

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board approve the statement of scope for Board Order CF-12-13, proposed rules affecting Chapter NR 166 related to the implementation of the Safe Drinking Water Loan Program. This program provides funding to municipalities for eligible drinking water infrastructure improvement projects.

FOR: June 2013 Board meeting

PRESENTER'S NAME AND TITLE: Robin Schmidt, Chief, Environmental Loans Section

SUMMARY:

Chapter NR 166 addresses Department implementation of the federal Safe Drinking Water Loan Program, which provides funding to municipalities for eligible projects and activities. Funding can be in the form of a low interest loan or in the form of principal forgiveness, which is similar to grant funding (i.e., no repayment occurs). Chapter NR 166 outlines implementation of the program, including project and cost eligibility, process flow, financial assistance and procurement requirements, interest rates, the disbursement process, and the priority scoring and ranking system.

This rule revision will incorporate changes that have occurred to the Federal Safe Drinking Water Loan Program, clarify eligibility issues and better streamline processes for obtaining financial assistance for water infrastructure projects. For example, revisions will likely update information for projects with multiple funding sources (i.e. "bundling") and making adjustments to population and income data when the US Census data is not available or has significant margin of error.

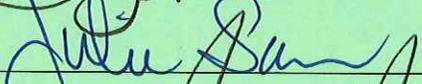
We plan to work with an internal and an external advisory group to identify areas where clarification is needed and help develop streamlining opportunities. The most substantive issue anticipated when revising ch. NR 166 is whether it is more appropriate to put the scoring system into the annual Intended Use Plan, which is a binding document with US EPA and subject to public review.

Chapter NR 166 was last revised in 2010, when program changes at the federal level required accompanying rule revisions. NRB last took action during that rule revision process. We anticipate one public hearing that will be held via LiveMeeting with statewide participation encouraged. This revision is a Type III action under ch. NR 150, Wis. Admin. Code; no environmental assessment is required. Revisions to ch. NR 166 are anticipated to have minimal impact on small businesses. Streamlining processes will only make the program more efficient for municipalities, their consultants, as well as the DNR.

RECOMMENDATION: That the Board approve the statement of scope for Board Order 12-13.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input type="checkbox"/> memo to the Board (for scope statement approval) | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Statement of scope | <input checked="" type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mary Rose Teves, Bureau Director		May 15, 2013
Julie Sauer, Administrator		5/15/13
Cathy Stepp, Secretary		5/30/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.:	CF-12-13
Relating to:	Safe Drinking Water Loan Program
Rule Type:	Permanent

1. Finding/nature of emergency (Emergency Rule only): Not applicable

2. Detailed description of the objective of the proposed rule:

Chapter NR 166 is the administrative rule for the Safe Drinking Water Loan Program (SDWLP), which provides loans to local units of government to finance drinking water infrastructure projects.

The main objectives of ch. NR 166 revisions are:

- To update areas of the code that are no longer in line with federal regulations or state statutes, including but not limited to the following:
 - Procurement including solicitation of disadvantaged businesses
 - Types of assistance available
 - Project and cost eligibility
- To provide needed efficiency, accuracy or clarity changes, including but not limited to the following:
 - Engineering report
 - Loan application
 - Financial assistance requirements
 - Loan interest rates including median household income information
 - Amendments to a financial assistance agreement, and
 - Flexibility with respect to the types of financial assistance available, annual funding policy, and project and cost eligibility.

Additional improvements to ch. NR 166 may be identified by the Advisory Committee that will be convened to assist in the rule revision process.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

A. Existing policies relevant to the rule:

The current ch. NR 166 includes many policies that will not be changed. Many of these policies are based in federal requirements that have evolved over the years. Some existing policies are specified in the related state statutes. The current ch. NR 166 is relatively prescriptive in nature. We expect that discussions with the Advisory Committee will yield recommendations for retaining many existing policies, eliminating some archaic policies, and including new policies so that the SDWLP is in compliance with Federal requirements.

