



## WI DEPARTMENT OF NATURAL RESOURCES MUNICIPAL FLOOD CONTROL GRANT PROGRAM CONTAMINATED PROPERTY ACQUISITION INFORMATION

When you are considering the acquisition or development of property that has a history of environmental contamination or where contamination is suspected, applying for a Municipal Flood Control Grant becomes a more complex process but is still feasible.

### HOW DOES APPLYING FOR A MUNICIPAL FLOOD CONTROL GRANT DIFFER WHEN A CONTAMINATED PROPERTY IS INVOLVED?

**For property acquisition projects**, the acquisition process, its requirements, and timetable for any property with suspected or known contamination change substantially. Also, the buyer's approach to the property, the negotiations with the seller, and the required appraisal assignment all differ. Depending on the nature of the contamination, the receptiveness of the parties involved and their commitment to resolution, delays as short as weeks or as long as years can occur. Specific requirements exist that *must* be fulfilled before an application for a grant award may be submitted.

**The most significant difference in grant requirements for contaminated properties** is that the investigation of whether contamination exists, to what extent it exists, a plan for remediation approved by the DNR, and a reliable determination of remediation costs must be completed before a grant application is submitted. This information is required before the property's fair market value can be determined by an appraiser. In effect you will need to invest money up front for investigation and remediation, prior to knowing whether you are successful in obtaining a grant. Establishing the fair market value of a contaminated property is a complex appraisal assignment. The appraiser must consider the environmental and economic liability associated with acquisition.

Another pre-application requirement for contaminated properties is assurance that the intended purpose of the site is viable given the remediation plan and property closure conditions. Remember, the acquisition of the property must be for the purposes of *flood control* to be eligible for a Municipal Flood Control grant award. The bottom line is that these requirements must all be addressed prior to applying for a Municipal Flood Control grant. Additionally, by law and administrative code, payment reimbursement requests are calculated based on 50% of the fair market value of the property determined by the DNR Appraisal Reviewer.

**Note:** Properties acquired by condemnation are **not eligible** for a Municipal Flood Control Grant award.

### DEVELOPMENT PROJECTS ON CONTAMINATED PROPERTIES

The site must have been remediated according to department (DNR) standards and to the point where the intended development project is viable given the site's characteristics. The Municipal Flood Control Grant Program does not reimburse clean-up costs.

### ACQUISITION PROJECTS WHERE THE CONTAMINATION IS REMEDIATED

The site must be remediated according to DNR standards and to the point where flood control functions of the property is viable given the site's characteristics. The appraiser you hire will determine the property's fair market value based on its remediated cleaned up" characteristics.

## **WHAT CONTAMINATED PROPERTY COSTS ARE ELIGIBLE FOR REIMBURSEMENT FROM THE MUNICIPAL FLOOD CONTROL GRANT PROGRAM IF MY APPLICATION IS SELECTED FOR A GRANT AWARD?**

As stated earlier, grants for property acquisitions are based on 50% of the fair market value of the property determined by the DNR Appraisal Reviewer. In addition, 50% of the costs of conducting Phase 1 and/or Phase 2 site assessments, land surveys, appraisals, relocation payments, title evidence, recording fees, and historical and cultural assessments are also eligible for reimbursement.

However, the cost of investigations under NR 716, Wisconsin Administrative Code, and cleaning up the property are not eligible costs. Be aware that if you proceed with investigation and remediation activities, and you are not successful later in competing for a grant award, the Phase 1 and 2 site assessment costs are not eligible for reimbursement. Other ineligible acquisition costs include attorney fees, brokerage fees paid by the buyer, real estate transfer taxes, back taxes, and other costs not identified above as eligible.

## **WHAT IS THE DEPARTMENT'S ROLE?**

The DNR's regional Remediation and Redevelopment program staff focus on determining if the site is currently free from or will be free from the presence of hazardous substances in concentrations that may represent a risk to public health or the environment, and if the site's intended flood control use is viable.

The DNR Appraisal Reviewer will review the appraisal report to certify its adherence to appraisal standards, determine if the fair market value of the property reflects the actual market and physical conditions of the property, as well as review the environmental and economic liability associated with ownership.

## **WHAT IS YOUR ROLE AS THE GRANT APPLICANT?**

In the case of a suspected or known contaminated property, you are responsible for accurately and competently assessing and determining the presence of any contamination by completing a site assessment and if necessary, some level of site investigation. For property acquisition projects, you will also be responsible for hiring an appraiser to determine the fair market value of the property.

