

**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to create ch. NR 173 relating to the administration of the brownfield green space and public facilities grant program.
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RR-25-02

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 292.79 and 227.11(2), Stats.

Statutes Interpreted: s. 292.79, Stats.

This rule implements the brownfield green space and public facilities grant program. Created in the 2001-2003 biennial state budget bill (2001 Wisconsin Act 16), the brownfield green space and public facilities grant program provides grants to eligible local governmental units to fund the costs of environmental remediation activities at eligible sites or facilities that will have a long-term public benefit, including the preservation of green space, the development of recreational areas, or use of a property by a local government. Eligible activities include actions to remedy environmental contamination at brownfields. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities and housing authorities. The legislature appropriated \$1 million for these grants during the 2001-2003 biennium. Local governments, or an appropriate private non-profit organization in partnership with a local government, are required to contribute matching funds as cash or in-kind, or both, equal to 20%, 35% or 50%, depending upon the amount of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that at least 20% of the funds be allocated to grants of \$50,000 or less.

SECTION 1. Chapter NR 173 is created to read:

NR 173.01 Purpose and applicability. The purpose of this chapter is to establish procedures for implementing a brownfield green space and public facilities grant program as provided for in s. 292.79, Stats. Grants made under this program will assist local governmental units in remediating environmental contamination on eligible brownfield sites or facilities.

NR 173.03 Definitions. In this chapter:

- (1) "Applicant" means a local governmental unit seeking a grant under this chapter.
- (2) "Delinquent taxes" means the unpaid property taxes, penalties and interest included in the delinquent tax bill.
- (3) "Department" means the department of natural resources.
- (4) "Eligible activities" means activities eligible for funding under this chapter, limited to remedial actions as defined in s. NR 700.03 (48) and implemented to remedy environmental contamination at an eligible site or facility.

Note: Section NR 700.03(48) defines "remedial action" to mean "those response actions, other than immediate or interim actions, taken to control, minimize, restore or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment".

(5) "Eligible project" means the remediation and redevelopment of an eligible site or facility that has a long-term public benefit, including the preservation of green space, the development of recreational areas, or the use of a property by the local government.

(6) "Eligible site or facility" means sites or facilities that are "brownfields," as defined in s. 560.13, Stats.

Note: Section 560.13 (1) (a), Stats., defines "brownfields" to mean 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.

(7) "Grantee" means a local governmental unit that has applied for and been awarded a grant under this chapter, and whose grant contract has been signed by the department.

(8) "Investigation" means an investigation undertaken in conformance with ch. NR 716.

(9) "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. 66.1333, Stats., community development authority created under s. 66.1335, Stats., or housing authority. Under the authority of s. 20.002 (13), Stats., federally recognized tribal governing bodies are eligible to apply for brownfield green space and public facility grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

(10) "Matching funds" means the cash or in-kind contribution, or both, as provided in s. NR 173.15.

(11) "Person" has the meaning specified in s. 299.01 (10), Stats.

Note: Section 299.01 (10), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency".

(12) "Phase 1 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.”

(13) "Phase 2 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.”

(14) “Private non-profit organization” means a nonprofit corporation, a charitable trust or other nonprofit association that is described in section 501 (c) (3) of the federal internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

NR 173.05 Eligibility. (1) The department may award grants under this chapter 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. Grants may be awarded if the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that person, or another person, has conducted or agreed to fund the minimum necessary remedial action.

(2) Grants may be awarded to eligible applicants for eligible sites or facilities that meet all of the following conditions:

(a) The end use will have a long-term public benefit, including preservation of green space, development of recreational areas or use by a local government.

(b) A phase I environmental assessment and a phase II environmental assessment have been completed for that eligible site or facility.

(3) As part of the application, applicants shall provide proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application.

NR 173.07 Allocation of funds. (1) For the 2001-2003 biennium, all grant funds shall be allocated through the application process to eligible applicants for eligible projects and awarded during the 2003 fiscal year. For future fiscal years, 50% of the funds appropriated to this grant program in a biennium shall be allocated through the application process to eligible applicants during the first fiscal year of the biennium and 50% shall be allocated during the second fiscal year of the biennium. All allocations are based on the availability of funds.

