

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

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** ch. NR 162, Wis. Admin. Code, relating to the Clean Water Fund Program and affecting small business.

CF-13-13

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted, Statutory Authority and Explanation: Section 281.58(2), Wis. Stats., authorizes the department to promulgate rules establishing eligibility criteria for applicants and projects and that are necessary for the execution of its responsibilities under the Clean Water Fund Program.

2. Related Statutes or Rules: Concurrent with this effort, the department is also repealing and recreating ch. NR 166 relating to the Safe Drinking Water Loan Program. Both the Safe Drinking Water Loan Program and the Clean Water Fund Program are part of the Environmental Improvement Fund.

3. Plain Language Analysis: Revisions to ch. NR 162, Wis. Admin. Code, relating to the Clean Water Fund Program clarify eligibility criteria, streamline processes, and update implementation issues since the rule was last revised. No new significant changes to the program result from the rule revisions. The main topics for revision include:

- Eligible projects/activities - updates language to incorporate current practices
- Dates for ITA/PERF submittals – changed to Oct 31st and allows for on-line submittals
- PERF scoring system – includes minor changes, changed to be self-scoring linked with WPDES permit limits, requires on-line submittals annually
- Interim financing costs - increased from \$7500 to up to \$15,000
- Refinancing - clarifies that a municipality cannot already have “long-term affordable debt” outstanding for its completed or substantially completed project”; any project that has been substantially completed for more than 3 years is not eligible for financing.
- Disadvantaged Business Enterprise – updated requirements to refer to federal requirements
- Median Household Income – clarifies the source of this data as the American Community Survey (as part of the US Census Bureau) and provides options for sanitary districts.

4. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: All state programs must comply with the federal requirements for the program, as outlined in 33 USC 1251 to 1376 and 33 USC 1381 to 1387. This rule complies with the requirements of the Federal Clean Water Act.

5. Comparison with Similar Rules in Adjacent States: Each state implements the federal Clean Water Act consistently with the associated state statutes and federal requirements. Each state loan program has unique features, but all of the programs are designed to meet federal Clean Water Act requirements. Each state has a unique priority scoring system based on state priorities but consistent with federal priorities. The EPA reviews program implementation to ensure consistency with the federal requirements.

6. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: The implementation of the Clean Water Fund Program does not include regulatory activities. Refinements to the program were established with both internal and external advisory groups with the intent of streamlining processes and clarifying criteria for program

implementation.

7. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: Rule revisions are expected to have minimal impact on small businesses, in that it streamlines existing processes and clarifies implementation criteria. Rule revisions do not contain any new requirements for small businesses.

8. Effect on Small Business (initial regulatory flexibility analysis): Minimal.

9. Agency Contact Person: Robin Schmidt, Bureau of Community Financial Assistance, 101 S. Webster Street., PO Box 7921, Madison WI 53707; robin.schmidt@wisconsin.gov; 608-266-3915.

10. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Robin Schmidt

Community Financial Assistance

Department of Natural Resources

101 S. Webster Street

PO Box 7921

Madison WI 53707

608-266-3915

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 162 is repealed.

SECTION 2. NR162 is recreated to read:

Subchapter I — General

NR 162.001 Purpose. The purposes of this chapter are all of the following:

(1) Establish rules under ss. 281.58 and 281.59, Stats., for the implementation and administration of a financial assistance program for the engineering and construction of treatment works and BMPs.

(2) Establish a priority system for the distribution of clean water fund program financial assistance as provided in s. 281.58, Stats., and the mechanisms and methodology to be used to modify the priority system.

(3) Establish rules under s. 281.58 (13), Stats., for the implementation and administration of hardship financial assistance.

(4) Establish rules under s. 281.58 (6) (b) 8., Stats., for the implementation and administration of interest rate subsidies for small loans issued by the board of commissioners of public lands for the engineering and construction of treatment works projects with total estimated costs of \$2,000,000 or less.

Note: All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

The forms are also available on the Department of Natural Resources website.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.002 Applicability. This chapter applies to all applicants for and recipients of financial assistance for the engineering and construction of treatment works and BMPs made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.58 and 281.59, Stats.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.003 Definitions. In this chapter:

(1) "Amendment" means a formal, written change to an existing financial assistance agreement, executed by all parties to the original agreement.

(1g) "American Community Survey" or "ACS" means the nationwide survey conducted by the U.S. bureau of the census to collect demographic, social, housing, and economic data and produce 1-year, 3-year and 5-year estimates based on population thresholds.

(1r) "Applicant" means any local governmental unit that applies for financial assistance under ss. 281.58 and 281.59, Stats.

(2) "Approval" means the written approval of the department.

(2g) "Best management practices" or "BMPs" has the meaning given in s. NR 151.002(4).

(2r) "Block group" means a subdivision of a census tract made up of a cluster of blocks having the same first digit of their four-digit identifying numbers within the tract.

(3) "Board of commissioners of public lands" means the organization comprised of the secretary of state, the state treasurer and the attorney general that operates under the authority of ch. 24, Stats.

(4) "Breach of contract" means the failure of the municipality to comply with any of the following:

- (a) The terms and conditions of the financial assistance agreement or interest rate subsidy agreement.
- (b) The terms and conditions of the municipal resolution authorizing the issuance and sale of bonds or notes to the clean water fund program.

(4m) "Capital improvement" means construction resulting in improvements to real property or depreciable property, or both, or adding to the value or useful life of these assets. Capital improvements may be structural improvements, including constructing new treatment works or BMPs or modifying existing buildings or facilities, or they may enhance usefulness or productivity, including replacing an existing pump with a more efficient new pump. Capital improvements are distinguished from repairs and from operation and maintenance activities which are more minor, routine, or cyclical in nature.

Note: The following are examples of capital improvements:

- constructing new clarifiers, aeration tanks, or other major components of a treatment works;
- upgrading existing equipment or installing new, more efficient process equipment, such as equipment for dewatering, aeration, scraping, skimming, or disinfection;
- constructing new process, administration, and storage buildings at the wastewater treatment plant;
- adding to or constructing major renovations of existing facilities;
- replacing aged or undersized sanitary sewer pipes;
- replacing a roof on a treatment plant building;
- constructing a new lift station or upgrading an existing lift station;
- installing security, a supervisory control and data acquisition system, or monitoring equipment as part of a scored project;

· constructing a new sludge storage facility.

(5) "Census block" means the smallest entity for which the U.S. census bureau collects and tabulates population information in the decennial census and income information in the American community survey.

(6) "Census designated place" means a statistical entity defined for each decennial census according to U.S. census bureau guidelines for the purpose of presenting census data and American community survey data for a concentration of population, housing and commercial structures that is locally identifiable by name, but is not within an incorporated place.

(6m) "Census tract" means a small, relatively permanent statistical subdivision of a county used in the decennial census and the American community survey, delineated for the purpose of presenting data, typically following visible features or governmental boundaries or both, including approximately 4,000 inhabitants, and designed to be a relatively homogeneous unit with respect to population characteristics, economic status, and living conditions.

(7) "Change order" means an action that specifies and justifies a change to a construction contract that alters the time of completion, or the total price, or both.

(8) "Clean water fund program" or "CWFP" means the program established under ss. 25.43, 281.58 and 281.59, Stats., for the purpose of providing financial assistance to municipalities for the planning, design and construction of treatment works and BMPs.

(9) "Commercial facility" means any facility that is used for retail stores, restaurants, office buildings, laundries and other private business and service establishments or similar enterprises.

(10) "Compliance maintenance" means the program established and regulated under ch. NR 208, intended to prevent a permittee under ch. 283, Stats., from exceeding an effluent limitation contained in a permit issued under ch. 283, Stats.

(11) "Construction" means a set of actions taken to make a capital improvement, including any of the following actions:

(a) Building, erecting, extending, or assembling a treatment works or BMP or a new major asset for an existing treatment works or BMP.

(am) Preparing the site or sites of a scored project for work activities. Site preparation includes grading, staking, and digging, and demolition or abandonment of existing structures.

(b) Purchasing a package wastewater treatment system or capacity in an existing treatment works.

(c) Altering, modifying, improving, upgrading, rehabilitating, or adding to existing treatment works facilities.

(d) Performing major repairs or replacing major components of existing facilities.

(e) Installing new mechanical, electrical, electronic, or piping equipment or facilities.

(f) Remediation of illicit discharges to a portion of a municipal storm water conveyance system draining to a scored urban runoff project.

(11m) "Custom tabulation" means a special tabulation of income data from the American community survey microdata files that is performed by the U.S. bureau of the census, is not part of the standard American community survey data tabulations, and results in generation of a median household income for an area designated by the applicant as the boundaries of a town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewerage district, or of the area served by the

treatment works if the treatment works serves only a portion of the place or minor civil division in which it is located.

(12) "Debt" means a financial liability that is subject to repayment and incurred to fund a scored project, including liabilities in the form of bond anticipation notes, general obligation bonds, revenue bonds, general obligation promissory notes, certificates of indebtedness, and special assessment bonds.

(13) "Department" means the department of natural resources.

(14) "Design flow" means the average annual flow or average daily flow specified in an approved facilities plan or approved plans and specifications, the flow specified in a WPDES permit or the flow required to meet performance standards.

(15) "Dilution ratio" means the quotient obtained by dividing the 7-day Q10, which is the average 7-day flow that occurs once in 10 years, of the surface waters receiving the wastewater discharge, in cubic feet per second (cfs), by the design flow of the wastewater treatment works, in million gallons per day (mgd).
Dilution ratio = 7-day Q10 of receiving water in cfs design flow in mgd x 1.55 cfs per mgd

(15g) "Disadvantaged business enterprise" or "DBE" means a business entity certified as disadvantaged under the U.S. department of transportation unified certification program or other program approved by the U.S. environmental protection agency to certify disadvantaged businesses.

(15r) "DOA" means the department of administration.

(16) "Effluent limitation" has the meaning given in s. 283.01(6), Stats.

Note: Under s. 283.01(6), Stats., "effluent limitation" means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of this state. Flow rates and flow volumes are considered to be physical constituents restricted by WPDES permits.

(16g) "Engineering" includes the following:

- (a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works or BMP, including preparing a facilities plan.
- (b) Performing engineering, architectural, legal, fiscal, or economic investigations or studies.
- (c) Identifying illicit discharges to a portion of a municipal storm water conveyance system draining to a scored urban runoff project or to a wastewater treatment works.
- (d) Preparing surveys, designs, plans, bidding documentation, working drawings, or specifications.
- (e) Inspecting or supervising any of the activities under pars. (a) to (d) or under sub.(11).

(16r) "Equipment replacement fund" means a separate fund established by the municipality to which appropriate deposits shall be made, or in which an appropriate balance shall be maintained, or both, for the purpose of making expenditures for major repair or planned replacement of equipment necessary for the operation of the treatment works, or for unexpected unbudgeted major costs incurred for operation and maintenance of the treatment works.

(17) "Financial assistance" includes one or more of the following actions taken by the department and DOA under ss. 281.58 and 281.59, Stats.:

- (a) providing a loan, principal forgiveness, interest rate subsidies, a grant, a guarantee, or credit enhancement to a municipality;
- (b) refinancing a municipality's interim debt obtained for the scored project; or
- (c) purchasing insurance for a municipality.

(18) "Financial assistance agreement" means a written agreement between a municipality, the department, and DOA that contains the terms and conditions of the financial assistance provided to the municipality under subch. II or III.

(18m) "Financial assistance agreement amendment" means a formal, written change to an existing financial assistance agreement, executed by all parties to the original agreement.

(19) "Force account work" means engineering, construction, or other project-specific activities performed by municipal employees, or using equipment owned by the municipality, or both.

(20) "Governmental facility" means any public facility, including a facility used for legislative, judicial, administrative and regulatory activities of federal, state and local governments.

(21) "Groundwater" has the meaning given in s. 160.01 (4), Stats.

(22) "Hardship financial assistance" means financial assistance authorized under s. 281.58 (13), Stats.

(23) "Hardship financial assistance funding list" means a list established each fiscal year that ranks in environmental priority order, based on the priority list established under s. 281.58 (8e), Stats., scored projects eligible for hardship financial assistance under s. 281.58 (13) (b), Stats.

(24) "Hardship fundable range" means those projects on the hardship financial assistance funding list that are projected to utilize all available hardship present value subsidy for each fiscal year.

(25) "Hardship present value subsidy" or "hardship PV" means the present value subsidy provided to municipalities to reduce loan interest rates below those interest rates established in s. 281.58(12)(a), Stats. including 0% interest loans, and to provide grants.

(26) "Hardship subsidy" means the amount of subsidy provided by the CWFP under s. 281.58 (13), Stats., to reduce the interest rate of a CWFP loan to a rate below any interest rate specified in s. 281.58(12)(a), Stats., and to provide grants.

(27) "Illicit discharge" has the meaning given in s. NR 216.002 (11).

(28) "Industrial facility" means any nongovernmental or nonresidential facility that is used for activities such as agriculture, forestry, fishing, mining, manufacturing, transportation, communications or providing services including electric, gas and sanitary services.

(29) "Industrial user" has the meaning given in s. 281.58 (1)(c), Stats.

(30) "Infiltration" has the meaning given in s. NR 110.03 (16).

(31) "Inflow" has the meaning given in s. NR 110.03 (17).

(32) "Institutional facility" means any facility that is used for social, charitable, religious and educational activities such as schools, churches, hospitals, nursing homes, penal institutions and similar uses.

(33) "Interest rate subsidy" means the subsidy, expressed in percentage points, provided by the CWFP under ss. 281.58 and 281.59, Stats., to reduce the interest cost of loans provided to municipalities by the board of commissioners of public lands under ch. 24, Stats.

(34) "Interest rate subsidy agreement" means a written agreement between a municipality, the department and the department of administration that contains the terms and conditions of financial assistance provided to the municipality under subch. IV.

(35) "Interim financing" means a debt of a municipality incurred to temporarily finance a scored project until permanent financing is obtained from the CWFP.

(36) "Interim financing costs" means the net interest, fees, and charges associated with issuing interim financing, including underwriter discounts, attorney fees, financial advisor fees, printing costs, bond rating charges, and trustees fees.

(37) "Lateral" means a privately-owned sewer service line that connects a residence, commercial establishment, institutional facility or industrial user to a municipal sewage collection system or individual system.

(38) "Maintenance" means preservation of the functional integrity and efficiency of a treatment works or BMP through repair of unscheduled and scheduled deficiencies in components of the treatment works or BMP, such as its equipment and structures, including any of the following types of maintenance:

(a) preventive maintenance, typically conducted with a frequency of 1 year or less, including scheduled service, repair, inspection, adjustment, or replacement of parts, to keep equipment or facilities in satisfactory operating condition, to avoid frequent breakdowns and premature replacements, and to achieve the expected life of constructed assets and installed building equipment;

(b) corrective maintenance, including unscheduled maintenance repairs to correct deficiencies during the year in which they occur;

(c) mobile equipment maintenance, including all corrective, preventive, emergency, or replacement maintenance work done on mobile equipment assets;

(d) recurring maintenance, including preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 1 year, but less than 10 years;

(e) component renewal which is preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 10 years, unless performed as part of a larger scored project;

(f) emergency maintenance including unscheduled activities and repairs, typically initiated within a very short amount of time from when a need is identified, to correct an emergency need to prevent injury, loss of property, or human health impacts, or to quickly return an asset to service;

(g) minor equipment replacement that substitutes or exchanges one existing asset, asset component, or item of installed equipment for another having the same specifications and the same capacity to perform the same function, except when performed within the scope of a larger capital improvement; or

(h) demolition occurring outside of the construction site of a scored project or that is not necessary for construction of a scored project.

