

Clearinghouse Rule 96-134



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS

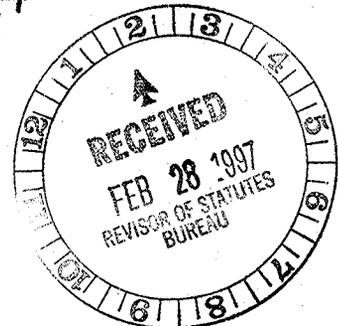
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

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. WR-45-96 was duly approved and adopted by this Department on December 4, 1996. 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 25th day of February, 1997.


George E. Meyer, Secretary

(SEAL)



96-134

5-1-97

Quality Natural Resources Management
Through Excellent Customer Service



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

The Wisconsin Natural Resources Board proposes an order to renumber 191.08(6), 191.09(4) and (5), NR 191(5), (6), (7), (8) (10) and (11), NR 191.10 (13), (14) and (15), to renumber and amend NR 191.08(5), NR 191.10(4), to amend NR 190.02, NR 190.08(3), NR 191.06(2)(a)1., NR 191.06(2)(b)8., NR 191.06(3), NR 191.07(2), NR 190.07(3), NR 191.08(1), NR 191.09(3), NR 191.10(1), NR 191.105(1), NR 191.105(3)(a), NR 191.105(5) to repeal NR 191.06(2)(a)3., NR 191.08(3) and (4), NR 191.10(3) and (9), NR 191.10(12) to repeal and recreate NR 191.06(3) to create NR 191.09(4), NR 191.10(10) relating to lake management planning grants and lake protection grants.

WR-45-96

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 144.253, 144.254(3) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 144.253 and 144.254, Stats.

The objectives of the order for ch. NR 190 are to:

1. Make minor clarifications regarding the status of nonprofit conservation organizations as eligible sponsors to be consistent with state law and the other department grant programs.
2. Increase the \$50,000 lifetime per lake funding cap to \$100,000.
3. Consistent with NR 1.91(4), clarify that a lake can meet the minimum public boating access gateway criteria if the department determines the access is sufficient to meet public demand.

These changes have been proposed based upon discussions with state lake management staff, University Extension lake management staff, representatives from the Wisconsin Association of Lakes and others at various meetings over the last year.

Last summer, legislation was created which named nonprofit conservation organizations (NCOs) as eligible sponsors for lake planning grants. Corresponding changes are proposed for the administrative code in addition to some minor wording that makes application requirements for NCOs consistent with recent changes to the Stewardship program.

The current \$50,000 per lake lifetime cap has been identified as a potential obstacle to completing comprehensive planning projects on several lakes facing complex management issues. Currently, Fox Lake, Dodge County and Delavan Lake, Walworth County, have reached their maximum of five grants under the present cap. In the last cycle, seven other lakes applied for their fourth grant. Others have expressed concern about being able to complete ambitious projects they have begun and the difficulty in planning their long term needs around a "five grant limit". Expensive long term water quality monitoring needed to accurately diagnose problems and evaluate the effectiveness of implementation activities is one example of the many costs associated with lake management.

The original amendments that went through public hearings, proposed to replace the lifetime cap of \$50,000 with a \$40,000 biennium cap to create a constant source of funding while assuring ample funding and competition within each appropriation. In approving the final order, the Natural

Resources Board, amended this proposal to delete the biennial cap and retain the lifetime cap but, double its limit to \$100,000.

In the last code revision in 1994, it was proposed that a public access requirement as a grant condition be removed. Northern lake groups and staff had said that this requirement was a significant reason that participation in the grant program was lagging in the north. At that time, NR 1.91 had just been published, which established that public boating access is not required for the department to provide lake planning or protection grants. Removing the requirement in the grant rule was proposed for consistency. However, the change was strongly opposed by some and as a compromise, a "first priority" was given to lakes meeting the public boating access criteria of NR 1.91(4). For consistency, the same provision was added to the Protection Grant codes (NR 191).

In the following grant cycles, it has become apparent that this compromise, as worded, set a higher requirement for access than the original code. Not only is the definition of adequate access more stringent under NR 1.91, but using a "first" priority means all lakes meeting the standards are considered first. In competitive cycles, lakes not meeting the access standards may not be funded since they go to the bottom of the list. The original concerns of the northern lake constituents were not resolved.

Based upon the advisory committee recommendation, the proposed rule that went to hearing, called for removing the gateway for public boating access. Again, there was a strong protest, exclusively from the Milwaukee metropolitan counties, asking that the department retain this provision as an incentive for lake organizations to create public boating access opportunities. Public comments from the northern portion of the state supported dropping the proposed rule.

Recognizing the regional variation in the public's perception of access to lakes, this final rule proposal retains the gateway criteria for public boating access per NR 1.91(4) development standards. However, it seeks to clarify that NR 1.91(4)(b) which allows the department to make a determination that public boating access is sufficient to meet public demand, can be applied if a lake doesn't meet the access development standards. This clarification is consistent with many of the public comments received.

