

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-093

AN ORDER to create chapter NR 168, relating to the brownfield site assessment grant program administration.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

06-01-00 REPORT SENT TO AGENCY.

RS:DD:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 00-093

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. What is the authority for the limitation in s. NR 168.07 (8)? The limitation does not appear to be a necessary part of "asbestos abatement activities" which are eligible activities under s. 292.75 (3) (d), Stats.

b. Is it clear that the grant criteria set forth in s. 292.75 (5) (a) and (b), Stats., are included in the scoring criteria under s. NR 168.13?

2. Form, Style and Placement in Administrative Code

a. The department's analysis provides little information about the actual content of the rule.

b. Section NR 168.01 (2) is unnecessary; see the note following s. NR 168.03 (4).

c. In s. NR 168.03 (1), it is suggested that "a brownfield site assessment grant" replace "funds for eligible activities."

d. Section NR 168.03 (intro.) should read: "In this chapter."

e. In s. NR 168.03 (3) and (4), "given" should replace "specified."

f. Beginning with the definition of "grantee or grant recipient" in s. NR 168.03, the remaining subsections are incorrectly numbered. It is not clear why both "grantee" and "grant recipient" are utilized in the rule.

g. In s. NR 168.03 (5), the material following "Stats." may be deleted and placed elsewhere in a substantive provision.

h. In s. NR 168.03 (13), use of "includes" implies that the definition is not inclusive. Is that the intent?

i. In s. NR 168.05 (1), it is suggested that "grants under this chapter" replace "this grant program." In sub. (2), it is suggested that "under this chapter" follow "grants."

j. In s. NR 168.07 (2), "the" should replace "this" and "category shall be established as follows:" may be deleted.

k. In s. NR 168.07 (3), "if" should replace "in the event that."

l. In s. NR 168.07 (4), it is suggested that "may not exceed" replace "shall be limited to."

m. In s. NR 168.07 (5), it is suggested that "of rank" follow "order" in the last sentence.

n. If s. NR 168.07 (8) is retained, a tighter link should be made between that subsection and s. NR 168.09 (4).

o. In s. NR 168.11 (3), use of the term "submittal dates" should be compared to the definition of "submittal date" in s. NR 168.03 (13).

p. In s. NR 168.13 (1), first sentence, "following" should be deleted and "in this section" should follow "criteria."

q. In s. NR 168.13 (2) (intro.), it is suggested that "grant applications" be substituted for "applications for grants."

r. In pars. (a) to (d) of s. NR 168.13 (2), it is suggested that "for an eligible site or facility" need not be repeated; reference to an eligible site or facility might be made instead in the introductory clause.

s. It is suggested that s. NR 168.13 (1) (e) begin as follows: "One point, up to a maximum of forty points, shall be . . ." The second sentence of the paragraph may begin as follows: "Points may be awarded only for costs and services that . . ."

t. It is suggested that s. NR 168.13 (1) (f) be revised to read as follows: "One point, up to a maximum of forty points, shall be awarded for each additional 2% of matching funds above the matching funds required under s. 292.75 (7), Stats. An applicant pledging more than the required 20% matches shall provide the pledged percentage of the total final cost." In this

regard, the definition of "matching funds" in s. NR 168.03 (5) (intro.) should be reviewed for need, content and use in the rule.

u. Is the second sentence of s. NR 168.15 (intro.) stated as intended, given sub. (6) of that section? If sub. (6) covers all of the "other costs," then the introductory sentence should simply read: "Eligible costs under this chapter include:".

v. Should "eligible" precede "activities" in s. NR 168.15 (1)?

w. In s. NR 168.15 (2), second sentence, "Labor" should replace "These."

x. It appears that s. NR 168.19 should be combined or more explicitly linked with s. NR 168.15.

y. The second sentence of s. NR 168.21 (1) repeats s. NR 168.13 (2) (f).

z. In s. NR 168.21 (2), it appears that the second sentence could be stated: "If the applicant is unable to meet this condition, the application is incomplete and the applicant is not eligible for a grant based on that application."

aa. It appears that s. NR 168.21 (3) could read: "The grant period is 12 months from the date of the department's signature on the grant contract unless extended under sub. (11)."

ab. Section NR 168.21 references "forms." [See s. 1.09 (2), Manual.]

ac. In s. NR 168.21 (7), "grant" should modify "payments" in the second sentence.

ad. In s. NR 168.21 (8), it is suggested that the last sentence be deleted and ", or may require the grantee to conduct compliance inspections," should follow "inspections" in the first sentence.

ae. In s. NR 168.23, the introductory clause should be renumbered sub. (1) and subs. (1) and (2) should be renumbered pars. (a) and (b). Subsections (3) and (4) should consequently be renumbered subs. (2) and (3).

af. The introductory clause of s. NR 168.25 should be renumbered sub. (1) and subs. (1), (2) and (3) should be renumbered pars. (a), (b) and (c). Subsection (4) should be renumbered sub. (2). The title to the section is not consistent with the title shown in the table of contents.

ag. It appears that the introductory clause of s. NR 168.25 should conclude: "... if all of the following conditions are met:". [The entire rule should be reviewed for the appropriate use of the words "any" or "all" in introductory clauses to clearly inform the reader of rule requirements.]

ah. Section NR 168.25 (1) should be modified by replacing "A" with "The" and replacing "should clearly explain" with "clearly explains."

- ai. In s. NR 168.25 (2), “shall take” should be replaced by “takes.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 168.07 (3), the use of the phrase “regular application cycles” should refer to s. NR 168.11 (3). [See also s. NR 168.07 (7).]

b. In s. NR 168.13 (1), it is suggested that the sentence begin as follows: “If the department is required under s. NR 168.07 (5) to score and rank eligible complete applications”

c. In s. NR 168.13 (2) (e), it is not clear what the reference to “costs and services outlined in s. NR 168.03 (8)” means.

d. In s. NR 168.21 (1), “required under” should replace “stated in” in the first sentence.

e. In s. NR 168.21 (10), the statutory cross-reference should be replaced by reference to s. NR 168.07 (4).

f. In s. NR 168.23 (4), “under sub. (3)” should follow “terminated.”

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

a. In s. NR 168.03 (5) (b), the definition of “cash contribution” should be reviewed for clarity and completeness.

b. Subsections (4) and (7) of s. NR 168.07 should be reviewed for consistency.

c. The last sentence of s. NR 168.11 (4) appears to be incomplete.

d. In s. NR 168.13 (1), the meaning and purpose of the last sentence are unclear.

e. In the first sentence of s. NR 168.15 (intro.), it is not clear what is “approved by the department.”

f. Section NR 168.17 is unclear. It appears that better drafting would improve clarity.

g. In s. NR 168.21 (5), first sentence, is “recorded” the right word?

h. The necessity for s. NR 168.21 (6) is unclear, particularly since as stated it is limited to specified types of regulations.

i. Section NR 168.21 (11) fails to indicate who approves a request for a time extension.

j. It is suggested that s. NR 168.23 (intro.) be revised to read: “If a grantee fails to comply with the provisions of this chapter, the department may take one or more of the

following actions:”. The subunits that follow the introductory clause should then be revised accordingly.

k. In s. NR 168.23 (4), what are the criteria for determining whether repayment of some or all grant payments will be required?

Report to
Legislative Council Rules Clearinghouse
NR 168, Wis. Adm. Code
Natural Resources Board Order No. CF-30-00

Wisconsin Statutory Authority

s. 292.75, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule allows the Department to award grants to local governmental units to carry out assessments and other specific preliminary activities on eligible sites or facilities. The intent of the program is to give local governmental units an incentive to start work on sites that have not attracted a developer, have been designated for public or municipal use, or there is not enough information about the site to determine the cost to remediate the site. This grant program allows a local governmental unit to make a smaller initial commitment during the early information-gathering period of brownfield remediation. The Brownfield Site Assessment Grant Program is not intended for complete site cleanup or remediation. Municipalities would be encouraged to seek funding for complete remediation, renovation or redevelopment through other sources such as the Department's Land Recycling Loan program or the Commerce Brownfield Grant program.

Local governmental units eligible to apply for funding from the Brownfield Site Assessment Grant program include cities, villages, towns, counties, tribes, redevelopment authorities, community development authorities and housing authorities. Grants for the program must be awarded prior to July 1, 2001.

