



CR 92-73

State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CA-7-92 was duly approved and adopted by this Department on August 20, 1992. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 9th
day of November, 1992.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

RECEIVED
NOV 13 1992
9:55 am
Revisor of Statutes
Bureau

2-1-93

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING,
AND CREATING RULES

RECEIVED

NOV 13 1992

Revisor of Statutes
Bureau

CA-7-92

IN THE MATTER of renumbering and amending ss.
NR 7.03(1) to (10) and 7.04(2); amending ss.
NR 7.02, 7.04(4), 7.05(1) to (4), 7.06(1), (2)
and (4)(b)(intro.), 7.07(1), (2) and 7.08 (1), (2);
repealing and recreating ss. NR 7.06(4)(a), 7.07(2)(a)
and 7.08(2)(a) and (5); and creating ss. NR 7.03(1),
(5), (6), (8), (13) and (16); 7.04(2)(b) and (c),
(5) to (15), 7.045, 7.05(6), (7), 7.083, 7.085 and
7.087 of the Wisconsin Administrative Code
pertaining to the recreational boating facilities
program.

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.92(5) and 227.11(2)(a), Stats.
Statutes interpreted: s. 30.92, Stats.

Chapter NR 7 provides rules for the administration of the recreational boating facilities program. The proposed rule will add provisions that correspond to recent legislative expansion of the program. The rules will require an organizational application from a lake association to determine whether it meets the test of "qualified" as defined by statute.

The rule also sets limits on the time between purchases of weed harvesting equipment that are cost sharable and requires the sponsor to pay back 50% of the sale price of the equipment if it is sold prior to a 10 year or less useful life.

A channel is defined for funding purposes and the limits of cost sharing assistance are specified. The limits of cost sharing assistance for the acquisition of aids to navigation and regulatory markers are specified and the procedure for requesting reimbursement of equipment purchase is outlined.

The rule also contains a number of standard grant program provisions, such as that indirect costs are not eligible and that sponsors agree to maintain the facility being developed and not convert any facilities developed without prior approval from the Department.

The rule requires sponsors to have all necessary chapter 30, Stats., permits secured prior to appearing before the Commission to request funds. The rule contains a provision that allows a variance to the rule to be granted under certain conditions and also clarifies under what circumstances a sponsor may obtain an additional 10% cost share for a construction project.

SECTION 1. NR 7.02 is amended to read:

NR 7.02 APPLICABILITY. The provisions of this chapter are applicable to all governmental units and qualified lake associations applying for financial assistance for safe recreational boating facilities projects under s. 30.92, Stats.

SECTION 2. NR 7.03(1) to (10) is renumbered 7.03(2) to (4), (7), (9) to (12), (14) and (15), and 7.03(9) and (11), as renumbered, are amended to read:

NR 7.03(9) "Project" means a specific ~~safe~~ recreational boating facility development, dredging of channels of waterways for recreational boating purposes, acquisition of capital equipment necessary to cut and remove aquatic plants, and acquisition of aids to navigation and regulatory markers.

(11) "Project period" means the period of time specified in the project agreement during which all work shall be completed or all items acquired.

SECTION 3. NR 7.03(1), (5), (6), (8), (13) and (16) are created to read:

NR 7.03(1) "Approval" means the signing by the secretary or secretary's designee of a project agreement that encumbers a specified amount of state aid funds for a specific purpose.

(5) "Force account" means the forces and resources of a sponsor including the use of the sponsor's own employees and equipment for construction, construction related activities (including architectural or engineering services), repair or improvement to a facility.

(6) "Fringe benefits" means employers' contributions or expenses for social security, employe's life and health insurance plans, unemployment insurance coverage, worker's compensation insurance, pension retirement plans and employe benefits in the form of regular compensation and sick, court or military leave.

(8) "Indirect costs" means those costs not directly assignable to a project. Such costs are generally administrative in nature, are incurred for a common or joint purpose, or are not readily assignable to a project.

Note: Examples of indirect costs include central office heat, light, utilities, administrative salaries, secretarial services, postage, etc., which are not supported by time reports or other documentation which links the expenditure to a particular project.