(2) In any first fiscal year of a biennium, if funds remain after regular application cycles, as identified in s. NR 173.09(3), the department may accept and fund additional applications and grant amendment requests through an additional grant cycle, or the remainder may be carried over to the next fiscal year.

(3) Of the funds appropriated by the legislature for the grant program per biennium, at least 20% shall be awarded for grants of \$50,000 or less.

(4) No grant award may exceed \$200,000.

(5) If sufficient funds are available, the department shall fund all eligible, complete applications without ranking them. If sufficient funds are not available, 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 fund a grant in its entirety, the department shall offer the eligible applicant the option of receiving partial or no funding.

(7) The department may not award more than one grant under this chapter for an eligible site or facility in any application cycle, as identified in s. NR 173.09(3).

NR 173.09 Grant application. (1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the brownfields green space and public facilities grant manager, to the address stated on the provided form.

Note: Grant application forms may be obtained as follows:

<u>Mailing Address</u>	<u>Phone</u>
Department of Natural Resources Bureau for Remediation and Redevelopment P.O. Box 7921 Madison, WI 53707	(608) 266-2111 <u>Web Site</u> www.dnr.state.wi.us/org/aw/rr/

(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) The street address of the eligible site or facility.

(c) Information that demonstrates that the site or facility meets the definition of an eligible site or facility under this chapter.

(d) A resolution that designates an authorized local governmental unit representative, commits the applicant to completing the activities listed in the grant application if awarded funds, commits the applicant to maintain the property for the end use specified in the application and grants the department access to the site or facility and grant records.

(e) A description of the proposed grant activities, including:

1. The eligible activities for which the applicant is seeking funds, including a detailed description of the remedial action proposed at the site or facility.

2. An itemized estimate of the cost of each activity proposed using the grant.

3. A description of the proposed matching funds and the professional qualification of the person conducting any in-kind services.

4. If matching funds are contributed by a person other than the applicant, a signed letter from that person explaining their commitment to providing matching funds for the grant and a description of the funds.

(f) Certification that the person conducting professional services for the local governmental unit has the necessary legal, managerial and technical qualifications required by local, state and federal law.

(g) A map showing the location of the eligible site or facility.

(h) Information about the current ownership of the eligible site or facility and information about initiation of the formal acquisition process, if applicable. If a local governmental unit owns the site or facility, information about how the local governmental unit acquired title to the property.

(i) 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.

(j) Information showing that the person who 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. In the alternative, information showing that the grant activities requested are beyond the legal responsibility of the person who caused the environmental contamination that is the basis of the grant request and that a person has conducted or agreed to fund the minimum necessary remediation.

(k) A copy of the phase 1 environmental assessment and the phase 2 environmental assessment reports that have been conducted at the site or facility.

(L) A summary of environmental activities that have been conducted and reports that have been prepared on the eligible site or facility, including any additional environmental investigation information that has been collected which is not described in the phase 1 and phase 2 environmental assessment reports.

(m) Any additional information that the department determines is necessary to document factors described in s. NR 173.11 that are considered when the grant applications are scored.

(3) APPLICATION CYCLE. The department shall establish application due dates. The department shall have at least one funding cycle each state fiscal year that funds are available. If funds are available after the first funding cycle, there may be additional application cycles, or the available funds may be carried over to the second fiscal year of the biennium.

(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 may not be considered. The application is considered complete when the additional or correct information requested by the department is received within the time period specified by the department. The department may not fund incomplete applications.

NR 173.11 Application scoring. (1) GENERAL. When ranking and scoring eligible and complete applications under s. NR 173.07(5), the department shall use the criteria in this section. The criteria shall be applied on a statewide basis.

