

nr198_EmR0809.pdf **Natural Resources – Revises Ch. NR 198 – EmR0809**
ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING AND CREATING RULES
WT-10-08(E)

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: s. 23.22(2)(c) and 23.24, Stats.

Statutory authority: ss. 23.22(2)(c), 227.11(2)(a) and 227.24(1)(a), Stats.

Explanation of agency authority: This order implements s. 23.22(2)(c), Stats., which directs the department to promulgate rules to establish a procedure to award cost-sharing grants to control invasive species. The rules must establish the criteria for determining eligible projects and eligible public and private grant recipients, allow cash and non-cash contributions as eligible costs share and consider the recommendations of the Invasive Species Council. Amendments under Act 20 of 2007 increased the state cost-share rate from 50% to 75% and eliminated a priority for grants awarded to units of local government. The Act also increased the annual appropriation from \$1.5 million in FY06, to 3.3 \$million in FY07 to \$4.3 million in FY08 and each fiscal year thereafter.

Related statute or rule: The rule's general provisions and structure are similar to the Department's lake and river grant programs rules, chs. NR 190, 191 and 195 which is intended to provide consistency in grant administration. This rule will also assist the department in achieving the statutory goals of s. 23.24, Stats., which designates invasive plants and provides the authority to regulate how these plants are controlled.

Plain language analysis: The objectives of the order for ch. NR 198 are to:

1. Implement changes in enabling legislation that increase the maximum state cost share rate from 50% to 75% and eliminate priority for local government sponsored projects.
2. Increase the maximum amount of the state funds available for projects.
3. Increase the value of donated, non-professional labor that can be used as local match from \$8 to \$12.
4. Allow for a cash advance for early detection and rapid response projects
5. Expand sponsorship to include universities, colleges and technical schools, hydro-electric corporations and other branches of state and federal government that manage lands or natural resources.
6. Broaden the definition of the nonprofit conservation organization.
7. Create a new subch. V that allows the department to disburse funds to sponsors who are successfully and ecologically containing established infestations under a department approved plan to help offset the costs of permit application and required monitoring and reporting.

Increasing the cost share rate and maximum amount of a grant award will improve efficiency and allow the scope and scale of the projects to be commensurate with the scale at which aquatic invasive species prevention and control issues need to be approached.

Increasing the volunteer labor rate will encourage more voluntary citizen participation in projects, make projects more affordable for sponsors and allow more efficient use of local cash in projects.

Expanding sponsorship to state and federal agencies will allow better aquatic invasive species (AIS) control within state and federal properties and other critical situations in the absence of a willing sponsor. The inclusion of universities, colleges and technical schools will increase efficiency for AIS prevention through statewide support to watercraft inspection networks, public education campaigns, volunteer monitors, information management as well as research and demonstration of AIS control techniques. Redefining nonprofit corporations expands sponsorship to include groups that do not have land trust functions but do have strong interests in controlling aquatic invasive species.

New Subchapter V allows the department to reimburse community-based project sponsors who control and contain establish populations of AIS in an environmentally sound manner according to a department approved plan. Previously, these “maintenance” level activities did not qualify for grants. Under the revision, grant funds will help offset the costs of aquatic plant management permit application fees and the costs of monitoring and reporting compliance.

Comparison to federal regulations: Similar programs on the federal level are generally directed at assisting state programs for AIS control. Some habitat restoration grants administered through agencies such as the U.S. Fish and Wildlife Service are available locally and can be used to address AIS issues.

Comparison with rules in adjacent states: Minnesota has a small grant program for reimbursing the costs of treatments for Eurasian Water milfoil. They also have a program for “high-intensity Eurasian water milfoil technical assistance”. Michigan has a small grants program (\$500 to \$2500) for activities very similar to those included in subchapter II. However, neither state has promulgated administrative rules for their programs. Michigan’s program is administered through a contract with a non-profit organization.

Summary of factual data and analytical methods: None.

Analysis to determine effect on small business: None.

Anticipated costs incurred by private sector: These rules affect potential sponsors of management activities on the state’s lakes, rivers and wetlands. The effects are believed to be positive, by providing state cost-sharing for activities that many local entities are conducting. While the grant program is voluntary, there will be some increased cost to sponsors associated with the development of plans and for monitoring and reporting activities that are required for some projects under subchapters III and IV. However, cost sharing is available for these requirements as well. It is believed that these increased costs will be offset by the financial assistance available through the grants.

Effect on small business: Small business is not directly affected by the rule because grants are issued only to governmental units, educational institutions, qualified non-profit organizations and FERC-licensed hydroelectric corporations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required. Environmental consultants and companies involved in nuisance species control should benefit from an increase in project activity resulting from an increase in the supply of money for these kinds of projects.

Emergency rule: The department interprets the substantial increase in AIS grant funding as a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department’s ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule’s limitations. Therefore, the Department is considering a request for enacting the proposed rule as an emergency rule to allow immediate implementation of the policies that will most aide in effective and efficient investment of these funds. Given that the appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund, an emergency rule will help to minimize or eliminate the amount of funds that are lapsed. The Bureau will be promulgating these changes and additional proposals as a permanent rule for public hearing at the next Board meeting.