(39) "Market interest rate" has the meaning given in s. 281.59(1) (b), Stats.

Note: Under s. 281.59(1)(b), Stats., "market interest rate" means the effective interest rate on a fixed-rate revenue obligation issued by the state to fund a loan made under this section or, for a variable rate obligation, the effective interest rate that the department of administration determines would have been paid if the variable rate obligation had been sold at a fixed rate.

(40) "Median household income" has the meaning given in s. 281.58 (1) (cm), Stats.

Note: Under s. 281.58(1)(m), Stats., "median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(40m) "Minor civil division" means the primary governmental divisions of a county, including towns, as designated by the U.S. bureau of the census to collect and publish data.

(41) "Minority business enterprise" or "MBE" means a DBE that is owned or controlled on a daily basis by one or more minority group members.

(44) "Municipal storm water conveyance system" means a system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, that is all of the following:

(a) owned or operated by a municipality;

(b) designed or used for collecting or conveying storm water;

(c) not a combined sewer conveying both sanitary wastewater and urban runoff; and

(d) not part of a publicly owned treatment works or BMP that provides secondary or more stringent treatment.

(44g) "Municipal WPDES storm water discharge permit" means any permit issued to a municipality by the department under s. 283.33 (2), Stats., for the purpose of controlling storm water discharges from a municipal separate storm sewer system owned or operated by a municipality.

(44r) "Municipality" has the meaning given in s. 281.59 (1)(c), Stats.

Note: Under s. 281.59 (1) (c), Stats., "municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, joint local water authority created under s. 66.0823, Stats., or federally recognized American Indian tribe or band in this state.

(45) "New or changed limits" means an effluent limitation in a WPDES permit that was newly established or modified after May 17, 1988.

(46) "Nonpoint source" has the meaning given in s. 281.65 (2)(b), Stats.

Note: Under s. 281.65 (2), Stats., "nonpoint source" means a land management activity that contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source under s. 283.01 (12), Stats.

(47) "Operations" means work activities performed on a recurring basis throughout the year that are intended to meet routine, daily functional needs. These activities include:

(a) operational maintenance activities related to continuing normal performance of the functions for which a treatment works or BMP asset or item of equipment is intended and to keep building systems such as HVAC, lighting, and electrical utilities working properly;

(b) custodial maintenance activities, such as housekeeping duties, rodent and pest control, and lawn mowing, associated with general day-to-day care and cleaning necessary to maintain constructed assets;

(c) trash removal activities to dispose of hazardous and non-hazardous waste and debris and to recycle products such as paper, cans, and bottles;

(d) snow and ice removal and activities to treat surfaces to eliminate unsafe weather-related conditions;

(e) office activities related to billing, collections, customer communications, personnel, and other types of work activities that support the administration of the treatment works or BMP; and

(f) monitoring activities associated with making sure all components of the treatment works or BMP are working as they should, and with watching for anomalies.

(48) "Parallel cost percentage" means, for a scored project, the proportion of costs eligible for below-market rate financing relative to the total costs eligible for CWFP financing as established in s. NR 162.04 (1).

Note: The calculation of the parallel cost percentage is described in s. NR 162.04(1) (c).

(49) "Performance standards" means nonagricultural performance standards established by the department in ch. NR 151, pursuant to s. 281.16 (2), Stats.

(49m) "Place" means a concentration of population either legally bounded as an incorporated place, such as a city or village, or identified as a census designated place by the U.S. bureau of the census.

(50) "Plans and specifications approval" means written department approval of project drawings and specification manuals for all construction work to be included in the loan for the scored project.

(50m) "Population" means the most recent year's final population estimate published by the DOA demographic services center for the Wisconsin city, town, or village that submitted an intent to apply form. For a municipality other than a city, town, or village, "population" means the most recent population count or estimate done for the municipality and provided to the department by the local governmental unit for purposes such as completing a sanitary survey.

(51) "Present value subsidy" or "PV" means the sum of periodic subsidies for loans made to or projected to be made to municipalities during a fiscal year, discounted at a rate of 5% to 7% per year to the first day of the biennium during which the loans are made.

(52) "Prior debt service" means the principal and interest of debt incurred for a previous capital improvement that is related to the treatment works or BMP and is documented as incurred in the past.

(53) "Priority score" means the numerical value, determined by the department, that is assigned to each project in accordance with s. NR 162.31.

(53m) "Professional services" includes engineering, archaeological, or financial services, provided by a formally certified member of a professional body, such as a trade association or organized profession.

(54) "Project" means a set of activities intended to result, or has resulted, in construction of wastewater related or storm water related facilities or practices.

(55) "Project closeout" means the procedures described in s. NR 162.14 (4) for projects funded under subchs. II and III, and in s. NR 162.70 (4) for projects funded under subch. IV.

(56) "Project commitment present value subsidy" or "project commitment PV" means the present value subsidy provided to municipalities to reduce loan interest rates from the market interest rate to the interest rates in s. NR 162.11 (1) (a), (b) and (c).

(57) "Project completion date" means the earliest date on which all of the following apply:

(a) Construction of the scored project is complete.

(b) The department or its agents have certified that the scored project was constructed according to department-approved plans and specifications.

(c) The department or its agents have certified that the facilities are operating according to design.

(d) The project closeout is complete.

(e) The department has notified the recipient that the scored project is complete.

(58) "Proportional share" means the costs of the operation and maintenance of the treatment works or BMP shared equitably and proportionately among the users through a user charge system.

(59) "Receiving municipality" means a municipality that owns a treatment works and accepts discharges from one or more other municipalities into its treatment works for treatment and disposal.

(60) "Recipient" means any municipality or group of municipalities that has been awarded or has received financial assistance under ss. 281.58 and 281.59, Stats.

(61) "Replacement" means obtaining and installing equipment, accessories or appurtenances that are necessary during the useful life of the treatment works or BMP project funded through the CWFP to maintain the capacity and performance for which the treatment works or BMP were designed and constructed.

(62) "Residential user" means a structure or part of a structure, including a mobile home, that is used primarily as a home, residence or sleeping place by one or more persons maintaining a common household and that uses a publicly owned treatment works. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

(62m) "Scored project" means a project of which the department reviewed the scope provided by the applicant and assigned a priority score based on the scope determined by the department to be eligible for financial assistance under a single CWFP project number.

(63) "Sewage collection system" means the public sanitary sewer mains, and associated pump stations, including service connection fittings to the lateral.

(64) "Sewer" means either a sewage collection system or a municipal storm water conveyance system, or a portion of a sewage collection system or a municipal storm water conveyance system.

(65) "Sewer service area" means that area served by a wastewater treatment works, or an area for which an agreement has been reached for future wastewater service, or an area for which capacity is provided to allow disposal of septic tank or holding tank wastes.

(67) "Subscribing municipality" means a municipality that discharges or plans to discharge all or part of its wastewater or urban runoff to another municipality for treatment and disposal.

(68) "Subsidy" means the amount provided by the CWFP for projects receiving financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

(a) To reduce the interest rate of CWFP loans from market interest rate to a lower subsidized rate.

(b) To reduce the interest payments on eligible loans or portions of loans made by the board of commissioners of public lands.

(c) To provide hardship financial assistance, including grants.

(d) To provide financial assistance for additional eligible costs of the scored project.

(e) To forgive a portion of the principal of a CWFP loan.

(69) "Substantial completion" means the date on which construction of the scored project is sufficiently complete in accordance with the contract documents so that the Owner can occupy or utilize the scored project for its intended use.

(70) "Total annual charges" means the annual treatment works or BMP costs, including operation and maintenance costs, equipment replacement fund deposits, CWFP debt service, prior debt service, debt service for project costs ineligible for CWFP assistance, and hookup fees owed to another municipality.

(70m) "TSS" means total suspended solids.

(71) "Treatment works" or "treatment work" has the meaning given in s. 283.01 (18), Stats.

Note: Under s. 283.01 (18), Stats., "treatment work" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the treatment works, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. This definition of "treatment works" includes urban runoff projects for municipalities that are required to obtain a WPDES permit under ch. 283, Stats.

(72) "Unsewered municipality" means a municipality in which some or all of the residential areas lack a sewage collection system.

(73) "Urban runoff" means snowmelt, ice-melt, precipitation and surface drainage conveyed from an urban land use in either a diffuse manner, as a nonpoint source, or as a point source conveyance regulated under ch. NR 216.

(73a) "Useful life" means:

(a) the period during which a treatment works operates, if the treatment works was constructed partially or wholly with Title II construction grants; or

(b) the term of the loan, if the treatment works was constructed partially or wholly with CWFP financing.

(74) "User charge" means a charge levied on users of a treatment works or BMP for the user's proportional share of the cost of operation, maintenance and replacement of the treatment works or BMP.

(75) "User charge system" means a system of charges meeting the requirements of s. NR 162.08, and the requirements of s. 281.58 (14) (b) 1. and 7., Stats., or s. NR 216.06 (2) (c).

Note: User charge systems may apply to storm water utility districts.

(76) "Wastewater" means a waste stream conveyed to a treatment works via a sewage collection system, including a combined sewer conveying both sanitary wastewater and urban runoff.

(77) "Women business enterprise" or "WBE" means a DBE that is owned or controlled on a daily basis by a woman or women.

(78) "WPDES permit" means a Wisconsin pollution discharge elimination system permit issued under ch. 283, Stats.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03; CR 03-028: am. (27) and (75) Register July 2004 No. 583, eff. 8-1-04.

Subchapter II — Financial Assistance Requirements

NR 162.01 Types of financial assistance available. The department and DOA may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., and ch. Adm 35, provide to eligible applicants for scored projects any of the following types of financial assistance unless the project has been substantially complete for 3 years or longer or the applicant already has long-term affordable debt outstanding for its completed or substantially completed project:

- (1) Subject to the limits established in s. NR 162.04(3), purchase or refinance a municipality's interim debt obligation.
- (2) Guarantee, or purchase insurance for, municipal obligations for construction of a treatment works or BMP if the guaranteed or purchased insurance would improve credit market access or reduce interest costs on the municipal obligations.
- (3) Make loans at or below the market interest rate.
- (4) Provide hardship financial assistance to eligible applicants pursuant to subch. III.
- (5) Provide interest rate subsidies pursuant to subch. IV.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.02 Annual funding policy, project priority list, and funding list. (1) FUNDING POLICY AND PROJECT PRIORITY LIST. The department may produce an annual CWFP funding policy in conjunction with the fiscal year's priority list established under s. NR 162.33. The funding policy may describe methods for making funding determinations and other policies related to the fiscal year. If the department publishes a funding policy for a given year, it shall provide an opportunity for public comment regarding the funding policy.

(2) FUNDING LIST. The department shall prepare a funding list of all CWFP applicants, including applications submitted under subchs. II to VI, when the amount available under s. 20.866 (2) (tc) or 281.59 (3e) (b) or (4) (f), Stats., is insufficient in accordance with s. 281.58 (9m) (f), Stats.

Note: A funding list for hardship projects will be prepared annually in accordance with s. NR 162.44.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.03 Project eligibility.

(1) TRADITIONAL WASTEWATER TREATMENT PROJECTS. A municipality may receive financial assistance under this chapter for a publicly-owned wastewater treatment works score project that meets any of the following criteria:

- (a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes a sewage collection system project that is necessary to maintain the integrity and performance of the wastewater treatment works serving the municipality.
- (b) The project is necessary to achieve compliance with an enforceable wastewater requirement changed or established after May 17, 1988, if the municipality is in substantial compliance with its permit issued under ch. 283, Stats.
- (c) The project is necessary to correct violations of an effluent limitation contained in a permit issued under ch. 283, Stats.
- (d) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality.

(2) INDIVIDUAL WASTEWATER TREATMENT SYSTEMS. (a) A project that is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste that serve one or more properties if the municipality:

1. Owns each individual system.
2. Is responsible for the proper installation, operation and maintenance of each individual system.
3. Has unlimited access to each individual system at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement of the system.
4. Establishes a comprehensive program for the regulation, inspection, operation and maintenance of individual systems, and for monitoring the impact of the systems on the groundwater where required by the department.
5. Complies with all other applicable requirements, limitations and conditions for projects funded under this chapter.

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land or ordinance. The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(2e) AREA-WIDE STORM WATER PROJECTS. (a) A municipality may receive financial assistance under this subchapter for a publicly owned project that is necessary to control storm water runoff rates, volumes, and discharge quality. This includes a municipal storm water conveyance system project that is necessary to maintain the integrity and performance of the urban runoff treatment works or BMP serving the municipality, as required by any of the following:

1. A WPDES storm water permit issued under subch. I of ch. NR 216.
2. A performance standard.
3. A plan approved by the department under s. 281.41, Stats., or a storm water management plan.

(2r) INDIVIDUAL STORM WATER PROJECTS. (a) A project that is eligible under sub. (2e) may consist of individual systems that treat urban runoff and serve one or more properties if the municipality:

1. Owns each individual BMP.
2. Is responsible for the proper installation, operation and maintenance of each individual BMP.
3. Has unlimited access to each individual BMP at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement of the BMP.
4. Establishes a comprehensive program for the regulation, inspection, operation and maintenance of individual BMPs, and for monitoring the impact of the BMPs on the groundwater where required by the department.
5. Complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land, or ordinance. The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(3) INELIGIBLE PROJECTS. The department may determine that an entire project or a portion of a project is ineligible for CWFP financial assistance. If the department determines that a portion of a scored project is ineligible, it shall specifically identify the ineligible portions and the associated costs, or prorate the amount of financial assistance to reflect the appropriate proportion of eligible to ineligible project costs, or both, in the financial assistance agreement. The following types of projects or portions of projects are not eligible to receive financial assistance under this chapter:

(a) Projects of a municipality that is failing to substantially comply with conditions or requirements of the CWFP or an existing financial assistance agreement, or with the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works or BMP.

(b) As specified in s. 281.58(8)(a)2, Stats., connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(c) Public sanitary sewer mains, interceptors, and individual systems that exclusively serve development not in existence as of the date of the application.

(d) Any project of which no portion of construction costs can be funded through the CWFP, including a request to provide funds for only non-construction portions of a project when another governmental agency is financing the construction costs, or a request to finance planning and design costs as they are being incurred prior to bidding a project. The CWFP shall provide financial assistance for a project only if the financial assistance agreement includes an amount of construction costs acceptable to the department and DOA for the capital improvement.