The proposed rules establish the framework for participation in the program and include a system of fund allocation, eligible activities, a scoring system for ranking applications, and costs that are eligible to be used as local match. The rule further establishes two categories of grants: small and large. Small grants are those for dollar amounts of \$2,000 to \$30,000, and large grants are those for dollar amounts of \$30,000 to \$100,000. Seventy percent of the funds available will be designated to fund small grants and 30% shall be allocated to fund large grants. Successful applicants must furnish a match of at least 20% of the amount of the grant as cash or in-kind services or both, during the 12 months of the project. An applicant that has more than one eligible site or facility may submit a grant application for each eligible site or facility; the statute, however, limits the total amount of grant funds that one applicant may be awarded to 15% of the available funds for the fiscal year.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Pat Sullivan, Bureau of Community Financial Assistance - 266-5742

Joe Renville, Bureau of Legal Services - 266-9454

Carol Turner, Bureau of Legal Services - 266-1959

Submitted on May 10, 2000

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
NR 168
Amendment No. if Applicable

FISCAL ESTIMATE

DOA-2048 N(R10/94)

Subject

NR 168 Site Assessment Grant Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- | | | |
|---|---|---|
| <p>1. <input type="checkbox"/> Increase Costs</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Government Units Affected:</p> <p><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities</p> <p><input type="checkbox"/> Counties <input type="checkbox"/> WTCS Districts</p> <p><input type="checkbox"/> School Districts <input type="checkbox"/> Others _____</p> |
|---|---|---|

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.370 (6) (et)

Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF RULE - This rule implements the brownfield site assessment grant program. Created in the 1999-2001 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination on an eligible site; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The Legislature appropriated \$1.45 million for the 99-01 biennium for these grants. Local governments are required to contribute matching funds—as cash or in-kind contributions—equal to 20% of the grant. Further, this rule limits the amount of funds that may be awarded for categories of eligible activities. These rules specify that 70% of available funds are to be allocated to "small" grants (i.e. a grant award of between \$2,000 and \$30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). Act 9 required that the Department promulgate these rules as necessary to administer the program, and directed the Department to promulgate them as emergency rules.

FISCAL IMPACT - None.

Long-Range Fiscal Implications

None.

Agency	Prepared By	Phone No.	Authorized Signature	Phone No.	Date
DNR	Joe Polasek	(608) 266-2794		(608) 266-2794	04/12/2000

1 ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
2 CREATING RULES

3
4 The Natural Resources Board proposes an order to create ch. NR 168 relating to the brownfield site
5 assessment grant program administration.
6

7
8 CF-30-00
9

10 Analysis Prepared by Department of Natural Resources

11
12 Statutory authority: s. 292.75, Stats.

13
14 Statute interpreted: s. 292.75, Stats.
15

16 This rule implements the brownfield site assessment grant program. Created in the 1999-2000
17 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program
18 provides grants to eligible local governments to cover the costs of brownfield site assessment
19 activities such as: investigating environmental contamination of an eligible site or facility;
20 demolishing structures located on an eligible site; removing certain abandoned containers; abating
21 asbestos as part of demolition activities; removing underground hazardous substance storage tank
22 systems; and removing underground petroleum product storage tank systems. Eligible local
23 governments include cities, villages, towns, counties, redevelopment authorities, community
24 development authorities, and housing authorities. The legislature appropriated \$1.45 million for the
25 99-01 biennium for these grants. Local governments are required to contribute matching funds as
26 cash or in-kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may
27 be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated
28 to "small" grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds
29 are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than
30 \$100,000). Act 9 required that the department promulgate these rules as necessary to administer
31 the program, and directed the department to promulgate them as emergency rules.
32

33 Section 1. Chapter NR 168 is created to read:

34
35 Chapter NR 168

36 Brownfield Site Assessment Grant Program

37
38 NR 168.01 Purpose and applicability

39 NR 168.03 Definitions

40 NR 168.05 Eligibility

41 NR 168.07 Allocation of funds

42 NR 168.09 Eligible activities

43 NR 168.11 Grant application

44 NR 168.13 Application scoring

45 NR 168.15 Eligible costs

46 NR 168.17 Matching funds

47 NR 168.19 Ineligible costs

48 NR 168.21 Grant conditions

49 NR 168.23 Grant termination and enforcement

50 NR 168.25 Grant variances
51

1 **NR 168.01 Purpose and applicability.** (1) The purpose of this chapter is to establish
2 procedures for implementing a brownfield site assessment grant program as provided for in s.
3 292.75, Stats. Grants made under this program will assist local governmental units in assessing
4 environmental contamination and conducting eligible activities on eligible brownfield sites or
5 facilities.

6 (2) This chapter applies to all cities, villages, towns, counties, tribes, redevelopment
7 authorities created under s. 66.431, Stats., community development authorities created under s.
8 66.4325, Stats., or housing authorities applying for financial assistance under s. 292.75, Stats., for
9 a brownfield site assessment grant. Under the authority of s. 20.002 (13), Stats., federally
10 recognized tribal governing bodies are eligible to apply for brownfield site assessment grants.
11 Grants made to any American Indian tribes are subject to the same conditions and restrictions as
12 apply to grants to local governmental units.

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and in
Note
below.

In this chapter:

13
14 **NR 168.03 Definitions.** The following definitions are applicable to terms used in this
15 chapter:

✓
a brownfield site assessment grant

16 (1) "Applicant" means a local governmental unit seeking funds for eligible activities under
17 this chapter.

18 (2) "Department" means the department of natural resources.

19 (3) "Eligible site or facility" has the meaning specified in s. 292.75 (1)(a), Stats.

govern

20 **Note:** Section 292.75(1)(a), Stats., defines "eligible site or facility" to mean an abandoned,
21 idle or underused industrial or commercial facility or site, the expansion or redevelopment of which
22 is adversely affected by actual or perceived environmental contamination.

23 (1) "Grantee or grant recipient" means an applicant that has been awarded a grant under
24 this chapter, which has been signed by the department.

✓
will

25 (2) "Investigation of environmental contamination" means activities associated with
26 conducting, documenting or completing a phase I environmental assessment, a phase II
27 environmental assessment or a site investigation.

28 (3) "Large grant" means a grant award to a local governmental unit, for an amount greater
29 than \$30,000 but not more than \$100,000 of state funds under this chapter.

30 (4) "Local governmental unit" has the meaning specified in s. 292.75 (1)(b), Stats.

govern

31 **Note:** Section 292.75(1)(b), Stats., defines "local governmental unit" to mean a city, village,
32 town, county, redevelopment authority created under s. 66.431, Stats., community development
33 authority created under s. 66.4325, Stats., or housing authority. Under the authority of s. 20.002
34 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site

1 assessment grants. Grants made to any American Indian tribes are subject to the same conditions
2 and restrictions as apply to grants to local governmental units.

3 (5) "Matching funds" means the cash or in-kind contribution, or both, required under s.
4 292.75 (7), Stats, which shall be incurred during the grant period by a local governmental unit and
5 for which it has not and may not receive any other state or federal grant funds.

6 (a) "In-kind contributions" are services performed by employes of the grantee.

7 (b) "Cash contributions" are costs and services incurred by but not performed by the
8 grantee.

9 (6) "Petroleum product" has the meaning given in s. 101.143 (1) (f), Stats.

10 **Note:** Section 101.143 (1) (f), Stats., defines "petroleum product" to mean "gasoline,
11 gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil."

12 (7) "Phase I environmental assessment" has the meaning given in s. NR 750.03 (5).

13 **Note:** Section NR 750.03 (5) defines "phase I environmental assessment" to mean "an
14 assessment of a site to identify potential or known areas of environmental contamination. This
15 assessment may include, but is not limited to, reviewing records, interviewing persons, and
16 conducting physical inspections of the site."

17 (8) "Phase II environmental assessment" has the meaning given in s. NR 750.03 (6).

18 **Note:** Section NR 750.03 (6) defines "phase II environmental assessment" to mean "an
19 assessment of a site to physically confirm that contamination exists in potential or known areas of
20 environmental assessment, but not to determine the nature, degree and extent of contamination.
21 This assessment may include, but is not limited to, field sampling of media, laboratory analysis of
22 samples and visual confirmation of environmental contamination at the site."

23 (9) "Removal of abandoned containers" means the removal of abandoned containers and the
24 proper disposal or treatment of abandoned containers.

25 (10) "Removal of an underground hazardous substance tank system or an underground
26 petroleum product storage tank system" means the removal of the system and the proper disposal
27 or treatment of the system.

28 (11) "Site investigation" means an investigation undertaken in accordance with ch. NR 716.

29 (12) "Small grant" means a grant award to a local governmental unit, for an amount of at
30 least \$2,000 but no more than \$30,000, under this chapter.

31 (13) "Submittal date" includes postmark date, fax date or electronic transmittal date.

32 (14) "Underground hazardous substance storage tank system" has the meaning given in s.
33 292.75 (1) (d), Stats.

34 **Note:** Section 292.75 (1) (d), Stats., defines "underground hazardous substance storage
35 tank system" as "an underground storage tank used for storing a hazardous substance other than a

1 petroleum product together with any on-site integral piping or dispensing system with at least 10%
2 of its total volume below the surface of the ground."