(13) "Qualified lake association" has the meaning given in s. 30.92(1)(br), Stats.

(16) "Sponsor" means a governmental unit or qualified lake association receiving assistance under this chapter.

SECTION 4. NR 7.04(2) is renumbered (2)(a) and amended to read:

NR 7.04(2)(a) ~~Project~~ Except as provided in pars. (b) and (c), expenditures shall be within the project period, project scope, and project amount as shown on the project agreement.

SECTION 5. NR 7.04(2)(b) and (c) are created to read:

NR 7.04(2)(b) Expenditures for necessary engineering or planning costs made prior to entering a project agreement may be reimbursed by the department.

(c) Expenditures for the acquisition of aids to navigation or regulatory markers made prior to entering a project agreement may be reimbursed by the department.

SECTION 6. NR 7.04(4) is amended to read:

NR 7.04(4) All payments are contingent upon final audit. All financial records, including all documentation to support entries in the accounting records to substantiate charges for each project, shall be kept available by ~~governmental units~~ sponsors for review by state officials for a period of 3 years after final payment.

SECTION 7. NR 7.04(5) to (15) are created to read:

NR 7.04(5) Grants of financial assistance for recreational boating facilities shall be consistent with the provisions of ss. NR 1.90, 1.92 and 1.93.

(6) Prior to project review by the commission, the sponsor shall have obtained all permits required under ch. 30, Stats.

(7) Sponsors shall comply with all applicable state and federal regulations regarding bidding and awarding contracts, wage and labor rates, access for individuals with disabilities, flood disaster protection, environmental quality and historical preservation.

(8)(a) Sites to be developed with recreational boating facilities funds shall be owned in fee simple by a sponsor or the sponsor shall hold a lease or easement for the site. When a site to be developed is leased or subject to an easement, the degree of control over the site by the sponsor and the period of time that the lease or easement continues shall be factors in determining the amount of recreational boating facilities funds to be granted to the project. The minimum length of the lease or easement shall not be less than 20 years and shall include the right to construct, operate and maintain a recreational boating facility.

(b) The total amount of assistance from the recreational boating facilities program and other state or federal funds for projects on lands owned by the department and leased or for which the department has entered an agreement or lease with a sponsor to develop and maintain a recreational boating facility may not exceed 90% of the eligible project costs. No more than 50% of the eligible project costs may be funded with recreational boating facilities monies.

(9) Donated labor, materials, land or other activities which do not result in an actual expenditure by the sponsor and indirect costs are not eligible project costs.

(10) Direct costs which are supported by time sheets, vouchers or similar documentation reflecting specific assignment to a project are eligible project costs.

(11) Actual fringe benefits paid as part of the direct labor costs claimed are eligible project costs.

(12) The department may approve, with the concurrence of the commission, variances from nonstatutory requirements of this chapter upon the request of a sponsor when the department determines that a variance is essential to effect necessary grant actions or program objectives, and where special circumstances make a variance in the best interest of the program. Before granting a variance, the department shall take into consideration such factors as good cause and circumstances beyond the control of the sponsor.

(13) Sponsors shall agree to operate and provide adequate maintenance of facilities and projects assisted with recreational boating facilities funds.

(14) Recreational boating facilities developed under this chapter may not be converted to other uses without prior approval of the department.

(15) The actual costs of force account labor and equipment is eligible. Equipment rental rates may not exceed the county machinery rates established annually by the department of transportation.

SECTION 8. NR 7.045 is created to read:

NR 7.045 QUALIFIED LAKE ASSOCIATIONS. (1) Applications from qualified lake associations shall consist of an organizational application and a project application. The organizational application shall include the following:

(a) Name and address of the lake association.

(b) Copy of the lake association by-laws or articles of incorporation.

(c) A resolution adopted by the governing body of the lake association:

1. Authorizing a representative to apply for grants on their behalf, sign documents and take necessary action to undertake, direct and complete the approved project.