The order will result in the following changes to ch. NR 191:

1. Conform to changes in legislation which raised the maximum state share percentage from 50% to 75% and per grant cap from \$100,000 to \$200,000.
2. Create an application deadline consistent with other department grant programs involving land acquisition.
3. Make donations of labor and services an eligible part of the local share consistent with ch. NR 190 Lake Planning Grants and the Stewardship Program and clarify the use of donated land for land acquisition projects.
4. Streamline the way funding priorities are assigned by removing confusing priority provisions for first time applications and projects with protection emphasis.
5. Clarify that a determination of minimum public boating access can be made if the department determines that access is adequate to meet public demand.
6. Make minor clarifications to remove obsolete language and create consistent language.

These changes will bring the code into compliance with state statutes and improve consistency among other department grant programs. An application deadline consistent with other department

grant programs involving land acquisition will improve customer service. The use of donations in the local match is consistent with provisions of Lake Planning (NR 190) and Stewardship grant programs.

It was the consensus of staff and the advisory committee that the current code attempts to establish too many priorities and suggested the development of a ranking system tailored to the wide ranging eligible project types. Existing code language assigns "first" priority to protection activities and lakes which meet the minimum boating access standards of NR 1.91. It also assigns a "higher" priority to lakes which have not previously received a protection grant. In addition there are six factors used to evaluate an application when developing a funding list. Last Fall was the first competitive funding cycle for the protection grants and some confusion was experienced trying to interpret the relative weight of these priorities. It is proposed that only the public boating access gateway be retained with the same clarification proposed above in the planning grants. The gateway criteria for first time applications and protection-oriented projects will be incorporated into a ranking system based on the six evaluation factors to help clarify and streamline project selection.

SECTION 1. NR 190.02 is amended to read:

NR 190.02 APPLICABILITY. This chapter applies to all counties, cities, townships, villages, qualified lake associations, public inland lake protection and rehabilitation districts, town sanitary districts and other local governmental units as defined in s. 66.299(1)(a), Stats., and qualified nonprofit conservation organizations as defined in s. 23.0955(1), Stats., that are established for the purposes of lake management, applying for financial assistance under s. ~~444.253~~ 281.68, Stats. for a planning project for a public inland lake. ~~Qualified nonprofit conservation organizations are also eligible when state statutes are amended to specify their eligibility.~~

SECTION 2. NR 190.06(3) is repealed and recreated to read:

NR 190.06(3) If the sponsor is a nonprofit conservation organization, the sponsor shall provide evidence that the organization meets the requirements in s. 23.0955(1), Stats.

SECTION 3. NR 190.07(3) is amended to read:

NR 190.07(3) The cumulative state share of the cost of planning projects for one lake may not exceed ~~\$50,000~~ \$100,000.

SECTION 4. NR 190.08(3) is amended to read:

NR 190.08(3) Applications for lakes which meet the minimum boating access ~~requirements~~ standards of s. NR 1.91(4)(d) or where the department determines, pursuant to NR 1.91(4)(b), that existing facilities are sufficient to meet existing public demand for access, shall receive first priority.

SECTION 5. NR 191.06(2)(a)1. is amended to read:

NR 191.06(2)(a)1. Information on the sponsor's purposes and ability to ~~acquire and manage lands for protection and improvement of lakes~~ manage a project for the protection and improvement of lakes and their ecosystems. If the sponsor is a qualified lake association, the sponsor shall provide evidence that the organization meets the requirements as described in s. ~~444.253(1)~~ 281.68(1), Stats. If the sponsor is a nonprofit conservation organization, the sponsor shall provide evidence that the organization meets the requirements as described in s. 23.0955(1), Stats.

SECTION 6. NR 191.06(2)(a)3. is repealed.

SECTION 7. NR 191.06(2)(b)8. is amended to read:

NR 191.06(2)(b)8. For projects involving acquisition of land a proposed land management plan for the property including a list of any owner occupants or tenants that occupy the land or buildings to be acquired. The sponsor shall provide evidence satisfactory to the department that it has the financial capacity and ability to acquire the property and provide for its long term management and maintenance.

SECTION 8. NR 191.06(3) is amended to read:

NR 191.06(3) Project applications shall be received by the department by ~~November~~ May 1 of each year to be eligible for grant awards made by ~~March~~ September 1.

SECTION 9. NR 191.07(2) is amended to read:

NR 191.07(2) The total state share of the cost of a project may not exceed ~~\$100,000~~ \$200,000.

SECTION 10. NR 191.08(1) is amended to read:

NR 191.08 PRIORITIES. (1) A project priority list shall be prepared or updated by the department each year. Projects to be included in the project priority list will be those projects which have been determined to be eligible by the department. Any projects previously accepted but which were not funded because of lack of funds may be included if a request is made in writing by the sponsor prior to ~~November 1~~ May 1 of each year.

SECTION 11. NR 191.08(3) and (4) are repealed.

SECTION 12. NR 191.08(5) is renumbered NR 191.08(3) and as renumbered is amended to read:

NR 191.08(3) Applications for lakes which meet the minimum boating access ~~requirements~~ standards of s. NR 1.91(4)(d) or where the department determines, pursuant to NR 1.91(4)(b), that existing facilities are sufficient to meet existing public demand for access, shall receive first priority.