3 (15) "Underground petroleum product storage tank" has the meaning given in s. 101.143
4 (1) (i), Stats.

5 Note: Section 101.143 (1) (i), Stats., defines "underground petroleum product storage
6 tank" to mean "an underground storage tank used for storing petroleum products together with any
7 on-site integral piping or dispensing system with at least 10% of its total volume below the surface
8 of the ground."

9
10 *found* NR 168.05 Eligibility. (1) Only local governmental units that have not caused the
11 environmental contamination that is the basis for the grant request are eligible for this grant
12 program. *under this chapter*

13 (2) Grants may be awarded to a local governmental unit only if the person that caused the
14 environmental contamination that is the basis for the grant request is unknown, cannot be located
15 or is financially unable to pay the cost of the eligible activities. *292.75(2)(b)*

16
17 NR 168.07 Allocation of funds. (1) Fifty percent of the funds appropriated to the grant
18 program under s. 20.370(6)(et), Stats., shall be allocated through the application process to
19 qualified applicants during the first fiscal year of the biennium. *292.75(2)(c)*

20 (2) Of the funds appropriated for this grant program, categories shall be established as
21 follows: 70% shall be designated to fund small grants, and 30% shall be designated to fund large
22 grants. *168.11(3)*

23 (3) In any given fiscal year, if there are remaining funds after regular application cycles, the
24 department may accept and fund applications and grant amendment requests as they are submitted,
25 for either grant category. In the event that multiple applications or requests have the same
26 submittal date, the department shall give preference to applications or requests in the same
27 category as the category of available funds. *what is still*

28 (4) The total amount of all grants awarded to an applicant in a fiscal year under this chapter
29 shall be limited to an amount equal to 15% of the available funds appropriated under s. 20.370 (6)
30 (et), Stats., for the fiscal year. *292.75*

31 (5) If sufficient funds are available in a grant category, the department shall fund all eligible,
32 complete applications without ranking them. If sufficient funds are not available in a grant
33 category, the department shall score and rank all eligible, complete applications and award grants in
34 descending order.

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1 rule one
sub. (5)

1 (6) If sufficient funds are not available to fully fund a grant, the department shall offer the
2 applicant the choice of receiving partial funding or withdrawing the application.

3 (7) The department may not award more than one grant to an eligible site or facility in any
4 application cycle.

5 (8) The department may not award funds for asbestos abatement unless it is a necessary
6 part of demolition activities.

7
8 **NR 168.09 Eligible activities.** Activities eligible for funding under this chapter include the
9 following activities at an eligible site or facility:

10 (1) The investigation of environmental contamination on an eligible site or facility for the
11 purposes of reducing or eliminating environmental contamination.

12 (2) The demolition of any structures, buildings or other existing improvements.

13 (3) The removal of abandoned containers, as defined in s. 292.41 (1), Stats.

14 (4) Asbestos abatement activities, as defined in s. 254.11 (2), Stats.

15 (5) The removal of underground hazardous substance storage tank systems.

16 (6) The removal of underground petroleum product storage tank systems.

17
18 **NR 168.11 Grant application. (1) GENERAL.** Applications for grants under this chapter shall
19 be on forms provided by the department and submitted to the following address: BF SAG Manager
20 – CF/8, Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707-7921.

21 (2) CONTENTS. A grant application shall include, but is not limited to, the following
22 information:

23 (a) The name, address and designated contact person for the applicant.

24 (b) Information that demonstrates that the site or facility meets the definition of an eligible
25 site or facility under this chapter.

26 (c) A resolution that designates an authorized representative, commits the applicant to
27 completing the activities listed in the grant application if awarded funds, and grants the department
28 access to the site or facility and grant records.

29 (d) A description of the proposed grant activities, including:

30 1. The street address of the eligible site or facility.

31 2. The eligible activities for which the applicant is seeking funds.

32 3. An itemized estimate of the proposed cost of each eligible activity.

33 4. An itemized description of the proposed matching funds and the professional
34 qualification of the person conducting any in-kind services.

35 5. A map showing the location of the eligible site or facility.

1 6. Current ownership of the eligible site or facility, including information on how the local
2 governmental unit acquired the property, if applicable.

3 7. Evidence that the local governmental unit has legal access to the eligible site or facility
4 so that it can conduct the activities stated in the grant application. The applicant shall provide this
5 documentation to the department with the grant application or no later than 90 calendar days after
6 the department notifies the local governmental unit that funds have been reserved pending submittal
7 of the legal access documentation.

8 8. Certification that the person conducting professional services for the local governmental
9 unit has the necessary legal, managerial and technical qualifications.

10 9. Information showing that the person that caused the environmental contamination that is
11 the basis for the grant request is unknown, cannot be located, or is financially unable to pay the
12 cost of the eligible activities.

13 (3) APPLICATION CYCLE. The department shall establish application submittal dates. The
14 department shall have at least one application funding cycle each state fiscal year. If funds are
15 available, there may be additional application cycles.

16 (4) APPLICATION REVIEW. The department shall review the application for completeness
17 and may request additional information. Applications that are determined to contain incorrect or
18 inaccurate information shall be considered incomplete. The application is considered complete the
19 additional or correct information requested by the department is received.

20
21 **NR 168.13 Application scoring.** (1) GENERAL. When the department scores complete
22 applications, as stated in s. NR 168.07 (5), it shall use the following criteria to score applications.
23 The criteria are applied on a statewide basis.

24 (2) POINT AWARDS. The department shall award points to the applications for grants
25 according to the following scoring criteria, listed without order of preference:

26 (a) Fifteen points shall be awarded to an application for an eligible site or facility that is
27 located within 1200 feet of a school, park, residence, or public or private drinking water supply
28 well.

29 (b) Fifteen points shall be awarded to an application for an eligible site or facility that has
30 contamination or hazards either of which is readily accessible to the public.

31 (c) Five points shall be awarded to an application for an eligible site or facility that will be
32 used by the general public and remain under the ownership of a local governmental unit or a non-
33 profit organization.

34 (d) Ten points shall be awarded to an application for an eligible site or facility for which the
35 local governmental unit has initiated the formal acquisition process, or 20 points shall be awarded to

is it clear that 292.75(5)(a) and (b) are included?

1 an application if the applicant or another local governmental unit has title to the eligible site or
2 facility.

3 (e) Up to a maximum of 40 points, one point shall be awarded for every \$2,500 in costs and
4 services outlined in s. NR 168.03 (8), which occurred within the 5 years prior to the application due
5 date. The applicant will only be awarded points for costs and services that have supporting
6 documentation included with the application, and have not been reimbursed by any other grant
7 programs.

8 (f) Up to a maximum of 40 points, one point shall be awarded for each additional 2% of
9 match that is above the required 20%, as stated in s. 292.75 (7), Stats. An applicant that pledges
10 more than the required 20% shall be responsible for providing that same percentage of the total
11 final cost.

12 (3) BONUS POINTS. The applicant may assign 29 bonus points to an application that it
13 considers to be a priority. This may be applied to one small application and one large application
14 over the life of the program, for each applicant.

15 (4) EQUAL SCORES. If 2 or more applications receive the same score, applications
16 requesting the smallest dollar amounts will be funded first.

17
18 **NR 168.15 Eligible costs.** Eligible costs include the reasonable and necessary costs incurred
19 during the grant period associated with conducting eligible activities under this chapter as approved
20 by the department. Eligible costs under this chapter may include, but are not limited to:

21 (1) Actual costs of services and equipment provided by employees of the grant recipient to
22 carry out activities necessary for the grant. Equipment rental rates may not exceed the county
23 machinery rates established annually by the department of transportation. *where?*

24 (2) Labor costs required for carrying out the eligible activities identified in the grant
25 agreement. *Labor* These costs may include salary, fringe benefits and other items determined to be
26 appropriate by the department.

27 (3) Costs for laboratory analysis and professional service contracts.

28 (4) The costs of necessary equipment and facilities used to carry out activities stated in the
29 grant application for the length of the grant awarded under this chapter.

30 (5) Costs of treatment, storage or disposal of materials that are generated as a result of
31 conducting the eligible activities.

32 (6) Other costs determined by the department to be necessary to carry out the eligible
33 activities, as approved in advance by the department.

34

Request

✓

may be awarded cycle

match required under

is match

shall provide - as pledged

note

7

cf 168.19 (4) & (5)

1 **NR 168.17 Matching funds.** Costs and services eligible as matching funds include eligible *activity*
2 activities listed under s. NR 168.09; costs of acquiring the eligible site or facility, specifically
3 payment of delinquent taxes; maintenance and security of the eligible site or facility; and
4 remediation activities on the eligible site or facility that are not listed under s. NR 168.09, if
5 approved in advance by the department.