2. Verifying that the association has sufficient funds to complete the project.

(d) A general description of the association including the number of members, frequency of meetings, membership qualifications and fees, age of association, purpose of the association, and a list of projects completed by the association in the last 3 years, if any.

SECTION 9. NR 7.05(1) to (4) are amended to read:

NR 7.05(1) Facilities such as ramps and ~~service~~ boarding docks required to gain access to the water~~er~~.

(2) Structures such as bulkheads and breakwaters necessary to provide safe water conditions for boaters ~~and~~.

(3) Activities such as dredging of launch basins and harbors of refuge to provide safe water depths for recreational boating. Dredging of launch basins or harbors of refuge is an eligible project only when it is associated with project development at the project site. Maintenance dredging of ~~projects or channels~~ launch basins and harbors of refuge is not an eligible item for funding.

(4) Support facilities limited to parking lots, signs, sanitary facilities, or security lighting for the convenience of boaters.

SECTION 10. NR 7.05(6) is created to read:

NR 7.05(6) Acquisition of aids to navigation and regulatory markers including ground tackle. Only the costs of the aids to navigation and regulatory markers including shipping and ground tackle are eligible for funds under this chapter. The cost of repairing, placing, moving or removing aids to navigation or regulatory markers is not eligible for funds under this chapter. A sponsor may not receive funds to replace individual aids to navigation or regulatory markers more than once every 5 years unless the sponsor can justify that replacement is necessary because of damage caused by collision with watercraft or natural occurrences.

SECTION 11. NR 7.05(7) is created to read:

NR 7.05(7) In addition to projects specified under subs. (1) to (6), the following projects are eligible for funding if they are projects for inland waters:

(a) Acquisition of capital equipment that is necessary to cut and remove aquatic plants that are aquatic nuisances or that are detrimental to fish habitat with the following limitations:

1. Eligible capital equipment shall be limited to cutting devices, barges with propelling motors, conveyors and trailering devices.

2. Acquisition of capital equipment is eligible only when the acquisition is pursuant to a plan to cut and remove aquatic plants that is approved by the department. If the capital equipment is to be used on more than one lake, each lake shall be covered by a department approved plan to cut and remove aquatic plants.

3. If a sponsor purchases new equipment, the department may not provide funds for the purchase of individual pieces of weed harvesting equipment more than once every 10 years. If a sponsor purchases used equipment, the 10 year limitation may be shortened to match the remaining years of utility of the equipment. If a sponsor sells any or all of the equipment funded under this chapter prior to the end of the 10 year or adjusted period, the sponsor shall repay the department 50% of the sale price.

(b) Dredging of a channel of a waterway to the degree necessary to accommodate recreational watercraft with the following limitations:

1. In order to be eligible for funds under this chapter, a channel to be dredged in a lake shall be defined by aids to navigation as defined in s. 30.74(2)(b), Stats.

2. Cost sharing for dredging of a channel may be provided only for dredging the width of a channel to a distance of 25 feet on either side of the centerline of a river or 25 feet on either side of a center channel marker in a lake. The depth of the channel dredging shall be limited to the depth necessary to accommodate recreational watercraft commonly utilizing the waterbody.

3. Eligible costs of dredging a channel in a waterway include: engineering, including soil borings, dredging and mobilization, construction of a temporary holding area, and transportation of spoils. The cost of constructing revetments to permanently contain spoils is eligible if the sponsor can demonstrate that the cost of creating a land mass is less than the cost of the transportation of spoils to a disposal site or if a substantial benefit to the recreational boating public will accrue.

4. Ineligible costs include: any costs relating to planning, engineering, dredging, handling, processing, transporting or depositing of contaminated dredge spoils; the purchase of land rights for a spoils deposition area or the costs of landfill storage of spoils; costs of land treatment to cover up spoils deposit; and the cost of testing or monitoring as a condition of a state or federal permit.

5. For the purposes of s. 30.92(4)(b)2., Stats., the dredging of a channel in a waterway to the degree that is necessary to accommodate recreational watercraft pursuant to s. 30.92(4)(b)8.a., Stats., shall be considered a construction project.

