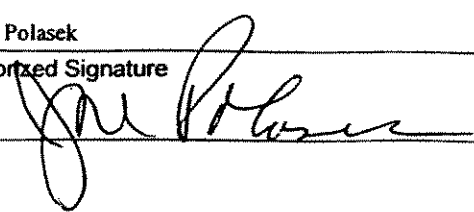
Fiscal estimate for new rule ch. NR 173, creating the Brownfields Green Space and Public Facilities Grant Program

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 \$25,000 for the staff time needed to develop the rule

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 68,000	\$ -
(FTE Position Changes)		(1.00 FTE)	(FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		68,000	-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$ 68,000	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 68,000	\$
Net Change in Revenues	\$	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/yyyy) 07-08-02