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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-060

#### 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 October 2002.]**

#### 2. Form, Style and Placement in Administrative Code

a. Section 23.22 (2) (c), Stats., envisions awarding grants to private, as well as public entities. However, this rule applies only to local governments. Will grants for private entities be addressed in subsequent rule-making?

b. The definition of “control” is an obvious, and very reasonable, improvement on the statutory definition. The department may want to request that the Legislature’s Law Revision Committee recommend legislation to correct (or, rather, complete) the statutory definition.

c. There are very few definitions of “water body” or “body of water” in the Statutes or Administrative Code. However, two definitions suggest improvements to the definition that this rule uses. The definition of “natural body of water” in s. NR 19.91 (3) includes reference to springs and ponds. The department may want to add these to this definition. The definition of “body of water” in s. NR 109.03 (3) uses the phrase, “that is a water of this state.” Since this phrase is widely used, it might be used here in place of the phrase “that exists within the boundaries of this state.” We recognize that “the waters of this state” includes groundwater, but the rest of the definition makes clear that the defined term includes only surface waters.

d. The rule should make greater use of the active voice, to state clearly who any rule provision applies to, especially where duties are created. Section NR 198.13 (1), (2), and (4) to (8) are all written in the passive voice. A clear example of how this creates confusion is s. NR 198.13 (4). One can reasonably infer that it is the department that will conduct the post audit, but it is not at all clear whether the department will audit all projects, a random sample of

projects, or only those over which it has some concern. The first sentence should read: “The department [shall] [may] conduct an audit of all of the sponsors records relating to a project.”

Section NR 198.32 (1) is another example of text that would benefit from use of the active voice. This could be achieved very simply by starting s. NR 198.32 (1) (intro.) with: “The sponsor shall ....”

e. Section NR 198.15 (1) could be revised by changing the introduction to say: “Priorities for funding projects include projects that do any of the following:” and changing the following paragraphs to each begin with a verb. If this option is not taken, then pars. (b) to (d) must be changed by adding “Projects that” at the beginning of each.

f. Section NR 198.22 (1) (d) should end with either “that include all of the following:” or “that include any of the following:”. As written, it is not clear which of these is intended. All introductory material in the rule should be reviewed in this regard.

g. Section NR 198.32 (5) should read: “...the sponsor shall complete ....”

h. Since the cross-references in s. NR 198.33 (1) and (4) are internal references, they should simply read: “sub. (2).” [See s. 1.07 (2), Manual.]

i. In s. NR 198.42 (2), commas should be inserted following “lakes,” “access,” and “(6).” The second and third are mostly a matter of style, but the first is necessary to ensure that the reader easily comprehends the sentence.

j. The last sentence of s. NR 198.42 (3) is duplicative of s. NR 198.14 (1) (c) and so should not be included in the text of the rule. If the department wants to remind readers of that provision, it could put that sentence in a note.

k. Section NR 198.43 should be reorganized. If this is a planning requirement that must precede a grant application, the section should begin with a statement that applicants shall prepare a management plan before applying for a grant. What is presented as an introduction should be numbered as a subsection, if it is retained. The first and third sentences of that introduction should be moved to s. NR 198.44, since they relate to grant applications; they could be combined into a single sentence, something like: “A sponsor may propose a project for a grant based on recommended activities in a management plan approved by the department under s. NR 198.43.” The second sentence should be combined with sub. (1), since it relates to submittal of plans. Also in that subsection should be the substance of s. NR 198.43 (2) (intro.), creating a subsection covering the submittal and approval of plans. The remainder of sub. (2), pars. (a) to (m) that is, are actually a description of the required contents of a plan; as such they should follow the initial statement that the plan is required and could be preceded by an introduction such as: “A plan shall include all of the following:”. Section NR 198.43 (1) (d) should be made a separate subsection, as it does not follow grammatically or logically from s. NR 198.43 (1) (intro.).

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

a. In the third paragraph of the plain language analysis, third sentence, it appears that “of” should be deleted.

b. In s. NR 198.13 (5), “that” should be used in place of “which.” The same applies to s. NR 198.15 (1) (a).

c. In s. NR 198.14 (1) (intro.), the word “may” should be omitted. Compare to s. NR 198.14 (2) (intro.).

d. In s. NR 198.14 (1) (c), it seems that the pro-rating should be based on the “useful life expectancy *relative to* the length of the project.”

e. Section NR 198.14 (1) (d) appears to be a subset of s. NR 198.14 (1) (e). If so, it should be omitted.

f. The factor for consideration in project approval identified in s. NR 198.15 (2) (d) is quite unhelpful. Do pioneer infestations get higher priority, or do established infestations? Arguments could be made either way. The rule should specify which gets higher priority.

g. Section NR 198.43 (1) (d) should be rewritten something like the following: “Approval of a lake management plan under ch. NR 190 does not constitute approval under this section. A sponsor may submit a plan approved under ch. NR 190 for approval under this section.”

h. In s. NR 198.44 (5), “state share” should be inserted after “maximum.” As drafted, it is not clear whether the \$75,000 is the maximum state share or the maximum total project costs. (The plain language analysis indicates that \$75,000 is the maximum state share.)