

Clearinghouse Rule 08-062

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 47.007(1) and 47.008(1) and to create NR 47, subch. XII, relating to the administration of the urban forestry catastrophic storm grant program.

FR-11-08

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: s. 23.097 (1r), Stats.

Statutory authority: Section 23.097(1r), Stats., directs the department to provide grants to counties, cities, villages, towns, federally recognized Indian tribes or bands and non-profit organizations that have been affected by catastrophic storm events in urban and developed areas for which the governor has declared a state of emergency.

Analysis of proposed rules: The proposed rule changes will identify the application process and criteria for determining eligibility for payments to local units of government, federally recognized Indian tribes or bands and non-profit organizations

The rule changes will update the general provision section on grant termination and enforcement contained within NR 47, subchapter I. Additionally, NR 47, subchapter XII will be created to administer the urban forestry catastrophic storm grants. NR 47, subchapter XII establishes eligibility, application procedures, eligible costs for payment, the grant selection process and the required supporting documentation for the urban forestry catastrophic storm grant program.

Comparison of Federal Regulations: Currently no assistance is provided to the above listed entities from the Federal Emergency Management Administration (FEMA) for 1) restorative pruning to damaged public or private trees, 2) removal and clean up of destroyed trees on private property, 3) re-planting of destroyed public or private trees; the urban forestry catastrophic storm grant program will help to fill that gap.

Comparison of Adjacent States: No nearby state has a program or similar legislation pending that is directly related to catastrophic storm grants for damage to urban forests. There are urban forestry supported programs in near-by states, however nothing could be found that specifically addresses catastrophic storm damage to urban forests.

One program funded by the United States Forest Service and administered by the State of Mississippi Forestry Commission provides assistance for recovery activities for urban and community forests affected by Hurricane Katrina. The program awarded a total of \$900,000 during 2006 and 2007 to local units of government, non-profit organizations and educational institutions; however program funding does not appear to be ongoing as grants are not available at this time.

Anticipated Costs Incurred by the Private Sector: The private sector will not incur any costs.

Effect on Small Business: Small business may benefit as grant recipients may contract with the state's small businesses for equipment rental and sales, consulting services, providing diverse nursery stock, along with removal, remediation, restoration and tree utilization efforts.

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Comments postmarked by July 22, 2008 will be considered. Submit by mail to:

Forest Lands Section, Bureau of Forest Management

Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

To submit comments by fax: (608) 266-8576

To submit comments on-line: <http://dnr.wi.gov/org/legal/admirules.html>

SECTION 1. NR 47.007(1) is amended to read:

NR 47.007(1) The provisions of this section apply only to subchs. II, IV, V, VIII, ~~and IX~~ and XII.

SECTION 2. NR 47.008(1) is amended to read:

NR 47.008(1) The provisions in this section apply only to subchs. II, IV, V, VIII, ~~and IX~~ and XII.

SECTION 3. Chapter NR 47, Subchapter XII, is created to read:

NR 47, Subchapter XII
Urban Forestry Catastrophic Storm Grant Program

NR 47.950 Purpose. The purpose of this subchapter is to establish procedures for project sponsor eligibility, application procedures, cost eligibility, grant selection and award processes, and reimbursement procedures for grants to counties, cities, village, towns, tribal governments and not-for-profit organizations for the repair of damage to urban forests following a catastrophic storm event. This program is authorization under s. 23.097 (1r), Stats. The department shall allocate up to 20% of the amount appropriated under s. 20.370(5)(bw) and (1)(mv), Stats., for grants issued under this subchapter.

NR 47.951 Applicability. This subchapter applies to all Wisconsin counties, cities, villages, towns, tribal governments and not-for-profit organizations applying for grants under this subchapter.

NR 47.952 Definitions. In this subchapter:

(1) "Catastrophic storm event" means snow, ice, hail, wind or tornados of sufficient ferocity to cause damage to urban forests. Further, the storm event becomes part of a Governor's declared state of emergency under s. 166.03, Stats. Catastrophic storm events do not include forest fires or secondary impacts that damage the urban forest over a longer period of time, such as would result from drought, insect infestations or disease, or water saturation due to flooding.

(2) "Concentrated development" means an area with an aggregate population of at least 100 persons per square mile as calculated by the Wisconsin department of administration.

