

Clearinghouse Rule 17-081

DRAFT #1

[10/18/17]

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **renumber and amend** NR 47.91 relating to the federal cost sharing program for suppression of gypsy moth.

FR-07-14

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: ss. 26.30(2)(6m), Stats.

2. Statutory Authority: ss. 26.30(2)(6m), 28.01, 28.07, 227.11(2) Stats.

3. Explanation of Agency Authority: Section 26.30(6m), Stats., states that if the department establishes a cost-shared suppression program for gypsy moth, and that program includes the awarding of federal cost sharing funds to counties, the department shall promulgate rules to implement the program. This statute contemplates that the cost-share suppression program include, but not be limited to, the awarding of federal cost sharing funds to counties. This broad grant of rulemaking authority is sufficient to provide the basis for the proposed de-activation rule language....” The federal cost-share fund grant language allows states to utilize the federal gypsy moth funds without establishing a cost-share program for private individuals or counties, and so the de-activation of public access to the state organized spray program under the new proposed authority in rule will not prevent the department from using these funds, since the Department, under s. 26.30(2), Stats., is “vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction”

4. Related Statutes or Rules: There are no related statutes or rules

5. Plain Language Analysis:

We propose to add to the applicability section a statement allowing the Natural Resources Board to disallow counties that would otherwise be eligible to apply to the cost shared suppression program for gypsy moth. This would deactivate the state suppression program to all applicants except state lands. Suppressing gypsy moth on state lands and applying for federal cost sharing and federally supplied Gypchek does not require rule authority to implement. However, by deactivating instead of repealing the rule we retain the option of reactivating the program for the public should that become necessary. Additional changes to the rule may be pursued which are reasonably related to those discussed here.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: The USDA Forest Service under the Cooperative Forestry Assistance Act of 1978 (appendix A) as amended (P.L. 95-313) and the 1990 Farm Bill offers a cost sharing program to states for the suppression of gypsy moth outbreaks. Their objective is to assist state agencies in protecting forest resources by preventing defoliation in residential, recreational and timber production lands. Cost share is made available to state cooperators who have established an acceptable integrated pest management strategy for the gypsy moth as determined by the Forest Service. The cost share from the Forest Service can be used to pay for the treatment and preparatory work for the treatment including monitoring, administration, and public notification. The current maximum federal share of project costs is 50%. The Forest Service cost-share rate, however, may be and has been adjusted downwards to meet annual federal budget limitations. The

Forest Service requires that the treatments that receive cost sharing be voluntary and are eligible by the minimum criteria decided by the Forest Service.

7. Comparison with Similar Rules in Adjacent States: Of the adjacent states, only Michigan has had a suppression program for gypsy moth. However, the state has not made a request for cost sharing since 2006 even though eligible treatments had been made by counties during this time. The Michigan Department of Agriculture takes its authority to run the suppression program from the Insect Pest and Plant Disease Act 189 of 1931. There are no legislative rules governing the Michigan suppression program, however. Like Wisconsin's program, Michigan has received cost sharing from the USDA Forest Service so requirements described above apply to both. Michigan's suppression program differs from the Wisconsin's in that the state only handles the cost sharing application to the USDA, running the spray program is done by counties.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Not applicable to this rule as it is not a regulatory provision but is instead a voluntary grant program.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: Not applicable to this rule as it is not a regulatory provision but is instead a voluntary grant program.

10. Effect on Small Business (initial regulatory flexibility analysis): This rule it is not a regulatory provision but is instead a voluntary grant program. We expect that business opportunities for local aerial applicators and arborists may increase with the deactivation of the state gypsy moth suppression program.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:
Andrea Diss-Torrance
Department of Natural Resources
PO Box 7921, Madison, WI 53707
608-264-9247, office
608-266-8576, FAX
Andrea.DissTorrance@wi.gov

Written comments may also be submitted to the Department at
DNRAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 47.911 is renumbered and amended to read:

NR 47.911 Applicability.

- (1) The provisions of this subchapter are applicable to all county governments applying for cost sharing under this subchapter.
- (2) The natural resources board may order that this subchapter is not available to any or all county governments that would otherwise be eligible for cost sharing under this subchapter. Such an order will remain in effect until the natural resources board rescinds that order.

Note: Natural resource board decisions and current availability of this subchapter to county governments will be made available online at XXXXXXXXXXXX or can be obtained by calling XXXXXXXX.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.
OR This rule shall take effect on [DATE].

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR
DEPARTMENT OF NATURAL RESOURCES

BY _____

Dan Meyer, Secretary

(SEAL)