(e) Dams, pipes, conveyance systems, and BMPs, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(f) In accordance with s. 281.58 (8) (d), Stats., a project of an unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality, unless it executes an agreement under s. 66.0301, Stats., with another municipality to receive, treat, and dispose of the wastewater of the unsewered municipality.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.04 Cost eligibility. (1) ELIGIBLE COSTS. (a) *Eligible at a subsidized rate.* Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include any of the following items and activities when specific to the scored project scope, or when approved by the department after being identified in the application as necessary for efficient operation of or the integrity of the overall treatment works or BMP and having de minimis cost:

1. 'Abandonment.' Abandonment of treatment works if approved in the plans and specifications of a scored project or by department staff, including activities such as demolition, re-landscaping, and removal and disposal of municipal waste or other debris.

2. 'Access roads.' When included in a scored project, roadways necessary to provide appropriate access to facilities such as lift stations and treatment plants.

3. 'Acquisition of facilities.' Costs associated with acquiring facilities of an existing treatment works or BMP if the municipality will own, operate and maintain the facilities throughout the term of the financial assistance.

4. 'Administrative buildings and equipment.' Buildings, offices, and office equipment and furnishings used for purposes of operating a treatment works, such as administration and storage buildings, if included in the approved plans and specifications or otherwise approved by department staff. The department may prorate costs for buildings, offices, and office equipment and furnishings that are partially used for purposes not related to the treatment works.

5. 'Administrative costs of a commission.' Administrative, legal, and other costs incurred by a commission solely for the scored project if identifiable in a contract or agreement between the member municipalities.

6. 'Compliance with state and federal requirements.' Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

Note: May include any of the following:

- Americans with Disabilities Act design and construction;
- green project reserve documentation;
- Davis-Bacon and related acts administration or other activities associated with wage rate requirements;
- DBE solicitation and documentation;
- environmental review of project sites and other activities related to ch. NR 150 compliance, including costs of public notices and hearings;
- historical, architectural, archaeological, and cultural resources work identified during planning, design, or construction of the project and incurred prior to project closeout;
- audit activities related to the federal single audit act portion of the municipality's annual audit report until the project is complete.

7. 'Construction activities.' Costs of activities defined in s. NR 162.03(11) and included in construction contracts or performed by force account, including the following:

- a. Replacing, repairing or rehabilitating a treatment works or BMP if identified in the plans and specifications as cost-effective and necessary.
- b. Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, watermains, and storm sewers necessary as a result of construction of the scored project.
- c. Punch list item activities.
- d. Acquiring, consuming, or expending materials.
- e. Other capital costs incurred solely for purposes of the scored project.

8. 'Demolition.' Demolishing existing structures if the demolition is part of a scored project and at least one of the following applies:

- a. The existing structure is part of the treatment works.
- b. The existing structure is part of a BMP project.
- c. The demolition is needed for site preparation.
- d. The demolition is included in abandonment procedures as approved in the plans and specifications of the scored project or when otherwise approved by department staff.

9. 'Discharge monitoring.' The cost of equipment used for monitoring, sampling, and analyzing industrial discharges to a municipal wastewater treatment works, or illicit discharges to an urban runoff treatment works or BMP that is owned by the municipality.

10. 'Easements and rights-of-way.' Costs of acquiring easements and rights-of-way, including purchase cost, and administrative and legal expenses.

11. 'Equipment and tools.' The department may prorate costs for equipment or tools if the municipality intends to utilize these items for multiple purposes rather than solely for the treatment works or BMP. Eligible equipment and tools include the following:

- a. Mobile equipment, such as portable stand-by generators, portable emergency pumps, and grounds and maintenance equipment for mowing and snow removal, for the treatment works or BMP.
- b. Spare parts, if included in the plans and specifications or otherwise approved by the department.
- c. Tools necessary for operations and maintenance of the treatment works or BMP, when purchased as part of a scored project, including specialized tools for specific purposes, site and building maintenance tools such as wheelbarrows, lawn sprinklers, weed trimmers, hoses, shovels, and rakes, and other basic tools such as trash cans, brooms, flashlights, and multiple-use hand tools.
- d. Machinery for manufacturing or repairing necessary tools or equipment for the treatment works or BMP.
- e. Purchasing, installing, programming or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the treatment works or BMP, including equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, SCADA and communications.

12. 'Fees.' Fees paid by the municipality for any of the following:

- a. Permits obtained for construction, including building, electrical, and plumbing permits, pit/trench dewatering permits, construction site storm water permits, railroad crossing permits, and permits required under ch. 30, Stats.
- b. Legal fees of an attorney that is not an on-staff municipal attorney, including costs of legal reviews of architectural, engineering or construction contracts, user charge systems and sewer use ordinances, management plans, and intermunicipal agreements, and costs for legal work necessary for securing eligible permits.
- c. Service fees paid to a state or federal agency, except administrative fees paid annually along with principal and interest payments on a CWFP loan.

16. 'Groundwater monitoring.' Installing groundwater monitoring equipment or facilities..

19. 'Insurance.' Purchasing insurance necessary during construction of the scored project, including property, liability, builders risk, and construction insurance.

20. 'Interim financing.' Costs associated with interim debt incurred for the scored project as delineated in sub. (3).

21. 'Laboratories.' Laboratory equipment, chemicals, and supplies related to initial setup, upgrade, or expansion of the laboratory.

22. 'Land Acquisition.' Costs of acquiring land, including purchase cost and administrative and legal expenses if at least one of the following applies:

a. The land will be used for storage of treated wastewater in land treatment systems before land application.

b. The land will be used for composting or temporary storage of compost residues that result from wastewater treatment if the department has approved a program for use of the compost.

c. The land is property on which the BMP, treatment works, biosolids facility or lift stations will be located, including urban corridors needed to support integrated systems of a treatment works or BMP for urban runoff.

d. The land will serve to isolate a treatment facility as required under s. NR 110.15 (3) (d).

e. The land will be used for sludge spreading.

23. The land is the property on which individual systems are or will be located if the systems are publicly-owned and maintained.

27. 'Lines to public sewer mains.' Pumping units and pressurized lines from the pumping units to the public sanitary sewer main, or holding and septic tanks and their sewer lines to the public sanitary sewer main, that are included in a sewage collection system, are cost-effective, and are owned and maintained by the applicant municipality.

29. 'Management plans.' Developing a detailed management plan for an individual system project that is eligible under s. NR 162.03 (2).

34. 'Municipal staff, equipment, and materials.' Municipal expenses incurred solely for the scored project and documented by the municipality as force account, including:

a. Salary and benefits of municipal employees, except elected officials or on-staff attorneys, for time spent working directly on the scored project;

b. expendable material costs incurred by the municipality; and

c. estimated costs incurred using equipment owned by the municipality.

35. 'Municipally owned facilities on private property.' Grinder pumps, sewer laterals, service connections, service branches, risers and riser pipes, when municipally owned and municipally maintained.

41. 'Pretreatment or toxicity reduction.' Developing a municipal pretreatment or toxicity reduction program and constructing facilities to be used by the municipal treatment works or BMP in the program, including monitoring equipment.

42. 'Professional services.' Engineering, architectural and other professional services and fees, including the following:

a. value engineering studies or analyses performed during the design phase;

b. conducting system evaluations and studies;

c. developing facilities plans and engineering reports;

d. preparing and submitting plans and specifications;

e. preparing, printing, and distributing bidding documents;

f. gathering documents and information for and completing the CWFP financial assistance application;

g. developing or revising an operations and maintenance manual;

h. preparing a plan of operation for the project;

i. advertising for and conducting bid lettings;

j. analyzing bids, preparing award recommendations, and preparing contracts;

k. providing construction management and inspection;

l. preparing for and facilitating public education and participation opportunities;

m. travel, indirect costs and labor;

n. preparing a user charge system and a sewer use or storm water utility ordinance;

o. preparing environmental assessment reports and evaluations;

p. conducting archaeological surveys and gathering historical site information;

q. providing financial advisor or bond counsel services related to loan closing or the issuance of bonds;

r. preparing a water conservation plan.

42m. 'Project site.' Construction-related work activities at the project site of a scored project, including the following:

a. Landscaping areas impacted by construction of the scored project.

b. Reconnecting laterals due to the rehabilitation of a publicly-owned treatment works.

- c. Relocating watermains if necessary for construction, and replacing mains with the same size or required minimum size pipe if breakage from construction occurs.
- d. Erecting project and treatment works identification signs.
- e. Preparing a site for construction, including surveying, staking, and grading.
- f. Restoring the construction site to original condition or upgrading the site to meet state and local requirements.
- g. Removing, relocating or replacing utilities, providing temporary utilities, installing new utility equipment, or upgrading utilities, if the recipient is legally obligated to pay these costs.
 - 43. 'Safety.' Purchase and installation of safety equipment to be used in the operation and maintenance of the treatment works or BMP.
 - 44. 'Sanitary sewers.' Evaluation, new installation, replacement, and lining and other rehabilitation of sanitary sewer pipes.
 - 45. 'Security.' Purchase and installation of security equipment and appurtenances for the treatment works, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.
 - 46. 'Septage facilities.' Facilities for receiving, storing or treating septage.
 - 51. 'Sludge removal.' Removing sludge when necessary as part of a scored project, including treatment plant upgrades, lagoon abandonment, conversion of a lagoon into an equalization basin, or other capital improvements.
 - 52. 'Special assessment fees.' Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments for repayment of its CWFPP loan.
 - 53. 'Staffing evaluations.' Conducting an evaluation of staffing needs to determine appropriate changes to staffing levels as a result of the scored project.
 - 54. 'Startup.' Startup expenses for a treatment works or BMP incurred solely because of the scored project, including costs for any of the following:
 - a. Preparing a startup curriculum and training materials.
 - b. Initial training of operating personnel on new or modified equipment, laboratory procedures, computers, controls, records management, and treatment processes.
 - c. Obtaining expert operational assistance for adjustments to the treatment process.
 - d. Implementing a maintenance management system.
 - e. Trucking seed sludge for start-up of the activated sludge process.
 - f. Attending off-site formal training programs if necessary for the initial operation of the constructed treatment works.
 - g. First fuel fill-up for new equipment, such as generators.
 - 55. 'Storm sewers on site.' Storm sewers for controlling on-site storm water runoff at treatment facilities, lift stations, septage receiving facilities and other treatment works facilities and properties.
 - 56. 'Street restoration.' Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and storm sewers necessary as a result of construction of the scored project; eligibility of costs may be prorated based on participation by one or more other funding agencies, such as the department of transportation or the U.S. department of agriculture, or on the percent of the project attributable to CWFPP-eligible activities, e.g. allowing half the street restoration costs as eligible when the project purpose is to replace both sewer pipes and water mains.
 - 60. 'Watermains.' Relocating water mains if necessary for construction, and replacing water mains of the same size or required minimum size if breakage from construction of a scored project occurs.

(b) *Eligible at market rate.* Costs eligible for market interest rate financing of a scored project include any of the following:

- 1. The cost of reserve capacity for sewage collection system, interceptor, or individual system projects in unsewered municipalities necessary to serve projected flows beyond the initial flows expected at the project completion date.
- 2. The cost of reserve capacity for wastewater projects necessary to treat projected flows beyond 10 years from the project completion date.
- 3. The cost of capacity for present and future flows from industrial wastewater users or from industrial areas regulated under ch. NR 216.

4. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5% of the total flow to the treatment works or BMP.

5. The cost of any portion of a project to correct violations of effluent limitations contained in a permit issued under ch. 283, Stats., or violations of performance standards.

6. The cost for any portion of a project designed solely for flood control and not required to meet WPDES storm water permit requirements or performance standards.

7. The cost for any portion of an urban runoff project that exclusively serves development not in existence as of the date of the application. These costs are eligible for funding only if the project furthers the local comprehensive planning goals identified in s. 1.13 (2), Stats., and, beginning January 1, 2010, is consistent with a comprehensive plan prepared pursuant to s. 66.1001, Stats.

8. Costs for providing sewers in a previously unsewered area as established in s. 281.58(8)(c), Stats.

Note: A scored project in an unsewered area is only eligible for below-market-rate financing if the department finds that at least two-thirds of the initial flow will be wastewater originating from residences in existence on October 17, 1972. If an unsewered project does not meet the two-thirds rule, the statute allows the CWFP to fund the project at market rate only.

9. The amount of project costs determined appropriate for a sanction under s. NR 162.09 (3) (a) for noncompliance with DBE good faith effort requirements.

(c) *Market rate cost calculation.* 1. The amount of the costs described in par. (b) 1. to 4. is determined using a parallel cost percentage, which is calculated as follows:

- a. Determine the total design capacity based on total flows and loadings.
- b. Calculate a reduced capacity condition by subtracting the flows and loadings associated with par. (b) 1. to 4. from the total design capacity.
- c. Estimate the eligible project costs associated with each of the conditions in subd. 1. a. and b.
- d. Divide the cost of the reduced capacity condition by the costs of the total design capacity.

$$PC = RC/DC$$

Where:

PC . . . is the parallel cost percentage expressed as a decimal.

RC . . . is the cost associated with the reduced capacity condition.

DC . . . is the cost associated with the total design capacity.

2. The amount of market rate project costs in par. (b) 1. to 4. is calculated as follows:

$$EM = (TP)(1-PC)$$

Where:

EM . . . is the amount of project costs eligible for market rate financing only.

TP . . . is the total project cost eligible for CWFP financing.

PC . . . is the parallel cost percentage expressed as a decimal.

3. If the department determines that the project includes other market rate costs as described in par. (b) 5. to 8., the amount of those costs shall be subtracted from the amount eligible for below-market rate financing and added to the amount of market rate costs calculated in subd. 2.

Note: All questions relating to cost eligibility or allocation shall be resolved prior to the execution of the financial assistance agreement in accordance with s. NR 162.16.

(2) INELIGIBLE COSTS. Costs for items and activities not directly associated with or not necessary for the construction or start-up of -a scored project are not eligible for financial assistance. Ineligible costs include the following:

- (a) 'Allowances.' Any allowance or contingency amounts built into a bid contract for nonspecific or ineligible items or activities.
- (b) 'Basin planning.' Basin or areawide planning not related to the scored project.
- (c) 'BCPL ineligibles.' For a project receiving interest rate subsidy under subch. IV, project costs determined to be ineligible for loan assistance from the board of commissioners of public lands.
- (d) 'Bonus payments.' Bonus payments not legally required for completion of construction before a contractual completion date.
- (e) 'Buying capacity.' Purchase cost of buying capacity in an existing treatment works that is not being expanded.
- (f) 'Certification.' Fees for operator certification training.
- (g) 'Conflict of interest.' Costs incurred in a contract that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, award, or administration of a contract supported by the CWFP and any of the following conditions exist:
1. The official or employee, the official's or employee's spouse, or the official's or employee's partner has an ownership interest in the firm selected for the contract.
 2. Any person identified in subd. 1. receives any contract, gratuity, or favor from the award of the contract.
- (i) 'Engineering.' Engineering costs attributable to ineligible construction costs when ineligible construction and equipment costs are 10% or more of total construction and equipment costs.
- (j) 'Grant administration.' Any costs for administering or applying for a municipality's USDA, CDBG, STAG, USACOE, FOE, or other non-CWFP federal or state government loans, grants, or other types of financial assistance.
- (k) 'Hookup charges.' Hookup charges imposed by one municipality on another for hooking into a treatment works or BMP, or transport system to such a facility, unless the charges are based on identifiable capital improvement costs incurred by the local governmental unit imposing the charge, and are included in an intermunicipal agreement meeting the requirements of s. NR 162.06(1)(g).
- (L) 'Industrial facilities.' Costs associated with privately-owned pretreatment facilities and monitoring equipment used by industry for sampling discharges to a municipal treatment works.
- (m) 'Interim financing.' Interest or principal payments on interim financing paid by the municipality out of its internal funds rather than capitalized funds.
- Note:** The ineligibility of interest or principal payments in par. (n) is based on U.S. treasury reimbursement regulations 26 CFR 1.150-2.
- (n) 'Late fees.' Interest or late fees charged a municipality for delayed payments to engineers, construction contractors, financial advisors, and others providing services to the municipality.
- (o) 'Laterals.' Connection laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.
- (p) 'Leases.' Costs related to leasing land or buildings.
- (q) 'Mismanagement and litigation.' Costs of claims against the recipient resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others, and costs resulting from litigation of contract disputes, liquidated damages, appeals, and other related disputes.

