

Clearinghouse Rule 00-093



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

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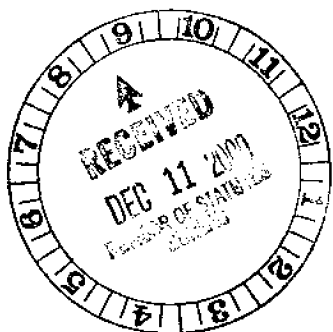
STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, 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. CF-30-00 was duly approved and adopted by this Department on October 25, 2000. 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 hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 7 day of December, 2000

(SEAL)



George E. Meyer
George E. Meyer, Secretary

2-1-01



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 \$30,000, 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) (l), Stats.

Note: Section 101.143 (1) (l), 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 December 7, 2000

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
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December 5, 2000

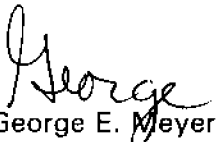
Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CF-30-00. These rules were reviewed by the Assembly Committee on Environment and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform 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,


George E. Meyer
Secretary

Enc.

