

Report From Agency

REPORT TO LEGISLATURE

NR 190, 191 and 195, Wis. Adm. Code
Lake and river protection grants
NR 198 Wis. Adm. Code,
Aquatic invasive species control grants

Board Order No. WT-09-08
Clearinghouse Rule No. 08-063

Basis and Purpose of the Proposed Rules

This proposed rule implements enabling legislation and facilitates investing a \$2.8 million increase in the annual funding allocation for the control of aquatic invasive species (AIS). The management of AIS will be improved statewide through this revision by allowing larger, more efficient prevention and control projects, lowering local costs, and providing a greater diversity of sponsors and eligible activities.

Summary of the rules

Proposed revisions to all grants, chs. NR 190, 191, 195 and 198 will:

1. Increase the value of hourly donated, non-professional labor that can be used as local match from \$8 to \$12. This will encourage more volunteer citizen participation in projects, make projects easier for sponsors to afford and allow more efficient use of local cash in projects.
2. Require that application materials not part of a required form be submitted in an electronic format. This will facilitate and speed the grant application review process.
3. Require grant applicants to provide specific information to the department about the location and extent of public access to the waterbody that is the focus of the project. This will help the department identify, track, manage and protect the public's access to state waters.

The objectives of the proposed rule changes specific to ch. NR 198 AIS Control Grants are to:

4. Implement changes in enabling legislation that increase the maximum state cost share rate from 50% to 75% and eliminate priority for local government sponsored projects. This will reduce local project costs and allow broader range of project sponsors.
5. Increase the maximum amount of the state funds available for Education, Planning and Prevention projects from \$75,000 to \$150,000; Established Population Control projects from \$75,000 to \$200,000 and Early Detection and Response projects from \$10,000 to \$20,000. This will allow for longer and geographically broader projects which will be more effective and efficient to administer.
6. Allow for a cash advance option for early detection and response projects. This will allow projects to begin immediately while the required local share is being raised.

7. Expand grant sponsorship to include, on a limited basis, universities, colleges and technical schools, hydroelectric corporations and other branches of state and federal government that manage natural resources. This will allow projects to be developed on a statewide scale with statewide benefits and efficiencies. It will allow managers to access funding for projects on state and federal properties with out the burden of securing the support of a third-party sponsor.
8. Broaden the eligibility criteria for nonprofit organizations to include more eligible sponsors.
9. Create a new subchapter (subch. V) that allows the department to disburse funds to sponsors who are successfully and ecologically containing established infestations under a department-approved plan to help offset the costs of permit application fees. This provide support to local organizations that are not otherwise using the grant program to manage and contain an AIS such as Eurasian watermilfoil.
10. Create a new subchapter (subch. VI) that allows the department to solicit and fund research and demonstration projects that will advance statewide knowledge and improve aquatic invasive species (AIS) management techniques. Management of AIS is a relatively new and rapidly evolving science. This expansion will help assure the annual investment of \$4.3 million is guided by science.
11. Add priorities and incentives that encourage sponsors to integrate watershed pollution control, habitat protection and restoration efforts into their projects. This will help couple long-term prevention with control, creating projects that are more resilient to AIS.
12. Change wording and language to improve clarity and other housekeeping items.

Summary of Public Comments

Overall there was support expressed for Order WT- WT-09-08. None of the 33 public appearances registered in opposition and several lauded the legislature for the increased funding and complimented the Department on the proposed revisions. In addition, 32 sets of written comments were received before the end of the public comment period. Despite the overall support, there were common concerns that a few of the proposals had over expanded the program or lacked adequate detail. These significant comments and the Department's responses are:

COMMENT: Increasing the size of grants is needed though concerned that more money overall will be needed. Large caps and increased cost share rates will limit broad distribution of funds. Reduce the maximum grant award (cap) for Education, Planning and Protection (EPP) from \$200,000 to \$100,000. These activities are less expensive compared to control projects. Reasonable caps (unspecified) should be placed on all projects.

Response: The overall cap proposed for EPP projects is now \$150,000 instead of \$200,000.

COMMENT: A widely shared concern with the Department, federal agencies and the University sponsoring grants because they will increase competition and reduce available funding; its inherently inappropriate; they charge high overhead; other funding is available to these groups and; it will demoralize volunteer-based organizations. While some suggested complete removal others recommended maximum funding levels or specific limitations on the types of projects that they could sponsor.

Response: A limit of \$200,000 per year in total for state, federal, university, college, school and hydropower corporate sponsors of Education, Planning and Prevention projects and a \$500,000 per year cap on Research and Demonstration projects was added to the rule. A provision that these sponsors are only eligible for Established Population Control projects where they are the owner of

the shore or bed of an infested water body or where a conventional local sponsor can not be found was also added to the rule.

COMMENT: The expanded definition of a nonprofit conservation organization is supported but the definition should be broader for organizations with interest in education and support of management but not active in management activities themselves.

Response: The definition was modified to include a broader purpose relating to control or prevention of AIS in the final rule.

COMMENT: Providing a higher cost share rate (50% vs 75%) for projects that also address habitat and water quality degradation wrongly implies that AIS infestations are caused by these other human induced problems; not necessary for effective AIS control and; will increase the costs of projects and take money and attention away from dealing directly with AIS. Everyone should receive 75% state cost share for controlling AIS, this requirement creates an additional financial burden.

Response: In the final rule all projects are eligible for the full 75%. It retains the emphasis on making projects that contain these elements a higher priority for funding and clarifies that to receive cost-sharing for these activities they need to be in the approved plan and need to relate to prevention or control of AIS.

