

Chapter NR 60

PUBLIC INLAND LAKE PROTECTION AND REHABILITATION

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Note: Chapter NR 60 as it existed on February 28, 1979, was repealed and a new chapter NR 60 was created effective March 1, 1979.

NR 60.01 Scope and applicability. This chapter contains rules for the administration of the public inland lake protection and rehabilitation program established by ch. 33, Stats. These rules apply to projects undertaken by lake protection and rehabilitation districts which involve an application for state technical or financial aid.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

NR 60.02 Definitions. As used in this chapter:

(1) "Best available map" means a map or aerial photograph having a scale which is sufficient to clearly depict the information requested and which is currently available or could be prepared at a reasonable cost.

(2) "Council" means the inland lakes protection and rehabilitation council created by s. 15.347 (8), Stats.

Note: 1997 Wis. Act 27 repealed s. 15.347 (8), Stats.

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

(4) "Direct drainage basin" means that portion of the lake's total basin which is not drained to an upgradient lake or impoundment.

(5) "District" or "lake district" means a public inland lake protection and rehabilitation district formed in accordance with the provisions of ch. 33, Stats.

(6) "Municipality" means any city, village or town.

(7) "Public inland lake" or "lake" means a lake, reservoir or flowage, or portion thereof, within the boundaries of the state that is accessible to the public by contiguous public lands or easements giving public access.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

NR 60.03 Feasibility study requirements. (1) **GENERAL.** An application for technical assistance in establishing the specific feasibility study requirements must be filed with the department according to the procedures in sub. (2). Each feasibility study must be approved by the department in order to insure sufficient information for determining the feasibility of alternative remedial measures, including costs; the relative permanence of alternative measures; baseline data for measuring subsequent changes, and the potential for long-term control of the causes of degradation.

(2) **APPLICATION FOR TECHNICAL ASSISTANCE IN DESIGNING A FEASIBILITY STUDY.** (a) An application for technical assistance for designing feasibility studies must be submitted by October 1 to be assured of receiving consideration for financial assistance for studies to begin in the following calendar year. The application must be made on forms provided by the department and contain the following information:

1. A copy of the resolution or county board order establishing the district, including a map showing the boundaries;

2. The names of the members of the district board of commissioners or, if applicable, the officers of the governing body of a municipality;

3. An estimate of the total equalized valuation of the property within the district;

4. The best available map which shows the direct drainage basin including basin boundaries and floodplain boundaries where delineated; total area and percentage of areas in agriculture, woodlands, urban development, wetlands, uplands and public lands and beaches (approximate); public accesses and public parking areas indicated on map; names and population of cities and villages in basin, and the names and location of all streams, including lake outlets;

5. The best available soils map of the drainage basin;

6. A lake map showing the number and location of permanent homes and seasonal dwellings on the lakeshore designating those served by a municipal sewerage system; identification of all streams flowing into and out of the lake, and a general description of the lake bottom types (e.g., muck, marl, sand, gravel);

7. Where applicable, a description of the water level control structure and its location;

8. Relevant background data including existing water quality data; a description of the fishery, including species; the occurrence of fish kills; the history of lake management efforts such as herbicide application, fish stocking, aeration, and sand blanketing;

9. Information regarding existing privately and publicly-owned access, including copies of local ordinances which regulate access to or use of the lake (e.g., launching fees, use restrictions);

10. A statement of lake problems and lake district objectives.

(b) The information contained in the application for technical assistance will serve as a basis for determining specific requirements of the feasibility study and also eligibility for financial assistance under s. NR 60.04.

(3) **SPECIFIC FEASIBILITY STUDY REQUIREMENTS.** (a) All studies shall meet requirements set forth by the department in the study specifications unless written approval of the department is obtained waiving such requirements.

(b) Unless other methods are approved or required by the department, testing methods required by the department are those contained in Standard Methods for the Examination of Water and Wastewater, 14th edition, 1975. Copies may be inspected at the offices of the department of natural resources, the secretary of state and the revisor of statutes, and may be obtained for personal use from the American Public Health Association, 1015 Eighteenth Street, Washington, D.C.

(4) **PROGRESS REPORTS AND CERTIFICATION OF COMPLETION.** (a) To assure that the feasibility study is carried out in accordance with the requirements prescribed by the department, progress reports will be required which describe the accomplishments to date with a tabulation of data obtained. The progress reports shall be submitted in triplicate to the department within 30 days following the completion of each quarter of study. Different or additional dates may be required by the department if quarterly reports are incompatible with the specific feasibility study authorized.