## **WHAT IF CONTAMINATION IS DISCOVERED AFTER THE PROPERTY HAS BEEN APPRAISED?**

The appraisal will not be suitable for fair market value determination by the DNR Appraisal Reviewer until the appraiser updates it to reflect the contamination and the cost to remediate. An appraisal prepared before knowing the extent of contamination, a remediation plan, and a reliable remediation cost will not be approved for grant award consideration.

## **CH. 32, WIS. STATS. PROVIDES AN EXEMPTION FROM ENVIRONMENTAL LIABILITY TO LOCAL GOVERNMENTS IF MUNICIPAL FLOOD CONTROL GRANT PROGRAM FUNDS ARE USED. WHAT DOES THIS MEAN?**

This law provides that if a local governmental unit acquires property with Municipal Flood Control Grant funds (also through tax delinquency, bankruptcy proceedings, condemnation, eminent domain, escheat and slum clearance or blight elimination), the local government only has to investigate and address the contamination to the extent needed to make the property safe for the intended use. If, for example, the

property would become a flood control easement, the local government would have to make sure that no public health risks associated with its use as a flood control easement exists. That would be the extent of the liability. Your municipality would not be required to fully investigate and cleanup the property to maximum standards above and beyond those required for the intended use as a flood control easement.

### PROPERTIES OF SPECIAL CONCERN

The following list identifies problem areas where the potential of contamination would indicate the need for a Phase 1 Environmental Site Assessment before any appraisals are ordered or serious planning or negotiations begin.

1. Any site previously developed and now sits vacant.
2. Any current or previous industrial or commercial site.
3. Any site used for storage or warehousing of commercial or industrial materials.
4. Orchards.
5. Railroads and railroad spurs.
6. Suspected former landfills.
7. Areas without vegetation.
8. Areas with monitoring wells.
9. Areas with a history or likelihood of underground storage tanks.
10. Any land suspected of being contaminated.
11. And any site adjacent to any of the locations above.

### WHAT ARE THE STEPS NECESSARY BEFORE I SUBMIT A MUNICIPAL FLOOD CONTROL GRANT APPLICATION?

**STEP 1:** Contact the MFC Grant Program Manager to discuss your specific property and project, eligibility for a grant award, the possibility of contamination, and the intended use for flood control. The MFC Grant Program Manager will also be able to connect you with your regional DNR Remediation and Redevelopment staff who will work with you as you proceed through the rest of steps and requirements.

**STEP 2:** If you suspect contamination or the property is one of special concern, hire a consultant to conduct a Phase 1 assessment to determine the presence or absence of a recognized environmental condition. While no property should be assumed to be free of contamination, certain types of property are more likely to be contaminated than others. At a minimum, inspect the property and make an initial judgment as to whether a contamination problem appears to exist.

**STEP 3:** If a recognized environmental condition is discovered, hire a consultant to conduct a Phase 2 assessment. The purpose of a Phase 2 is to demonstrate the presence or absence of contaminants.

**STEP 4:** If the presence of contaminants on the property is identified, you must submit the Phase 2 results to the DNR regional Remediation and Redevelopment staff to determine whether the contaminants are at levels that require a full site investigation under NR 716, Wis. Admin Code. The purpose of an NR 716 Investigation is to determine the degree, extent, and scope of the contamination for establishing remediation options. You will be required to pay a fee for this DNR review. DNR fees are not reimbursable.

**STEP 5:** If a NR 716 site investigation is required, you will need to hire a consultant to conduct the investigation and determine the appropriate cleanup action. You will then submit the resulting Remediation Actions Options Report and Plan to your DNR region Remediation and Redevelopment contact for approval. There is also a DNR fee for this review. No DNR fees are reimbursable.

**STEP 6:** DNR regional Remediation and Redevelopment staff will determine closure conditions and, if possible, provide assurance that the intended flood control purpose for the property is viable.

**STEP 7:** For property acquisition projects, you can now hire an appraiser to determine the appraised value of the property. It is critical that your appraiser talk to the DNR Appraisal Reviewer about the appraisal standards and requirements, and the remediation plan (extent, cost) and closure conditions.

**STEP 8:** You can now submit a Municipal Flood Control Grant application for consideration in the next available grant cycle by the grant deadline date.

**STEP 9:** If your application is selected for a grant award: The completed appraisal will be reviewed and certified by the DNR Appraisal Reviewer.

For additional information regarding the Municipal Flood Control Grant Program, visit:

<https://dnr.wi.gov/Aid/MunFloodControl.html>

For additional information regarding contaminated property, visit:

<https://dnr.wi.gov/topic/Brownfields/>