COMMENT: Oppose creating a cost share incentive (50% vs 75%) for projects that have used a competitive bidding process to select an herbicide applicator. It will open the door to substandard contractors, is a waste of money and a barrier to innovation.

Response: The differential cost share rates were removed from the final rule but replaced with a requirement that sponsors need to demonstrate they sought bids or competitive quotes or took other actions to seek the best price when selecting consultants and services.

COMMENT: Agree that “points” should be given for more comprehensive or “wholistic” management approaches but concerned that it will detract from a focus on AIS management; divert money and energy away from controlling AIS; is ambiguously worded and not pertinent to Early Detection and Response or Education, Planning and Prevention projects. Higher priority should be given to non infested lakes and prevention efforts.

Response: The final rule retains the ability to consider these factors in awarding grants but was reworded to make a tighter connection to activities that have a direct impact on AIS management.

COMMENT: Research and demonstration projects are needed but we are concerned about costs of diverting funding away from prevention and control projects and the focus of the work. Research should be restricted or biennially capped to assure a balance of funding for other needs. Research should come from other funding sources or be limited or more specifically controlled.

Response: As discussed above the final rule includes a cap of \$500,000 per fiscal year for research and demonstration projects. To assure research is focused and connected to local projects, the rule now states the Department will solicit research needs year-round from sponsors and consult with the Council on Invasives Species bi-annually. The purpose statement has been amended to explicitly include economic and social issues and the subchapter format has been restructured and expanded similar to the other subchapters to improve clarity.

COMMENT: Make I-LIDS (a remote video surveillance device) an eligible cost. They are an important and cost-effective supplement to watercraft inspectors and law enforcement and should become an eligible component of the grant program.

Response: An addition was made to the rule that makes the initial installation costs and set up of a video surveillance system and eligible cost if the sponsor is already participating in watercraft inspection effort (Clean Boats, Clean Waters). The annual lease, all operation and maintenance costs will be the sponsor's responsibility for all years after.

Modifications Made

All the major modifications to policy made by the Department following the public comment period are detailed above in the response to comments.

Appearances at the Public Hearings

July 22, 2008 - Eau Claire

In support:

Roger Kees, 18300 54th Ave., Chippewa Falls
Mary Jo Fleming, 18790 54th Ave. Chippewa Falls
Sarah Braun, S. Cty Hwy K, Fall Creek, WI
Jo Heuschele, 836 LeRoy Lane, River Falls, WI

In opposition – none

As interest may appear - none

July 23, 2008 - Spooner

In support:

Earl Cook, PO Box 62, Springbrook, WI

In opposition – none

As interest may appear - none

No position -

Jim Brakken, 45255 E Cable Lake Rd., Cable, WI
Fred Blake, N2644 Boot Lake Rd. Sarona, WI
Gary Klund, Cumberland WI
Randy Baker, 122 S. Lake Drive, Shell Lake, WI
Joe Weiss, W5390 Bobcat Rd., Spooner, WI

July 29, 2008 - Rhinelander

In support:

Rick Pyle, 1092 Crystal Creek Ln, Three Lakes, WI
Steve Oestreicher, 8475 N. Oneida Lake Dr., Harshaw, WI
Maureen Ferry, PO Box 107, Florence, WI

In opposition – none

As interest may appear -

Ted Ritter, 330 Court St., Eagle River, WI
Chris Wise, 3185 B Hanson Rd. Sayner, WI
Sheehan Donoghue, PO Box 39, Sayner, WI

Jeanette & Robert Williams, 8758 S. Wind Pudding Dr., Hazelhurst, WI
Dave Roberts, 3248 Tuffle Rd. NW, Eagle River, WI
Susan Lloyd, PO Box 71, Sayner, WI
Chris Roberts, 3248 Tuttle Rd NW, Eagle River, WI
Wilbur Petroskey, 431 Abner St., Rhinelander, WI

No position –

Radley Z. Watkins, 6654 Sylvan Shore Dr., Hazelhurst WI
Jan Wise, 3185 B Hanson Rd. Sayner, WI
Joanne & Gary DeFere, N5505 Bischoff Bay Ln., Shawano, WI
Cathy Cleland, 4560 Golf Ln., Harshaw, WI
Peter Lloyd, W5243 Selmer Rd., Tomahawk, WI
Harry Helwig, 5590 Lake End Rd., Rhinelander, WI

July 30, 2008 - Oshkosh – No appearances

August 5, 2008 – Watertown

In support:

Bill Lewis, W4087, Cty Hwy C, Montello, WI

In opposition – none

As interest may appear -

Rick Jirsa, 146 E. Milwaukee St., Jefferson, WI
Jeffrey Thornton, 321 Barney St., Waukesha, WI

No position –

Dee Schriver, N53 W3436, CTy Hwy Q, Okauchee, WI

Changes to Rule Analysis and Fiscal Estimate

Minor modifications were made to the Rule Analysis based on the proposed rule modifications. The fiscal effect remains the same. No modifications were made to the Fiscal Estimate.

Response to Legislative Council Rules Clearinghouse Report

Comments from the Legislative Council dealt exclusively with form, style, placement, clarity, grammar, punctuation and use of plain language. All the suggestions were incorporated in the final text.

Final Regulatory Flexibility Analysis

Small business is not directly affected by the rule because grants are issued only to governmental units or nonprofit organizations. Therefore, under s. 227.114, Stats., a final regulatory flexibility analysis is not required.