

State of Wisconsin Department of Administration
Division of Energy, Housing and Community Resources

FLEXIBLE FACILITIES PROGRAM IMPLEMENTATION HANDBOOK

CHAPTER 4: ENVIRONMENTAL REVIEW



Contents

CHAPTER 4: ENVIRONMENTAL REVIEW	3
1.0 Introduction	3
1.1 Applicability	3
1.2 Environmental Requirements for Construction & Acquisition	3
2.0 Project & Site Review	4
3.0 Environmental Review Components.....	4
3.1 Environmental Report Content	4
A. Coastal Management.....	4
B. Air Quality	5
C. Historical Properties	5
D. Coastal Barrier Resources	6
E. Floodplain Management	7
F. Wetlands Protection	8
G. Clean Water Act.....	8
H. Endangered Species	9
I. Invasive Species	9
J. Wild and Scenic Rivers/Safe Rivers and Harbors Act	10
K. Safe Drinking Water	10
L. Farmlands Protection	10
M. Toxic Chemicals and Radioactive Materials	11
N. Environmental Justice.....	12
O. Magnuson – Stevens Fishery Conservation and Management Act (MSA), Marine Mammal Protection Act (MMPA), and Coral Reef Protection	13
3.2 Environmental Report Submission	13
4.0 Chapter Attachments List	13

CHAPTER 4: ENVIRONMENTAL REVIEW

1.0 Introduction

1.1 Applicability

All grantees and subrecipients with projects funded by the Flexible Facilities Program (FFP, which is funded by the U.S. Department of Treasury Capital Projects Fund (CPF), must comply with all applicable federal and state environmental laws and regulations. In accordance with Treasury CPF requirements, the environmental requirements applicable to FFP projects are presented in the *FFP Project Environmental Report (Template)* document (Attachment FFP-04-01 for this chapter of the *FFP Implementation Handbook*), which serves as the environmental ‘checklist’ for the CPF and FFP. The National Environmental Policy Act (NEPA) and related requirements do not apply to FFP projects, unless another funding source for the project requires it.

1.2 Environmental Requirements for Construction & Acquisition

Grantees and subrecipients are required to complete the activities, documents, and entry fields in the *FFP Project Environmental Report (Template)* document (Attachment FFP-04-01 for the *Handbook*). Completing the environmental review items in the template assist the reviewer in determining which environmental laws and requirements apply. The *Environmental Report (ER)* must be completed and submitted to the State of Wisconsin Department of Administration (DOA) Division of Energy, Housing and Community Resources (DEHCR) Environmental Desk via email at DOAEnvironmentalDesk@wisconsin.gov for review and approval. Grantees and subrecipients must receive approval for the ER from DEHCR *prior to* acquisition* being completed and/or construction starting for the FFP project. All ER records, permits, and documentation necessary to evidence compliance with all environmental requirements must be maintained in the FFP project file and retained in accordance with the records retention requirements specified in Chapter 2: *Grant Administration* of the *Handbook*.

**[Exception: Acquisition being paid in whole with match funding (i.e., non-FFP funding) may be acquired prior to the ER being certified by DEHCR, but the acquired property may be later deemed ineligible by DEHCR upon review of the ER and related processes. If a grantee or subrecipient closes on a property prior to the ER being certified by DEHCR, they are accepting the risk of it potentially being deemed ineligible as the project site or as a FFP cost later due to environmental concerns. Also, the acquisition is subject to the requirements set forth in Chapter 5: Acquisition & Relocation of this Handbook, regardless of the funding source(s).]*

2.0 Project & Site Review

The reviewer and preparer of the *Environmental Report* is to obtain and use, as appropriate, any environmental report (federal, state, or local) that has already been prepared for the property or area in which the FFP project site property is located in order to limit duplications of effort. If an environmental review for the project or project site has been approved by another state or federal agency, contact the DEHCR Environmental Desk at DOAEnvironmentalDesk@wisconsin.gov to determine if anything additional is required to meet the FFP requirements.

A site visit by the reviewer preparing the ER is strongly recommended for most projects. Before the site visit, the reviewer is to examine all background information submitted with the grantee's FFP application, and a Phase I (ASTM) Report, if available and applicable. Use the *FFP Project Environmental Report (Template)* document (Attachment FFP-04-01 for the *Handbook*) to aid in assessing the site during the visit.