(b) The department will review the progress reports and may require any changes necessary to bring the feasibility study work into conformance with the feasibility study authorized.

(c) The feasibility study may be modified if data obtained during the study reveal that an original requirement is unnecessary or that additional information is necessary.

(d) The final report shall be submitted in triplicate to the department within 30 days following completion of study unless otherwise agreed to by the department. A feasibility study will be certified as completed if it has met the requirements specified by the department.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

NR 60.04 Financial assistance for feasibility study.

(1) APPLICATION FOR FINANCIAL ASSISTANCE. Districts must file application for financial assistance for a feasibility study by March 15. The application must be on forms provided by the department. Completed applications shall be mailed to the Office of Inland Lake Renewal, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

(2) DEPARTMENT ACTION ON APPLICATION. (a) The department shall notify the district of its decision to grant or deny aid for feasibility study by April 1. Priority for and amount of aid granted will be determined in accordance with the procedure in sub. (3). If aid is denied, the department shall indicate in writing the reasons for denial.

(b) A district requesting financial assistance shall accept or reject a grant offer within 30 days after being notified of the offer by the department.

(3) PRIORITY AND AMOUNT OF GRANT. The priority for receiving assistance, and the amount of assistance, for feasibility studies covered by these rules shall be determined according to the following provisions:

(a) *Priority.* Any district may apply for financial assistance to undertake a feasibility study of a public inland lake wholly or partly within its boundaries. When financial assistance applications exceed funds available, applications will be ranked by the department based on adequacy of public access, including public lands and beaches; potential nonriparian use; degree of local commitment, and other factors considered relevant by the department. Feasibility study grants will be made in the order of ranking and the number will be limited by the funds available.

(b) *Grant amount.* Grant awards made under this section will be on a 60% state-40% local cost-sharing basis. The grant award shall be based on the lowest bid received, unless the district disqualifies such bidder(s) as being not responsive or responsible and so notifies the department. The department may require proof that annual meeting approval has been obtained whenever the district's share of a feasibility study cost, exclusive of nonmonetary contributions, will exceed \$5,000.

(c) *Nonmonetary contributions.* The district may apply nonmonetary contributions toward its share of study costs. To qualify for such credit, the district must provide the department with a copy of the contract with the successful bidder specifying the nonmonetary value of the contributions and the work to be performed, and properly account for such contributions pursuant to s. NR 60.11 (4) (b).

(4) GRANT AGREEMENT. The grant agreement shall contain the following provisions:

(a) Distribution of the aid shall be made in 4 installments. An initial installment of 10% of the grant offer shall be paid into a fund established by the district within 20 days after completion of a grant agreement. Payments representing 20% of the grant offer shall be made after receipt and approval by the department of each of the first 2 quarterly reports. The remainder of the grant will be paid after receipt and approval of the final feasibility study report required by s. NR 60.03 (4) (d) and any required audits.

(b) A starting date and schedule for completion of the study will be specified by the department. Changes in these dates must be approved by the department.

(c) Every grant awarded under this section shall contain a provision that the recipient in using the funds shall not discriminate against any person because of religion, sex, race, color or national origin.

(5) TERMINATION OF THE GRANT. A grant may be terminated by the department for any of the following reasons:

(a) The violation of any term or condition of the grant agreement by the grantee, or;

(b) The wilful or bad faith refusal of any grantee to comply with the feasibility study requirements specified by the department, or;

(c) Any material misrepresentation made by the recipient on the application for financial assistance or the application for technical assistance required by s. NR 60.03 (2).

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

NR 60.10 Project planning and approval. (1) INITIAL ADOPTION OF PROJECT PLAN.

(a) Upon receipt and approval of the final feasibility study report, the department will formulate suggested alternative methods for protecting or rehabilitating the lake.

(b) The department will tentatively indicate which alternatives require the preparation of an environmental impact report (EIR) by the applicant or an environmental impact statement (EIS) by the department. If an EIS is required, formal adoption of a proposed plan by district resolution cannot take place until a preliminary environmental impact report (PER) has been completed, circulated, and the period for comment ended.

Note: The authority for submission of an EIR is contained in s. 23.11 (5), Stats. The PER requirement is contained in ch. NR 150, Wis. Adm. Code, and in guidelines issued February 1976, pursuant to executive order no. 26, for the purpose of implementing s. 1.11, Stats. (Wisconsin Environmental Policy Act).