6
7 **NR 168.19 Ineligible costs.** Costs ineligible for reimbursement under this chapter are costs
8 that are not necessary to or not directly associated with the eligible activities established in s. NR
9 168.09, as determined by the department. Ineligible costs for reimbursement or as matching funds
10 include, but are not limited to:

- 11 (1) Costs incurred outside the grant period stated in the grant contract.
- 12 (2) Costs reimbursed by any other local, state or federal grant programs.
- 13 (3) Fines and penalties due to violation of, or failure to comply with, federal, state or local
14 laws and regulations.
- 15 (4) Ordinary operating expenses of the applicant, such as salaries and expenses of public
16 officials.
- 17 (5) Costs of capital equipment.
- 18 (6) Costs of license application or permit fees.
- 19 (7) Legal fees.

20
21 **NR 168.21 Grant conditions.** (1) A grantee shall contribute matching funds of at least 20%
22 of the grant, as stated in s. 292.75 (7), Stats. An applicant that pledges more than the required
23 20% shall be responsible for providing that same pledged percentage of the total final cost. *repeats 168.13(2)(c)*

24 (2) An applicant shall provide the department with written proof of legal access to the
25 eligible site or facility to carry out all eligible activities listed in the application within 90 calendar
26 days of notification from the department that funds have been reserved, pending submittal of the
27 legal access documentation. If the applicant is unable to meet this condition, the department shall
28 *is* consider the application to be incomplete, and shall make the funds available to the next applicant, *the donor*
29 established in accordance with the criteria in s. NR 168.13. *determined*

30 (3) The initial grant period shall be 12 months from the date of the department's signature
31 on the grant contract. *is extended under sub. (1)(b)*

32 (4) The grantee may request a maximum of 2 partial payments during the grant period on
33 forms provided by the department and shall include documentation of work completed and eligible
34 costs and match incurred by the grantee. The department may withhold 10% of the total grant
35 amount stated in the grant agreement for final payment. The final payment request shall be made *✓*

168.13(2)(c)
repeats
is
the donor
determined
is extended under sub. (1)(b)
✓

"grantee"
"grant recipient" ✓
129.27

1 on forms provided by the department no later than 6 months after the expiration date of the grant
2 period stated in the grant agreement. right word ✓

3 (5) Accounting for all grant funds shall be in accordance with generally accepted principles
4 and practices, and shall be recorded by the grantee in a separate account. Supporting records of
5 grant expenditures shall be maintained in sufficient detail to show that grant funds were used for
6 the purpose for which the grant was awarded. All financial records, including invoices and canceled
7 checks or bank statements that support all grant costs claimed by the grant recipient shall be kept
8 and made available for inspection for 3 years after final payment.

9 (6) The grantee shall comply with applicable local, state and federal regulations concerning
10 bidding and awarding contracts, wage and labor rates, access for the disabled, flood disaster
11 protection, environmental quality and historical preservation. ✓

12 (7) All of the grant recipient's records pertaining to the grant are subject to department
13 review. ^{Grant} Payments are contingent upon review by the department and may be adjusted if costs are
14 determined to be ineligible. of what? ✓

15 (8) The department may conduct compliance inspections on properties for which assistance
16 has been provided under this chapter. ^{or may require the grantee to} The department may require grantees to conduct self-
17 inspections on these sites or properties. ✓

18 (9) ^{similar} Grantees shall provide the department with a progress report, if requested. ✓

19 (10) The grant recipient may request, for good cause and prior to the end of the grant
20 period, an amendment for changes to the grant award up to 10% of the original grant amount
21 unless the amendment would increase the award to an amount that exceeds the limit set in s.
22 292.75 (6), Stats. Amendments are subject to department approval and availability of funds. ✓

23 (11) Prior to the end of the grant period stated in the grant agreement, the grant recipient
24 may request an extension of the grant period for up to 12 additional months. The request shall be in
25 writing and describe the reasons for the time extension. Who approves? ✓

26 (12) The grant recipient shall provide to the department a report of the activities completed
27 with the funds awarded under this chapter. The report shall be submitted to the department along
28 with the final request for reimbursement under the grant contract. ✓

29
30 NR 168.23 Grant enforcement and termination. ⁽¹⁾ The department may impose the following
31 sanctions for noncompliance with the provisions of this chapter: ✓

32 (1) Costs directly related to noncompliance may be declared ineligible.

33 (2) Other administrative and judicial remedies may be instituted as legally available and
34 appropriate.

158
should cite
168.57(4) ✓

follows (intro)

1 (3) The department may terminate a grant awarded under this chapter for any of the
2 following reasons:

- 3 (a) Violation of any term or condition of the grant contract.
- 4 (b) Lack of substantial progress by the grant recipient, without good cause.
- 5 (c) Substantial evidence that the grant was obtained by fraud.
- 6 (d) Substantial evidence of gross abuse or corrupt practices in the administration of the
- 7 grant activities.

8 (4) If a grant is terminated, repayment of some or all payments made to the grant recipient
9 may be required.

10
11 **NR 168.25 Variances.** The department may approve a variance from a requirement of this
12 chapter under the following conditions:

13 (1) ^{all} A local governmental unit's written request for a variance shall clearly explain the
14 circumstances justifying the variance.

15 (2) The department shall take into account factors such as good cause and circumstances
16 beyond the control of the local governmental unit.

17 (3) The department determines that a variance is essential to effect necessary grant actions
18 or program objectives or where special circumstances make a variance in the best interest of the
19 program.

20 (4) The department may not grant variances from statutory requirements.

21
22 The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources
23 Board on _____.

24
25 The rule shall take effect on the first day of the month following publication in the
26 Wisconsin administrative register as provided in s.227.22 (2) (intro.), Stats.

27
28 Dated at Madison, Wisconsin _____

29
30 STATE OF WISCONSIN
31 DEPARTMENT OF NATURAL RESOURCES

32
33
34
35 By _____
36 George E. Meyer, Secretary

37 (SEAL)

OCT 27 2000

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. CF-30-00

Legislative Council Rules Clearinghouse Number 00-093

Subject of Rules BROWNFIELD SITE ASSESSMENT GRANT
PROGRAM ADMINISTRATION

Date of Transmittal to Presiding Officers OCTOBER 26, 2000

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Natural Resources Board proposes an order to create ch. NR 168 relating to the brownfield site assessment grant program administration.

CF-30-00

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 292.75, Stats., and Section 913(2) of 1999 Wisconsin Act 9

Statute interpreted: s. 292.75, Stats.

This rule implements the brownfield site assessment grant program. Created in the 1999-2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. These rules establish the framework for participation in the program and include a system of fund allocation, eligible activities, the necessary elements of a grant application and how to apply, a scoring system for ranking applications, costs that are eligible to be used as match, and grant conditions. Local governments are required to contribute matching funds equal to at least 20% of the grant. The rule specifies that 70% of available funds are to be allocated to "small" grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). The scoring system takes into account environmental, health and human safety threats, as well as the applicant's commitment to the project, as directed in the statutes under s. 292.75, Wis. Stats.

Section 1. Chapter NR 168 is created to read:

Chapter NR 168
Brownfield Site Assessment Grant Program

- NR 168.01 Purpose and applicability
- NR 168.03 Definitions
- NR 168.05 Eligibility
- NR 168.07 Allocation of funds
- NR 168.09 Eligible activities
- NR 168.11 Grant application
- NR 168.13 Application scoring
- NR 168.15 Eligible costs
- NR 168.17 Matching funds
- NR 168.19 Ineligible costs
- NR 168.21 Grant conditions

NR 168.23 Grant enforcement and termination
NR 168.25 Variances

NR 168.01 Purpose and applicability. The purpose of this chapter is to establish procedures for implementing a brownfield site assessment grant program as provided for in s. 292.75, Stats. Grants made under this program will assist local governmental units in assessing environmental contamination and conducting eligible activities on eligible brownfield sites or facilities.

NR 168.03 Definitions. In this chapter:

(1) "Applicant" means a local governmental unit seeking a brownfield site assessment grant under this chapter.

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

(3) "Eligible site or facility" has the meaning given in s. 292.75 (1)(a), Stats.

Note: Section 292.75(1)(a), Stats., defines "eligible site or facility" to mean an abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(4) "Grantee" means an applicant that has been awarded a grant under this chapter, which has been signed by the department.

(5) "Investigation of environmental contamination" means activities associated with conducting, documenting or completing a phase I environmental assessment, a phase II environmental assessment or a site investigation.

(6) "Large grant" means a grant award to a local governmental unit, for an amount greater than \$30,000 but not more than \$100,000 of state funds under this chapter.

(7) "Local governmental unit" has the meaning given in s. 292.75 (1)(b), Stats.

Note: Section 292.75(1)(b), Stats., defines "local governmental unit" to mean a city, village, town, county, redevelopment authority created under s. 66.431, Stats., community development authority created under s. 66.4325, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(8) "Matching funds" means the cash or in-kind contribution, or both, required under s. 292.75 (7), Stats., and given in s. NR 168.17.

(9) "Petroleum product" has the meaning given in s. 101.143 (1) (f), Stats.

Note: Section 101.143 (1) (f), Stats., defines "petroleum product" to mean "gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil."

(10) "Phase I environmental assessment" has the meaning given in s. NR 750.03 (5).

Note: Section NR 750.03 (5) defines "phase I environmental assessment" to mean "an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site."

(11) "Phase II environmental assessment" has the meaning given in s. NR 750.03 (6).

Note: Section NR 750.03 (6) defines "phase II environmental assessment" to mean "an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site."

(12) "Removal of abandoned containers" means the removal of abandoned containers and the proper disposal or treatment of abandoned containers.

(13) "Removal of an underground hazardous substance tank system or an underground petroleum product storage tank system" means the removal of the system and the proper disposal or treatment of the system.

(14) "Site investigation" means an investigation undertaken in accordance with ch. NR 716.

(15) "Small grant" means a grant award to a local governmental unit, for an amount of at least \$2,000 but no more than \$30,000⁴, under this chapter.

(16) "Submittal date" includes postmark date, fax date or electronic transmittal date.

(17) "Underground hazardous substance storage tank system" has the meaning given in s. 292.75 (1) (d), Stats.

Note: Section 292.75 (1) (d), Stats., defines "underground hazardous substance storage tank system" as "an underground storage tank used for storing a hazardous substance other than a petroleum product together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground."

(18) "Underground petroleum product storage tank" has the meaning given in s. 101.143 (1) (I), Stats.

Note: Section 101.143 (1) (I), Stats., defines "underground petroleum product storage tank" to mean "an underground storage tank used for storing petroleum products together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground."

NR 168.05 Eligibility. (1) Only local governmental units that have not caused the environmental contamination that is the basis for the grant request are eligible for grants under this chapter.

(2) Grants under this chapter may be awarded to a local governmental unit only if the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located or is financially unable to pay the cost of the eligible activities.

NR 168.07 Allocation of funds. (1) 50% of the funds appropriated to the grant program under s. 20.370(6)(et), Stats., shall be allocated through the application process to qualified applicants during the first fiscal year of the biennium.

(2) Of the funds appropriated for the grant program, 70% shall be designated to fund small grants, and 30% shall be designated to fund large grants.

(3) In any given fiscal year, if there are remaining funds after regular application cycles as identified in s. NR 168.11 (3), the department may accept and fund applications and grant amendment requests as they are submitted, for either grant category. If multiple applications or requests have the same submittal date, the department shall give preference to applications or requests in the same category as the category of available funds.

(4) The total amount of all grants awarded to a local governmental unit based on all application cycles for a fiscal year under this chapter shall be limited to an amount equal to 15% of the available funds appropriated under s. 20.370 (6) (et), Stats., for the fiscal year.

(5) If sufficient funds are available in a grant category, the department shall fund all eligible, complete applications without ranking them. If sufficient funds are not available in a grant category, the department shall score and rank all eligible, complete applications and award grants in descending order of rank.

(6) If sufficient funds are not available to fully fund a grant, the department shall offer the applicant the choice of receiving partial funding or withdrawing the application.

(7) The department may not award more than one grant for an eligible site or facility in any application cycle as identified in s. NR 168.11 (3).

NR 168.09 Eligible activities. Activities eligible for funding under this chapter include the following activities at an eligible site or facility:

(1) The investigation of environmental contamination on an eligible site or facility for the purposes of reducing or eliminating environmental contamination.

(2) The demolition of any structures, buildings or other existing improvements.

(3) The removal of abandoned containers, as defined in s. 292.41 (1), Stats.

(4) Asbestos abatement activities, as defined in s. 254.11 (2), Stats.

(5) The removal of underground hazardous substance storage tank systems.

(6) The removal of underground petroleum product storage tank systems.

NR 168.11 Grant application. (1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the following address: BF SAG Manager – CF/8, Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707-7921.

(2) CONTENTS. A grant application shall include, but is not limited to, the following information:

(a) The name, address and designated contact person for the applicant.

(b) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.

(c) A resolution that designates an authorized representative, commits the applicant to completing the activities listed in the grant application if awarded funds, and grants the department access to the site or facility and grant records.

(d) A description of the proposed grant activities, including:

1. The street address of the eligible site or facility.
2. The eligible activities for which the applicant is seeking funds.
3. An itemized estimate of the proposed cost of each eligible activity.
4. An itemized description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.
5. A map showing the location of the eligible site or facility.
6. Current ownership of the eligible site or facility, including information on how the local governmental unit acquired the property, if applicable.
7. Evidence that the local governmental unit has legal access to the eligible site or facility so that it can conduct the activities stated in the grant application. The applicant shall provide this documentation to the department with the grant application or no later than 90 calendar days after the department notifies the local governmental unit that funds have been reserved pending submittal of the legal access documentation.
8. Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications.
9. Information showing that the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located, or is financially unable to pay the cost of the eligible activities.

(3) APPLICATION CYCLE. The department shall establish application due dates. The department shall have at least one application funding cycle each state fiscal year. If funds are available, there may be additional application cycles.

(4) APPLICATION REVIEW. The department shall review the application for completeness and may request additional information. Applications that are determined to contain incorrect or inaccurate information shall be considered incomplete. The application is considered complete when the additional or correct information requested by the department is received.

NR 168.13 Application scoring. (1) GENERAL. If the department is required under s. NR 168.07 (5) to score and rank eligible complete applications, it shall use the criteria in this section to score applications. The criteria will be applied on a statewide basis.

(2) POINT AWARDS. The department shall award points to the grant applications according to the following scoring criteria, listed without order of preference:

(a) Fifteen points shall be awarded to an application for an eligible site or facility that is located within 1200 feet of a school, park, residence, or public or private drinking water supply well.

(b) Fifteen points shall be awarded to an application for an eligible site or facility that has contamination or hazards either of which is readily accessible to the public.

(c) Five points shall be awarded to an application for an eligible site or facility that will be used by the general public and remain under the ownership of a local governmental unit or a non-profit organization.

(d) Ten points shall be awarded to an application for an eligible site or facility for which the local governmental unit has initiated the formal acquisition process, or 20 points shall be awarded to an application if the applicant or another local governmental unit has title to the eligible site or facility.

(e) One point, up to a maximum of 40 points, shall be awarded for every \$2,500 in costs and services outlined in s. NR 168.17, which occurred within the 5 years prior to the application due date. Points may be awarded only for costs and services that have supporting documentation included with the application, and have not been reimbursed by any other grant programs.

(f) One point, up to a maximum of 40 points, shall be awarded for each additional 2% of matching funds above the matching funds required under s. 292.75 (7), Stats.

(3) BONUS POINTS. The applicant may assign 29 bonus points to an application that it considers to be a priority. This may be applied to one small application and one large application over the life of the program, for each applicant. If an application to which an applicant assigned

bonus points results in a grant, the department will consider those points used, whether or not the application was scored.

(4) **EQUAL SCORES.** If 2 or more applications receive the same score, applications requesting the smallest dollar amounts will be funded first.

NR 168.15 Eligible costs. (1) Actual costs of services and equipment provided by employees of the grantee to carry out eligible activities necessary for the grant. Equipment rental rates may not exceed the county machinery rates established annually by the department of transportation.

(2) Labor costs required for carrying out the eligible activities identified in the grant agreement. Labor costs may include salary, fringe benefits and other items determined to be appropriate by the department.

(3) Costs for laboratory analysis and professional service contracts.

(4) The costs of necessary equipment and facilities used to carry out activities stated in the grant application for the length of the grant awarded under this chapter.

(5) Costs of treatment, storage or disposal of materials that are generated as a result of conducting the eligible activities.

(6) Other costs determined by the department to be necessary to carry out the eligible activities, as approved in advance by the department.

NR 168.17 Matching funds. Costs and services eligible as matching funds shall be incurred during the grant period by the grantee and include:

(1) Activities given in s. NR 168.09;

(2) Costs of acquiring the eligible site or facility, limited to:

(a) The purchase price of the property,

(b) Payment or cancellation of delinquent taxes, and

(c) Acquisition fees other than legal fees;

(3) Maintenance and security of the eligible site or facility; and

(4) Remediation activities on the eligible site or facility that are not given in s. NR 168.09, if approved by the department.