6. A sponsor may not receive funds for dredging the same channel of a waterway more than once every 10 years.

SECTION 12. NR 7.06(1) and (2) are amended to read:

NR 7.06(1) Feasibility studies, ~~including a resolution from the affected governmental unit supporting the project,~~ shall be the basis for determining the feasibility of a safe recreational boating facility project and the rank of the project on the project priority list.

(2) All feasibility studies shall be site specific and completed in sufficient detail with appropriate maps, plans and text to allow the commission to determine the feasibility of the project. Where the commission finds a project is feasible and the project is supported by the resolutions resolution of the affected governmental unit or qualified lake association, it shall be placed on the project priority list using the factors in s. 30.92(3)(b), Stats.

SECTION 13. NR 7.06(4)(a) is repealed and recreated to read:

NR 7.06(4)(a) General information.

1. Name and location of project.
2. Purpose of the project.
3. Work to be done accompanied by a detailed estimate of the cost of the project including the local share, the requested amount of state funding and the extent of all other sources of funds.
4. Anticipated time schedule for project development.
5. Ownership of lands associated with the project.
6. Distance of nearest comparable safe recreational boating facility on the same body of water, where applicable.

SECTION 14. NR 7.06(4)(b)(intro) is amended to read:

NR 7.06(4)(b) Economic analysis. The purpose of this analysis is to describe the anticipated level of use of the facility or project and associated benefits derived from such use for consideration by the commission when it evaluates the merits of various projects and establishes priorities for financial assistance. At a minimum for the development of safe recreational boating facilities, the analysis shall address:

SECTION 15. NR 7.07(1) is amended to read:

NR 7.07(1) Applications from governmental units or qualified lake associations for funding of feasibility studies are to be made to the department for presentation to the commission.

SECTION 16 NR 7.07(2) is amended to read:

NR7.07(2) The application shall be made on forms provided by the department and at a minimum contain the following:

Note: Application forms are available at any department district office.

SECTION 17. NR 7.07(2)(a) is repealed and recreated to read:

NR 7.07(2)(a) A resolution officially adopted by the governmental unit or qualified lake association authorizing a representative to act as agent for the governmental unit or lake association for the signing of forms or claims and verifying that sufficient funds are available to complete the project.

SECTION 18. NR 7.08 (1) is amended to read:

NR 7.08(1) Applications from governmental units or qualified lake associations for funding of safe recreational boating facilities development projects are to be made to the department for presentation to the commission.

SECTION 19 NR 7.08(2) is amended to read:

NR 7.08(2) The application shall be made on forms provided by the department an at a minimum contain the following information:

Note: Application forms are available at any department district office.

SECTION 20. NR 7.08(2)(a) is repealed and recreated to read:

NR 7.08(2)(a) A resolution officially adopted by the governmental unit or qualified lake association containing a formal request for assistance, authorizing a representative to act as agent for the governmental unit or lake association to sign forms or claims and verifying that sufficient funds are available to complete the project.

SECTION 21. NR 7.08(5) is repealed and recreated to read:

NR 7.08(5) The department may pay, with the approval of the commission, an additional 10% of eligible costs for a construction project under s. 30.92(4)(b)2, Stats., if:

(a) the sponsor requests the additional 10% cost sharing, and

(b)1. The sponsor is a municipality and it conducts a boating safety enforcement and education program approved by the department; or

2. The sponsor provides financial support by written agreement to a municipality which conducts a boating safety and education program approved by the department on the waters in the immediate area of the proposed project.

SECTION 22. NR 7.083, 7.085 and 7.087 are created to read:

NR 7.083 APPLICATION FOR THE DREDGING OF A CHANNEL OF A WATERWAY. (1) Applications from governmental units and qualified lake associations for funds for dredging of a channel of a waterway on inland waters shall be made to the department for presentation to the commission.

(2) The application shall be made on forms provided by the department and at a minimum contain the following information:

Note: Application forms are available at any department district office.