(2) POINT AWARDS. The department shall award points to the grant applications according to the following scoring criteria:

(a) The demonstrated need for the project based on factors including, but not limited to:

1. Public benefit of the project.
2. Demonstrated need for this type of property or facility in the neighborhood and community.
3. Economic hardship and distress in the neighborhood and community where the site or facility is located.

(b) The commitment of an applicant to the project based on factors including, but not limited to:

1. Community support for the project.
2. Community partnerships.
3. Property ownership.
4. Public participation and planning.

(c) Environmental benefits of the project based on factors including, but not limited to:

1. Health and environmental risks posed by contamination at the eligible site or facility.
2. Likelihood that the grant activities will assist in obtaining closure of the site.
3. Degree to which a community is prepared to implement the eligible activities.
4. Extent of blight or slum conditions at the property.

(d) The applicant's financial commitment to the project based on factors including, but not limited to:

1. Matching funds provided beyond the minimum required in s. NR 173.15(1).
2. Past costs paid on the project.
3. Extent to which the applicant is financially prepared to complete the project.

(3) When making a determination under sub. (2), the department shall accord a 25% weight to the criterion under sub. (2)(a), a 15% weight to the criterion under sub. (2)(b), a 35% weight to the criterion under sub. (2)(c) and a 25% weight to the criterion under sub. (2)(d).

(4) If 2 or more applications receive the same score, applications requesting the smallest dollar amounts will be funded first.

NR 173.13 Eligible and ineligible costs. (1) ELIGIBLE COSTS. Grant funding provided under this chapter may be used for the following expenses:

(a) The actual costs of services and equipment provided by employees of the grantee for the implementation of the grant agreement. Equipment rental rates may not exceed the county machinery rates established annually by the Wisconsin department of transportation.

Note: Current equipment rates can be obtained from the Wisconsin Department of Transportation, Division of Transportation Infrastructure Development, Bureau of Highway Operations, 4802 Sheboygan Avenue, Room 501, PO Box 7986, Madison, WI 53707, (608) 266-8370.

(b) Labor costs required for carrying out the eligible activities identified in the grant agreement. Labor costs may include salary, fringe benefits and other personnel costs determined to be appropriate by the department.

(c) Costs for laboratory analysis and professional services contracts associated with grant activities.

(d) The costs of necessary equipment and facilities used to carry out activities in the grant agreement.

(e) Costs of treatment, storage or disposal of materials that are generated as a result of conducting the eligible activities.

(f) Costs to prepare a remedial action plan in accordance with ch. NR 722.

(g) Other costs, approved in advance by the department, that the department determines are necessary to carry out the eligible activities.

(2) INELIGIBLE COSTS. Costs ineligible for reimbursement under this chapter are costs that are not necessary to or not directly associated with the eligible activities as defined under this chapter or established in s. NR 173.13(1), as determined by the department, including any of the following:

(a) Costs incurred outside the grant period stated in the grant contract.

(b) Costs reimbursed by any other local, state or federal programs.

(c) Costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act and dry cleaner environmental response program.

(d) Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.

(e) Ordinary operating expenses of the applicant, such as salaries and expenses of public officials.

(f) Costs of capital equipment.

- (g) Costs of licenses, application, permit fees and department review fees.
- (h) Legal fees.
- (i) Phase I and II environmental assessments.
- (j) Chapter NR 716 site investigations.
- (k) The demolition of any structures, buildings or other existing improvements.
- (L) Planning, design or construction of public use facilities.
- (m) Engineering costs not associated with a remedial action.

NR 173.15 Matching of grants. (1) DEFINITION. Local governmental units shall match funds provided through this chapter as follows:

- (a) At least 20% of the grant request for grants of \$50,000 or less.
- (b) At least 35% of the grant request for grants of greater than \$50,000 and less than \$100,000.
- (c) At least 50% of the grant request for grants of at least \$100,000, up to \$200,000.