- (r) 'Negligence.' Costs incurred due to negligence or error of a party contracted by the municipality.
- (s) 'No construction.' All costs of a project if the municipality does not finance some construction costs through the CWFP.
- (t) 'O&M.' Operation and maintenance expenses as defined in s. NR 162.03(47) and (38).
- (u) 'Ordinary municipal operating expenses.' Ordinary operating expenses of local government, such as salaries and expenses of elected officials and on-staff attorneys, postage, utility bills, and annual financial audits.
- (v) 'Other governmental assistance.' Costs for which payment has been or will be received under another federal or state program, including costs for which funds from the U.S. department of agriculture's rural development program or a community development block grant program are committed. This paragraph does not apply to a municipality receiving a loan from the board of commissioners of public lands for a scored project receiving interest subsidy under subch. IV.
- (w) 'Outside of scope.' Costs outside the scope of the scored project. The department may approve a de minimis amount of costs outside the scope if the extra work will improve the overall integrity, operation, or functionality of the treatment works.
- (x) 'Personal injury.' Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise.
- (y) 'Post-closeout.' Costs incurred after the project completion date of the scored project.
- (z) 'Private septic payments.' Credits or payments to private septic owners made as a result of complying with s. 60.726, Stats.
- (aa) 'Sludge removal.' Removing sludge from a wastewater facility when it is not necessary for the scored CWFP project.
- (bb) 'Special devices.' Waste-generating fixtures and associated plumbing from a residence or commercial establishment to a treatment unit, and modifications to homes or other buildings for installation of special devices.
- (cc) 'Special districts.' Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, and joint commissions.
- (dd) 'Violation penalties.' Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.
- (ee) 'Watermains.' Watermain construction, replacement, or repair, unless the work is necessary as a direct result of work performed for the scored CWFP project, such as moving a watermain to allow appropriate distance between it and a sanitary sewer pipe being constructed in the scored project.
- (ff) 'Wisconsin fund facilities.' The acquisition of a treatment works built with Wisconsin fund grant program monies.
- (gg) 'WPDES permit fees.' The cost of a WPDES permit unless it is a special permit specific to the project construction.

(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS.

(a) *Net interest expense.* Interim financing interest expenses shall be offset with any interest earnings from the investment of the proceeds from the interim financing to determine the amount eligible for CWFP funding.

(b) *Interim financing issuance costs.* The amount of interim financing issuance costs eligible for funding is limited to \$15,000 plus 0.5% of the total eligible face amount of the interim financing. If interim financing is rolled over or renewed, the face amount may not be counted multiple times in calculating the eligible face amount of interim financing for purposes of this limit.

(c) *Interim interest costs.* The period of time for which interest on interim financing is eligible for funding shall run from no earlier than 12 months prior to the start of construction through the earliest of the following:

1. The date of the first disbursement of the CWFP financial assistance.
2. One year following substantial completion of the project.

(d) *Cost proration.* If the term of the interim financing exceeds the limit in par. (c), the interim financing costs shall be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the debt used for interim financing is not exclusively for the CWFP scored project, costs shall be prorated according to the proportion of the total debt that is for the department-approved project.

(e) *Maximum principal.* The principal amount of interim financing that can be refinanced with CWFP financial assistance cannot exceed the total amount of the interim financing that was spent on eligible project costs.

(4) REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS. The department may reimburse eligible project costs previously paid by the local governmental unit from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150-2 and the criteria established under s. NR 166.04 are met.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.05 Notice of intent to apply. (1) A municipality shall submit notice of its intent to apply for financial assistance in the form required by the department. The municipality shall submit the notice by October 31 prior to the state fiscal year from which the municipality is requesting to receive financial assistance. In order for the notice of intent to apply to be valid, it shall include the signature of an elected official of the municipality, an employee of the municipality, or the municipality's authorized representative, and at least one of the following shall apply:

(a) The online intent to apply form is completed and submitted by October 31.

(b) An alternate method of delivery is used due to a problem with the online form. Alternate methods include the following:

1. A paper copy of the intent to apply form is postmarked by October 31 or has a documented shipping or mailing date of October 31 or earlier.

2. The department receives the intent to apply form by October 31 via fax, e-mail, or other delivery methods. These methods are acceptable as long as it is clear that the notice arrived at the department by the October 31 deadline.

3. Hand-delivery and shipping without documentation of the shipping date are acceptable as long as they are received by the department prior to the close of business on October 31.

Note: An Intent to Apply form is available on the Environmental Improvement Fund website at dnr.wi.gov/Aid/EIF.html and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707-7921.

(2) The department may waive the requirement in sub. (1) upon the written request of a municipality pursuant to s. 281.58 (8m) (c), Stats. Before waiving the requirement in sub. (1), the department shall consider special circumstances and factors, consistent with those established in s. NR 162.20 (1) for granting variances.

(3) The department may waive the requirement in sub. (1) if the municipality has applied for a grant for which it is eligible under either s. 281.65 (4c) or 281.66, Stats.

History: CR 03-027; cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.06 Application. (1) PROCEDURES. A municipality shall apply for financial assistance in accordance with s. 281.58 (9), Stats., in the form required by the department.

Note: An application form is available on the Environmental Improvement Fund website at dnr.wi.gov/Aid/EIF.html and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921. An interest subsidy application is a different form and must be submitted in accordance with s. NR 162.63.

(2) **CONTENTS OF APPLICATION.** The applicant shall submit a complete application. The department shall accept an application as complete after all of the following items, if applicable, are received by the department either in the application form or separately, and DOA preliminarily approves the municipality as creditworthy for financial assistance for the proposed project:

(a) Evidence of an approved facility plan or other department approved plan.

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats.

(c) A completed financial assistance application form, including estimated or actual construction costs and information regarding assistance received or expected from another funding source.

Note: The CWFP cannot provide any financial assistance for a project if construction costs are not included as part of the project costs to be funded by the CWFP.

(d) Items required for compliance with federal regulations, including documentation of compliance with wage rate laws, information regarding green project components, and completed federal forms.

e) Copies of executed engineering contracts for planning and design if costs are requested for planning and design, and a copy of the executed engineering contract for construction management if funds are requested for construction management and the contract is available at the time of application submittal.

(f) A resolution authorizing an elected official of the municipality or an employee of the municipality to act as the applicant's representative in connection with the application and with any additional information required for financial assistance.

(g) A proposed or an executed intermunicipal agreement when 2 or more municipalities discharge to or through the same treatment works or BMP. The intermunicipal agreement shall do all of the following:

1. Identify ownership for each individual portion of the treatment works or structural urban BMP, such as interceptors, sewage collection systems, municipal storm water conveyance systems, lift stations and privately owned treatment works or BMP.

2. Establish a term of agreement that is at least for the life of the loan.

3. For urban runoff treatment works or BMP projects, require each municipality to adopt local regulations for construction sites, and adopt a municipal storm water management plan and ordinance for new development and redevelopment, both consistent with the performance standards and with model ordinances developed by the department under s. 281.33(4), Stats.

4. Demonstrate the basis for generating revenue for operation, maintenance and replacement costs based on actual use, and state the parties that are responsible for paying these charges.

5. Indicate the method for generating revenue for capital costs and indicate who is responsible for payment.

6. Indicate that the owner of the regional facility shall accept the applicant's wastewater or urban runoff and identify the boundary from which the applicant's discharge originates.

7. Require each entity to adopt a user charge and sewer use ordinance that is consistent with the requirements of s. NR 162.08.

(h) Financial information required by DOA to be used in determining the affordability of the proposed project, the financial capability of the municipality, and the adequacy of the pledge of revenues to repay the obligation securing the proposed CWFP loan.

(i) A copy of the existing user charge system, if available, and information regarding the proposed user charge system and a sewer use or storm water utility ordinance for the treatment works or BMP.

(j) Any existing or proposed contracts with users of the treatment works or BMP.

(k) Documentation applicable to U.S. internal revenue service tax information as indicated in the application form.

(L) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds, if required by U.S. treasury reimbursement regulations 26 CFR 1.150-2, and the local governmental unit passed a reimbursement resolution prior to the application submittal deadline.

(m) A copy of the debt instrument of any debt to be refinanced with CWFP financial assistance.

(2g) PROJECTS FUNDED JOINTLY WITH OTHER AGENCIES. If a project is receiving financial assistance from another state or federal agency, and the department is unable to obtain typical documentation for the project due to differences between agencies in items or procedures, such as the project being let with a group of projects by the Wisconsin department of transportation or the contents of a contract having language specific to the other agency, the department may determine what documentation is appropriate to satisfy the application requirements.

(2r) In fiscal years for which the department has set an application submittal deadline for all or a specific type of funding, the applicant must submit a completed application form and required attachments by the application submittal deadline in order to be considered eligible for the funding for which the deadline is set. If the department determines attachments are missing from an application and is, therefore, incomplete, the department may allow a reasonable amount of additional time for an applicant to submit the missing items.

(3) INTERMUNICIPAL EXCEPTION. The department may waive the requirement of an intermunicipal agreement if an order under s. 281.43 (1), Stats., has been issued, or if the department has obtained executed intermunicipal agreements for subscribers whose design flows, design suspended solids capacities, annual debt payments, and wastewater projects' designed biochemical oxygen demand (BOD) capacities total at least 90% of the total for the regional treatment works or BMP.

(4) DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT. An applicant shall sign the financial assistance agreement within 12 months after the date the department determines in writing the application is acceptable. An applicant shall time its submittal of the application accordingly. If a financial assistance agreement is not signed within 12 months of the department's determination of acceptance, the applicant's project shall lose its allocated subsidy. A municipality may not submit more than one application for any single project in any 12-month period, except for an application for additional costs for the approved project.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.07 Financial assistance requirements.

Before executing a financial assistance agreement for any project under subch. II or III, the department shall determine that all of the applicable requirements of s. NR 162.06 are met and that all of the following are satisfied:

(1) All of the following documentation, if applicable to the project, is submitted to the department:

(a) Certification for force account work as required by s. NR 162.09 (4).

(b) Initial flow documentation, if the project is for an unsewered municipality.

(c) Legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project.

(d) Items related to bids for each prime contract including the following:

1. The proposal of the successful bidder.

2. An engineer's evaluation of the bids, including bid tabulation, and a recommendation.

3. If a contract is awarded to other than the low responsive, responsible bidder, a legal opinion that the award complies with applicable state statutes and administrative codes.

4. Solicitation and utilization information regarding DBEs.

6. Evidence of bid advertisement, including appropriate wage rate language, when applicable.

7. A copy of the bid bond and the performance bond.

8. Evidence of award of the construction contract by the municipality, which may be a notice of award, a municipal resolution, or minutes from the municipal meeting at which the determination of award was made.

9. A bound copy of the executed construction contract with up-to-date copies of all addenda, attachments, appendices, and appropriate Davis-Bacon or other wage rate information.

10. Documentation of the construction start date and expected substantial and final completion dates.

Note: A notice of award and a notice to proceed are preferred but not required for this documentation.

(e) A request for disbursement and required supporting invoices, payoff statements, and other applicable documentation of expenditures, including a copy of the title or deed for land purchased for the project if the applicant is requesting CWFP financial assistance for land purchase costs, and complete copies of any contract change orders for which costs are included in the request for disbursement.

(f) Evidence that a bond counsel is drafting legal documents related to the authorization and issuance of bonds for action at a municipal meeting prior to the scheduled loan closing.

(g) Completed federal forms, if applicable.

(i) Parallel cost percentage information.

(j) An executed intermunicipal agreement, if 2 or more municipalities will discharge to or through the same treatment works or BMP.

(k) Proof that a sewer use or storm water ordinance and user charge system that meet the requirements of s. NR 162.08 have been adopted by the municipality.

(L) A copy of the adopted user charge system.

(m) A copy of the executed construction management contract with an architectural or engineering firm, if costs are requested for this activity.

(2) The department has approved the plans and specifications and the parallel cost percentage for the project, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

(3) The project has met the priority requirements of subchs. III and IV, as applicable.

(4) The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the treatment works or BMP throughout the applicant's jurisdiction.

(5) DOA is satisfied that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

(6) The applicant has received, or has applied for, permits required by the department, including those under chs. 30 and 283, Stats.

(7) For an urban runoff treatment works or BMP, the applicant agrees to adopt local regulations for construction sites, and adopt a municipal storm water management plan and ordinance for new development and redevelopment, both consistent with performance standards and with model ordinances developed by the department under s. 281.33 (4), Stats.

Note: The performance standards are established in ch. NR 151. The model ordinance is established in ch. NR 152.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.08 Requirements for a user charge system and sewer use ordinance. (1) GENERAL. Any user charge system and sewer use ordinance adopted by a recipient shall be maintained in accordance with s. 281.58 (14) (b) 7., Stats., or s. NR 216.06 (2) (c), and this section, for the useful life of a treatment works or BMP. The applicant shall submit user charge information to the department and shall certify to the department that the user charge system meets all of the requirements in this subsection.

(2) APPLICABILITY. (a) A user charge system and sewer use ordinance is required of any wastewater treatment works project receiving a loan under this chapter.

(b) A user charge system is required of any urban runoff project receiving a revenue pledge loan under this chapter.

(c) A user charge system is required of any urban runoff project that requires an intermunicipal agreement under s. NR 162.06 (2) (g). In this case, "users" means the municipalities covered by the agreement.

(3) USER CHARGE SYSTEM REQUIREMENTS. Any user charge system shall do all of the following:

(a) Require that each user or user class pays its proportionate share of operation and maintenance costs, including replacement costs, of the treatment works or BMP within the recipient's service area.

(b) Provide that the costs of operation and maintenance for all flow not directly attributable to users be distributed proportionally among all users of the recipient's treatment works or BMP.

(c) Require that the charges for users or user classes generate sufficient revenue to pay costs identified in par. (e) 2. and 3.

(d) Require that the recipient establish an equipment replacement fund, maintain the equipment replacement fund as a separate fund of the municipality, and make deposits to this fund on an annual basis. This fund is to be used for the replacement of equipment related to the wastewater treatment works, or for periodic maintenance of urban runoff treatment works or BMPs.

