

# RULES CERTIFICATE

## Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

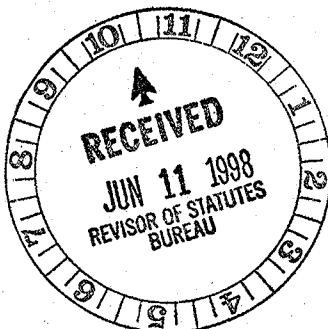
I, William J. McCoshen, Secretary of the Department of Commerce,  
and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to  
Brownfields Grant Program  
(Subject)

were duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the 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 at 201 West Washington Avenue  
in the city of Madison, this 4<sup>th</sup>  
day of June A.D. 19 98

W. J. McCoshen  
Secretary

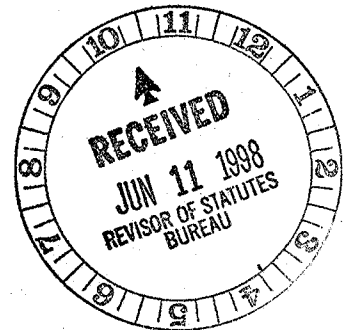






State of Wisconsin \ Department of Commerce

# RULES in FINAL DRAFT FORM



**Rule No.:** Chapter Comm 110

**Relating to:** Brownfields Grant Program

**Clearinghouse Rule No.:** 98-007

## DEPARTMENT OF COMMERCE

### RULE RELATING TO THE BROWNFIELDS GRANT PROGRAM

The Department of Commerce (Commerce) hereby proposes to adopt a to create Chapter Comm 110 Wisconsin Administrative Code, relating to the Brownfields Grant Program.

#### Analysis of Rules

Statutory Authority: Section 560.13, Stats.

Statutes Interpreted: Section 560.13, Stats.

On October 14, 1997, 1997 Wisconsin Act 27, took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the 97-99 biennium that can be distributed by Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires Commerce to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the Department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under Chapter 227, Stats., and exempts the Department from making a finding of an emergency. This emergency rule was developed in consultation with the Department of Natural Resources and the Department of Administration and published and took effect on December 31, 1997. Commerce has decided to adopt the emergency rule as a permanent rule subject to public hearing review and comment pursuant to s. 227. 24(4), Stats.

Pursuant to s. 560.13, Stats., the Department of Commerce has authority to award grants for brownfields redevelopment or associated environmental remediation to any person, municipality or local development corporation. Chapter Comm 110, titled "Brownfields Grant Program", Wisconsin Administrative Code is being created to establish the criteria the Department will use to issue the grants. This chapter includes the same definitions contained in the Statutes necessary to implement the law. In addition, these rules delineate the criteria the Department will consider in the awarding of grants, including the content and information required from applicants, the conditions of contract under the grant, and reporting and auditing of implementing the grant in terms of periodic financial and program reports.

#### Contact Person

Dennis W. Kozich, Chief Legal Counsel, Department of Commerce – 608/266-3203.

## ORDER

Pursuant to the authority vested in the Department of Commerce by Section 560.13, Stats., the Department of Commerce hereby creates Chapter Comm 110, Wisconsin Administrative Code, relating to the Brownfields Grant Program.

**SECTION 1.** Chapter Comm 110 Wisconsin Administrative Code is created to read:

### Chapter COMM 110

#### BROWNFIELDS GRANT PROGRAM

**Comm 110.01 PURPOSE.** Pursuant to s. 560.13, Stats., the purpose of this chapter is to set forth the criteria for awarding grants for brownfields redevelopment or associated environmental remediation, including criteria for applying for and the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to the project and innovative proposals for remediation and redevelopment; contract requirements; use of grant funds; and reporting and auditing of the awarded grants.

**Comm 110.02 DEFINITIONS.** In this chapter:

(1) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(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.

(3) "Department" mean the department of commerce.

(4) "Environmental remediation activities" means investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environmental pollution; abating, removing, or containing environmental pollution at a brownfields facility or site; or restoring soil or groundwater at a brownfields facility or site.

(5) "In-kind contribution" means actual remediation services performed by a person qualified to provide such services under federal, state and local laws. These services may include, but are not limited to:

- (a) Providing treatment services of contaminated groundwater;
- (b) Excavating or hauling soil or other materials;
- (c) Surveying;
- (d) Conducting demolition activities;
- (e) Providing site security or site maintenance; and
- (f) Performing investigation activities.

