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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 01-142

AN ORDER to repeal Comm 110.02 (6) and (7); to renumber Comm 110.02 (9) to (11) and 110.04 (1); to renumber and amend Comm 110.02 (8); to amend Comm 110.02 (2), 110.04 (intro.) and 110.08; to repeal and recreate Comm 110.03; and to create Comm 110.04 (1) (b), relating to brownfields redevelopment grants.

Submitted by **DEPARTMENT OF COMMERCE**

12-04-01 RECEIVED BY LEGISLATIVE COUNCIL.

01-07-02 REPORT SENT TO AGENCY.

RNS:MCP:ksm;jal

**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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# WISCONSIN LEGISLATIVE COUNCIL

## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 01-142

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

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

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

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

## 2. Form, Style and Placement in Administrative Code

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

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

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

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

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

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

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

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

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

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

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



State of Wisconsin \ Department of Commerce

# HEARING DRAFT OF PROPOSED RULES

**Rule No.:** Comm 110

**Relating to:** Brownfields Redevelopment Grants

**ORDER OF THE  
DEPARTMENT OF COMMERCE**

**CREATING RULES**

The Wisconsin Department of Commerce proposes an order to repeal Comm 110.02 (6) and (7);  
to renumber Comm 110.02 (9) to (11) and 110.04 (1);  
to renumber and amend Comm 110.02 (8);  
to amend Comm 110.02 (2), 110.04 (intro.), and 110.08;  
to repeal and recreate Comm 110.03;  
and to create Comm 110.04 (1) (b), relating to brownfields redevelopment grants.

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**ANALYSIS OF PROPOSED RULES**

**Statutory Authority and Statutes Interpreted**

Statutory Authority: section 560.13 (6), Stats.  
Statutes Interpreted: section 560.13 (1) to (7), Stats.

Under the statutes cited, the Department awards grants for redevelopment of abandoned, idle, or underused industrial or commercial facilities or sites that are adversely affected by actual or perceived environmental contamination. Pursuant to s. 560.13 (6), Stats., these grants are applied for and administered in accordance with criteria that are contained in chapter Comm 110 of the *Wisconsin Administrative Code*.

2001 Wisconsin Act 16 modified s. 560.13, Stats., by (1) expanding the listing of eligible grant applicants to include trustees and nonprofit organizations, and (2) prohibiting use of any grant funds to pay either delinquent real estate taxes, or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The proposed changes to chapter Comm 110 would (1) modify the definitions to match the statutory listing of eligible applicants, (2) expand the limitations on use of grant funds to include the statutory prohibition relating to delinquent taxes or lien claims, and (3) update several aspects of the application procedure that have evolved since the chapter was initially created as an emergency rule in 1997.

\*\*\*\*\*

*File reference: Comm 110/Analysis*

SECTION 1. Comm 110.02 (2) is amended to read:

Comm 110.02 (2) "Brownfields redevelopment" means any work or undertaking by a person, ~~municipality or local development corporation~~ to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the facility or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial, or other purposes. "Brownfields redevelopment" does not include construction of new facilities on the site for any purpose other than environmental remediation activities.

SECTION 2. Comm 110.02 (6) and (7) are repealed.

SECTION 3. Comm 110.02 (8) to (11) are renumbered Comm 110.02 (6) to (9) and Comm 110.02 (6), as renumbered, is amended to read:

Comm 110.02 (6) "Person" means an individual, partnership, limited liability company, corporation ~~or limited liability company~~, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy

SECTION 4. Comm 110.03 is repealed and recreated to read:

Comm 110.03 Application content. Applications shall be submitted to the department. Each application shall contain all of the following:

- (1) The name, address, and designated contact person <sup>of in grant sub</sup> for the applicant.
- (2) Supporting documentation to demonstrate that the party which caused the environmental contamination on the subject property is unknown, cannot be located, or is financially unable to pay for the cost of the cleanup. ? ←
- (3) A description of the proposed project and associated budget, including all of the following:
  - (a) The location and duration of the project.
  - (b) The brownfields redevelopment and environmental remediation activities that the applicant is seeking grant funds <sup>end - prep</sup> for.
  - (c) An itemized estimate of the proposed cost of each project activity.
  - (d) The amount, quality, and certainty of the applicant's financial contribution to the project, including in-kind service contributions.

5-560-13  
2/12/20  
grant  
is  
is  
is

is in 10  
560-13 (3/10/13)  
is in 10

how related  
to (8) ?