(e) Establish a financial management system that accounts for all of the following:

1. Revenues generated.

2. Costs of operation and maintenance of the treatment works or BMP, including appropriate amount of money to be deposited annually into the equipment replacement fund .

3. Debt service costs, including debt service reserves, and debt coverage requirements. Debt coverage means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

(f) Require the review, at least every 2 years, of the wastewater or urban runoff contribution of users and user classes, the total costs of operation and maintenance of the treatment works or BMP, and the user charge system.

(g) Require that each user which discharges any toxic pollutants or high strength wastes to a wastewater treatment works pay for any increased costs associated with the discharge.

(h) Provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to service provided by the treatment works or BMP.

(i) Be based on actual or estimated use except as provided for under s. 281.58 (14) (b) 7., Stats.

(4) MUNICIPAL RESPONSIBILITIES. The municipality shall do all of the following:

(a) Incorporate the user charge system in one or more municipal ordinances or other legislative enactments, and into intermunicipal agreements if the project serves more than one municipality.

(b) Terminate any term or condition of any pre-existing agreement or contract between the recipient and a user that is inconsistent with the requirements of this section.

(c) Maintain records to document compliance with this section.

(d) For a wastewater treatment works, enact and enforce a sewer use ordinance that does all of the following:

1. Prohibits any new connections from sources that will add substantial infiltration or inflow into the sanitary sewer system.

2. Requires that new sewers and connections to the sewer system be properly designed and constructed.

3. Requires that wastewater introduced into the treatment works not endanger public safety or the environment, not jeopardize the physical integrity of the treatment works, not cause substantial upset to the treatment process and not cause a violation of effluent or water quality limitations.

4. Defines normal domestic strength of the wastewater.

5. Controls and monitors industrial discharges by requiring control manholes, pretreatment, and grease, oil and sand interceptors.

6. Provides a methodology for establishing sewer use rates that complies with sub. (1). A municipality may include an optional class of low income residential users, with incomes below a level established by the municipality, who are charged at a lower rate than other residential users.

7. Defines violations and penalties for violators.

(e) For an urban runoff treatment works or BMP, demonstrate adequate legal authority established by statute, ordinance or series of contracts to meet the provisions of s. NR 216.06 (2) (c).

(5) DEPARTMENT REVIEW. The department may annually review a recipient's user charge system to ensure that it continues to meet the requirements of this section.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03; CR 03-028: am. (1) and (4) (e) Register July 2004 No. 583, eff. 8-1-04.

NR 162.09 Procurement. (1) APPLICABILITY. Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law and federal law applicable to the CWFP project. No contract may be awarded to any person or organization that does not operate in conformance with state and federal civil rights and equal opportunity laws.

(1g) FINANCIAL ASSISTANCE RECIPIENT RESPONSIBILITY. The recipient is responsible for the administration and successful completion of the project as well as acceptance of the terms of the financial assistance agreement or interest rate subsidy agreement.

Note: See ss. 60.47, 60.77 (6) (a), 61.54, 61.55, 62.15, 66.0131 and 66.0901, Stats.

(2) PROFITS. Contractors may earn only fair and reasonable profits under financial assistance agreements and interest rate subsidy agreements. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

(3) SOLICITATION OF DISADVANTAGED BUSINESS ENTERPRISES. (a) Whenever a recipient or its prime contractor is procuring construction, equipment, raw materials, or supplies for a project financed wholly or in part with CWFP monies, they shall make good faith efforts to provide DBEs opportunities to compete for participation in the project. Recipients and their prime contractors shall comply with DBE regulations contained in s. 40 CFR part 33 in the manner determined by the CWFP. Failure to comply with DBE regulations and requirements may result in a sanction as defined in par. (b). Requirements may include the following activities:

1. Use outreach and recruitment activities to make DBEs aware of contracting opportunities. . These activities may include:
 - a. putting a sentence in bid advertisements that encourages DBEs to submit bids or proposals;
 - b. contacting DBEs via telephone, faxed or mailed letter, e-mail, or other methods of correspondence, informing them of the project and encouraging their participation;
 - c. advertising the project in trade publications.
2. Arrange timeframes for contracts and establish delivery schedules when possible in a way that encourages and facilitates participation by DBEs in the competitive process, including posting solicitations for bids or proposals for at least 30 calendar days before the bid or proposal closing date, when possible.
3. Divide total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by DBEs in the competitive process.
4. Consider contracting with a consortium of DBEs when a contract is too large for one DBE to handle individually.
5. Use the services and assistance of the federal small business administration and the minority business development agency of the department of commerce.
6. Use required federal forms when applicable.
7. Include in project bidding documents DBE information prescribed by the department.
8. Solicit DBEs certified under the unified certification program or by the U.S. environmental protection agency or an agency approved by the U.S. environmental protection agency to certify DBEs, and provide to the department documentation of solicitation efforts made.

Note: the Wisconsin department of transportation unified certification program's list of certified DBEs is available online at dot.wi.gov.

9. Document any participation of DBEs, including MBEs and WBEs, and submit the documentation in the form required to the department.

(b) Failure to comply with par. (a) may result in a sanction of up to 8% of the construction costs eligible for subsidy being financed at the market interest rate. This paragraph does not apply to any recipient that awards contracts to MBEs or WBEs or both in an amount equal to or greater than the applicable fair share objectives. Fair share objectives means the percentage of participation in project costs by MBEs and WBEs that can be reasonably procured. Fair share objectives are determined by the department as negotiated with and agreed to by the U.S. environmental protection agency under 40 CFR part 33, subpart D, given the availability of qualified MBEs and WBEs in the state.

(4) FORCE ACCOUNT WORK. The department may approve financial assistance for force account work based on the applicant's certification that at least one of the following applies:

(a) The applicant's staff has the necessary competence required to accomplish the work and the work can be accomplished more economically by the use of the force account method than by hiring a contractor.

(b) Emergency circumstances dictate the use of the force account method.

(5) CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES. (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department may not provide financial assistance for costs that are not eligible or reasonable.

(b) Reasonableness reviews may include a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. The department may consider the scope of work, conditions unique to the project, and any other factors affecting costs.

(c) Architectural or engineering services contracts shall indicate a maximum estimated cost for a defined scope of work that the contractor may not exceed without a negotiated contract amendment for additional costs.

(6) CONSTRUCTION CONTRACTS AND SUBCONTRACTS. (a) *Applicability.* This subsection applies to construction contracts or subcontracts awarded by recipients for any construction activity.

(b) *Type of contract.* The project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized by sub. (4). Each contract shall be a fixed or unit price contract, or a time and expense contract, unless the department gives advance written approval for the recipient to use some other acceptable type of contract. In any event, the cost-plus-a-percentage-of-cost type contract may not be used.

(c) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for each contract change order, and submit each change order and all associated backup documentation to the department construction management engineer within 90 days of execution of the change order.

2. The department may require that all change orders for a project funded under this chapter be approved by the department.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.10 Reimbursement and refinancing.

(1) REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS. The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150-2.

(2) REFINANCING OF INTERIM FINANCING. The department may refinance the eligible portion of the municipality's interim financing subject to the limits established in s. NR 162.04 (3).

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.11 Loan interest rate. The department shall calculate interest rates in accordance with s. 281.58 (12), Stats., and all of the following:

(1) INTEREST RATE CATEGORIES. (a) Costs of projects or portions of projects described in ss. NR 162.03 (1)(a), (b), (d), and (e), s. NR 162.03(2) and NR 162.04(1)(b) shall be charged the interest rate specified for the applicable project type in s. 281.58(12), Stats.as

(b) For project costs sanctioned under s. NR 162.09 (3) (b) for noncompliance with requirements for solicitation of DBEs, the interest rate shall be the market interest rate.

(2) PROJECT INTEREST RATE CALCULATION. (a) If all of the eligible costs of a project are classified under one of the categories in sub. (1), the interest rate shall be the rate stated in the applicable section of s. 281.58(12), Stats. If a project contains eligible costs from one or more of the categories, and s. 281.58(12), Stats., specifies interest rates for the categories that are different from each other, a composite rate shall be computed for the project in accordance with par. (b).

(b) All of the following methods, in the order listed, shall be used to estimate the total eligible costs associated with the project:

1. Each eligible cost that can be allocated, based on its purpose, exclusively to any one of the categories in sub. (1), shall be so allocated.
2. Each eligible cost that cannot be allocated to a particular category, shall be divided among the categories based on the portion of the design flow of the project that is attributable to each category.
3. The composite interest rate shall be computed as follows:

$$RC = (RT 1)(PR 1) + (RT 2)(PR 2) + (RT 3)(PR 3) + (RT 4)(PR 4)$$

Where:

RC . . . is the composite interest rate for the project.

RT1 . . . is the interest rate for compliance maintenance and new or changed limits projects.

RT2 . . . is the interest rate for unsewered projects.

RT3 . . . is the interest rate for urban runoff treatment works and BMP projects.

RT4 . . . is the market interest rate.

PR1 . . . is the percentage of the project being financed by the CWWP that is eligible under s. NR 162.03 (1)(a) and (b).

PR2 . . . is the percentage of the project being financed by the CWWP that is eligible under s. NR 162.03 (1)(d).

PR3 . . . is the percentage of the project being financed by the CWWP that is eligible under s. NR 162.03 (1)(e) and (2).

PR4 . . . is the percentage of the project being financed by the CWWP that is eligible under s. NR 162.04 (1)(b).

(c) Except as provided in s. 281.59 (13), Stats., the interest rate shall be based on the rates in effect at the time the financial assistance agreement is executed.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.12 Financial assistance agreement conditions.

(1) Each financial assistance agreement shall bind the recipient to all of the following conditions:

(a) The recipient shall agree to maintain a system of user charges and a sewer use ordinance in accordance with s. NR 162.08 for the design life of the treatment works or BMP.

(b) The treatment works or BMP shall comply with all pertinent requirements of federal, state and local environmental laws and regulations.

(c) For financial assistance provided directly from a federal capitalization grant, the recipient shall agree to comply with the requirements contained in 33 USC 1251 to 1266 and 33 USC 1381 to 1387, if required by the terms of the capitalization grant.

(d) The recipient shall provide timely sewerage service to all users of the treatment works within the delineated service area except in areas where annexation is refused, pursuant to s. 281.43 (1m), Stats.

(e) The recipient shall comply with all state and local laws regarding procurement and public contracts.

(f) The recipient shall provide department representatives access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow department representatives access to records of contractors and subcontractors pertinent to the project for the purpose of inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(g) The recipient shall expeditiously initiate and complete the project, including construction of and payments for the portions ineligible for financial assistance, in accordance with the financial assistance agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

(h) The recipient shall promptly notify the department of changes to the project, including revisions to the plans and specifications.

(i) The recipient shall promptly submit to the department a copy of any prime contract or modification to a prime contract.

(j) The recipient shall begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement. The recipient shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(k) If applicable to the project, the recipient shall submit an operation and maintenance manual to the department as follows:

1. The project engineer and the authorized representative of the recipient shall certify that the operation and maintenance manual meets or exceeds the requirements of this chapter. The operation and maintenance manual shall address all of the following areas:

- a. General information.
- b. Staffing.
- c. Records and recordkeeping.
- d. Laboratory.
- e. Safety.
- f. Utility systems.
- g. A description of the process, operations and controls.
- h. Maintenance.
- i. Sludge management.
- j. Manufacturer's information.

2. For projects or facilities that have an approved operation and maintenance manual, this requirement may be met by the submission of an addendum to the original manual.

(L) The recipient shall provide construction site erosion control in accordance with the design criteria, standards, and specifications outlined on DNR's website.

Note: Storm water technical standards, models and BMPs are available online at <http://dnr.wi.gov/topic/stormwater/standards/>. Use these technical standards to plan, design, install, and maintain erosion/sediment control and storm water management practices to comply with s. NR 151, Wis. Adm. Code. The information on these web pages is available in paper form and may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

(m) The recipient shall provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(n) The recipient shall accept septage to the wastewater treatment works from septic tanks or holding tanks within the recipient's sewer service area, subject to s. 281.49, Stats. The recipient may regulate the time, rate, location and quantity of the septage contributions.

- (o) The recipient shall notify the department of the substantial completion of the project.
- (2) The financial assistance agreement is not effective until executed by all parties to the agreement.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.13 Financial management. The recipient shall do all of the following:

- (1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department.
- (2) Maintain a financial management system that meets the requirements, terms and conditions of the financial assistance agreement and ch. Adm 35.
- (3) Comply with any U.S. treasury requirements for maintaining the tax-exempt status of the bonds sold to the CWFP.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.14 Financial assistance disbursements.

- (1) **REQUESTS FOR DISBURSEMENT.** The recipient shall submit to the department requests for disbursement for eligible costs in the format specified by the department.
- (2) **ADJUSTMENT.** Before the final disbursement under the financial assistance agreement, the department may recommend to the department of administration that any request for disbursement be reviewed or audited.
- (3) **WITHHOLDING OF FUNDS.** The department may withhold funds on the basis of any of the following:
 - (a) The department may direct the department of administration to withhold financial assistance disbursements where the department determines in writing that a recipient has failed to comply with project objectives, or the terms, conditions or reporting requirements of the financial assistance agreement.
 - (b) The department may withhold 5% of the principal amount of the loan until the requirements of the final project closeout have been completed.
 - (c) The department may withhold payment of costs of a contract that fall outside of the beginning or end dates of the contract until the recipient amends the dates of the contract.
- (4) **FINAL DISBURSEMENT AND PROJECT CLOSEOUT.** (a) The recipient shall submit the final request for disbursement after final completion of the project construction.
 - (b) All of the following project closeout procedures shall occur prior to the final disbursement:
 - 1. The department shall complete a final inspection and sign off on the project.
 - 2. The recipient shall obtain department approval of all change orders and amendments for which disbursement is requested.
 - 3. The recipient shall certify its acceptance of the project from its contractors and engineers on a form provided by the department.

Note: A project acceptance certification form is available on the CWFP web pages or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

- 4. The recipient shall document final utilization of MBEs and WBEs on a form provided by the department.

Note: An MBE/WBEutilization form is available on the CWFP web pages or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

5. The recipient shall submit to the department an operation and maintenance manual certification checklist.

Note: O&M manual certification checklist forms are available on the CWFP web pages or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

6. The department shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.15 Amendments to a financial assistance agreement. (1) ALTERING THE PROJECT. The recipient shall obtain an amendment to the financial assistance agreement before any of the following occur:

(a) The type of wastewater or urban runoff treatment is altered.

(b) The facilities plan, plans and specifications, or any major part of the project is substantially altered.

(2) CHANGES CONSISTENT WITH OBJECTIVES. The department may determine that execution of an amendment is not required before the recipient implements changes in the project if the changes are consistent with the objectives of the project, within the scope of the financial assistance agreement, and do not require review under ch. NR 110.

(3) ADDITIONAL FUNDING. (a) General. The department may provide additional funding in the form of a loan for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may not process a request to provide additional funding for a project until the time the total remaining costs to complete the project can be reasonably determined.

