



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-142

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.]

1. Statutory Authority

a. The corresponding statutory provision for s. Comm 110.03 (2) is s. 560.13 (2) (a) 2. a., Stats. The rule requires supporting documentation showing that the party that caused the “environmental contamination on the subject property” is unknown, cannot be located or is financially unable to pay for the cost of cleanup. The statute is much narrower in scope, requiring a finding only that the party that caused the “portion of the environmental contamination that is the basis for the grant request” is unknown, cannot be located or is financially unable to pay. As drafted, it appears that the rule would preclude a grant if a party that caused environmental contamination on the property is known, although that party did not cause the portion of the environmental contamination that is the basis for the grant request.

b. The rule, in s. Comm 110.03 (7) (d), requires a statement that the proposed project will not displace any worker in Wisconsin. It should first be noted that this is somewhat confusing because the introductory paragraph requires the statement to address “what is likely to result if assistance is not granted.” However, the statement regarding the proposed project’s effect on workers appears to require an assumption that the assistance will be granted or the project will take place whether or not the grant is made. Section 560.13, Stats., does not contain a requirement for grant eligibility that the proposed project may not displace any workers in Wisconsin, although this requirement does appear in ss. 560.605 and 560.84, Stats. If the department determines that it has authority to impose this requirement, the department should consider how this requirement may affect projects. For example, if the remedial action includes cessation of an existing business operation and razing of the building in which that business

operation was conducted, would that constitute displacement of a worker that precludes a grant under the program?

2. Form, Style and Placement in Administrative Code

In s. Comm 110.03 (3) (f), “the” should replace “such.”

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

a. Section Comm 110.03 (2) uses the term “subject property,” although that phrase is not defined in the rule or used in the statutes. The term “brownfield facility or site” is used in s. Comm 110.02 (10) and at several places in s. 560.13, Stats. That phrase may be more appropriate.

b. Section Comm 110.03 (3) (b) could be rewritten so that it does not end in a preposition, e.g., “. . . activities for which the applicant is seeking grant funds.”

c. Although the “quality” of the applicant’s financial contribution to the project is an element of s. 560.13 (3) (a) 3., Stats., it is difficult to know what that means. The rule merely repeats the statutory language. If the department has an interpretation of the meaning of this provision, it would be useful to add that interpretation to the rule.

d. Section Comm 110.03 (3) (d) requires information on the “certainty” of the applicant’s financial contributions to the project. Does this merely repeat the requirement that is established in more detail in s. 110.03 (8)?

e. Section Comm 110.03 (3) (h) refers to “local infrastructure.” Does “local” mean infrastructure that will be provided by a local unit of government?

f. Section Comm 110.03 (4) and (5) restate the criteria set forth in the statutes in s. 560.13 (3) (a) 1. and 2. How do these provisions relate to s. Comm 110.03 (3) (i)? This latter provision appears to be a broader statement regarding the effects of the project, and appears to be so broad that it is difficult to know what kind of information would satisfy this requirement.

g. Section Comm 110.03 (6) restates the statutory criterion in s. 560.13 (3) (a) 4., Stats. Does the requirement for innovativeness apply to remedial action? The methods of funding? Any other elements of the proposal?

h. It appears that proposed s. Comm 110.04 (1) (b) is a requirement that must be met in addition to, rather than instead of, renumbered sub. (1) (a). This would be clearer if the new material were created as a separate subsection, such as sub. (1m), rather than as sub. (1) (b).

Also, for consistency with other provisions in s. Comm 110.04, “will” should replace “does.”