(a) A resolution officially adopted by the governmental unit or qualified lake association authorizing a representative to act as agent for the governmental unit or lake association for the signing of forms or claims and verifying that sufficient funds are available to complete the project.

(b) A statement supported by appropriate documents that the project is feasible from an economic, environmental and engineering viewpoints

(3) The department may provide funds for channel dredging projects at a rate determined by the commission subject to the limitations of s. 30.92(4), Stats. The actual rates of funding may vary from project to project and shall be based on consideration of the factors contained in s. 30.92(3)(b), Stats., and the principles expressed in s. NR 7.09(1).

NR 7.085 APPLICATION FOR THE ACQUISITION OF CAPITAL EQUIPMENT TO CUT AND REMOVE AQUATIC PLANTS. (1) Applications from governmental units and qualified lake associations for funding the acquisition of capital equipment to cut and remove aquatic plants on inland waters shall be made to the department for presentation to the commission.

(2) The application shall be made on forms provided by the department at its district offices and at a minimum contain the following information:

Note: Application forms are available at any department district office.

(a) A resolution officially adopted by the governmental unit or qualified lake association authorizing a representative to act as agent for the governmental unit or lake association to sign forms or claims and verifying that sufficient funds are available to complete the acquisition of the equipment.

(b) A statement supported by appropriate documents that the acquisition of the capital equipment is feasible from economic and environmental viewpoints.

(3) Prior to the proposed acquisition project being presented to the commission, the governmental unit or qualified lake association shall have obtained approval from the department of a management plan to cut and remove aquatic plants from the waterbody.

(4) The department may fund acquisition of capital equipment for cutting and removal of aquatic plants at a rate determined by the commission subject to the limitations of s. 30.92(4), Stats. The actual rates of funding may vary from project to project and will be based on consideration of the factors contained in s. 30.92(3)(b), Stats., and the principles expressed in s. NR 7.09(1).

Note: The amount eligible for reimbursement for the purchase of capital equipment will be up to 50% of the actual cash payment for the equipment. In the case of a trade, the amount eligible for reimbursement will be 50% of the difference between the price of a new unit and the cash value allowed for the equipment being traded.

NR 7.087 APPLICATION FOR THE ACQUISITION OF AIDS TO NAVIGATION AND REGULATORY MARKERS. (1) Applications from governmental units and qualified lake associations for funds for the purchase of aids to navigation and regulatory markers shall be made to the department for presentation to the commission.

(2) The application shall be made on forms provided by the department at its district offices and at a minimum contain the following information:

Note: Application forms are available at any department district office.

(a) A resolution officially adopted by the governmental unit or qualified lake association authorizing a representative to act as agent for the governmental unit or lake association for the signing of forms or claims and verifying that sufficient funds are available to complete the project.

(b) Number and cost of the aids to navigation or regulatory and appropriate ground tackle.

(c) If the aids to navigation or regulatory markers have been purchased prior to the application, as allowed by s. NR 7.04(2), copies of vendor invoices for materials purchased.

(d) Copy of department waterway marker placement permit and map showing location of markers acquired.

(3) The department shall reimburse the costs of acquiring aids to navigation and regulatory marker projects at a rate determined by the commission subject to the limitations of s. 30.92(4), Stats. The actual rates of funding may vary from project to project and will be based on consideration of the factors contained in s. 30.92(3)(b), Stats., and the principles expressed in s. NR 7.09(1).

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 20, 1992

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

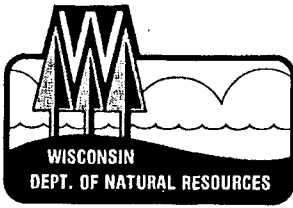
November 9, 1992

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)

RECEIVED
NOV 13 1992
Revisor of Statutes
Bureau



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

November 10, 1992

Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

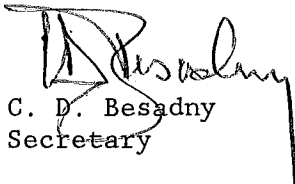
RECEIVED
NOV 13 1992
Revisor of Statutes
Bureau

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CA-7-92. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.