(b) Applicability. Additional funding for a project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

1. 'Sufficient PV, original biennium.' If there is sufficient project commitment present value subsidy available from the biennium in which the original financial assistance agreement was funded, a municipality may receive funding for the additional project costs from that biennium's project commitment present value subsidy. The loan interest rate and loan maturity date in the original financial assistance agreement shall be maintained in amending the original financial assistance agreement.

2. 'Continuous funding cycle loan, new biennium.' If there is not sufficient project commitment present value subsidy available from the biennium in which the original financial assistance agreement was funded, and the CWFP is accepting applications on a continuous funding cycle basis during the fiscal year in which the additional costs are to be funded, the municipality may receive funding for the additional costs from the current biennium's project commitment present value subsidy. If the interest rate and loan maturity dates for the additional funding are the same as in the original financial assistance agreement, the funds may be provided by amending the original financial assistance agreement. If the loan interest rate or loan maturity date for the additional funding is different than that contained in the original financial assistance agreement, the funds shall be provided by a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11.

Note: Section 281.59 (3e) (c), Stats., allows present value subsidy to be allocated only until the December 30th following the end of the biennium.

3. 'Compete for PV, new biennium.' If a municipality is not able to obtain CWFP assistance for its additional project costs through the methods described in subd. 1. or 2., and a funding list for all CWFP projects is published for the fiscal year in which the additional costs are to be funded, a municipality may

compete through the application process to receive CWFP project commitment present value subsidy to finance the additional costs. If a municipality is successful in obtaining project commitment present value subsidy for the additional costs, and the interest rate and loan maturity date for the additional funding are the same as in the original financial assistance agreement, the funds may be provided by amending the original financial assistance agreement. If the loan interest rate or loan maturity date for the additional funding is different than those established in the original financial assistance agreement, the funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11. The application for additional costs shall be ranked on the CWFP funding list based on the priority score the project received in the fiscal year in which the original financial assistance agreement was funded.

(c) *Requesting funds.* A municipality may request funding for additional project costs using one of the following options:

1. 'Request by letter.' If par. (b) 1. is applicable, the municipality shall submit a letter to the department that justifies the need for the additional funding and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. 'Request by application.' If par. (b) 2. or 3. is applicable, the municipality shall submit a CWFP notice of intent to apply as described in s. NR 162.05, and a financial assistance application as described in s. NR 162.06, requesting a loan for additional project costs. The department may waive specific application requirements for the amendment request if submittals made with the initial application are still acceptable to the department. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original financial assistance agreement. If par. (b) 3. is applicable, the application shall be postmarked by the June 30 prior to the fiscal year from which the funds for the additional costs are requested.

(4) EFFECTIVE DATE. A financial assistance agreement amendment is not effective until executed by all parties to the agreement.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.16 Disputes. (1) DECISION OF THE DEPARTMENT. Except as otherwise provided by law, any dispute arising under subch. II or V prior to the execution of a financial assistance agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the applicant personally or by mail.

(2) REVIEW OF THE DECISION. A final decision of the department may be reviewed pursuant to subch. III of ch. 227, Stats., and ch. NR 2.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.17 Records and record retention. (1) REQUIREMENTS. The recipient shall maintain books, documents, papers and records, and accounting procedures in accordance with generally accepted accounting principles or other method of accounting accepted by the department, the financial assistance agreement, and ch. Adm 35, and retain them in accordance with subch. II of ch. 19, Stats. The recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers and records related to the project that are necessary for the recipients' compliance with this section.

(2) INSPECTION. The department or its agents may, during normal business hours, inspect and copy the recipient's records and the records of its contractors.

(3) RECORD RETENTION. The recipient and contractors of recipients shall preserve and make their records available to the department for a minimum of 3 years from the date that the department notifies the recipient that the project is closed out.

(a) If a financial assistance agreement is partially or completely terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

(b) Records that relate to appeals, disputes or litigation arising out of the performance of the project, shall be retained until any appeals, disputes or litigation have been finally resolved or for a period of 3 years from the date the department notifies the recipient that the project is closed out, whichever is later.

(4) FEDERAL SINGLE AUDIT. Recipients of financial assistance provided directly from the federal capitalization grant shall comply with the federal single audit act 31 USC 7501 to 7507, OMB circular A-133 and ch. Adm 35.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.18 Breach of contract. (1) Upon breach of contract by the recipient, the department may do any of the following:

(a) Declare the unpaid loan balance due and immediately payable.

(b) Increase the interest rate on the unpaid balance of the loan to the market interest rate in effect on the date the financial assistance agreement was executed.

(c) Rescind the grant and convert the grant amount to a loan.

(d) Immediately terminate the financial assistance agreement and disburse no additional funds, if the financial assistance has not been fully disbursed.

(e) Seek an injunction or any other equitable or judicial relief from a court of appropriate jurisdiction.

(f) Seek any other appropriate administrative remedy.

(2) The department of administration's receipt of any payment after the occurrence of a breach of contract does not constitute the department's waiver of any rights and remedies under this section.

Note: The department of administration may under s. 281.59 (11) (b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.19 Noncompliance. Upon failure of the recipient to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter, the department may do any of the following:

(1) Refuse to enter into a financial assistance agreement.

(2) Seek penalties as provided in s. 281.98, Stats.

(3) Seek any other appropriate remedy, relief or penalty.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.20 Variances. (1) **GENERAL.** The department may, on its own initiative or pursuant to a written request from an applicant, approve a variance from a requirement of this chapter when it determines that a variance is essential to effect necessary financial assistance actions or department objectives where special circumstances make a variance in the best interest of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the

recipient, and financial hardship. Any variance approved shall be consistent with the objectives of ss. 281.58 and 281.59, Stats.

(2) APPLICABILITY. The department may only approve a variance from any non–statutory requirement of this chapter.

(3) REQUEST FOR VARIANCE. An applicant shall submit a request for a variance in writing to the department as soon as it is determined a variance is needed. Each request for a variance shall contain all of the following:

(a) The name of the applicant and project number.

(b) The section of this chapter from which the applicant seeks a variance and a statement explaining why the variance is necessary.

(c) An adequate description of the variance desired, and the facts that the recipient believes warrant the department's approving the variance.

(d) A statement as to whether the recipient has previously requested the same or a similar variance, and if so, the circumstances of the previous request.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.21 Administrative fees. (1) An administrative fee, if one is imposed, shall be included in the biennial finance plan established under s. 281.59 (3), Stats., which is approved by the building commission under s. 13.48, Stats.

(2) Hardship financial assistance provided under subch. IV is not subject to an administrative fee.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

Subchapter IV — Hardship Financial Assistance

NR 162.40 Applicability. (1) GENERAL. This subchapter applies to all applicants for and recipients of hardship financial assistance pursuant to s. 281.58 (13), Stats. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving financial assistance under s. 281.58 (13), Stats. This subchapter does not apply to financial assistance for BMPs under subch. II or to interest rate subsidy provided under subch. IV.

(2) ADMINISTRATIVE OR SERVICE FEES. Administrative or service fees under s. NR 162.21 may not be charged to hardship financial assistance recipients.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.41 Types of hardship financial assistance. The department may provide any of the following types of hardship financial assistance:

(1) Loans with interest rates lower than the interest rates specified in s. NR 162.11.

(2) Grants not to exceed 70% of the eligible costs of the project.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.42 Eligibility for hardship financial assistance. (1) ELIGIBLE MUNICIPALITIES. A municipality that meets all of the following criteria is eligible for hardship financial assistance:

(a) The median household income in the municipality is 80% or less of the median household income in this state. The department shall determine median household income as follows:

1. If the municipality is a place, including a city, village, or census designated place, or the municipality is a county or a minor civil division, such as a town, the department shall obtain the most recent median household income figure published for the municipality by the U.S. bureau of the census prior to the department's publishing of the project priority list.

Note: The department uses the U.S. census bureau's municipal incomes as derived from the American community survey and published annually in the 5-year survey data. At the time of writing of this administrative code, the U.S. census bureau is not collecting income data during the decennial census.

2. If the municipality is a town sanitary district or public inland lake protection and rehabilitation district, the municipality shall supply a median household income provided by the U.S. bureau of the census along with documentation of how the median household income was determined. This median household income of the municipality shall be one of the following:

a. A median household income derived by requesting a custom tabulation of income data at the census block level from the American community survey most recently published with 5-year data.

Note: To obtain a custom tabulation, the municipality will likely need to compare a map showing the boundaries of the municipality to a census block map and determine which census blocks contain any portion of the municipality. The municipality would then submit the appropriate census block numbers to the U.S. bureau of the census with a request for a custom tabulation of a median household income figure for the municipality.

b. The median household income of the census tract or block numbering area that encompasses the municipality. If the municipality falls within two or more census tracts or block numbering areas, the median household income shall be weighted by the population of the municipality that resides within each minor civil division.

c. The median household income of the minor civil division, such as a town, within which the municipality is located. If the municipality falls within two or more minor civil divisions, the median household income shall be weighted by the population of the municipality that resides within each minor civil division.

3. If the sewer service area of the treatment works within the boundaries of the municipality is different than the municipality's boundaries, the municipality may choose to follow the custom tabulation procedure as described in par. 2.a. and submit the result to the department to use in lieu of the median household income obtained by the department as described in par. 1.

(b) The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2% of the median household income in the municipality without assistance under s. 281.58 (13), Stats.

(2) PROJECT ELIGIBILITY. (a) Wastewater projects described in s. NR 162.03 (1) (a), (b) and (e) and (2) are eligible for hardship financial assistance.

(b) Projects or portions of projects described in s. NR 162.03 (1) (c) are not eligible for hardship financial assistance.

(c) Projects described in s. NR 162.03 (1) (d) and (3) are not eligible for hardship financial assistance.

(3) COST ELIGIBILITY. Eligible and ineligible costs described in s. NR 162.04 apply to hardship financial assistance projects.

(4) REFINANCING AND REIMBURSEMENT. (a) The department may refinance a project with hardship financial assistance for a municipality in the hardship fundable range if any of the following applies:

1. The municipality started or completed construction of the project prior to receiving hardship financial assistance and received a loan for the project from a source other than the department.

2. The municipality received a financial assistance agreement for a CWFP loan at an interest rate specified in s. NR 162.11 for the project and all of the following apply:

a. The municipality was on a hardship financial assistance funding list and did not receive hardship financial assistance for the entire project due to insufficient hardship present value subsidy.

b. At the time of each application submittal for the project, the municipality met the criteria described in sub. (1).

(b) A financial assistance agreement to refinance an existing project debt shall be executed before the project has been substantially complete for more than 5 years.

(c) An applicant for refinancing shall meet the planning and design criteria and application requirements as established in subch. II.

(d) Refinancing shall be subject to the limitations of issuance and interim financing costs established in s. NR 162.04 (3).

(e) Reimbursement of the municipality's internal funds for previously paid project costs shall be in accordance with s. NR 162.10 (1) and subject to U.S. treasury reimbursement regulations in 26 CFR 1.150-2.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.43 Application. (1) NOTICE OF INTENT TO APPLY. Each municipality intending to apply for hardship financial assistance shall inform the department of its intent by the October 31 prior to the hardship application deadline specified in sub. (2). Section NR 162.05 (1) and (2) apply to hardship financial assistance projects.

Note: A Notice of Intent to Apply form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) APPLICATION DEADLINE. To request hardship financial assistance for the following state fiscal year, a municipality shall submit a complete application and plans and specifications by June 30.

Note: An application form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707. An interest subsidy application is a different form and must be submitted in accordance with s. NR 162.63.

(3) PROCEDURE. Subject to sub. (2), hardship financial assistance applicants shall follow the procedure described in s. NR 162.06 (1) and s. 281.58 (9) (a) to (c), Stats.

(4) CONTENTS OF APPLICATION. An application for hardship financial assistance shall comply with the requirements of s. NR 162.06 (2).

(5) AMENDED APPLICATION. An applicant may submit an amended application prior to the date the department publishes the hardship financial assistance funding list.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.44 Funding list. (1) GENERAL. The department shall establish a hardship financial assistance funding list in accordance with s. 281.58 (13) (d), Stats., and the funding policy established in s. NR 162.02 (1).

Note: Hardship financial assistance projects are included in the project priority list established annually under s. NR 162.33.

(2) ELIGIBILITY CALCULATION. (a) The department shall determine eligibility for hardship financial assistance using the following method:

$$S = \frac{(AT+M+O+W) R}{(MHI)(N)}$$

where:

S . . . is the estimated total annual charges per residential user as a percentage of the median household income in the municipality.

AT . . . is the annual principal and interest costs, based upon a 20-year repayment schedule at the appropriate interest rate, for that portion of the project that is eligible for the below market interest rate, if the municipality did not receive hardship financial assistance for the project.

M . . . is the annual principal and interest costs, based upon a 20-year repayment schedule at the market interest rate, for that portion of the project that is eligible for the market interest rate.

O . . . is the annual operation, maintenance and replacement costs of the treatment works to be paid by the recipient of the hardship financial assistance.

W . . . is the total remaining prior wastewater debt service of the municipality plus the estimated debt service for project costs ineligible for CWFP funding, such as hook-up fees owed another municipality and debt for lateral sewers, divided by 20 years. If the prior wastewater debt has more than 20 years remaining, the total debt service on that portion of "W" shall be divided by the actual number of years remaining on the debt. In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

R . . . is the residential percentage. Residential percentage is determined by dividing the residential design flow by the total design flow from the applicant municipality.

MHI is the median household income in the municipality.

N . . . is the number of residential users in the municipality.

(b) If S is greater than 2% and the municipality meets the criterion listed in s. NR 162.42 (1) (a), the municipality is eligible for hardship subsidy and the department shall place the project on the hardship financial assistance funding list. If S is 2% or less, the municipality is not eligible for hardship subsidy and may request a non-hardship loan unless the municipality has already received a CWFP loan for the project.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.45 Allocation of funds. At the time of publication of the funding list, the hardship present value subsidy shall be allocated to those projects within the hardship fundable range in the order specified in s. 281.58 (13) (e), Stats. The department shall base the amount allocated on figures in the municipality's current application and additional information provided to the department prior to publication of the funding list.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.46 Requirements and conditions for receiving hardship financial assistance. (1)

REQUIREMENTS. Before awarding hardship financial assistance for any project, the department shall determine that all of the applicable requirements established in s. NR 162.07, and the user charge and sewer use ordinance requirements of s. NR 162.08, the procurement requirements of s. NR 162.09 and the application requirements of s. NR 162.43 have been met.

(2) **CONDITIONS.** The conditions in s. NR 162.12 shall be included in financial assistance agreements that award hardship financial assistance.

(3) **FINANCIAL MANAGEMENT.** Section NR 162.13 applies to recipients of hardship financial assistance.

(4) **RECORDS AND RECORD RETENTION.** Section NR 162.17 applies to recipients of hardship financial assistance.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.47 Procedure for determining type and amount of hardship financial assistance. (1)

GENERAL. (a) The department shall determine the type and amount of hardship financial assistance at the time the hardship financial assistance agreement is awarded.

(b) The department may provide financial assistance in the form of a loan or a combination of loan and grant for eligible project costs for the amount specified in s. 281.58 (13) (c), Stats. The municipality shall pay at least 30% of the project costs eligible for the below-market interest rate.