(c) Subject to par. (b), the district may select and adopt a proposed plan based upon the alternatives suggested by the department.

(2) REQUEST FOR HEARING AND APPLICATION FOR PERMITS AND FINANCIAL ASSISTANCE. (a) Following formal adoption of a proposed plan, a district may request that the department hold a hearing in the area as specified in s. 33.14, Stats.

(b) Applications for permits and financial assistance must be on forms provided by the department and will be accepted by the department between May 1-15 and November 1-15 of each year.

(3) HEARING AND DEPARTMENT ACTION ON PROPOSED PLAN. (a) The department will set a time and place for a public hearing on the proposed plan within 10 days after receipt of the proposed plan, applications for required permits and financial assistance.

(b) The hearing will be held within 90 days after notice of hearing in the lake district vicinity. The hearing will be for the purpose of receiving testimony regarding:

1. The environmental impact statement prepared by the department if required, and the proposed plan;
2. The issuance of required permits;
3. The potential for long-range environmental pollution as defined by s. 283.01 (6m), Stats., if the project is implemented;
4. Views of the appropriate soil and water conservation district;
5. Views of the appropriate regional planning commission;
6. The likelihood that sources of continuing lake degradation will be substantially eliminated.

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

(d) The department shall approve, approve with modification or disapprove a plan within 60 days following the hearing. The department shall state the reasons if a plan is disapproved and pro-

vide alternatives if modification is recommended. For approved plans, the department will concurrently issue its decision on the applications for permits and financial assistance.

(4) **FINAL ADOPTION OF PLAN.** A district may by resolution adopt the approved or modified plan, and a copy of the plan and resolution shall be submitted to the department. The plan may then be implemented, subject to any conditions in the grant agreement where an offer of financial assistance has been made by the department and accepted by the district.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; correction in (3) (b) 3, made under s. 13.93 (2m) (b) 7., Stats.

NR 60.11 Financial assistance for project implementation. (1) APPLICATION FOR FINANCIAL ASSISTANCE. Application shall be made on forms provided by the department. Completed applications shall be mailed to the Office of Inland Lake Renewal, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

(2) **DEPARTMENT ACTION ON APPLICATION.** (a) The department will act on the application for financial assistance when it approves or disapproves a proposed plan as provided in s. NR 60.10 (3) (d). Decisions on funding of eligible projects will be made on or about May 1 and November 1 of each year, consistent with the priority system established pursuant to sub. (3) and statutory direction in s. 33.16 (6), Stats. If aid is denied, the department shall indicate in writing the reasons for denial.

(b) A district shall accept or reject a grant offer within 60 days unless the department approves an extension. Extensions will only be granted where the district commissioners need annual meeting approval before acceptance or where strict adherence to the 60-day requirement would create undue hardship.

(3) **PRIORITY AND AMOUNT OF GRANT.** (a) The department shall provide financial assistance to approved projects in a manner designed to improve and protect the quality of Wisconsin's inland lakes in the most cost-effective and environmentally sound ways, and to provide a balanced program of research and demonstration, rehabilitation, and protection based on recommendations of the council. When financial assistance applications exceed funds available, projects shall be ranked so that the highest priority is assigned to the project which contributes most to further the following objectives:

1. Protection and enhancement of environmental values by preventing degradation of fish and wildlife habitat, surface and groundwater quality, natural beauty and unique scientific values, land values, recreation values, air quality and the quality of life generally, and by improving and preserving the water quality of the lake through improvement measures in the lake and direct drainage basin.

2. Preservation of the public rights in the navigable waters of the state by assuring adequate public access in relation to the lake's carrying capacity and most beneficial uses.

3. Comparison of cost-benefit in relation to other projects under consideration.

4. Assurance of local involvement in the project and a commitment to future lake management.

5. Consideration of the urgency of the need for lake protection and rehabilitation.

(b) Cost-sharing for project implementation work shall be determined on an individual basis, depending upon the availability of federal financial assistance and other pertinent factors. State cost-sharing shall not reduce the district share of costs below 10% (except where s. NR 60.12 applies), and a minimum district cost-share of 20% shall generally be required.

(c) Nonmonetary contributions may be applied toward the district's share. When a district applies for financial assistance for implementation, it must specify the nonmonetary contributions, the manner in which the work will be performed, and the basis for calculating the value of such contributions.