See 110.02(10) - brownfield  
facility or job - also in 10

(e) A description of the proposed match, and the professional qualifications of the persons conducting any in-kind services.

(f) A list of other federal, state, local, and private funding or financial sources the applicant may be seeking funding from, including the timing of such funding awards.

(g) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.

(h) A description of the local infrastructure the project requires, and the source and certainty of financing the needed infrastructure.

(i) The immediate and continuing effects of the project upon the political subdivisions within which it will be located.

(j) A map showing the location of the project within the municipality having jurisdiction, and an indication if this project is located in any specially designated federal, state, or local economic financing or taxation zone.

(4) A description of the potential for the project to promote economic development in the area.

(5) A summary of the environmental condition of the site, and the impact the project will have on the environment.

(6) The innovativeness of the applicant's proposal for remediation and redevelopment.

(7) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including statements addressing all of the following:

(a) That sufficient funding is not available at reasonable terms from any other source.

(b) That state funds received under this chapter will not replace funds from any other sources, such as agri-chemical, petroleum environmental cleanup fund act, and superfund.

(c) That the project is not likely to take place without the grant.

(d) That the proposed project will not displace any worker in Wisconsin.

(8) A statement, including supporting documentation, that the applicant is financially sound and has the financial resources to complete the project in a timely manner, assuming the grant is awarded.

(9) A plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the project, pursuant to s. Comm 110.08.

*is this government or local govt*

*is extremely broad - is this a grant criteria for 560.13(7)(A) ? How related to*

*John - should become specific? is this remediation, funding, etc?*

*OK*

*appears in 560.005 +  
560.84 but not  
in 560.13 - on the  
what does it mean.*

*can't shut down an operation to  
remove structure & remediate?*

(10) Copies of phase 1 and phase 2 environmental assessments conducted in regard to the property.

SECTION 5. Comm 110.04 (intro.) is amended to read:

**Comm 110.04 (intro.) Eligibility.** The department may award a grant to any person, municipality, or local development corporation if all of the following apply:

SECTION 6. Comm 110.04 (1) is renumbered Comm 110.04 (1) (a).

SECTION 7. Comm 110.04 (1) (b) is created to read:

*is (b) alt. to (a)? should be (1)(b)*

**Comm 110.04 (1) (b)** The recipient <sup>shall</sup> does not use the grant proceeds to pay lien claims of the department of natural resources or the federal environmental protection agency based on investigation or remediation activities of the department of natural resources or the federal environmental protection agency or to pay delinquent real estate taxes or interest or penalties that relate to those taxes.

SECTION 8. Comm 110.08 is amended to read:

**Comm 110.08 Reporting and auditing.** A grant recipient awarded a grant under this chapter shall provide the department semi-annual financial and program reports. A financial audit and final program reports report shall be submitted at the end of each contract. The financial audit and the program reports become the property of the department and are open to public inspection.

(End)

\*\*\*\*\*

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month following publication in the Wisconsin Administrative Register.

\*\*\*\*\*

File reference: Comm 110/Perm rules

11/19/01

OCT 28 2001

OCT 30 2001

Department of Commerce

Emergency Rule Relating to Brownfields Redevelopment Grants

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wisconsin Act 16, the Department must begin accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in chapter Comm 110 of the Wisconsin Administrative Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making chapter Comm 110 consistent with Act 16. Due to the mandatory rulemaking procedures under chapter 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to then, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison this 23<sup>rd</sup>  
day of October, A.D. 2001,  
by the Department of Commerce



Philip Edw. Albert, Acting Secretary

SECTION 1. Comm 110.02 (2) is amended to read:

**Comm 110.02 (2) "Brownfields redevelopment"** means any work or undertaking by a person, ~~municipality or local development corporation~~ to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the facility or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial, or other purposes. "Brownfields redevelopment" does not include construction of new facilities on the site for any purpose other than environmental remediation activities.

SECTION 2. Comm 110.02 (6) and (7) are repealed.

SECTION 3. Comm 110.02 (8) to (11) are renumbered Comm 110.02 (6) to (9) and Comm 110.02 (6), as renumbered, is amended to read:

**Comm 110.02 (6) "Person"** means an individual, partnership, limited liability company, corporation ~~or limited liability company~~, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy

SECTION 4. Comm 110.03 is repealed and recreated to read:

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- (3) A description of the proposed project and associated budget, including all of the following:
  - (a) The location and duration of the project.
  - (b) The brownfields redevelopment and environmental remediation activities that the applicant is seeking grant funds for.
  - (c) An itemized estimate of the proposed cost of each project activity.
  - (d) The amount, quality, and certainty of the applicant's financial contribution to the project, including in-kind service contributions.