(2) CALCULATION OF HARDSHIP FINANCIAL ASSISTANCE AMOUNT. (a) The interest rate for a hardship financial assistance loan on eligible below-market project costs shall be no greater than a rate specified in s. NR 162.11. The department may only provide grant funding to a municipality if it is necessary in order to bring the total annual charges per household down to 2% of the median household income. The department shall determine the amount of financial assistance to be provided for a project as follows:

1. 'Determining the grant amount.' a. To determine whether or not a municipality is eligible for a grant and to determine the amount of grant needed to keep total annual charges at 2% of the median household income in the municipality, the department shall use the following method:

$$(MHI)(N)(.02) = A$$

$$A / R = B$$

$$B - O - W - M = C$$

$$P / 20 = D$$

$$D - C = H$$

where:

MHI is the median household income in the municipality.

N . . . is the number of residential users in the municipality.

A . . . is the estimated amount the residential users can afford annually for wastewater treatment.

R . . . is the residential percentage. Residential percentage is determined by dividing the residential design flow by the total design flow from the applicant municipality.

B . . . is the estimated amount the residential and nonresidential users can afford for all wastewater treatment costs annually.

O . . . is the annual operation, maintenance and replacement costs of the treatment works to be paid by the recipient of the hardship financial assistance.

W . . . is the total remaining prior wastewater debt service of the municipality plus the estimated total municipal debt service for project costs ineligible for CWFP funding, such as hook-up fees owed another municipality and debt for lateral sewers, divided by 20 years. If the prior wastewater debt has more than 20 years remaining, the total debt service on that portion of "W" shall be divided by the actual number of years remaining on the debt. In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

M . . . is the annual principal and interest costs based upon a 20-year repayment schedule at the market interest rate for that portion of the project that is eligible for the market interest rate.

C . . . is the estimated amount the residential and nonresidential users can afford annually to pay for debt service on the CWFP project loan.

P . . . is the project costs eligible for below market interest rate.

D . . . is the annual debt service for a zero percent interest rate loan for below market eligible project costs.

H . . . if positive, is the annual grant amount a municipality needs to keep total annual charges per household at 2% of the municipality's median household income. If H is negative, the municipality is not eligible for a grant and the interest rate for a loan shall be determined in accordance with subd. 2. and par. (b).

b. H (20) equals the total maximum grant the municipality is eligible to receive, subject to the 70% grant limit with the remainder at a zero percent loan for eligible project costs.

2. 'Determining the interest rate for a loan.' a. If H is zero, the municipality is eligible for a zero percent interest rate loan with no grant portion.

b. If H is negative, the municipality is eligible for a below market interest rate loan with no grant portion. The department determines the interest rate by entering figures from the calculation in subd. 1. a.

as the following into a financial calculator, such as the Hewlett Packard HP-12C or equal, and solving for the interest rate:

- C = payment
- P = principal or present value
- 20 = term
- i = interest rate

Note: "Interest rate" means the discount rate at which the present value of CWFP loan payments equals the CWFP loan amount.

c. If the department determines that the affordable interest rate for hardship financial assistance is greater than the interest rate for that project type defined in s. NR 162.11 (1), the department shall determine the interest rate for the project according to the method described in s. NR 162.11 (2).

(b) If portions of the project costs are only eligible for funding at the market interest rate, pursuant to s. NR 162.04 (1) (b), then the department shall calculate a composite interest rate for the project. The department shall compute the composite interest rate for a hardship project as follows:

$$HRC = \frac{(i)(P) + (im)(CT\ 3)}{P + CT\ 3}$$

where:

HRC is the composite interest rate.

i . . . is the interest rate calculated in par. (a), if any; otherwise it is zero.

P . . . is the project costs eligible for below market interest rate.

im . . . is the CWFP market interest rate.

CT3 is the project costs eligible for CWFP market interest rate funding under s. NR 162.04 (1) (b).

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.48 Operation, maintenance, and replacement cost estimates. (1) The maximum amount allowable for operation, maintenance and replacement cost estimates used in ss. NR 162.44 (2) and 162.47 (2) shall be 2 standard deviations above the mean operation, maintenance and replacement costs, as obtained from a regression analysis of the operation, maintenance and replacement costs of previously funded CWFP projects on population size, segregated by project type. The department may use confidence intervals in determining the maximum allowable amount rather than standard deviations.

(2) The estimated operation, maintenance and replacement costs used for "O" under ss. NR 162.44 (2) and 162.47 (2) (a) 1. shall be the operation, maintenance and replacement costs contained in the application and the approved user charge, respectively, or the maximum allowable amount derived under sub. (1), whichever is less.

(3) The department shall update the operations, maintenance and replacement costs used under sub. (1) to reflect new data and inflation as needed for review of scored projects.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.49 Hardship financial assistance agreement.

(1) NOTICE OF HARDSHIP FINANCIAL ASSISTANCE COMMITMENT. The department may issue a notice of hardship financial assistance commitment to a municipality in the hardship fundable range upon the municipality's request if the municipality has complied with the requirements of s. NR 162.43 and has submitted sufficient documentation to show that it has complied or will comply with the financial assistance requirements of s. NR 162.07.

(2) EXECUTION OF HARDSHIP FINANCIAL ASSISTANCE AGREEMENT. (a) The department may enter into a hardship financial assistance agreement with a municipality in the hardship fundable range if the requirements under s. NR 162.46 (1) are met.

(b) The department shall specify the type of hardship financial assistance to be provided in the hardship financial assistance agreement for each application that it approves.

(c) The date the hardship financial assistance agreement is signed by the department shall be deemed the date the hardship financial assistance agreement is awarded for purposes of determining the interest rate for the loan portion of the financial assistance.

(3) DEADLINE FOR SIGNING A FINANCIAL ASSISTANCE AGREEMENT. The applicant shall sign the financial assistance agreement by August 30 of the calendar year that follows the year in which hardship present value subsidy is allocated to the project. If a financial assistance agreement is not signed by that August 30, the subsidy allocated for the applicant's project shall be released for reallocation to other projects.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.50 Hardship financial assistance disbursements. (1) GENERAL. Disbursements of financial assistance shall be made in accordance with s. NR 162.14.

(2) ORDER OF LOAN AND GRANT DISBURSEMENTS. The department shall make disbursements of hardship financial assistance first in the form of a loan, up to the loan amount identified in the hardship financial assistance agreement. The department shall make grant disbursements, if any, after all hardship loan proceeds have been disbursed.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.51 Funding additional project costs. (1) APPLICABILITY. The department may provide additional funding in the form of a loan or grant for eligible project costs incurred beyond the amount specified in the hardship financial assistance agreement. The department may not process a request to provide additional funding for a project until the time the total remaining costs to complete the project can be reasonably determined. Additional funding for a project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

(a) *Hardship PV available, original biennium.* If sufficient hardship present value subsidy is available from the biennium in which the original hardship financial assistance agreement was funded, the municipality may receive funding for the additional costs from that biennium's present value subsidy. The proportion of loan to grant, the interest rate, and the final maturity date in the original financial assistance agreement shall be maintained in the amendment to the original hardship financial assistance agreement.

(b) *Insufficient hardship PV, sufficient commitment PV, original biennium.* If there is not sufficient hardship present value subsidy but there is sufficient project commitment present value subsidy available from the biennium in which the original hardship financial assistance agreement was funded, a municipality may receive a financial assistance agreement to fund the additional costs from that biennium's project commitment present value subsidy. The funding shall be in the form of a loan at the interest rate corresponding to the project type as defined in s. NR 162.11 with a loan term of up to 20 years.

(c) *Continuous funding cycle loan, new biennium.* If there is not sufficient project commitment or hardship present value subsidy available from the biennium in which the original hardship financial assistance agreement was funded, and the CWFP is accepting applications on a continuous funding cycle basis for the fiscal year in which the additional costs are to be funded, the municipality may receive funding for the additional costs from the current biennium's project commitment present value subsidy. If the interest rate and final maturity date for the additional funding are the same as in the original financial assistance agreement, the funds may be provided in an amendment to the original hardship financial assistance agreement. If the interest rate or final maturity date of the additional funding is different than those in the original financial assistance agreement, the funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the interest rate corresponding to the project type as defined in s. NR 162.11.

Note: Section 281.59 (3e) (c), Stats., allows present value subsidy to be allocated only until the December 30th following the end of the biennium.

(d) *Compete for hardship PV, new biennium.* A municipality may compete for hardship financial assistance for additional project costs through the application process in a biennium other than that in which the original hardship financial assistance agreement was funded. The application for additional funding may be submitted in any fiscal year through the second year of the biennium following the substantial completion date of the project indicated in the original hardship financial assistance agreement. The application shall be ranked on the hardship financial assistance funding list based on the priority score the project received in the fiscal year in which the original hardship financial assistance agreement was funded. The additional funding is subject to the following:

1. 'Sufficient hardship PV available.' If the municipality is successful in obtaining sufficient hardship financial assistance from another biennium for the entire amount of additional costs, the original proportion of loan to grant, interest rate and final maturity date shall be maintained in an amendment to the original hardship financial assistance agreement.

2. 'Partial hardship PV available.' If there is hardship present value subsidy available to only partially fund the additional costs, the municipality may receive funding from the current biennium's project commitment present value subsidy for any eligible costs beyond the amount funded with the available hardship present value subsidy. The funds shall be provided in a financial assistance agreement in the form of a loan or a combination of grant and loan for up to 20 years with an interest rate determined by the department and the department of administration based on the proportion of hardship and non-hardship funding.

(e) *Compete for commitment PV, new biennium.* If a municipality is not able to obtain CWFP assistance for its additional project costs through the methods described in pars. (a) to (d), and a funding list for all CWFP projects is published for the fiscal year in which the additional costs are to be funded, a municipality may compete through the application process to receive CWFP project commitment present value subsidy to finance additional project costs. The funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11. The application for additional funds shall be ranked on the CWFP funding list based on the priority score the project received in the fiscal year in which the original hardship financial assistance agreement was funded.

(2) REQUESTING FUNDS. A municipality may request funding for additional project costs using one of the following options:

(a) *Request by letter.* If sub. (1) (a) or (b) is applicable, the municipality shall submit a letter to the department that justifies the need for the additional funding and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

(b) *Request by application.* If sub. (1) (c) or (e) is applicable, the municipality shall submit a CWFP notice of intent to apply as described in s. NR 162.05 and a financial assistance application as described in s. NR 162.06, requesting a loan for additional project costs. The department may waive specific application requirements for the amendment request if submittals made with the initial application are still acceptable to the department. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement. If the municipality submits its application for additional funding as part of the continuous funding cycle and intends to later apply for hardship financial assistance for these same project costs, the municipality shall inform the department in writing that waiting to obtain hardship financial assistance to pay those costs would have negative impacts on the municipality.

(c) *Request by application, hardship.* If sub. (1) (d) is applicable, the municipality shall submit a CWFP intent to apply form and a financial assistance application as described in s. NR 162.43, requesting hardship financial assistance for additional project costs. The application shall be postmarked by the June

30 prior to the fiscal year from which the additional funds are requested. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.52 Sale of hardship financed treatment works. A municipality may not sell a treatment works or a portion of a treatment works that received financing under this subchapter unless the municipality receives prior written approval from the department.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.53 Breach of contract and noncompliance. Sections NR 162.18 and 162.19 apply upon breach of contract or noncompliance by the recipient.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.54 Variances. Section NR 162.20 applies to hardship financial assistance projects.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.55 Disputes. (1) DECISION OF THE DEPARTMENT. Except as otherwise provided by law, any dispute arising under this subchapter prior to the execution of a financial assistance agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the applicant personally or by mail.

(2) REVIEW OF THE DECISION. A final decision of the department may be reviewed pursuant to subch. III of ch. 227, Stats., and ch. NR 2.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

Subchapter VI — Interest Rate Subsidies for Small Loans

NR 162.60 Applicability. This subchapter applies to all applicants for and recipients of interest rate subsidy on a loan from the board of commissioners of public lands for planning, design and construction of treatment works and BMPs with estimated costs of \$2,000,000 or less made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving interest rate subsidy under ss. 281.58 and 281.59, Stats. The following sections in subchs. I to III apply to projects receiving an interest rate subsidy under this subchapter: ss. NR 162.01, 162.02, 162.04 (1) (a) and (2), 162.05, 162.09 (1), (2) and (4) to (6), 162.11 (1) (a) to (d) and (2), 162.16, 162.20, 162.21, and 162.30 to 162.33.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.61 Project eligibility. (1) ELIGIBLE PROJECTS. An eligible applicant may receive financial assistance under this subchapter for a publicly owned project that meets any of the following criteria and has not been substantially complete for 3 years or more:

(a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes a sewage collection system project that is necessary to maintain the integrity and performance of the wastewater treatment works serving the municipality.

(b) The project is necessary to achieve compliance with an enforceable wastewater requirement changed or established after May 17, 1988, if the municipality is in substantial compliance with its permit, issued under ch. 283, Stats.

(c) The project is necessary to control storm water runoff rates, volumes and discharge quality. This includes a municipal storm water conveyance system project that is necessary to maintain the integrity and performance of the urban runoff treatment works or BMP serving the municipality, as required by any of the following:

1. A WPDES storm water permit issued under subch. I of ch. NR 216.
2. A performance standard.
3. A plan approved by the department under s. 281.41, Stats., or a storm water management plan.

(d) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality.

(2) INDIVIDUAL SYSTEMS. (a) A project that is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste or urban runoff that serve one or more properties if the municipality:

1. Owns each individual system.
2. Is responsible for the proper installation, operation and maintenance of each individual system.
3. Has unlimited access to each individual system at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement of the system.
4. Establishes a comprehensive program for the regulation, inspection, operation and maintenance of individual systems, and for monitoring the impact of the systems on the groundwater where required by the department.
5. Complies with all other applicable requirements, limitations and conditions for projects funded under this subchapter.

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land or ordinance. The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(3) INELIGIBLE PROJECTS. The following projects or portions of projects are not eligible to receive financial assistance under this subchapter:

(a) Projects that are found ineligible for financing by the board of commissioners of public lands.

(b) Projects of a municipality that has failed to substantially comply with any of the conditions or requirements of the CWFP, a financial assistance agreement, or an interest rate subsidy agreement, or with the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works or BMP.

(c) Laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(d) Public sanitary sewer mains, interceptors and individual systems that exclusively serve development not in existence as of the date of the application.

(e) Projects of municipalities that will not request interest rate subsidy for project construction costs, including projects solely for planning and design.

(f) Dams, pipes, conveyance systems and structural urban best management practices, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(g) Projects in an unsewered municipality that will be disposing of wastewater in the treatment work of another municipality and has not executed an intermunicipal agreement under s. 66.0301, Stats., with the other municipality to receive, treat and dispose of the wastewater.

(h) Projects that have been substantially complete for 3 years or longer.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.62 Cost eligibility. (1) ELIGIBLE COSTS. Project costs described in s. NR 162.04 (1) (a) are eligible for interest rate subsidy.

(2) INELIGIBLE COSTS. Project costs described in s. NR 162.04 (1) (b) and (2) are not eligible for interest rate subsidy.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.63 Notice of intent to apply and application. (1) NOTICE OF INTENT TO APPLY. A municipality that intends to apply for an interest rate subsidy shall submit to the department a notice of its intent to apply in accordance with s. NR 162.05.