All sections of the *Environmental Report* (ER) must be completed. The reviewer is to document each review component in the ER template and include all back up records such as maps, correspondence, and compliance findings. Any issues or mitigation requirements are to be noted in each section of the ER. Grantees should allow up to 30 days for responses from regulatory agencies should they need to be contacted.

If the project involves additional federal funding, NEPA laws may apply, and additional review may be necessary.

3.0 Environmental Review Components

3.1 Environmental Report Content

The topics that are listed in A. through O. that follow are to be addressed in the *Environmental Report (Template)* document (Attachment FFP-04-01).

A. Coastal Management

Grantees with projects located in one of the 15 counties adjacent to either Lake Superior or Lake Michigan must document compliance with the *Wisconsin Coastal Management Program (WCMP)*. State regulation is focused on public and private uses that are “reasonably likely to affect any land or water use or natural resource of the coastal zone.” Proposed sites that are located on the shorelines of either lake or are located along rivers or streams that drain into these lakes are more likely to require extensive review by the WCMP. The grantee must document that the WCMP has approved such projects. The approvals may be obtained either directly from the WCMP or indirectly through the regional planning commission in whose jurisdiction the project falls. Contact information is provided on the [WCMP website](#).

B. Air Quality

The Wisconsin Department of Natural Resources (DNR) is responsible for regulating air quality under [Wis. Stat. § Ch. 285](#) and [Wis. Admin. Code §§ Ch. 400-499](#). Certain projects may require an air pollution control permit. To determine if a permit is necessary, the WDNR encourages grantees to consult the [Small Business Environmental Assistance Program Air Management Permit Primer website](#).

Additional resources on air permits can be found on the WDNR website:

- [WDNR Air Permit Page](#)
- [WDNR Air Permit Exemption Page](#)

To minimize emissions associated with exhaust from diesel trucks or other diesel-fueled equipment, subcontractors to this grant are encouraged to restrict the diesel engine idling time. Truck and off-road equipment idling restrictions could be applied to minimize the impact of diesel emissions occurring in conjunction with construction and operation of the proposed development. Best management practices suggest limiting diesel engine idling to 5 minutes for all heavy-duty diesel trucks and construction equipment operating on the facility property, except when temperatures fall below 20 degrees Fahrenheit.

If additional assistance is needed, the DNR Air Program contact is Megan Corrado at Megan.Corrado@wisconsin.gov or (608) 405-0327

C. Historical Properties

FFP projects are subject to historical and archeological reviews in accordance with [Section 604 of the Social Security Act](#) (the Statute), as added by [Section 9901 of the American Rescue Plan Act of 2021](#) (ARPA). To avoid harm to both known historic properties and archeological sites, and to undiscovered sites present in a project area, each grantee's environmental review must include:

- Identification of historic properties and archeological sites within or near the proposed project area
- Assessment of the effects of the proposed action on these historic properties and sites.

The Wisconsin Historical Society (WHS) serves as the federal government's State Historic Preservation Officer (SHPO). The WHS has delegated the responsibility for determining whether an FFP-funded property contains sites that are eligible for inclusion in the National Register of Historic Places to the [DEHCR Environmental Desk](#), including both historic buildings and archeological sites. It is the grantee's responsibility to assist DEHCR in collecting information that forms the basis for this

determination. Contact the [DEHCR Environmental Desk](#) to coordinate historical and archaeological clearance.

Buildings

If a grantee proposes to rehabilitate an existing building **50 years of age or older**, it must contact the [DEHCR Environmental Desk](#) to determine whether the building is listed on the WHS's Architecture and History Inventory (AHI). If the building is listed, then the grantee must consult with DEHCR and WHS to mitigate adverse effects on the building's historic features.

Undeveloped Sites Less Than One-half Acre

For projects involving new construction on previously unexcavated sites the WHS requires that grantees determine whether known archeological sites are present in the project area, by consulting with the WHS's Archeological Site Inventory (ASI) database. DEHCR can review the WHS ASI database for you to determine if further consultation with WHS is necessary. If the property is found to contain prehistoric or historic sites, then the grantee must enter into consultations with DEHCR and WHS to mitigate the project's effects on such sites. In a very limited number of cases, an archeological excavation could be required. If no resolution is found at the state level, further consultation with the Advisory Council on Historic Preservation, Washington D.C., may be required.