(e) A description of the proposed match, and the professional qualifications of the persons conducting any in-kind services.

(f) A list of other federal, state, local, and private funding or financial sources the applicant may be seeking funding from, including the timing of such funding awards.

(g) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.

(h) A description of the local infrastructure the project requires, and the source and certainty of financing the needed infrastructure.

(i) The immediate and continuing effects of the project upon the political subdivisions within which it will be located.

(j) A map showing the location of the project within the municipality having jurisdiction, and an indication if this project is located in any specially designated federal, state, or local economic financing or taxation zone.

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(7) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including statements addressing all of the following:

(a) That sufficient funding is not available at reasonable terms from any other source.

(b) That state funds received under this chapter will not replace funds from any other sources, such as agri-chemical, petroleum environmental cleanup fund act, and superfund.

(c) That the project is not likely to take place without the grant.

(d) That the proposed project will not displace any worker in Wisconsin.

(8) A statement, including supporting documentation, that the applicant is financially sound and has the financial resources to complete the project in a timely manner, assuming the grant is awarded.

(9) A plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the project, pursuant to s. Comm 110.08.

(10) Copies of phase 1 and phase 2 environmental assessments conducted in regard to the property.

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**Comm 110.04 (intro.) Eligibility.** The department may award a grant to any person; ~~municipality, or local development corporation~~ if all of the following apply:

SECTION 6. Comm 110.04 (1) is renumbered Comm 110.04 (1) (a).

SECTION 7. Comm 110.04 (1) (b) is created to read:

**Comm 110.04 (1) (b)** The recipient does not use the grant proceeds to pay lien claims of the department of natural resources or the federal environmental protection agency based on investigation or remediation activities of the department of natural resources or the federal environmental protection agency or to pay delinquent real estate taxes or interest or penalties that relate to those taxes.

SECTION 8. Comm 110.08 is amended to read:

**Comm 110.08 Reporting and auditing.** A grant recipient awarded a grant under this chapter shall provide the department semi-annual ~~financial and~~ program reports. A financial audit and ~~final program reports~~ report shall be submitted at the end of each contract. The financial audit and the program reports become the property of the department and are open to public inspection.

(End)

FISCAL ESTIMATE  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Comm 110

Amendment No. if Applicable

**Subject**

Brownfields Redevelopment Grants

**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

1.  Increase Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:

Towns  Villages  Cities  
 Counties  Others \_\_\_\_\_  
 School Districts  WTCS Districts

2.  Decrease Costs  
 Permissive  Mandatory

4.  Decrease Revenues  
 Permissive  Mandatory

**Fund Sources Affected**

GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

The Department currently administers brownfields redevelopment grants. The proposed rule replaces current requirements with requirements that are not expected to result in significant additional costs.

**Long-Range Fiscal Implications**

None known.

Agency/Prepared by: (Name & Phone No.)  
Jason Scott 261-7714

Authorized Signature/Telephone No.

*Walter E. Belmont*

Date

10/23/01

**FISCAL ESTIMATE WORKSHEET**  
Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R06/99)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.      Amendment No.  
Comm 110

Subject  
Brownfields Redevelopment Grants

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs By Category</b>		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( 0 FTE)	( - 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs By Category</b>	<b>\$ 0</b>	<b>\$ - 0</b>
<b>B. State Costs By Source of Funds</b>		
GPR	\$	\$
FED		-
PRO/PRS		-
SEG/SEG-S	0	- 0
<b>III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S	0	- 0
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ - 0</b>

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)  
Jason Scott      261-7714

Authorized Signature/Telephone No.  
*John E. Allan*

Date  
10/23/01



P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD#: (608) 264-8777  
www.commerce.state.wi.us

Scott McCallum, Governor  
Philip Edw. Albert, Secretary

February 11, 2002

Donald J. Schneider  
Senate Chief Clerk  
Room 501  
119 Martin Luther King Blvd  
Madison, Wisconsin 53703

John A. Scocos  
Assembly Chief Clerk  
Room 402  
1 East Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE  
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 01-142

RULE NO.: Comm 110

RELATING TO: Brownfields Redevelopment Grants

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Philip Edw. Albert', written over a horizontal line.