(2) COSTS AND SERVICES ELIGIBLE AS MATCHING FUNDS. Local governmental units receiving grants under this chapter may count as matching funds the value of costs and services incurred during the grant period by the grantee or a private non-profit organization in partnership with the grantee, including but not limited to, the costs of any of the following:

- (a) Eligible activities as defined under this chapter.
- (b) Acquisition of the eligible site or facility.
- (c) Payment or cancellation of delinquent taxes.
- (d) Maintenance and security of the site or facility.
- (e) Costs of completing a ch. NR 716 site investigation.
- (f) Planning and design for green space, recreational area or use by a local government at an eligible site or facility.
- (g) Demolition of any structures or existing improvements on the eligible site or facility.
- (h) Asbestos abatement activities, associated with demolition, as defined in s. 254.11(2), Stats.
- (i) Removal of underground hazardous storage tank systems.
- (j) Removal of underground petroleum product storage tank systems.

(k) Removal of abandoned containers as defined in s. 254.11(2), Stats.

(L) Removal and disposal of debris, solid waste and scrap materials on the eligible site or facility.

(3) COSTS AND SERVICES INELIGIBLE AS MATCHING FUNDS. Ineligible costs for matching funds include, but are not limited to, costs that have been reimbursed, or will be reimbursed, from other sources such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act, and dry cleaner environmental response program.

NR 173.17 Grant conditions. Each grant awarded under this chapter shall be subject to all of the following conditions:

(1) Before the department may reimburse a local governmental unit receiving funds under this chapter, the grantee shall demonstrate all of the following:

(a) A local governmental unit or private non-profit organization owns or has long-term control over the eligible site or facility.

(b) A deed restriction has been placed on the deed for the property where the eligible site or facility is located, and recorded at the county register of deeds office, limiting the use of the property to the end use specified in the agreement for at least 20 years from the date that the grant agreement is signed by both parties. This deed restriction shall remain in place for 20 years.

(c) A ch. NR 716 site investigation and a ch. NR 722 remedial action plan have been approved by the department.

(2) A grantee shall also comply with the following conditions:

(a) The grant period is 24 months from the date of the department's signature on the grant contract, unless extended under par. (f)

(b) The grantee shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides clear references, particularly to source or original documents. Records shall reflect all of the following minimum requirements:

1. Project accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed and identified in sufficient detail to reflect their source and purpose. Proof of payment, such as canceled checks or receipts from vendors, shall be kept and made available for inspection for 3 years after final payment.

(c) All of the grantee's records pertaining to the grant are subject to department review. Grant payments by the department are contingent upon review of grantee records and may be adjusted if costs are determined to be ineligible.

(d) 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.

(e) Grantees shall provide the department with a written progress report, if requested.

(f) The grantee may request, for good cause and prior to the end of the grant period, an amendment for: changes to increase the grant award up to 10% of the original grant amount, changes to the project scope or an extension of the grant period. The request shall be in writing and describe the reasons for the request. Amendments are subject to department approval and availability of funds.

(g) The grantee may request a maximum of 2 partial payments per year 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 Green Space and Public Facilities Grant Manager – RR/3, DNR Bureau for Remediation and Redevelopment, Box 7921, Madison, WI 53707

(h) The grantee shall provide to the department a final written report of the activities completed with the funds awarded under this chapter, on a form provided by the department. The report shall be submitted to the department along with the final request for reimbursement under the grant contract.

NR 173.19 Grant enforcement and termination. (1) PENALTIES. If a local governmental unit receiving grants under this chapter fails to comply with any 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) Seek reimbursement of all or a portion of the state's grant award.

(c) Other administrative and judicial remedies may be instituted as legally available and appropriate.

(2) TERMINATION. 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.

NR 173.21 Variances. (1) VARIANCE APPROVALS. The department may approve a variance from a requirement of this chapter if all of the following conditions are met:

(a) The grantee'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 grantee.

(c) The department determines that a variance is essential to effect necessary grant actions or where special circumstances make a variance in the best interest of the program or the state, in accordance with the program's goals to remedy environmental contamination of brownfields for projects with a long-term public benefit.

(2) VARIANCE DISAPPROVAL. 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 August 14, 2002.

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

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

Darrell Bazzell, Secretary

(SEAL)