Note: Grantees that do **not** have electronic access to the Wisconsin Historic Society's AHI (Architecture and History Inventory) and ASI (Archeological Site Inventory) databases should contact the [DEHCR Environmental Desk](#) to request a review of the database on the grantee's behalf. Grantees or consultants who have remote access to the AHI and ASI databases may review it and determine whether *known* historical or archeological resources are present in the proposed project area. Include the results of the database search and a map in the completed ER.

D. Coastal Barrier Resources

If the project is located within a coastal barrier zone designated on a current Federal Emergency Management Agency (FEMA) flood map or U.S. Fish and Wildlife Service (USFWS) coastal barrier resources map

(<https://www.fws.gov/cbra/maps/index.html>), the Coastal Barrier Resources Act (CBRA) **prohibits** federal funding of projects in designated coastal barriers. There are some exceptions. Please contact the [DEHCR Environmental Desk](#) immediately and consult with the nearest Regional Office of USFWS (<http://www.fws.gov/where>) for further guidance.

E. Floodplain Management

Floodplain development is regulated through local units of government (i.e., villages, cities, or counties), with oversight by the DNR and FEMA. Floodplain development in towns is regulated by the county. Local floodplain ordinances must meet the minimum requirements of FEMA's National Flood Insurance Program (NFIP) as found in [44 CFR Parts 59-72](#) and the higher standards of Wisconsin's Floodplain Management Program as found in [Ch. § NR 116, Wisc. Adm. Code](#). The definition of development under the NFIP and [Ch. § NR 116, Wisc. Adm. Code](#) is:

Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

A grantee is responsible for:

- Consulting the FEMA Flood Insurance Rate Map (FIRM) or contacting the floodplain administrator for the local unit of government to determine if the project is located in a 100-year or more frequent floodplain, i.e., Special Flood Hazard Area (SFHA). The finding must be documented in the ER.
- Ensuring any activity meeting the above definition of development meets the requirements laid out in the local floodplain ordinance and is permitted by the grantee or the appropriate permitting authority. Projects involving the rehabilitation/modification of an existing structure in the SFHA must take the substantial improvement requirements of the NFIP, [Ch. § NR 116, Wisc. Adm. Code](#) and the local floodplain ordinance into consideration. In general, if the total cost (including labor and materials) of any modification or rehabilitation of an existing building in the SFHA equals or exceeds 50 percent of the building's equalized assessed value then the building must meet the higher floodplain standards required of new construction. The determination of substantial improvement must be made by the local floodplain administrator.
- Flood Insurance is also required if the building being modified is located in the SFHA identified on a current FIRM.

- Construction funded through this program must also meet the requirements of Executive Order 11988. These requirements are laid out in the [8-Step Decision-Making Process for Executive Order 11988](#).

In all cases, if a project is located within the SFHA on a FIRM, contact both the local floodplain administrator and the [DEHCR Environmental Desk](#). The contact must be documented.

Floodplain maps are available on the [FEMA Flood Map Service](#) website.

Additional documentation may be found on the [Wisconsin DNR Surface Water Data Viewer](#) or on many county GIS websites.

F. Wetlands Protection

Wetland regulations include federal, state and local laws, and these can affect development in and adjacent to wetlands. In general, projects are in compliance if they are not located in designated wetlands, or do not require filling or otherwise disturbing them.

Grantees must determine whether projects proposing new construction or ground-disturbance will affect wetlands. For assistance, contact the local zoning administrator or the DNR regional office, the area regional planning commission which has jurisdiction in the county where the project will take place, or the U.S. Army Corps of Engineers (USACE). The U.S. Environmental Protection Agency (EPA) has responsibility for permitting in some circumstances. Documentation for wetlands compliance can be obtained from either the [U. S. Fish and Wildlife Service National Wetlands Inventory](#) or the [Wisconsin DNR Surface Water Data Viewer](#).

G. Clean Water Act

A separate type of permit is required to dispose of dredge or fill material in the Nation's waters, including wetlands. Authorized by Section 404 of the Act, this permit program is administered by the USACE, subject to and using environmental guidance from the EPA. Some types of activities are exempt from permit requirements, including certain farming, ranching, and forestry practices that do not alter the use or character of the land; some construction and maintenance; and activities already regulated by States under other provisions of the Act.