Philip Edw. Albert  
Secretary



P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD#: (608) 264-8777  
www.commerce.state.wi.us

Scott McCallum, Governor  
Philip Edw. Albert, Secretary

February 11, 2002

Senator Fred Risser  
President of the Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53702

Representative Scott Jensen  
Speaker of the Assembly  
Room 211 West, State Capitol  
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

### NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 01-142

RULE NO.: Comm 110

RELATING TO: Brownfields Redevelopment Grants

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
  - a) Rule Report.
  - b) Public Hearing Attendance Record.
  - c) Public Hearing Comment and Agency Response Form.
  - d) Legislative Council Rules Clearinghouse Report.
  - e) Response to Legislative Council Rules Clearinghouse Report.
  - f) Fiscal Estimate.
  - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

Philip Edw. Albert  
Secretary

# RULE REPORT

## Department of Commerce

Rule No.: Comm 110

Relating to: Brownfields Redevelopment Grants

*Agency contact person for substantive questions:*

Name Jason Scott

Title Brownfields Development Consultant

Telephone Number 261-7714

*Agency contact person for internal processing:*

Name Sam Rockweiler

Title Code Development Consultant

Telephone Number 266-0797

1. Agency statutory authority under which the agency intends to promulgate the rule(s).  
560.02 and 560.13 (6), Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).  
None known.
3. Citation of court decisions which are applicable to the proposed rule(s).  
None known.



# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 01-142

RULE NO.: Comm 110

RELATING TO: Brownfields Redevelopment Grants

Agency contact person for substantive questions.

Name: Jason Scott

Title: Brownfields Development Consultant

Telephone No. 261-7714

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

*(Continued on reverse side)*

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a.  Accepted
  - b.  Accepted in part
  - c.  Rejected
  - d.  Comments attached

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 01-142

RULE NO.: Comm 110

RELATING TO: Brownfields Redevelopment Grants

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

The rule somewhat increases the flexibility for all businesses and owners associated with brownfields properties by (1) expanding the listing of applicants who are eligible to receive redevelopment grants, to include trustees and nonprofit organizations; and (2) revising the criteria for disallowing funding, to no longer exclude projects that include temporary or other inconsequential displacement of workers.

The rule also updates and clarifies several aspects of the application procedure that have evolved since the chapter was initially created as an emergency rule in 1997, which may enable some small businesses to more easily apply for the grants.

The rule also eliminates a current requirement to submit semi-annual financial reports, because these reports are no longer considered necessary.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

No issues unique to small business were raised during the hearing process.

3. Nature and estimated cost of preparation of any reports by small businesses.

The rule package does not increase the number of reports required from small businesses.

4. Nature and estimated cost of other measures and investments required of small businesses.

The rule will not impose additional costs or require additional investments by small businesses.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

No additional costs will accrue to the Department.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

The rule will not adversely impact public health, safety or welfare.



State of Wisconsin \ Department of Commerce

# RULES IN FINAL DRAFT FORM

**Rule No.:** Comm 110

**Relating to:** Brownfields Redevelopment Grants

**Clearinghouse Rule No.:** 01-142

**ORDER OF THE  
DEPARTMENT OF COMMERCE**

**CREATING RULES**

The Wisconsin Department of Commerce proposes an order to repeal Comm 110.02 (6) and (7);  
to renumber Comm 110.02 (9) to (11) and 110.04 (2) and (3);  
to renumber and amend Comm 110.02 (8);  
to amend Comm 110.02 (2), 110.04 (intro.), and 110.08;  
to repeal and recreate Comm 110.03;  
and to create Comm 110.04 (2), relating to brownfields redevelopment grants.

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**ANALYSIS OF PROPOSED RULES**

**Statutory Authority and Statutes Interpreted**

Statutory Authority: section 560.02 and 560.13 (6), Stats.  
Statutes Interpreted: section 560.13 (1) to (7), Stats.

Under the statutes cited, the Department awards grants for redevelopment of abandoned, idle, or underused industrial or commercial facilities or sites that are adversely affected by actual or perceived environmental contamination. Pursuant to s. 560.13 (6), Stats., these grants are applied for and administered in accordance with criteria that are contained in chapter Comm 110 of the *Wisconsin Administrative Code*.