Revisions to ch. NR 166 must maintain compliance with the following federal requirements:

- 1) Use at least 15% of the funds available each year to provide loan assistance to small systems that serve fewer than 10,000 persons.
- 2) Finance only infrastructure projects of community or nonprofit non-community water systems needed to achieve or maintain compliance with Safe Drinking Water Act requirements or to significantly further the health protection objectives of the Act.
- 3) Comply with all federal cross-cutting authorities and require loan recipients to comply with crosscutters. Crosscutting authorities include laws and Executive Orders such as the Davis-Bacon Act, Archaeological and Historic Preservation Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act, Wild and Scenic Rivers Act,

the Debarment and Suspension Executive Order 12549, Uniform Relocation and Real Property Acquisition Policies Act, and the Equal Employment Opportunity Executive Order 11246.

- 4) Prioritize projects each year giving top priority to projects that: (a) address the most serious risks to human health; (b) are necessary to ensure compliance with the requirements of the Safe Drinking Water Act; and (c) assist systems most in need, on a per household basis.
- 5) Provide financing for land acquisition only if the land is integral to the project and is purchased from a willing seller.
- 6) Provide financing for a system only if the owner has (or will have with appropriate changes in operation) the technical, managerial, and financial capability to keep the system in compliance with the Safe Drinking Water Act.
- 7) Deny assistance for any system that is in significant noncompliance with any national drinking water regulation unless the state determines the project will enable the system to return to and be able to maintain compliance.
- 8) Determine the primary purpose of each project, and deny assistance for any project for which the primary purpose is fire protection or expansion for future growth.
- 9) Conduct environmental reviews of the sites on which projects will take place.

B. New Policies Proposed to be Included in the Revised Rule:

Through discussions with our partners, customers, and the Advisory Committee, new policies will be identified for inclusion into ch. NR 166, including some federal requirements that are specified as part of annual federal appropriation bills.

For example, it may be recommended that SDWLP policy changes are more efficiently modified if they are included in the annual *Intended Use Plan (IUP)*. The IUP undergoes public review and comment prior to being submitted to the DNR Secretary and EPA for approval. Examples of policies that could be included in the IUP instead of ch. NR 166 include project scoring system priorities, "green project" reserve determinations, and additional subsidization requirements.

C. Analysis of Policy Alternatives:

- 1) Do Nothing – leave ch. NR 166 as it is
 - a. Pros: This alternative would mean no rule revisions are necessary and staff resources will not be diverted from program implementation.
 - b. Cons: The absence of rule revisions will mean that ch. NR 166 is still out of compliance with Federal fund requirements. Our inability to revise the rule means we must continue issuing variances for portions of the program that are inconsistent with new federal requirements.
- 2) Incorporate policy changes into ch. NR 166
 - a. Pros: Many areas of ch. NR 166 can be improved or streamlined with fairly minor changes. Some of these changes are the result of federal requirements. In addition, incorporating changes that are discussed with DNR partner bureaus and external partners will help streamline the program, build better efficiencies for all, ensure consistency with federal requirements, and provide assurances to EPA that our program is meeting those requirements.
 - b. Cons: Rule changes in general require a significant amount of staff resources, which could be used for other program implementation activities.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Sections 281.61(12)(a) and (b), Wis. Stats., contain the statutory authority for the Department of Natural Resources to promulgate rules for administration of the SDWLP and read as follows:

- (12) DUTIES OF THE DEPARTMENT. The department shall do all of the following:
- (a) Promulgate rules establishing eligibility criteria for applicants and projects under this section.
 - (b) Promulgate rules that are necessary for the execution of its responsibilities under the safe drinking water loan program.

The Environmental Improvement Fund, which includes the SDWLP, is administered cooperatively by the Wisconsin DNR and Department of Administration (DOA). Revisions to ch. NR 166 must also be coordinated with s. 281.59, Wis. Stats., in order to avoid conflict with the statutes.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The following estimates of staff time needed to complete the rule revision process include:

Bureau of Community Financial Assistance:	240 hours
Bureau of Drinking Water & Groundwater:	120 hours
Legal Services:	40 hours
Management & Budget and Science Services:	<u>4 hours</u>
Total estimated time for this rule revision:	404 hours