SECTION 13. NR 191.08(6) is renumbered NR 191.08(4)

SECTION 14. NR 191.09(3) is amended to read:

NR 191.09(3) The local share of the project cost may not be less than ~~50~~ 25% of the eligible project costs.

SECTION 15. NR 191.09(4) and (5) are renumbered (5) and (6)

SECTION 16. NR 191.09(4) is created to read:

NR 191.09(4) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the project cost subject to all of the following:

(a) All sources of local share donation shall be indicated when the application for a grant is submitted.

(b) The maximum value of donated labor shall be \$5.00 per hour.

(c) The value of donated equipment shall conform to the Wisconsin department of transportation highway rates for equipment.

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

(d) The value of donated materials and services shall conform to market rates and be established by invoice.

SECTION 17. NR 191.10(1) is amended to read:

NR 191.10 (1) The department shall issue grant awards by ~~March~~ September 1 of each year for projects based upon the project priority list.

SECTION 18. NR 191.10(3) and (9) are repealed.

SECTION 19. NR 191.10(4) is renumbered NR 191.10(3) and as renumbered amended to read:

NR 191.10(3) The local share of the project cost may not be less than ~~50~~ 25% of the eligible project costs.

SECTION 20. NR 191.10(5), (6), (7), (8), (10) and (11) are renumbered NR 191.10(4), (5), (6), (7), (8) and (9).

SECTION 21. NR 191.10(12) is repealed

SECTION 22. NR 191.10(10) is created to read:

NR 191.10(10) The substantiated value of donated services or contributions of property may be used as part of the local share of the project cost subject to all of the following:

(a) Contributions of property shall be determined by appraisal made under this section and shall be a portion of the property to be acquired.

(b) Up to 75% of the fair market value of a contribution of property may be used as local share, but only to the extent that lake protection funds are needed to acquire the subject property. The amount of the property donation that can be used for match equals the value of the donation or the amount of cash needed by the sponsor for the purchase, whichever is less, so there will be no cash back in excess of the monies actually needed for the purchase.

(c) All sources of local share donation shall be indicated when the application for a grant is submitted.

(d) The value of donated services shall conform to market rates and be established by invoice.

SECTION 23. NR 191.10 (13), (14) and (15) are renumbered (11), (12) and (13).

SECTION 24. NR 191.105(1) is amended to read:

NR 191.105 (1) The department shall issue grant awards by ~~March~~ September 1 of each year for projects based upon the project priority list.

SECTION 25. NR 191.105(3)(a) is amended to read:

NR 191.105(3)(a) Diagnostic/feasibility studies shall follow specifications provided by the department to ensure that sufficient information for determining the feasibility of alternative remedial measures, including: costs; the relative permanence of alternative measures; the potential for long-term control of the causes of degradation as well as the baseline data required to measure subsequent changes. Studies previously developed under ch. NR 190 lake management planning grants or for other purposes may ~~quality~~ qualify as feasibility studies with the written approval of the department.

SECTION 26. NR 191.105(5) is amended to read:

NR 191.105(5) The local share of the project cost may not be less than ~~50%~~ 25% of the eligible project costs.

SECTION 27. NR 191.105(3), (4), (5), (6) and (7) are renumbered NR 191.105(4), (5), (6), (7) and (8).

SECTION 28. NR 191.105(3) is created to read:

NR 191.105(3) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the project cost subject to all of the following:

(a) All sources of local share donation shall be indicated when the application for a grant is submitted.

(b) The maximum value of donated labor shall be \$5.00 per hour.

(c) The value of donated equipment shall conform to the Wisconsin department of transportation highway rates for equipment.

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

(d) The value of donated materials and services shall conform to market rates and be established by invoice.

SECTION 29. CROSS REFERENCE CHANGES. For the statutory references in Column A, change the reference to the one in Column B:

<u>Code Section</u>	<u>Column A</u>	<u>Column B</u>
NR 190.01	144.253	281.68
NR 190.03(4)	144.253	281.68
NR 190.07(1)	144.253	281.68
NR 191.01	144.254	281.69
NR 191.02	144.253	281.68
	144.254	281.69
Note	144.253	281.68
NR 191.03(7)	144.253	281.68
NR 191.03(14)	144.254	281.69
NR 191.07(1)	144.254	281.69

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on December 4, 1996

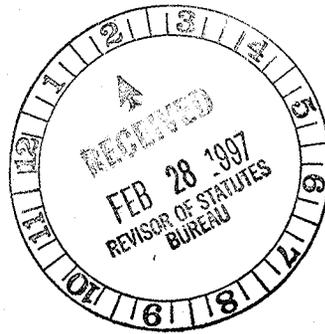
The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

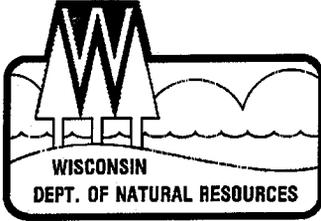
Dated at Madison, Wisconsin February 25, 1997

(SEAL)

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
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February 25, 1997

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. WR-45-96. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Agriculture and Environmental Resources 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.