2001 Wisconsin Act 16 modified s. 560.13, Stats., by (1) expanding the listing of eligible grant applicants to include trustees and nonprofit organizations, and (2) prohibiting use of any grant funds to pay either delinquent real estate taxes, or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The proposed changes to chapter Comm 110 would (1) modify the definitions to match the statutory listing of eligible applicants, (2) expand the limitations on use of grant funds to include the statutory prohibition relating to delinquent taxes or lien claims, (3) update several aspects of the application procedure that have evolved since the chapter was initially created as an emergency rule in 1997, and (4) revise the criteria for disallowing funding, to no longer exclude projects that include temporary or other inconsequential displacement of workers.

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*File reference: Comm 110/Analysis*

SECTION 1. Comm 110.02 (2) is amended to read:

**Comm 110.02 (2)** "Brownfields redevelopment" means any work or undertaking by a person, ~~municipality or local development corporation~~ to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the facility or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial, or other purposes. "Brownfields redevelopment" does not include construction of new facilities on the site for any purpose other than environmental remediation activities.

SECTION 2. Comm 110.02 (6) and (7) are repealed.

SECTION 3. Comm 110.02 (8) to (11) are renumbered Comm 110.02 (6) to (9) and Comm 110.02 (6), as renumbered, is amended to read:

**Comm 110.02 (6)** "Person" means an individual, partnership, limited liability company, corporation or limited liability company, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy.

SECTION 4. Comm 110.03 is repealed and recreated to read:

**Comm 110.03 Application content.** Applications shall be submitted to the department. Each application shall contain all of the following:

- (1) The name, address, and designated contact person for the applicant.
- (2) Supporting documentation to demonstrate that the party which caused the portion of the environmental contamination that is the basis for the grant request is unknown, cannot be located, or is financially unable to pay for the cost of the cleanup.
- (3) A description of the proposed project and associated budget, including all of the following:
  - (a) The location and duration of the project.
  - (b) The brownfields redevelopment and environmental remediation activities for which the applicant is seeking grant funds.
  - (c) An itemized estimate of the proposed cost of each project activity.
  - (d) The amount and certainty of the applicant's financial contribution to the project, including in-kind service contributions.

(e) A description of the proposed match, and the professional qualifications of the persons conducting any in-kind services.

(f) A list of other federal, state, local, and private funding or financial sources the applicant may be seeking funding from, including the amount, timing, and certainty of the funding awards.

(g) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.

(h) A description of the infrastructure the project requires, and the source and certainty of financing for the needed infrastructure.

(i) A map showing the location of the project within the municipality having jurisdiction, and an indication if this project is located in any specially designated federal, state, or local economic financing or taxation zone.

(4) A description of the potential for the project to promote economic development in the area.

(5) A summary of the environmental condition of the site, and the impact the project will have on the environment.

(6) The innovativeness of the applicant's proposal for remediation and redevelopment, including, but not limited to, innovative funding, remediation, or reuse.

(7) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including certified statements addressing all of the following:

(a) That sufficient funding is not available at reasonable terms from any other source.

(b) That state funds received under this chapter will not replace funds from any other sources, such as agri-chemical, petroleum environmental cleanup fund act, and superfund.

(c) That the project is not likely to take place without the grant.

(8) A certified statement, including supporting documentation, that the applicant is financially sound and has the financial resources to complete the project in a timely manner, assuming the grant is awarded.

(9) A certified statement and plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the project, pursuant to s. Comm 110.08.

(10) A certified statement that the proposed project will not result in a net loss of permanent employees.

(11) Copies of phase 1 and phase 2 environmental assessments conducted in regard to the property.

SECTION 5. Comm 110.04 (intro.) is amended to read:

**Comm 110.04 (intro.) Eligibility.** The department may award a grant to any person, ~~municipality, or local development corporation~~ if all of the following apply:

SECTION 6. Comm 110.04 (2) and (3) are renumbered Comm 110.04 (3) and (4).

SECTION 7. Comm 110.04 (2) is created to read:

**Comm 110.04 (2)** The recipient will not use the grant proceeds to pay lien claims of the department of natural resources or the federal environmental protection agency based on investigation or remediation activities of the department of natural resources or the federal environmental protection agency or to pay delinquent real estate taxes or interest or penalties that relate to those taxes.

SECTION 8. Comm 110.08 is amended to read:

**Comm 110.08 Reporting and auditing.** A grant recipient awarded a grant under this chapter shall provide the department semi-annual ~~financial and~~ program reports. A financial audit and final program ~~reports~~ report shall be submitted at the end of each contract. The financial audit and ~~the~~ program reports become the property of the department and are open to public inspection.

(End)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month following publication in the Wisconsin Administrative Register.

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*File reference: Comm 110/Perm rules lr*

*1/28/02*