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

(4) "Eligible project sponsor" means a Wisconsin town, village, city, county, tribal government or not-for-profit organization with urban forests within a concentrated development that has sustained damage following a catastrophic storm event for which the governor has declared a state of emergency.

(5) "Grant agreement" means a formally binding legal contract between the project sponsor and the department that sets forth the mutual obligations related to specific urban forestry projects.

(6) "Grant period" means the period of time specified in the grant agreement during which all work shall be accomplished.

(7) "Marshalling yard" means a location where storm related tree debris is collected, held and may be processed for future uses.

(8) "Not-for-profit organization" means any organizations that meets the requirements of section 501(c)(3) of the United States Internal Revenue Code and has received a certification stating so from the United States internal revenue service. The organizations shall also be registered with the Wisconsin department of financial institutions.

(9) "Urban forests" means trees in cities, villages and other concentrated development.

NR 47.953 Eligibility. (1) The department shall only make grants under this subchapter once the governor has declared a state of emergency due to a catastrophic storm event. Damage to an urban forest shall be the direct result of a catastrophic storm event.

(2) Only eligible project sponsors shall be awarded a grant under this subchapter.

(3) Two or more eligible project sponsors may enter into a cooperative agreement under s. 66.0301, Stats., whereby one of the parties acts as agent on behalf of all other parties and fully administers the urban forestry catastrophic storm grant agreement for all parties. In cooperative arrangements, all parties to the cooperative agreement shall be eligible project sponsors.

NR 47.954 Application procedures. (1) An eligible project sponsor may apply for a grant under this subchapter for the purpose specified under s. NR 47.950.

(2) Eligible project sponsors shall request grant funding on application forms provided by the department. The application shall include a resolution of the project sponsor's governing body that authorizes its representative to file the grant application, serve as the contact for purposes of a grant under this subchapter, and submit reimbursement claims.

Note: Application materials are available upon request from the Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494. Completed forms and supporting documentation shall be mailed to the same address. Application materials may also be accessed from the Wisconsin Department of Natural Resources webpage at:

<http://dnr.wi.gov/forestry/JF/index.htm>

(3) To be considered for funding, eligible project sponsors shall postmark an application for funding under this subchapter within 60 days of the date that the governor declares a state of emergency for their area.

(4) The department shall only review and consider for funding complete applications submitted by the deadline. The department may request additional or missing information in writing. Eligible project sponsors shall respond to requests for additional or missing information within 30 days of the date of the request. Failure of project sponsors to provide the requested information by the deadline will result in the incomplete application being returned to the project sponsor.

(5) The department shall evaluate all complete applications submitted using the criteria identified in s. NR 47.956.

(6) The department shall notify eligible project sponsor in writing of the status of their grant application within 60 days from the time the application is deemed complete. The department shall notify unsuccessful project sponsors in writing.

(7) The department shall award grants in accordance with s. NR 47.957.

(8) If an eligible project sponsor submits an application but program funds are exhausted due to earlier awards during a fiscal year, the department shall hold the application and consider the applications when additional grant funds become available. In such cases, the department will notify the project sponsor in writing of the reason for the delay in the review of the submitted application.

NR 47.955 Eligible and ineligible costs. (1) **ELIGIBLE COSTS.** Under this subchapter, the costs of removing, repairing and replacing trees that have been damaged by a catastrophic storm event in cities, villages and concentrated development areas shall be eligible for reimbursement so long as those costs are not otherwise reimbursed by federal disaster assistance or other funding sources. Further, eligible costs shall be incurred between the date of the governor declared state of emergency and may not exceed 365 days after. Eligible costs may include, but are not limited to the following:

(a) The costs of rented or leased equipment and facilities.

(b) The cost of purchased equipment. For equipment whose useful life is one year or less, the full purchase cost is an eligible cost. For equipment whose useful life is greater than one year, eligible cost is

equal to one year's useful life as determined by dividing the purchase cost by the number of years of useful life of the equipment. Useful life of equipment shall be determined by the department. Regardless of the useful life, equipment costing more than \$5,000 per unit is not eligible for reimbursement.

(c) Salaries and fringe benefit costs associated with project sponsor personnel engaged in removing, repairing and replacing storm-damaged trees.