NR 168.19 Ineligible costs. Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities established in s. NR 168.09 or established in s. NR 168.15, as determined by the department. Ineligible costs for reimbursement or as matching funds include, but are not limited to:

- (1) Costs incurred outside the grant period stated in the grant contract.
- (2) Costs reimbursed by any other local, state or federal grant programs.
- (3) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.
- (4) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.
- (5) Costs of capital equipment.
- (6) Costs of license application or permit fees.
- (7) Legal fees.

NR 168.21 Grant conditions. (1) A grantee shall contribute matching funds of at least 20% of the grant, as required under s. 292.75 (7), Stats. An applicant pledging more than the required 20% match shall provide the pledged percentage of the total final cost.

(2) An applicant shall provide the department with written proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application within 90 calendar days of notification from the department that funds have been reserved, pending submittal of the legal access documentation. If the applicant is unable to meet this condition, the application is incomplete and the applicant is not eligible for a grant based on that application.

(3) The grant period is 12 months from the date of the department's signature on the grant contract unless extended under sub. (10).

(4) The grantee may request a maximum of 2 partial payments during the grant period on forms provided by the department and shall include documentation of work completed and eligible costs and match incurred by the grantee. The department may withhold 10% of the total grant amount stated in the grant agreement for final payment. The final payment request shall be made on forms provided by the department no later than 6 months after the expiration date of the grant period stated in the grant agreement.

Note: Forms are available upon written request to the following address: BF SAG Manager – CF/8, DNR Bureau of Community Financial Assistance, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921.

(5) Accounting for all grant funds shall be in accordance with generally accepted principles and practices. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was awarded. All financial records, including invoices and canceled checks or bank statements that support all grant costs claimed by the grantee shall be kept and made available for inspection for 3 years after final payment.

(6) All of the grantee's records pertaining to the grant are subject to department review. Grant payments are contingent upon review by the department and may be adjusted if costs are determined to be ineligible.

(7) The department may conduct compliance inspections, or may require the grantee to conduct compliance inspections, on properties for which assistance has been provided under this chapter.

(8) Grantees shall provide the department with a progress report, if requested.

(9) The grantee may request, for good cause and prior to the end of the grant period, an amendment for changes to the grant award up to 10% of the original grant amount unless the amendment would increase the award to an amount that exceeds the limit set in s. NR 168.07 (4). Amendments are subject to department approval and availability of funds.

(10) Prior to the end of the grant period stated in the grant agreement, the grantee may request that the department extend the grant period for up to 12 additional months. The request shall be in writing and describe the reasons for the time extension.

(11) The grantee shall provide to the department a report of the activities completed with the funds awarded under this chapter. The report shall be submitted to the department along with the final request for reimbursement under the grant contract.

NR 168.23 Grant enforcement and termination. (1) If a grantee fails to comply with the provisions of this chapter, the department may take one or more of the following actions:

(a) Costs directly related to noncompliance may be declared ineligible.

(b) Other administrative and judicial remedies may be instituted as legally available and appropriate.

(2) The department may terminate a grant awarded under this chapter for any of the following reasons:

(a) Violation of any term or condition of the grant contract.

(b) Lack of substantial progress by the grantee, without good cause.

(c) Substantial evidence that the grant was obtained by fraud.

(d) Substantial evidence of gross abuse or corrupt practices in the administration of the grant activities.

(3) If a grant is terminated under sub. (2), repayment by the grantee may be required.

NR 168.25 Variances. (1) The department may approve a variance from a requirement of this chapter if all of the following conditions are met:

(a) The local governmental unit's written request for a variance clearly explains the circumstances justifying the variance.

(b) The department takes into account factors such as good cause and circumstances beyond the control of the local governmental unit.

(c) The department determines that a variance is essential to effect necessary grant actions or program objectives or where special circumstances make a variance in the best interest of the program.

(2) The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 25, 2000.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

REPORT TO LEGISLATURE

NR 168, Wis. Adm. Code
Brownfield site assessment grant program administration

Board Order No. CF-30-00
Clearinghouse Rule No. 00-093

Statement of Need

The 1997-99 biennial budget directed the Department to study seven issues related to the cleanup and reuse of brownfields, in cooperation with other state agencies and external parties. Brownfields are properties that are underutilized, idle or abandoned industrial or commercial sites, where expansion or redevelopment is negatively affected by known or suspected environmental contamination. The recommendations from this study were given to the Legislature and used as the basis for several brownfields initiatives in the current state budget, including the creation of the Brownfields Site Assessment Grant Program. Under 1999 Wisconsin Act 9 the Department was directed to promulgate rules to administer a program that will award \$1.45 million dollars as brownfield site assessment grants.

The proposed program allows the Department to award grants to local governmental units to carry out assessments and other specific preliminary activities on eligible sites or facilities. The intent of the program is to give local governmental units an incentive to start work on sites that have not attracted a developer, have been designated for public or municipal use, or there is not enough information about the site to determine the cost of remediating the site. This grant program allows a local governmental unit to make a smaller initial commitment during the early information-gathering period of brownfield remediation. The Brownfield Site Assessment Grant Program is not intended for complete site cleanup or remediation. Municipalities would be encouraged to seek funding for complete remediation, renovation or redevelopment through other sources such as the Department's Land Recycling Loan Program or the Commerce Brownfield Grant Program.

Local governmental units eligible to apply for funding from the Brownfield Site Assessment Grant Program include cities, villages, town, counties, tribes, redevelopment authorities, community development authorities and housing authorities.

These rules establish the framework for participation in the program and include a system of fund allocation, eligible activities, a scoring system for ranking applications, and costs that are eligible to be used as match. The rule further establishes two categories of grants: small and large. Small grants are those for dollar amounts of \$2,000 to \$30,000, and large grants are those for dollar amounts of more than \$30,000 up to \$100,000. Seventy percent of the funds available will be designated to fund small grants, and 30% shall be allocated to fund large grants. Successful applicants must furnish a match of at least 20% of the amount of the grant as cash or in-kind services, or both, during the 12 months of the project. An applicant that has more than one eligible site or facility may submit a grant application for each eligible site or facility; the statute, however, limits the total amount of grant funds that one applicant may be awarded to 15% of the available funds for the fiscal year.

The program deals with brownfields at the front end of the remediation process, when very little is known about the site or facility. The scoring system takes into account environmental, health and human safety threats, as well as the applicant's commitment to the project.

Modifications as a Result of Public Hearing

The removal and proper disposal of contaminated soil excavated as a result of removing a tank is an eligible activity. However, the excavation and disposal of additional soil is not eligible for reimbursement, but may be used toward the grant match.

Forgiveness, cancellation and waiver of delinquent taxes is now eligible to be used as grant match.

The applicant will lose the benefit of the 29 bonus points only if the current application is successful and results in a grant being awarded.

Appearances at the Public Hearing and Their Position

June 12, 2000 – Eau Claire

In support – none

In opposition – none

As interest may appear:

Bill Barry, Ayres Associates, P.O. Box 1590, Eau Claire, WI 54701

June 13, 2000 – Stevens Point – no appearances

June 15, 2000 – Oshkosh

In support – none

In opposition – none

As interest may appear:

Thomas J. Mueller, Environmental Management Company LLC, P.O. Box 856, Cedarburg, WI 53012

Response to Legislative Council Rules Clearinghouse Report

See attached.

Final Regulatory Flexibility Analysis

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

Response to Legislative Council Rules Clearinghouse Report

The Department accepted the majority of recommendations made in the Legislative Council Rules Clearinghouse Report. The Department did not accept the following recommendations:

Recommendation 1b: “Is it clear that the grant criteria set forth in s. 292.75 (5)(a) and (b), Stats., are included in the scoring criteria under s. NR 168.13?”

- The grant criteria set forth in s. 292.75 (5)(a) and (b), Stats. are: “the local governmental unit’s demonstrated commitment to performing and completing necessary environmental remediation activities on the eligible site, including the local governmental unit’s financial commitment,” and “the degree to which the project will have a positive impact on public health and the environment”. The Department believes that each of the scoring criteria in s. NR 168.13 (2)(a) to (f) is related to either the applicant’s financial commitment to the project or to public health and safety concerns.

Recommendation 2h: “In s. NR 168.03 (13), use of ‘includes’ implies that the definition is not inclusive. Is that the intent?”

- Yes, that is the intent, therefore no change was made.

Recommendation 2l: “In s. NR 168.07 (4), it is suggested that ‘may not exceed’ replace ‘shall be limited to’.”

- The Department decided to use the same language as the statute for the program, s. 292.75, Wis. Stats., therefore no change was made.

Recommendation 2n: “If is retained, a tighter link should be made between that subsection and s. NR 168.09 (4).”

- The Department did not retain s. NR 168.07 (8), therefore the change was not made.

Recommendation 2r: “In pars. (a) to (d) of s. NR 168.13 (2), it is suggested that ‘for an eligible site or facility’ need not be repeated; reference to an eligible site or facility might be made instead in the introductory clause.”

- In most cases the Department would accept this recommendation, but the sentences did not make sense without the phrase, therefore the change was not made.

Recommendation 5d: “In s. NR 168.13 (1), the meaning and purpose of the last sentence are unclear.”

- The sentence means that all applications will be scored according to the criteria listed, regardless of factors such as their size or location. The purpose of the sentence is to establish this policy and allow the Department to score applications consistently throughout the state.

JUL 05 2000

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Natural Resources Board proposes an order to create ch. NR 168 relating to the brownfield site assessment grant program administration.

CF-29-00(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 227.24 and 292.75, Stats., and Section 913(2) of 1999 Wis. Act 9

Statute interpreted: s. 292.75, Stats.

This rule implements the brownfield site assessment grant program. Created in the 1999-2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The legislature appropriated \$1.45 million for the 99-01 biennium for these grants. Local governments are required to contribute matching funds as cash or in-kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated to "small" grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). Act 9 required that the department promulgate these rules as necessary to administer the program, and directed the department to promulgate them as emergency rules.

Section 1. Chapter NR 168 is created to read:

Chapter NR 168
Brownfield Site Assessment Grant Program

- NR 168.01 Purpose and applicability
- NR 168.03 Definitions
- NR 168.05 Eligibility
- NR 168.07 Allocation of funds
- NR 168.09 Eligible activities
- NR 168.11 Grant application
- NR 168.13 Application scoring
- NR 168.15 Eligible costs
- NR 168.17 Matching funds
- NR 168.19 Ineligible costs
- NR 168.21 Grant conditions
- NR 168.23 Grant termination and enforcement
- NR 168.25 Grant variances

NR 168.01 Purpose and applicability. (1) The purpose of this chapter is to establish procedures for implementing a brownfield site assessment grant program as provided for in s. 292.75, Stats. Grants made under this program will assist local governmental units in assessing environmental contamination and conducting eligible activities on eligible brownfield sites or facilities.

(2) This chapter applies to all cities, villages, towns, counties, tribes, redevelopment authorities created under s. 66.431, Stats., community development authorities created under s. 66.4325, Stats., or housing authorities applying for financial assistance under s. 292.75, Stats., for a brownfield site assessment grant. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

NR 168.03 Definitions. The following definitions are applicable to terms used in this chapter:

(1) "Applicant" means a local governmental unit seeking funds for eligible activities under this chapter.

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

(3) "Eligible site or facility" has the meaning specified in s. 292.75 (1)(a), Stats.

Note: Section 292.75(1)(a), Stats., defines "eligible site or facility" to mean an abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(4) "Grantee or grant recipient" means an applicant that has been awarded a grant under this chapter, which has been signed by the department.

(5) "Investigation of environmental contamination" means activities associated with conducting, documenting or completing a phase I environmental assessment, a phase II environmental assessment or a site investigation.

(6) "Large grant" means a grant award to a local governmental unit, for an amount greater than \$30,000 but not more than \$100,000 of state funds under this chapter.

(7) "Local governmental unit" has the meaning specified in s. 292.75 (1)(b), Stats.

Note: Section 292.75(1)(b), Stats., defines "local governmental unit" to mean a city, village, town, county, redevelopment authority created under s. 66.431, Stats., community development authority created under s. 66.4325, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield site

assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(8) "Matching funds" means the cash or in-kind contribution, or both, required under s. 292.75 (7), Stats., which shall be incurred during the grant period by a local governmental unit and for which it has not and may not receive any other state or federal grant funds.

(a) "In-kind contributions" are services performed by employees of the grantee.

(b) "Cash contributions" are costs and services incurred by but not performed by the grantee.

(9) "Petroleum product" has the meaning given in s. 101.143 (1) (f), Stats.

Note: Section 101.143 (1) (f), Stats., defines "petroleum product" to mean "gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil."

(10) "Phase I environmental assessment" has the meaning given in s. NR 750.03 (5).

Note: Section NR 750.03 (5) defines "phase I environmental assessment" to mean "an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site."

(11) "Phase II environmental assessment" has the meaning given in s. NR 750.03 (6).

Note: Section NR 750.03 (6) defines "phase II environmental assessment" to mean "an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site."

(12) "Removal of abandoned containers" means the removal of abandoned containers and the proper disposal or treatment of abandoned containers.

(13) "Removal of an underground hazardous substance tank system or an underground petroleum product storage tank system" means the removal of the system and the proper disposal or treatment of the system.

(14) "Site investigation" means an investigation undertaken in accordance with ch. NR 716.

(15) "Small grant" means a grant award to a local governmental unit, for an amount of at least \$2,000 but no more than \$30,000, under this chapter.

(16) "Submittal date" includes postmark date, fax date or electronic transmittal date.

(17) "Underground hazardous substance storage tank system" has the meaning given in s. 292.75 (1) (d), Stats.

Note: Section 292.75 (1) (d), Stats., defines "underground hazardous substance storage tank system" as "an underground storage tank used for storing a hazardous substance other than a

petroleum product together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground."

(18) "Underground petroleum product storage tank" has the meaning given in s. 101.143 (1) (i), Stats.

Note: Section 101.143 (1) (i), Stats., defines "underground petroleum product storage tank" to mean "an underground storage tank used for storing petroleum products together with any on-site integral piping or dispensing system with at least 10% of its total volume below the surface of the ground."

NR 168.05 Eligibility. (1) Only local governmental units that have not caused the environmental contamination that is the basis for the grant request are eligible for this grant program.

(2) Grants may be awarded to a local governmental unit only if the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located or is financially unable to pay the cost of the eligible activities.

NR 168.07 Allocation of funds. (1) Fifty percent of the funds appropriated to the grant program under s. 20.370(6)(et), Stats., shall be allocated through the application process to qualified applicants during the first fiscal year of the biennium.

(2) Of the funds appropriated for this grant program, categories shall be established as follows: 70% shall be designated to fund small grants, and 30% shall be designated to fund large grants.

(3) In any given fiscal year, if there are remaining funds after regular application cycles, the department may accept and fund applications and grant amendment requests as they are submitted, for either grant category. In the event that multiple applications or requests have the same submittal date, the department shall give preference to applications or requests in the same category as the category of available funds.

(4) The total amount of all grants awarded to an applicant in a fiscal year under this chapter shall be limited to an amount equal to 15% of the available funds appropriated under s. 20.370 (6) (et), Stats., for the fiscal year.

(5) If sufficient funds are available in a grant category, the department shall fund all eligible, complete applications without ranking them. If sufficient funds are not available in a grant category, the department shall score and rank all eligible, complete applications and award grants in descending order.

(6) If sufficient funds are not available to fully fund a grant, the department shall offer the applicant the choice of receiving partial funding or withdrawing the application.

(7) The department may not award more than one grant to an eligible site or facility in any application cycle.

(8) The department may not award funds for asbestos abatement unless it is a necessary part of demolition activities.

NR 168.09 Eligible activities. Activities eligible for funding under this chapter include the following activities at an eligible site or facility:

(1) The investigation of environmental contamination on an eligible site or facility for the purposes of reducing or eliminating environmental contamination.

(2) The demolition of any structures, buildings or other existing improvements.

(3) The removal of abandoned containers, as defined in s. 292.41 (1), Stats.

(4) Asbestos abatement activities, as defined in s. 254.11 (2), Stats.

(5) The removal of underground hazardous substance storage tank systems.

(6) The removal of underground petroleum product storage tank systems.

NR 168.11 Grant application. (1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the following address: BF SAG Manager – CF/8, Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707-7921.

(2) CONTENTS. A grant application shall include, but is not limited to, the following information:

(a) The name, address and designated contact person for the applicant.

(b) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.

(c) A resolution that designates an authorized representative, commits the applicant to completing the activities listed in the grant application if awarded funds, and grants the department access to the site or facility and grant records.

(d) A description of the proposed grant activities, including:

1. The street address of the eligible site or facility.

2. The eligible activities for which the applicant is seeking funds.

3. An itemized estimate of the proposed cost of each eligible activity.

4. An itemized description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.

5. A map showing the location of the eligible site or facility.

6. Current ownership of the eligible site or facility, including information on how the local governmental unit acquired the property, if applicable.

7. Evidence that the local governmental unit has legal access to the eligible site or facility so that it can conduct the activities stated in the grant application. The applicant shall provide this documentation to the department with the grant application or no later than 90 calendar days after the department notifies the local governmental unit that funds have been reserved pending submittal of the legal access documentation.

8. Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications.

9. Information showing that the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located, or is financially unable to pay the cost of the eligible activities.

(3) APPLICATION CYCLE. The department shall establish application submittal dates. The department shall have at least one application funding cycle each state fiscal year. If funds are available, there may be additional application cycles.