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SECTION 1.NR 198.11 is amended to read:

NR 198.11 **Applicability and eligible sponsors.** This chapter applies to all counties, cities, towns, villages, tribes, public inland lake protection and rehabilitation districts, and town sanitary districts and other local governmental units as defined in s. 66.0131(1)(a), Stats., qualified lake associations as defined in s. 281.68 (1) (b), Stats., that charge an annual membership fee of not less than \$5 and not more than \$50, qualified school districts as defined in s. 281.68 (3m) (c),

Stats, private and public colleges, universities and technical schools, qualified nonprofit conservation organizations ~~as defined in s. 23.0955 (1), Stats.~~, and river management organizations, as defined in s. NR 195.02(2), state and federal natural resource or land management agencies and FERC-licensed hydroelectric corporations, applying for financial assistance under s. 23.22(2)(c), Stats., for an aquatic invasive species prevention or control project for any waters of the state including lakes, rivers, streams, wetlands and the Great Lakes.

SECTION 2.NR 198.12(6) to (10) are renumbered NR 198.12(8) to (12).

SECTION 3. NR 198.12(6) is created to read:

NR 198.12 (6) "Natural resource agency" means a government agency that is charged with the responsibility for the management of lakes, rivers, streams, wetlands, forests, plants, soils or agricultural lands.

SECTION 4. NR 198.12(7) is created to read:

NR 198.12(7) "Nonprofit conservation organization" means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes includes the acquisition or management of property for conservation purposes including the control of aquatic invasive species and that is described in section 501 (c) (3) of the internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

SECTION 5. NR 198.14(1)(e) is amended to read:

NR 198.14(1)(e) Reasonable costs necessary to complete an application and comply with a permit application required to implement a project ~~awarded a grant if the costs are incurred within 12 months prior to the application deadline.~~ Costs up to 12 months prior to the application deadline are eligible for reimbursement.

SECTION 6. NR 198.14(1)(f)2 is amended to read:

NR 198.14(1)(f)2. The maximum value of donated non-professional labor shall be ~~\$8~~ \$12 per hour.

SECTION 7. NR 198.15(2) is repealed.

SECTION 8. NR 198.23(5) to (7) are amended to read:

NR 198.23(5) The total state share of the cost of an education, prevention and planning project may not exceed ~~50%~~ 75% of the total project cost.

(6) ~~The~~ Except as limited in sub. (7), the maximum amount of a grant award shall be ~~\$75,000~~ \$200,000.

(7) State share of the costs of a watercraft inspection program is limited to ~~\$2,500~~ \$4,000 annually for each public boat launch facility not to exceed ~~50%~~ 75% of the total project cost up to the maximum grant amount.

SECTION 9.NR 198.33 (5) is amended to read:

NR 198.33(5) The total state share of the cost of an early ~~infestation control~~ detection and response project may not exceed ~~50%~~ 75% of the total project costs up to maximum of ~~\$10,000~~ \$20,000.

SECTION 10. NR 198.33(6) is created to read:

NR 198.33(6) Notwithstanding s. NR 198.13(2), the department may distribute up to 25% of the state share of the project costs to the sponsor following acceptance of the grant agreement by the sponsor.

SECTION 11. NR 198.44(5) is amended to read:

NR 198.44(5) The state share of the cost of the project may not exceed ~~50%~~ 75% of the total project costs up to a maximum state share of ~~\$75,000~~ \$200,000.

SECTION 12. Subchapter V is created to read:

Subchapter V – Maintenance and Containment Projects

NR 198.50 Purpose. Grants awarded under this subchapter are intended to provide sponsors limited financial assistance for the ongoing control of a suppressed established aquatic invasive species population. These projects are generally intended for waters where management activity has achieved a desired level of control but complete eradication is not an achievable or reasonable goal. Ongoing maintenance is needed to contain these populations so they do not re-establish throughout the waterbody, spread to other waters, and impair navigation or other beneficial uses of the waterbody.

NR 198.51 Applicability. This subchapter applies to all sponsors applying for a grant for a maintenance and containment project that is in compliance with an approved plan under subchapter IV.

NR 198.52 Eligible activities. Activities eligible for funding under this subchapter may include any of the following:

- (1) Application fees for aquatic plant management permits issued by the department.
- (2) Surveying, monitoring, reporting and record-keeping required by the department.
- (3) Other activities determined necessary by the department.

NR 198.53 Applications and grant awards. (1) Claim forms will be provided to eligible sponsors with the department approved ch. NR 107 or 109 permit. Claims may be submitted any time after the permitted activities are completed and the necessary compliance reports are submitted to the department.

(2) A complete claim shall contain the following information:

(a) The name of the waterbody on which the project took place and a statement by the sponsor that to the best of their knowledge the project was completed in compliance with their permit conditions and according to their department approved plan.

(b) The amount of the claim for reimbursement or the actual cost incurred if the request is greater than the standard reimbursement.

(c) The signature of a representative authorized by resolution to act on behalf of the sponsor.

(d) A completed compliance check list to be signed by department region staff.

(3) The department shall review the claim and may approve it for a grant award.

(4) The standard state share of the cost for a maintenance and control project will be determined by the department based on the application fee and specified monitoring and reporting in the permit or the department approved plan.

SECTION 13. STATEMENT OF EMERGENCY. The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

SECTION 14. EFFECTIVE DATE. This rule shall take effect on July 1st, 2008 as provided in s. 227.24(1)(d), Stats.

SECTION 15. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 26, 2008.