6. List with description of all entities that may be affected by the proposed rule:

- Wisconsin local governmental units (cities, towns, villages, sanitary districts, lake rehab & protection districts, water authorities, counties) – SDWLP applicants
- Bond counsels – Hired by applicants to prepare municipal bond documents for SDWLP loan closings
- Consulting engineers – Hired by applicants to plan, design, conduct bidding process, oversee construction and coordinate various players—including financial assistance agencies—in the projects
- Financial advisors – Hired by applicants to advise them on best financial options for interim financing and permanent project financing
- Municipal attorneys – Hired by applicants to prepare statements required by SDWLP for proof of land ownership and to provide legal advice related to other loan related documents and issues
- Construction contractors & subcontractors – Awarded bids by applicants to construct necessary infrastructure projects; must follow certain program requirements such as paying Davis-Bacon wage rates, and soliciting and reporting utilization of disadvantaged business enterprises
- DNR Bureau of Drinking Water & Groundwater – Provides technical expertise on drinking water issues, cooperates with SDWLP staff in setting overall program priorities, determines annual project priority scores, and reviews project plans and specifications
- DNR Bureau of Endangered Resources – Conducts environmental reviews for SDWLP projects and shares findings with SDWLP staff
- DNR Bureau of Facilities & Lands – Conducts review of project areas to determine impacts to historical/archaeological sites and shares findings with SDWLP staff
- DNR Bureau of Legal Services – Provides legal counsel on proposed rule revisions and for SDWLP interpretations or actions related to unclear issues
- DOA Capital Finance Office – Administers the SDWLP in cooperation with DNR
- DOA Community Development Block Grant (CDBG) Program - Works cooperatively with the SDWLP to provide special funding packages for local governmental units that need assistance from more than one funding agency on a project
- Wisconsin Historical Society (SHPO) – Provides expertise in historical/archaeological issues related to project sites
- Wisconsin DOT Regional Offices and Division of Transportation System Development – Provide bidding and contract documentation to the SDWLP for projects let by DOT

- Wisconsin Public Service Commission – Sets rates for applicant municipalities' water systems; works cooperatively with the SDWLP to assure applicants will be able to collect enough user fees to make scheduled payments on the SDWLP loan
- U.S. Bureau of the Census – Provides income and other data needed for decision-making related to project priority scores and amount of subsidy municipalities receive
- USDA Rural Development Wisconsin – Works cooperatively with the SDWLP to provide special funding packages for local governmental units that need assistance from more than one funding agency on a project
- Wisconsin Rural Water Association – Provides training and assistance for water operators and municipal officials; carries out contract work related to the Safe Drinking Water Act goals; works cooperatively with the SDWLP and other funding agencies to help its members finance their water infrastructure projects

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

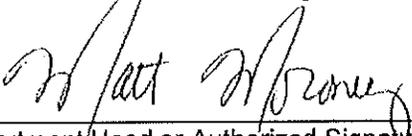
Drinking water state revolving loan programs in each state must comply with the Safe Drinking Water Act and Amendments, federal regulations under *40 CFR Parts 9 and 35*, EPA Guidelines, and grant conditions specific to each annual capitalization grant the state receives. Our current statutes already include the major requirements for drinking water state revolving funds, as identified in Section 3.A. above.

Additional requirements have been imposed by the federal government through the federal appropriation process in recent years. For example, one of the federal regulations that impacts small businesses performing construction work is the requirement that Davis-Bacon wages must be paid to workers. Another example is the requirement to award additional subsidization.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule would likely have a positive impact on small businesses. It will help streamline processes and enhance the efficiency of funding municipal infrastructure projects. Construction of infrastructure projects has a direct link to engineering and construction jobs and helps local and state economies. The proposed rule would also remove some uncertainty regarding requirements that engineering and construction companies involved in SDWLP projects must follow, as DNR would be able to relay more quickly to businesses what Congress requires each year.

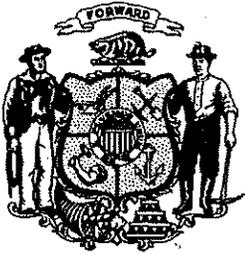
Contact Person: Jeanne Cargill, 608-267-7587



Department/Head or Authorized Signature

3/21/13

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

April 3, 2013

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Scope Statement for CF-12-13 modifying Chapter NR 166 relating to the Safe Drinking Water Loan Program

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on March 21, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to Chapter NR 166. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor