

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 168.07(1); to amend NR 168.03(3) note, 168.07(2) and (3), 168.09(4), 168.11(1), (2)(c) and (4), 168.13(2)(a), (b), (c) and (f), 168.17(intro.), (3) and (4), 168.19(2) and 168.21(2) and (11); to repeal and recreate NR 168.13(2)(e); and to create NR 168.03(3m), (8m) and (16m), 168.13(2)(am), (g) and (h), 168.17(5) and 168.19(8) and (9) relating to the administration of the brownfield site assessment grant program.

RR-07-04

Analysis Prepared by Department of Natural Resources

Statutes Interpreted: s. 292.75, Stats.
Statutory Authority: ss. 292.75(2)(d) and 227.11(2), Stats.

Section 292.75(2)(d) requires that the Department promulgate a rule to administer this grant program.

Analysis of Rule: This rule implements the Brownfield Site Assessment Grant program. Created in the 1999-2001 biennial state budget bill (1999 Wisconsin Act 9), the Brownfields Site Assessment Grant (SAG) program provides grants to local governmental units to conduct initial activities and investigations of known or suspected environmentally contaminated property. This order modifies the existing ch. NR 168, with technical clarifications so that the rule language is consistent with statutory changes made after the rule took effect. Also, the changes are meant to clarify grant guidelines and to address issues not considered during the initial draft of the rule. Other changes proposed are to revise the application scoring process so that more points are given to sites that are greater environmental and community priorities, with less emphasis on the financial contribution of the applicant.

Comparison to Federal and State Regulations: This rule describes the specific administrative requirements for this grant program. This is not a regulatory program which places requirements on businesses, the public, or local governments. The SAG program is unique to Wisconsin and while U.S. EPA and some other states have financial incentive programs for brownfields, they are distinctly different in structure, purpose, eligibility, and scoring criteria. As a result, a regulatory comparison would be impractical. Furthermore, the U.S. EPA's brownfields grant program has a very flexible subjective priority ranking system, most of which is not codified in statute or rule.

Data and Analytical Methodologies: The Department did not conduct analysis or use specific data to support these changes to the rule. Since most of the changes are legal and administrative clarifications such analysis was not necessary. In order to adjust the scoring system, the Department did consider the scores of past applications under the existing scoring system and several of the changes arose out of a detailed analysis how the different criteria impact the distributions of grant awards.

Analysis of Small Business Effects: Since this is not a regulatory program and the rule describes administration requirements for grants which are awarded to local governments, there is no impact on small businesses and an economic impact report is not necessary.

Private Sector Costs: Generally this program is designed to assist with the assessment and site preparation of brownfields properties which will likely be redeveloped leading to increased jobs, property taxes, and economic development in communities. While the grants are awarded to local governments, in some cases the local governments are working in partnership with private sector businesses to cleanup these properties. Those private partners will not incur additional costs as a result of this rule and will likely be positively impacted by this increased investment in their projects.

Effect on Small Business: We expect no impact on small businesses since this is a program which provides grants to local governments and it is not a regulatory program.

SECTION 1. NR 168.03(3) Note is amended to read:

NR 168.03(3) Note: Section 292.75 (1)(a), Stats., defines "eligible site or facility" to mean ~~an abandoned, idle or underused industrial or commercial facility or site~~ one or more contiguous industrial or commercial facilities or sites with common or multiple ownership that are abandoned, idle, or underused, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

SECTION 2. NR 168.03(3m) is created to read:

NR 168.03(3m) "Environmental contamination" means a hazardous substance that has been discharged into the air, land, or water of the state.

SECTION 3. NR 168.03(7) Note is amended to read:

NR 168.03(7) Note: Section 292.75 (1) (b), Stats., defines "local governmental unit" to mean a city, village, town, county, redevelopment authority created under s. ~~66.434~~ 66.1333, Stats., community development authority created under s. ~~66.4325~~ 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 site assessment grants. Grants made to any American Indian tribes are subject to the same conditions and restrictions as apply to grants to local governmental units.

SECTION 4. NR 168.03(8m) is created to read:

NR 168.03(8m) "Past costs" means costs and services specified in s. NR 168.09 which were incurred after January 1, 1990 by any local governmental unit at the eligible site or facility which is the subject of the grant request under this chapter. Past costs do not include ineligible costs outlined in s. NR 168.19, costs that have been or will be reimbursed by any other grant program, or costs pledged as matching funds for grants awarded in prior grant cycles under this chapter.

SECTION 5. NR 168.03(16m) is created to read:

NR 168.03(16m) "tax delinquent" means a site or facility located on a parcel of real property that is included in a tax certificate, issued pursuant to s. 74.57, Wis. Stats.

SECTION 6. NR 168.07(1) is repealed.

SECTION 7. NR 168.07(2) is amended to read:

NR 168.07(2) Of the funds appropriated for the grant program, ~~70%~~ 60% shall be designated to fund small grants, and ~~30%~~ 40% shall be designated to fund large grants.

SECTION 8. NR 168.07(3) is amended to read:

NR 168.07(3) In any given fiscal year, if there are remaining funds after regular application cycles as identified in s. NR 168.11 (3), the department may fund existing eligible applications that were not funded, grants that received partial funding, grant amendment requests to increase a grant award pursuant to s. NR 168.21(9), or accept and fund additional applications ~~and grant amendment requests~~ as they are submitted, for either grant category. If multiple applications or requests have the same submittal date, the department shall give preference to applications or requests in the same category as the category of available funds.

SECTION 9. NR 168.09(4) is amended to read:

NR 168.09(4) Asbestos abatement activities, as defined in s. 254.11 (2), Stats., conducted as part of activities described in sub. (2).

SECTION 10. NR 168.11(1) is amended to read:

NR 168.11(1) GENERAL. Applications for grants under this chapter shall be on forms provided by the department and submitted to the following address: BF SAG Manager - ~~GF/8, Bureau of Community Financial Assistance~~ RR/3, Bureau for Remediation and Redevelopment, PO Box 7921, Madison, WI 53707-7921.

SECTION 11. NR 168.11(2)(c) is amended to read:

NR 168.11(2)(c) A resolution adopted by the governing body of the applicant that designates an authorized representative, commits the applicant to completing the activities listed in the grant application if awarded funds, and grants the department access to the site or facility and grant records. The resolution shall be signed by the person authorized to sign the resolution on behalf of the applicant and shall refer to the brownfields site assessment grant program. For an application to be considered complete, a resolution shall be submitted no later than 30 days after the application due date.

SECTION 12. NR 168.11(4) is amended to read:

NR 168.11(4) The department shall review the application for completeness and may request additional information. Applications that are determined to contain inadequate, incorrect, or inaccurate information shall be considered incomplete. The application is considered complete when the additional or correct information requested by the department is received.

SECTION 13. NR 168.13(2)(a) is amended to read:

NR 168.13(2)(a) Fifteen points shall be awarded to an application for an eligible site or facility that is located within 1200 feet of a school, park, residence, or public or private drinking water supply well a source water protection area, as defined in s. NR 243.03(29), for a community or nontransient noncommunity water system with a groundwater source or within 600 feet of a transient noncommunity or private water supply well used for potable purposes.

SECTION 14. NR 168.13(2)(am) is created to read:

NR 168.13(2)(a) Fifteen points shall be awarded to an application for an eligible site or facility that is located within 500 feet of a school, park or residence.

SECTION 15. NR 168.13(2)(b) is amended to read:

NR 168.13(2)(b) Fifteen points shall be awarded to an application for an eligible site or facility that has contamination or hazards either of which is readily accessible to the public or if there is a hazard or contamination at the site or facility and the applicant has taken action to limit access to the hazard or contamination.

SECTION 16. NR 168.13(2)(c) is amended to read:

NR 168.13(2)(c) Five points shall be awarded to an application for an eligible site or facility that ~~is or will be used by the general public and remain under the ownership of~~ owned by a local governmental unit or a non-profit organization and will be used by the general public.

SECTION 17. NR 168.13(2)(e) is repealed and recreated to read:

NR 168.13(2)(e) Five points if more than \$2,000 in past costs have been incurred, and one additional point, up to a maximum of 10 points, shall be awarded for every \$3,000 in past costs incurred. Points may be awarded only for past costs that are eligible under this chapter and have supporting documentation included with the application.

SECTION 18. NR 168.13(2)(f) is amended to read:

NR 168.13(2)(f) One point, up to a maximum of ~~40~~ 20 points, shall be awarded for each additional ~~2~~ 4% of matching funds provided by the applicant or any local governmental unit above the matching funds required under s. 292.75 (7), Stats.

SECTION 19. NR 168.13(2)(g) is created to read:

NR 168.13(2)(g) Ten points shall be awarded to an application for a site or facility that is vacant or abandoned at the time the application is submitted.

SECTION 20. NR 168.13(2)(h) is created to read:

NR 168.13(2)(h) Five points shall be awarded to an application for a site or facility that is one of the following:

1. Tax delinquent at the time the application is submitted.
2. Owned by a local governmental unit and was tax delinquent at the time it was acquired by a local governmental unit.
3. Was acquired by a person, other than a local governmental unit, and was tax delinquent at any time during the period 5 years on or before the application due date.

SECTION 21. NR 168.17(intro.) is amended to read:

NR 168.17 Matching funds. (intro.) Costs and services eligible as matching funds shall be incurred during the grant period ~~by the grantee~~ and include:

SECTION 22. NR 168.17(3) is amended to read:

NR 168.17(3) Maintenance and security of the eligible site or facility; ~~and~~

SECTION 23. NR 168.17(4) is amended to read:

NR 168.17(4) Remediation activities on the eligible site or facility that are not given in s. NR 168.09, if approved by the department; ~~and~~

SECTION 24. NR 168.17(5) is created to read:

NR 168.17(5) Payment or cancellation of delinquent taxes.

SECTION 25. NR 168.19(2) is amended to read:

NR 168.19(2) Costs that have been or will be reimbursed by any other local, state, or federal grant programs or other sources, such as the agricultural chemical cleanup program, petroleum environmental cleanup fund act and dry cleaner environmental response program.

SECTION 26. NR 168.19(8) is created to read:

NR 168.19(8) Costs to conduct a site investigation if the site or facility would qualify for reimbursement from the petroleum environmental cleanup fund (PECFA) under ss. 101.143 and 101.144, Stats.

SECTION 27. NR 168.19(9) is created to read:

NR 168.19(9) Costs claimed as matching funds for a grant awarded under this chapter.

SECTION 28. NR 168.21(2) is amended to read:

NR 168.21(2) An applicant shall provide the department with written proof of legal access to the eligible site or facility to carry out all eligible activities listed in the application within ~~90~~ 60 calendar days of notification from the department that funds have been reserved for the project, pending submittal of the legal access documentation. If the applicant is unable to meet this condition, the application is deemed incomplete and the ~~applicant is not eligible for a grant based on that application~~ department shall withdraw the grant offer.

SECTION 29. NR 168.21(11) is amended to read:

NR 168.21(11) The grantee shall provide to the department a report of the activities completed with the funds awarded under this chapter. The report shall be submitted ~~to~~ on forms provided by the department along with the final request for reimbursement under the grant contract.

SECTION 30. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 31. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 26, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)