(d) Contractor and consultant costs to remove, repair and replace storm-damaged trees.

(e) Costs of marshalling yards and their operation.

(f) Costs of tree removal, stump grinding, cleaning and filling hole left by removed tree, tree repair, replacement tree purchase and planting, soil amendment and mulching, tree guards and protective devices for new tree establishment.

(g) Cost of disposal and utilization of wood and brush from tree removal and repair.

(h) The costs of necessary supplies. Supplies may include but are not limited to maps, fuel, mileage, computer software or devices for storm damage assessment and response, photocopies, postage, and other supply costs determined by the department to be reimbursable. Supplies do not include rent, office printers or capital expenditures.

(2) COST CONTAINMENT. Project sponsors shall make every effort to control their costs. Failure by the project sponsor to show evidence of attempts to control costs, as described in this section, may result in refusal by the department to reimburse those costs.

(a) Heavy equipment costs shall be calculated on an hourly or mileage rate, not to exceed the hourly or mileage rates established by the Wisconsin department of transportation for highway equipment.

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

(b) Project sponsors shall implement cost-effective best management practices. All tree care operations shall meet standards established in all parts of the most current editions of ANSI A300 American National Standard for Tree Care Operations – Standard Practices and ANSI Z133.1 American National Standard for Arboricultural Operations - Safety Requirements.

Note: The ANSI standards are available at www.isa-arbor.com International Society of Arboriculture, PO Box 3129, Champaign, IL 61826

(c) Costs for removing, repairing, replacing or planting trees may not exceed local market rates.

(d) All project sponsors receiving a grant under this subchapter shall comply with the state procurement law under chs. 59, 60, 61 and 62, Wis. Stats.

Note: So that project sponsors may better comply with state procurement and cost-containment requirements, the department makes available the document titled *Procurement Guide for Local Governments Receiving Grants*. This document is available from the department upon request by writing to: Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494, or on-line at: <http://dnr.wi.gov/org/caer/cfa/grants/Forms/ProcurementGuide.pdf>

(3) INELIGIBLE COSTS. Costs not directly associated with the implementation of this subchapter may not be reimbursed. Those costs include, but are not limited to:

(a) Costs incurred before or more than 365 days after a governor's declared state of emergency for the project sponsor's area.

(b) Costs for the repair of structures, vehicles, fences, sidewalks or other objects damaged by damaged trees or their parts.

(c) Legal or settlement costs due to storm-related litigation.

(d) Costs of routine urban forest management to trees unaffected by the storm.

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

(f) Ordinary project sponsor operating expenses, also called indirect costs, such as salaries and expenses of elected officials, that are not directly related to urban forestry management.

(g) Costs incurred in a contract which creates a real or apparent conflict of interest.

(4) CONFLICT OF INTEREST PROHIBITION. An apparent conflict of interest arises when an official or employee of a project sponsor participates in the selection, awarding or administration of a contract supported by the grant and either:

(a) The official or employee, or his or her spouse or partner or children, has an ownership interest in the firm selected for the contract.

(b) A person identified in par. (a) receives a contract, gratuity, or favor as a result of the award of the contract.

NR 47.956 Application review criteria. (1) The department shall review and consider, as a group, all applications postmarked within 60 days of each state of emergency declaration made by the governor. Each application in the group will be evaluated for all of the following factors, including:

- (a) Extent of tree damage in public areas, residential properties, businesses and natural areas.
- (b) Extent of damage to the entire community as a percentage of overall land mass.
- (c) Repair work needed, by category, tree removal, stump grinding and cleanup; tree restoration; tree planting, and the estimated cost of those repairs.
- (d) Community population.

(2) Each reviewed application will share grant funding with all other reviewed applications in its group consistent with the provisions in s. NR 47.957(3).

NR 47.957 Grant awards. (1) FOR ANY CATASTROPHIC STORM EVENT OCCURRING AFTER JUNE 13, 2007. Individual grant awards provided by the department may range from not less than \$4,000 and not more than \$50,000 for a grant under this subchapter.

(2) In making a grant award under sub. (1), the department may not duplicate funds awarded for eligible costs received by the project sponsor from any of the following sources:

- (a) Federal or state agencies.
- (b) Public or private insurance.
- (c) Charitable contributions.
- (d) Other sources.