(6) "Local development corporation" means a non-profit corporation organized under ch. 181, Stats., that does all of the following:

- (a) Operates within specific geographic boundaries.
- (b) Promotes economic development within the specific geographic area.
- (c) Demonstrates a commitment to or experience in the redevelopment of brownfields.
- (7) "Municipality" means a city, village, town or county.
- (8) "Person" means an individual, partnership, corporation or limited liability company.

(9)(a) "Phase 1 environmental assessment" means 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.

(b) "Phase 2 environmental assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase 1 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.

(10) "Project" means any brownfields redevelopment or environmental remediation activities undertaken on a brownfield facility or site by or at the direction of an eligible recipient under s. 560.13 (2) (a), Stats.

(11) "Recipient match" means the contribution required under s. 560.13 (2) (b), Stats.

**Comm 110.03 APPLICATION CONTENT.** Applications from applicants shall be submitted to the department. Each application shall contain all of the following:

- (1) The name, address, and designated contact person of the applicant.
- (2) A description of the proposed project, 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) A description of the proposed match, and the professional qualifications of the persons conducting any in-kind services.
  - (e) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.
  - (f) The amount and availability of the expenditures required for local infrastructure relating to the project.
  - (g) The immediate and continuing effects of the project upon the political subdivisions within which it will be located.
  - (h) A map showing the location of the project within the municipal jurisdiction it is located, and an indication if this project is located in any specially designated federal, state or local economic financing or taxation zone.
- (3) 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.
  - (4) The potential for the project to promote economic development in the area.
  - (5) The impact the project will have on the environment.
  - (6) The amount and quality of the applicant's contribution to the project, including the amount and availability of capital investment and cash or in-kind service contributions.

(7) 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.

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

(9) An explanation of how the proposed project addresses the evaluation and eligibility criteria established in ss. Comm 110.05 and Comm 110.04.

(10) 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 that:

(a) 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; and

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

(11) 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.

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

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

(1) The recipient will use the grant proceeds for brownfields redevelopment or associated environmental remediation activities.

(2) All of the following are unknown, cannot be located or are financially unable to pay the cost of brownfields redevelopment or associated environmental remediation activities:

(a) The party that caused the portion of the environmental contamination that is the basis for the grant request.

(b) Any person who possessed or controlled the environmental contaminant that is the basis for the grant request before the contaminant was released.

(3) The recipient will contribute a recipient match to the cost of the project in cash or in-kind.

**Comm 110.05 CRITERIA FOR DETERMINING GRANT AWARDS.** The department shall use the following criteria in determining grant awards:

(1) The potential of the project to promote economic development in the surrounding area including; job creation, wages and benefits, impact on economic distress, local and private investment, increase in taxable property, impact on the community, and other factors the department considers relevant.

(2) Whether the project will have a positive effect on the environment.

(3) The amount and quality of the recipient's contribution to the project.

(4) The innovativeness of the recipient's proposal for remediation and redevelopment including; proposed reuse, public or private partnership and other factors the department considers relevant.

**Comm 110.06 CONTRACTS.** Each grant recipient shall enter into a contract with the department for the purpose of implementing the grant awarded under this chapter. Each contract shall be signed by the secretary of commerce and the chief executive officer of the eligible recipient, or by the authorized representative of the eligible recipient. The department may void a contract and seek a return of any funds released under the contract for failure by the grant recipient to perform its obligations under the contract.

**Comm 110.07 USE OF GRANT FUNDS.** Grant proceeds may not be used for phase 1 and phase 2 environmental assessments.

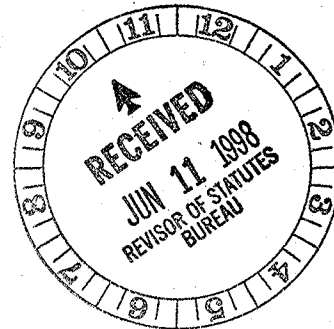
**Comm 110.08 REPORTING AND AUDITING.** A grant recipient awarded a grant under this chapter shall provide the department semi-annual financial and program reports. A financial audit and final program reports shall be submitted at the end of each contract. The financial audit and the program reports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

(END)

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

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June 6, 1998

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 West Wilson Street  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

**TRANSMITTAL OF RULE ADOPTION**

CLEARINGHOUSE RULE NO.: 98-007

RULE NO.: Comm 110

RELATING TO: Brownfields Grant Program

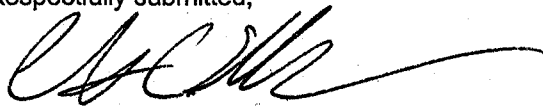
Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

  
William J. McCoshen  
Secretary