A permit may be required from the USACE for the disposal of dredge or fill material in the nation's waters, including wetlands. Contact the Regulatory Program of the

nearest District Office of the USACE (<http://www.usace.army.mil/Locations.aspx>) for further guidance on Section 404 permits.

A Water Quality Certification (Section 401) is required for activities that may result in a discharge into navigable waters, including wetlands, watercourses, and natural or man-made ponds. A National Pollution Discharge Elimination System (NPDES) permit may also be required for such discharges. Contact your state water quality agency for additional guidance. Additional information concerning Section 401 or NPDES requirements can be found at: <https://www.epa.gov/cwa-401/overview-cwa-section-401-certification> and <https://www.epa.gov/npdes/npdes-permit-basics>.

H. Endangered Species

The Endangered Species Act of 1973, as amended, (16 USC 1531-1536) provides for the cooperation of agencies (including FFP grantees) to ensure the conservation of endangered species and their habitats. Each grantee must complete the Federal USFWS Section 7 process as part of its environmental review for funded projects. Section 7 consultation is provided on the [U.S. Fish and Wildlife Service Information and Planning and Consultation \(IPaC\) website](#). Login is required to complete the assessment and generate an impact letter.

The DNR Endangered Resources Review Program screens proposed projects for potential impacts to state endangered and threatened species as well as federal. The [WDNR Natural Heritage Inventory \(NHI\) Public Portal](#) can be used to complete a preliminary assessment of a project for impacts to endangered resources. Additional information is provided on the [WDNR Endangered Resources Review Program website](#).

I. Invasive Species

Agencies are required to prevent the introduction of invasive species and provide for their control. For more information on invasive species, see <https://www.invasivespeciesinfo.gov/>.

If the project is likely to introduce invasive species per the [invasivespeciesinfo.gov](https://www.invasivespeciesinfo.gov) website information, provide documentation demonstrating that the benefits of the activity clearly outweigh the potential harm caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

J. Wild and Scenic Rivers/Safe Rivers and Harbors Act

If a proposed project site is located along the St. Croix or Wolf Rivers, or along components of the Wild and Scenic River system, a grantee must contact the National Park Service (NPS). NPS will review the project for potential impacts on the Wild and Scenic River System, the National Rivers Inventory, the National Park System, and similar resources or properties. A list of Wisconsin's wild and scenic rivers components can be found on the [National Wild and Scenic Rivers System website](#).

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the construction of any structure in or over any navigable water of the United States. The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking. A permit may be required from the USACE if the proposed activity involves any work in, over, or under navigable waters of the United States. Contact the USACE at <http://www.usace.army.mil/Locations.aspx> for further guidance on Section 10 permits. The USACE can authorize activities by a standard individual permit, letter-of-permission, nationwide permit, or regional permit. The USACE will make the determination on what type of permit is needed.

K. Safe Drinking Water

The Safe Drinking Water Act (SDWA) authorizes the EPA to set national health-based standards for drinking water to protect against both naturally occurring and man-made contaminants that may be found in drinking water. EPA, states, and water systems then work together to make sure that these standards are met. A permit may be required if the proposed activity will involve underground injection which may impact drinking water sources. Provide verification that the project's pipes, solder and flux is/will be lead free.

L. Farmlands Protection

The Farmland Protection Policy Act (FPPA) of 1981 and its implementing regulations, 7 CFR 658, regulate the conversion of farmland to nonagricultural uses. The first review step is to determine whether the land is already in urban use or has been designated as such by the local unit of government. Land is defined as "in urban use" if any one of the following three statements is true:

- Building density exceeds 30 structures per 40 acres
- The land is zoned for residential, commercial, or industrial use

- A comprehensive land use plan has identified this property for future residential, commercial, or industrial use, and was adopted within 10 years prior to the proposed project.

If the land **is in** urban use (as defined) the FPPA does not apply.

If the land **is not** in urban use, determine if any part is prime or unique farmland of statewide or local importance, by contacting the Natural Resources Conservation Service (NRCS) (formerly the Soil Conservation Service) office for the county in which the project is located. If the farmland is prime, unique, or of statewide or local importance, a Farmland Conversion Impact Rating Form AD-1006 must be completed and returned to the NRCS. A fillable copy of the form can be found at: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa>.