(d) The department's grant offer shall be based upon the reasonable and necessary costs of project implementation, including the cost of professional and consultant services; construction and equipment costs; acquisition of land or easements essential to the project, but excluding acquisition of public access; reclamation or landscape changes essential to the project, and any other protection or rehabilitation measures identified in the approved plan. The following, however, shall not be included in the basis for determining the state share of the project cost; interest on bonds or other forms of indebtedness; damage awards for personal injury arising out of the project; fines or penalties for violation of local, state or federal laws; bonus payments for early completion of contract work; routine operating expenses of any unit of government; costs paid by other state or federal assistance programs, or any costs determined to be outside the scope of the approved project.

(e) Retroactive funding shall only be available for project work done after the date an application under s. NR 60.03 (2) was filed requesting technical assistance in designing a feasibility study and determined to be consistent with the requirements and scope of the approved project.

(4) **GRANT AGREEMENT.** The following provisions shall apply to implementation of grant agreements:

(a) *Method of payment.* Grant payments for implementation projects shall be made on a reimbursement basis on a schedule mutually agreed to by the department and lake district, except that large capital outlays may qualify for advance payment of the state share. Copies of invoices and canceled checks documenting payment of such invoices must be submitted to the department when claims for reimbursement are filed.

(b) *Progress reports.* The department may require the district to submit progress, financial or other reports relating to the conduct of the approved project.

(c) *Accounting by grantee.* Accounting for all project funds shall be in conformance with generally accepted accounting principles and practices. Supporting records of grant expenditures must be maintained in sufficient detail to show that the grant funds were used for the purpose for which the grant was made. Each grantee will be required to submit a satisfactory final accounting to the department following completion of the project or termination of the grant.

(d) *Inspection and audit.* The books, records, documents and accounting procedures of every grantee shall be subject at reasonable times to inspection and audit by the department or its authorized representative. In addition, the grantee shall permit the department access to the project site at reasonable times.

(e) *Modification of agreement.* The grantee shall notify the department by certified mail of any changes proposed in the scope or objective of the project as described in the grant agreement or final plan. The department will promptly advise the district whether or not state funds may be used for such modification. The department may require the execution of a written modification of the agreement prior to funding the proposed changes.

(f) *Nondiscrimination.* Every grant awarded under this chapter shall contain a provision that the recipient shall not use the grant funds in a manner which discriminates against any person because of sex, religion, race, color or national origin.

(g) *Public use.* The department shall require a commitment by the district to maintain an adequate level of public access. The grant agreement may provide that fees for use of public access be reviewed and approved by the department prior to taking effect.

(h) *Annual meeting approval.* The district shall submit to the department evidence that the annual meeting has approved any project costing the district more than \$5,000.

(5) **TERMINATION OF THE GRANT.** (a) The department may terminate a grant for any of the following reasons:

1. The violation of any term or condition of the grant agreement by the grantee;

2. The wilful or bad faith refusal of the grantee to implement the project as described through the planning process, in the resolution adopting the final plan, and in the grant agreement;

3. Any material misrepresentations made by the recipient on the application for financial assistance or at any stage of the planning process.

4. Upon request of the grantee if the grantee can show good cause for termination of the grant prior to completion of the project.

(b) The department, through the secretary or designated representative, shall send a notice of intent to terminate to the grantee by certified mail prior to termination of any grant. Such notice shall operate as a stop-work order to the extent that grant funds would be used to pay for project work. The department may only issue a final notice of termination after consultation with the grantee and a discussion of the grounds for termination.

(c) Except where the department finds that good cause exists for termination of a project for which a grant has been awarded,

the grantee shall be responsible for returning all state grant funds previously paid to the grantee. The department, however, may approve any equitable arrangement whereby the grantee substantially discharges that obligation. The department shall have the option of either accepting equipment and materials purchased under the grant agreement or requiring a private or public sale with proceeds returned to the department. In all cases, the grantee shall return any unexpended state funds as well as any state funds spent after receipt of the department's notice of intent to terminate.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

NR 60.12 Research and demonstration projects.

Research and demonstration projects may be undertaken as a cooperative activity between lake districts and the department. Such projects shall be designed to assess experimental and innovative techniques of lake protection and rehabilitation. The department may provide up to 100% state funding of experimental projects where the eventual results are highly uncertain.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.