(3) ALLOCATION OF FUNDS. (a) All complete applications received within 60 days of the governor declared state of emergency and evaluated by the department will share grant funds available at that time. If insufficient monies are available to fully fund all eligible requests, available funds will be pro-rated among all eligible project sponsors. The department will make grant awards until funds are exhausted.

(b) The department shall issue a grant agreement to all successful applicants. The grant agreement shall be signed by the authorized representative and returned to the department within 30 days of the date of the agreement. Failure to sign and return the grant agreement by the deadline may result in the department canceling the agreement and awarding associated funds to another project sponsor.

(4) MATCH. There is no match requirement for grants under this subchapter. It is anticipated that project costs will exceed available grant funding. Costs in excess of the grant award amount are the responsibility of the project sponsor.

(5) ADVANCE PAYMENTS. Project sponsors may request from the department one advance payment not to exceed 50% of the total grant award amount. Project sponsors shall make this request, in writing, when returning the signed grant agreement to the department. The applicant shall maintain detailed records and proofs of payment to justify advance expenditures used for a project under this subchapter. Project sponsors shall submit these proofs of payment when final reimbursement is requested.

NR 47.958 Reimbursements. (1) CLAIM SUBMITTAL. Only eligible project sponsors that have entered into a signed grant agreement with the department for funding under this subchapter may apply for reimbursement of urban forest damage costs. Eligible project sponsors shall:

- (a) Make claims on forms provided by the department.

Note: Reimbursement claim forms are available upon request from the Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494. Completed forms and supporting documentation shall be mailed to the same address. Forms may also be found on the Wisconsin Department of Natural Resources webpage at: <http://dnr.wi.gov/forestry/UF/index.htm>

(b) Submit proofs of payment with reimbursement claims. Proofs of payment may include: copies of canceled checks, copies of checks and bank statement, and credit card receipts and credit card statements.

(c) If the project sponsor seeks reimbursement of employee salaries, employee fringe benefits or independent contractor fees, the reimbursement request shall specify all of the following for that employee or independent contractor:

1. The position number of the employee, or the contract number of the independent contractor.

2. The total amount of salaries and fringe benefits, or the total amount of contractor fees, on which the project sponsor seeks reimbursement.

(d) Submit proof of cost-containment efforts.

Note: So that projectsponsors maybetter complywith state procurement and cost-containment requirements, the department makes available the document titled *Procurement Guide for Local Governments Receiving Grants*. The document is available from the department upon request by writing to: Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494, or on-line at: <http://dnr.wi.gov/org/caer/cfa/grants/Forms/ProcurementGuide.pdf>

(e) Only request reimbursement for eligible costs identified in s. NR 47.955.

(f) Comply with generally accepted accounting principles and practices.

(g) Substantiate, with proofs of payment, any advance payment earlier provided by the department.

(h) Submit final reimbursement claims postmarked within 60 days of the end of the grant agreement.

(2) REIMBURSEMENT. The department shall issue reimbursements under this subchapter following review of final reimbursement claims submitted by project sponsors. The department shall compare reimbursement claim with the project sponsor grant agreement. The department shall offset the amount of a reimbursement by any portion of an advance that the project sponsor cannot substantiate with proofs of payment and by other sources of funding that the project sponsor has received for damages in the same storm event as described in s. NR 47.957(2).

(3) REPAYMENT OF ADVANCE. If the department finds that proofs of payment are insufficient to substantiate the full amount of an advance, the department shall notify the project sponsor of this in writing. The project sponsor shall return the unexpended balance of the advance to the department within 30 days of receipt of the department's request.

NR 47.959 Audit and records retention. (1) AUDIT. If eligible costs are subsequently reimbursed by sources other than the department after the department has issued payment under this subchapter, the project sponsor shall refund to the department the amount of those costs. Likewise, if the department, project sponsor or project sponsor's auditor determines that both the department and another source paid an eligible cost, the project sponsor shall refund the questioned cost to the department. The department shall deposit any refund back into the urban forestry grant fund, s. 20.370(5)(bw), Stats.

(2) RECORDS RETENTION. The project sponsor shall retain all receipts, records, and supporting documentation associated with each grant award for a period of 3 years after final payment. The project sponsor shall make these documents available for review by the department upon request.

SECTION 4. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 5. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)