The NRCS will return the form within 45 days, after which the grantee must decide whether to continue, modify, or drop the project.

If the land is in current farm use, also see *Wis. Stat. § 32.035* (dealing with eminent domain) regarding the preparation of an agricultural impact statement and then contact the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP).

M. Toxic Chemicals and Radioactive Materials

Grantees must determine whether leaking underground storage tanks, hazardous materials storage tanks, hazardous waste facilities, toxic chemicals, radioactive materials, or other potential public health and safety problems either directly or indirectly affect proposed project sites and activities. Hazards can include exposure to hazardous chemicals via the air, soil, and water, as well as risks to life and property through proximity to railroads and industrial activities. Airborne hazards include releases of chemicals from above-ground chemical storage facilities. Waterborne hazards include contamination of groundwater by leaking underground storage tanks into well fields.

Soil contamination by chemical spills is another means by which humans are exposed to man-made hazards and are listed at the DNR website. Sites located within one-quarter mile of industries using or storing hazardous chemicals or within one-quarter mile of active rail lines, are generally not suitable for housing, but may be suitable for other federally funded projects.

- The EPA maintains a contamination site mapping database available on their [Cleanups in My Community website](#), which enables users to find and map contaminated sites.
- A WDNR has a similar database on their [Brownfields – Wisconsin Remediation and Redevelopment Database \(WRRD\) website](#).

- DATCP maintains a [Storage Tank Database](#) for aboveground and underground storage tanks.

The WDNR has implemented an asbestos program to reduce the public's possible asbestos exposure. These regulations require facility owners and/or operators involved in demolition and renovation activities to inspect the affected facility before attempting to remove any asbestos, file proper notification, and handle and dispose of asbestos properly. If your project is affected by asbestos, please refer to the [WNR Asbestos website](#) for more information about the steps.

The proximity of petroleum or chemical storage tanks to a proposed project site may be a concern. Some older neighborhoods in communities contain industries which use or store flammable or explosive products. While fire safety codes generally assure safe operation and minimize these risks, at least for a short term, such sites may represent hazards to workers within the project facilities. Depending on the nature of the project, grantees should make every effort to avoid sites that place people at risk. In general, sites within one-quarter mile of such industries, particularly when there are no intervening structures, may be at risk. DATCP maintains a searchable list of above-ground and underground storage tanks, which can be accessed on the [DATCP Petroleum/Hazardous Liquids Storage Tanks Overview website](#).

If needed, consult with the [DEHCR Environmental Desk](#) for assistance in evaluating potential hazards.

N. Environmental Justice

Per this funding's Executive Order, "Each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Thus, as appropriate, analysis of environmental justice concerns should be integrated during the review process. If the proposed project activities will have disproportionately high and adverse human health or environmental effects on minority or low-income populations, consult the Council on Environmental Quality website for further guidance on Environmental Justice:

- <https://ceq.doe.gov/nepa-practice/justice.html>,
- <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>, and https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

O. Magnuson – Stevens Fishery Conservation and Management Act (MSA), Marine Mammal Protection Act (MMPA), and Coral Reef Protection

These regulations govern fish, marine mammal, and coral habitat not found in Wisconsin. While projects cannot impact these species, it must be confirmed on the ER that this is the case. See completed sections of the for environmental review stock answers to these questions.

3.2 Environmental Report Submission

Once completed, the grantee is to submit the *Environmental Report* to the DEHCR Environmental Desk at DOAEnvironmentalDesk@wisconsin.gov along with all supporting documentation. After the *Environmental Report* is submitted, the DEHCR Environmental Desk will review the documentation and upon verifying it is complete and correct, will issue an environmental clearance letter. Contact the [DEHCR Environmental Desk](#) with any questions.

4.0 Chapter Attachments List

The attachment for Chapter 4: Environmental Review of the *FFP Implementation Handbook* is listed below. This template is available in a ‘fillable’ format on the [FFP Implementation Resources website](#) under the “Chapter Attachments/Fillable Forms” section.

ATTACHMENT FFP-04-01 FFP PROJECT ENVIRONMENTAL REPORT (TEMPLATE)