(4) APPLICATION REVIEW. The department shall review the application for completeness and may request additional information. Applications that are determined to contain incorrect or inaccurate information shall be considered incomplete. The application is considered complete the additional or correct information requested by the department is received.

NR 168.13 Application scoring. (1) GENERAL. When the department scores complete applications, as stated in s. NR 168.07 (5), it shall use the following criteria to score applications. The criteria are applied on a statewide basis.

(2) POINT AWARDS. The department shall award points to the applications for grants according to the following scoring criteria, listed without order of preference:

(a) Fifteen points shall be awarded to an application for an eligible site or facility that is located within 1200 feet of a school, park, residence, or public or private drinking water supply well.

(b) Fifteen points shall be awarded to an application for an eligible site or facility that has contamination or hazards either of which is readily accessible to the public.

(c) Five points shall be awarded to an application for an eligible site or facility that will be used by the general public and remain under the ownership of a local governmental unit or a non-profit organization.

(d) Ten points shall be awarded to an application for an eligible site or facility for which the local governmental unit has initiated the formal acquisition process, or 20 points shall be awarded to

an application if the applicant or another local governmental unit has title to the eligible site or facility.

(e) Up to a maximum of 40 points, one point shall be awarded for every \$2,500 in costs and services outlined in s. NR 168.03 (8), which occurred within the 5 years prior to the application due date. The applicant will only be awarded points for costs and services that have supporting documentation included with the application, and have not been reimbursed by any other grant programs.

(f) Up to a maximum of 40 points, one point shall be awarded for each additional 2% of match that is above the required 20%, as stated in s. 292.75 (7), Stats. An applicant that pledges more than the required 20% shall be responsible for providing that same percentage of the total final cost.

(3) BONUS POINTS. The applicant may assign 29 bonus points to an application that it considers to be a priority. This may be applied to one small application and one large application over the life of the program, for each applicant.

(4) EQUAL SCORES. If 2 or more applications receive the same score, applications requesting the smallest dollar amounts will be funded first.

NR 168.15 Eligible costs. Eligible costs include the reasonable and necessary costs incurred during the grant period associated with conducting eligible activities under this chapter as approved by the department. Eligible costs under this chapter may include, but are not limited to:

(1) Actual costs of services and equipment provided by employees of the grant recipient to carry out activities necessary for the grant. Equipment rental rates may not exceed the county machinery rates established annually by the department of transportation.

(2) Labor costs required for carrying out the eligible activities identified in the grant agreement. These costs may include salary, fringe benefits and other items determined to be appropriate by the department.

(3) Costs for laboratory analysis and professional service contracts.

(4) The costs of necessary equipment and facilities used to carry out activities stated in the grant application for the length of the grant awarded under this chapter.

(5) Costs of treatment, storage or disposal of materials that are generated as a result of conducting the eligible activities.

(6) Other costs determined by the department to be necessary to carry out the eligible activities, as approved in advance by the department.

NR 168.17 Matching funds. Costs and services eligible as matching funds include eligible activities listed under s. NR 168.09; costs of acquiring the eligible site or facility, specifically payment of delinquent taxes; maintenance and security of the eligible site or facility; and remediation activities on the eligible site or facility that are not listed under s. NR 168.09, if approved in advance by the department.

NR 168.19 Ineligible costs. Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities established in s. NR 168.09, as determined by the department. Ineligible costs for reimbursement or as matching funds include, but are not limited to:

- (1) Costs incurred outside the grant period stated in the grant contract.
- (2) Costs reimbursed by any other local, state or federal grant programs.
- (3) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.
- (4) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.
- (5) Costs of capital equipment.
- (6) Costs of license application or permit fees.
- (7) Legal fees.

NR 168.21 Grant conditions. (1) A grantee shall contribute matching funds of at least 20% of the grant, as stated in s. 292.75 (7), Stats. An applicant that pledges more than the required 20% shall be responsible for providing that same pledged percentage of the total final cost.

(2) An applicant shall provide the department with written proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application within 90 calendar days of notification from the department that funds have been reserved, pending submittal of the legal access documentation. If the applicant is unable to meet this condition, the department shall consider the application to be incomplete, and shall make the funds available to the next applicant established in accordance with the criteria in s. NR 168.13.

(3) The initial grant period shall be 12 months from the date of the department's signature on the grant contract.

(4) The grantee may request a maximum of 2 partial payments during the grant period on forms provided by the department and shall include documentation of work completed and eligible costs and match incurred by the grantee. The department may withhold 10% of the total grant amount stated in the grant agreement for final payment. The final payment request shall be made

on forms provided by the department no later than 6 months after the expiration date of the grant period stated in the grant agreement.

(5) Accounting for all grant funds shall be in accordance with generally accepted principles and practices, and shall be recorded by the grantee in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was awarded. All financial records, including invoices and canceled checks or bank statements that support all grant costs claimed by the grant recipient shall be kept and made available for inspection for 3 years after final payment.

(6) The grantee shall comply with applicable local, state and federal regulations concerning bidding and awarding contracts, wage and labor rates, access for the disabled, flood disaster protection, environmental quality and historical preservation.

(7) All of the grant recipient's records pertaining to the grant are subject to department review. Payments are contingent upon review by the department and may be adjusted if costs are determined to be ineligible.

(8) The department may conduct compliance inspections on properties for which assistance has been provided under this chapter. The department may require grantees to conduct self-inspections on these sites or properties.

(9) Grantees shall provide the department with a progress report, if requested.

(10) The grant recipient may request, for good cause and prior to the end of the grant period, an amendment for changes to the grant award up to 10% of the original grant amount unless the amendment would increase the award to an amount that exceeds the limit set in s. 292.75 (6), Stats. Amendments are subject to department approval and availability of funds.

(11) Prior to the end of the grant period stated in the grant agreement, the grant recipient may request an extension of the grant period for up to 12 additional months. The request shall be in writing and describe the reasons for the time extension.

(12) The grant recipient shall provide to the department a report of the activities completed with the funds awarded under this chapter. The report shall be submitted to the department along with the final request for reimbursement under the grant contract.

NR 168.23 Grant enforcement and termination. The department may impose the following sanctions for noncompliance with the provisions of this chapter:

(1) Costs directly related to noncompliance may be declared ineligible.

(2) Other administrative and judicial remedies may be instituted as legally available and appropriate.

(3) The department may terminate a grant awarded under this chapter for any of the following reasons:

- (a) Violation of any term or condition of the grant contract.
- (b) Lack of substantial progress by the grant recipient, without good cause.
- (c) Substantial evidence that the grant was obtained by fraud.
- (d) Substantial evidence of gross abuse or corrupt practices in the administration of the

grant activities.

(4) If a grant is terminated, repayment of some or all payments made to the grant recipient may be required.

NR 168.25 Variances. The department may approve a variance from a requirement of this chapter under the following conditions:

(1) A local governmental unit's written request for a variance shall clearly explain the circumstances justifying the variance.

(2) The department shall take into account factors such as good cause and circumstances beyond the control of the local governmental unit.

(3) The department determines that a variance is essential to effect necessary grant actions or program objectives or where special circumstances make a variance in the best interest of the program.

(4) The department may not grant variances from statutory requirements.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 23, 2000.

The rule shall take effect on the day of publication in the official state newspaper.

Dated at Madison, Wisconsin June 8, 2000

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE

OA-2048 N(R10/94)

Subject

NR 168 Site Assessment Grant Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- | | | |
|--|---|---|
| <p>1. <input type="checkbox"/> Increase Costs</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Government Units Affected:</p> <p><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities</p> <p><input type="checkbox"/> Counties <input type="checkbox"/> WTCS Districts</p> <p><input type="checkbox"/> School Districts <input type="checkbox"/> Others _____</p> |
| <p>2. <input type="checkbox"/> Decrease Costs</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>4. <input type="checkbox"/> Decrease Revenues</p> <p><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | |

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.370 (6) (et)

Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF RULE - This rule implements the brownfield site assessment grant program. Created in the 1999-2001 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination on an eligible site; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The Legislature appropriated \$1.45 million for the 99-01 biennium for these grants. Local governments are required to contribute matching funds--as cash or in-kind contributions--equal to 20% of the grant. Further, this rule limits the amount of funds that may be awarded for categories of eligible activities. These rules specify that 70% of available funds are to be allocated to "small" grants (i.e. a grant award of between \$2,000 and \$30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than \$100,000)

Act 9 required that the Department promulgate these rules as necessary to administer the program, and directed the Department to promulgate them as emergency rules.

FISCAL IMPACT - None.

Long-Range Fiscal Implications

None.

3

Agency	Prepared By	Phone No.	Authorized Signature	Phone No.	Date
DNR	Joe Polasek	(608) 266-2794		(608) 266-2794	04/12/2000