Note: A Notice of Intent to Apply form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) PROCEDURES. A municipality shall apply for an interest rate subsidy in accordance with s. 281.58 (9), Stats., on an application form provided by the department.

Note: An application form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(3) CONTENTS OF APPLICATION. The applicant shall submit a complete application. The department shall accept an application as complete when all of the following items, if applicable, are submitted to the department either in the application form or separately:

(a) Evidence of an approved facility plan or other department approved plan.

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats.

(c) A completed interest subsidy application form.

(d) Estimated or actual construction costs.

(e) A proposed or an executed intermunicipal agreement, in accordance with s. NR 162.06 (2) (g), in cases where 2 or more municipalities discharge to or through the same treatment works or BMP.

(f) Replacement fund information.

(4) DEADLINE FOR SIGNING INTEREST RATE SUBSIDY AGREEMENT. An applicant shall sign an interest rate subsidy agreement within 8 months after the date the department determines in writing the application is acceptable. An applicant shall time its submittal of the application accordingly. If an interest subsidy agreement is not signed within 8 months of the department's determination of acceptance, the applicant's project shall lose its allocated subsidy. A municipality may not submit more than one application for any single project in any 12-month period.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.64 Interest rate subsidy requirements. Before awarding interest rate subsidy for any project, the department shall determine that all of the applicable requirements of s. NR 162.63 have been met and that all of the following have been satisfied:

(1) The department has received the following information pertaining to the applicant's board of commissioners of public lands loan:

- (a) A copy of the loan application.
- (b) A copy of the application review letter from the attorney general's office.
- (c) A signed copy of the certificate of indebtedness.
- (2) The project has met the priority requirements of subch. V.
- (3) If requested by the department, copies of executed engineering contracts for planning, design and construction have been submitted to the department.
- (4) If requested by the department, information related to bids and construction contracts has been submitted to the department.
- (5) The department has approved the plans and specifications for the project and the parallel cost percentage, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.
- (6) The applicant has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of the treatment work or BMP throughout the applicant's jurisdiction.
- (7) The department of administration has determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.
- (8) If requested by the department, additional financial information required by the department of administration has been submitted to the department.
- (9) The applicant has received, or has applied for, any state permits required by the department, including those under chs. 30 and 283, Stats.
- (10) If requested by the department, information on the applicant's user charge system and sewer use or storm water utility ordinance in addition to that required by s. NR 162.63 (3) (f) has been submitted to the department.
- (11) If requested by the department, other documentation or certification in support of the application has been submitted to the department.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.65 Procurement. (1) APPLICABILITY. Procurement of professional services and construction contracts by recipients under this subchapter shall be in accordance with the requirements of s. NR 162.09 (1), (2) and (4) to (6).

(2) UTILIZATION OF MINORITY-BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES. Recipients are encouraged to provide MBEs and WBEs the maximum feasible opportunity to compete for contracts and subcontracts and to utilize MBEs and WBEs for their projects. Recipients shall provide documentation of any MBE or WBE utilization to the department.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.66 Determination of interest rate subsidy. (1) GENERAL. Interest rate subsidies shall be set in accordance with s. 281.58 (8) (j) and (12) (a), Stats., and this section. Subsidies are not available for interest payments that were due the board of commissioners of public lands prior to the execution of an interest rate subsidy agreement with the department.

(2) PROJECT COST CATEGORIES. (a) The department shall classify costs of projects and portions of projects according to s. NR 162.11 (1) (a) to (d).

(b) The department may not provide an interest rate subsidy for costs classified under s. NR 162.11 (1) (d).

(3) PROJECT INTEREST RATE CALCULATION. The department shall calculate the project interest rate according to s. NR 162.11 (2).

Note: Section NR 162.11 (1) (e) does not apply to projects subsidized under this subchapter.

(4) CALCULATION OF INTEREST RATE SUBSIDY. (a) Only that portion of the recipient's board of commissioners of public lands loan that is used for an eligible project under s. 281.58, Stats., is eligible for interest rate subsidy.

(b) The maximum amount of project costs eligible for interest rate subsidy is the total eligible project costs multiplied by the parallel cost percentage as determined under the applicable requirements of s. NR 162.04 (1) (c). (c) The interest rate subsidy shall be based on the market interest rate in effect at the time the interest rate subsidy agreement is executed.

(d) The department shall calculate the interest rate subsidy as follows:

1. If the interest rate charged for the loan by the board of commissioners of public lands is greater than or equal to the CWFP market interest rate, the interest rate subsidy is calculated as follows:

$$SB = RT4 - RC$$

where:

SB . . . is the interest rate subsidy for which the project is eligible under this subchapter.

RT4 is the market interest rate.

RC . . . is the project interest rate, as calculated under s. NR 162.11 (2) (b).

2. If the interest rate charged for the loan by the board of commissioners of public lands is less than the CWFP market interest rate, the interest rate subsidy is calculated as follows:

$$SB = RF - RC$$

where:

SB . . . is the interest rate subsidy for which the project is eligible under this subchapter.

RF . . . is the interest rate established for the project by the board of commissioners of public lands.

RC . . . is the project interest rate, as calculated under s. NR 162.11 (2) (b).

Note: Annually, the department of administration will calculate the interest subsidy payment to a recipient based on the interest charged by the board of commissioners of public lands on the principal balance outstanding on the recipient's loan and as established in the interest rate subsidy agreement. The payment will be calculated as follows:

$$IS = (I)(E)(SB/RF)$$

where:

IS . . . is the subsidy payment provided in a given year to the recipient, in dollars.

I is the amount of interest on a recipient's loan due the board of commissioners of public lands in a given year.

E . . . is the percentage that results from dividing the eligible loan amount by the total loan amount, as determined by the department of administration.

SB . . . is the interest rate subsidy for which the project is eligible under this sub-chapter.

RF . . . is the interest rate established for the project by the board of commissioners of public lands.

Note: The board of commissioners of public lands shall determine the type of municipal obligation that is required for the repayment of its loan.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.68 Interest rate subsidy agreement conditions. (1) The interest rate subsidy agreement shall bind the recipient to all of the following conditions:

(a) *Compliance with laws and regulations.* The recipient and the treatment work or BMP shall comply with all pertinent requirements of federal, state and local laws and regulations.

(b) *Access.* The recipient shall provide department representatives access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow department representatives access to records of contractors and subcontractors that are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(c) *Operation and maintenance.* The recipient shall develop and adopt a program of system-wide operation and maintenance of the treatment work, including the training of personnel.

(d) *Erosion control.* The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision.

Note: See s. NR 162.12 (1) (L) for information on inspecting and obtaining copies of this publication.

(e) *Construction inspection.* The recipient shall provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(f) *Substantial completion.* The recipient shall notify the department of the substantial completion of the project.

(g) *Minority business enterprise and women business enterprise utilization reporting requirements.* The recipient shall document any utilization of minority- and women-owned businesses on the project.

(2) The interest rate subsidy agreement is not effective until executed by all parties to the agreement.

(3) If requested pursuant to s. 281.58 (14) (b) 7., Stats., the recipient shall adopt and maintain a user charge system that generates sufficient revenue to cover the cost of debt service and equipment replacement.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.69 Financial management. The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department.

(2) Maintain a financial management system that meets the requirements, terms and conditions of the interest rate subsidy agreement.

(3) Comply with any requirements of the board of commissioners of public lands.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.70 Interest rate subsidy disbursements and project closeout. (1) GENERAL. After execution of the interest rate subsidy agreement, the department of administration may provide interest rate subsidy for the eligible portion of project costs incurred within the scope of an approved project. The department shall determine compliance with the terms and conditions of the interest rate subsidy agreement before interest rate subsidy payments are made.

(2) **APPLICATION OF SUBSIDY PAYMENTS.** Subsidy payments shall be applied to the interest due on the board of commissioners of public lands loan.

(3) AMENDMENTS AND CHANGE ORDERS. (a) The eligible project costs established in the interest rate subsidy agreement that were used to calculate the subsidy payment may not be increased by amendment or change order.

(b) An executed interest rate subsidy agreement may not be amended, unless the department or the department of administration determines that an amendment is needed to correct an error or errors in the agreement.

(4) PROJECT CLOSEOUT. All of the following project closeout procedures shall be completed:

(a) *Final inspection.* The recipient shall notify the department of the final completion of the project. The department may complete a final inspection of the project.

(b) *Documentation of minority business enterprise and women business enterprise utilization.* The recipient shall document any utilization of MBEs and WBEs on a form provided by the department.

Note: An MBE/WBE utilization form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(c) *Operation and maintenance.* The municipality shall submit to the department evidence that its operation and maintenance manual has been updated as required by the department.

(d) *DNR certification of recipient's compliance.* The department shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.71 Breach of contract and noncompliance. The department may rescind an interest rate subsidy agreement or seek any other appropriate administrative remedy upon breach of contract by the recipient, or if the recipient fails to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.72 Termination. The department shall terminate the interest rate subsidy agreement if the recipient terminates its loan agreement with the board of commissioners of public lands or prepays all of the principal of the loan prior to the end of the term of the loan agreement. No subsidy payment may be made for a year in which the loan is paid off early or the interest rate subsidy agreement is terminated early.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

Subchapter V — Priority Scoring and Ranking System

NR 162.30 Project scoring system. Projects shall be scored under one of the following three categories: collection systems, wastewater treatment plants and urban runoff projects. **(1) COLLECTION SYSTEMS.** The following factors, when applied to collection system projects in accordance with s. NR 162.31, shall determine the priority scoring for clean water fund program financial assistance pursuant to s. 281.58, Stats.

(a) *Project type score.* The following points shall be awarded to each collection system project:

1. Fifty points for a project that the department determines is necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats. This includes eligible projects identified under s. NR 162.03 (1) (a) and (d) 1.

2. Twenty-five points for a project that serves an unsewered municipality(section of a?). This includes eligible projects identified under s. NR 162.03 (1) (e).

3. Five points for a project for planning, design, construction or replacement of collection system related activities that violate a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., of a performance standard. This includes eligible projects or costs identified under s. NR 162.03 (1) (c) or 162.04 (1) (b).

(b) *Human health score.* A collection system project may be awarded points for human health only if the project is necessary to eliminate a health hazard.

1. Replacing failing septic systems. A project that reduces the percentage of failing private systems shall be awarded the following points:

- a. Thirty points if 70% or more of the systems included in the project are failing systems.
- b. Twenty-five points if the project includes between 50% and 70% of failing systems.
- c. Twenty points if the project includes between 30% and 50% of failing systems.
- d. Fifteen points if the project includes between 15% and 30% of failing systems.
- e. Ten points if the project includes between 5% and 15% of failing systems.
- f. Five points if the project includes less than 5% but more than 0 failing systems

Note: Failing septic systems include those with surface water ponding, discharge of sewage to the ground, systems with high groundwater or crevassed bedrock.

2. Elimination or prevention of bypasses and overflows. A project that reduces or prevents bypasses and overflows that have occurred within the past 5 years shall be awarded 15 points.

3. Collection-system related backups. A project that reduces the number of basement backups related to the collection system shall be awarded the following points:

- a. Fifteen points if the project eliminates more than 50 basement backups.
- b. Ten points if the project eliminates between 15 and 49 basement backups.
- c. Five points if the project eliminates between 1 and 15 basement backups.

(c) *Regionalization score.* Projects that result in increased regionalization of wastewater treatment shall be awarded the following points:

1. Twenty points if the project results in the transport of wastewater that was previously served by individual septic systems to an already constructed municipal wastewater treatment plant or a joint treatment plant

2. Fifty points if the project results in the transport of wastewater from more than one municipality in which a new treatment plant will need to be constructed.

3. If a treatment plant is being upgraded to accommodate increased flow or loadings of more than 10% due to this collection system project and the treatment plant is seeking funding from the Clean Water Fund Program, then both projects shall be awarded the same total score. The scores for both projects shall be awarded the highest score from either project by section: Project Type, Human Health, water quality, Regional and population so that both projects final score is the same.

(2) WASTEWATER TREATMENT PLANT PROJECTS. The following factors, when applied to wastewater treatment plant projects in accordance with s. NR 162.31, shall determine the priority scoring for clean water fund program financial assistance pursuant to s. 281.58, Stats.

(a) *Project type score.* The following points shall be awarded to each wastewater treatment plant project:

1. A project that the department determines is necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats. This includes eligible projects identified under s. NR 162.03 (1) (a) and (d) 1 shall be awarded 50 points.

2. A project that is designed to meet new or changed WPDES permit limits shall be awarded 50 points.

3. A project for planning, design, construction or replacement of collection system related activities that violate a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., of a performance standard shall be awarded 5 points. This includes eligible projects or costs identified under s. NR 162.03 (1) (c) or 162.04 (1) (b).

(b) *Human health criteria.* Projects that directly affect human health are awarded points based on the following criteria:

1. Five points if the project is necessary to eliminate documented system-related backups caused by the facility (not the collection system or due to I/I) within the past 5 years.
2. Ten points if the project eliminates or prevents bypasses and overflows that have occurred at the plant in the past 5 years (or if > 5 years, as part of a comprehensive plan), as defined in ch. NR 210.21, Wis. Adm. Code from a municipal sewerage system.
3. Ten points if the facility has an effluent limit for total Nitrogen for a groundwater discharge.
4. Five points if the facility has an effluent limit for other compounds, including chlorides, for a groundwater discharge.
5. Five points if the facility's permit requires annual disinfection prior to discharge.
6. Three points if the facility's permit requires disinfection but at a less than annual basis prior to discharge.

(c) *Water quality criteria*

1. The department shall establish criteria and associated points for various water quality parameters in the Intended Use Plan.
2. The department shall use the current facility permit limit for calculating the points assigned to the water quality criteria category.

Note: The Intended Use Plan is an annual plan required by US EPA as part of the blah, blah, blah.

Note: The parameters to be included in the Intended Use Plan include BOD/CBOD, TSS, DO, Ammonia, Phosphorus, chlorides and metals (including copper, nickel, zinc, mercury, cadmium and arsenic).

(d) *Regionalization.* If the project is necessary because of a greater than 10% increased flow or loadings from a new subscribing community or other municipality, 20 points shall be awarded.

(3) URBAN RUNOFF PROJECTS. The following factors, when applied to urban runoff projects in accordance with s. NR 162.31, shall determine the priority scoring for clean water fund program financial assistance pursuant to s. 281.58, Stats.

(a) *Project type score.* The following points will be awarded to each urban runoff project:

1. Fifty points shall be awarded for a project for which the municipality has an MS4 urban runoff permit.
2. Twenty-five points shall be awarded for an unpermitted urban runoff project.
3. Five points shall be awarded for a project for construction or replacement of urban runoff treatment works that violate a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., of a performance standard. This includes eligible projects or costs identified under s. NR 162.03 (1) (c) or 162.04 (1) (b).

(b) *Water quality score.* Urban runoff projects may be awarded water quality scores as indicated in subpar. 1 to .

1. Connected drainage areas associated with urban runoff projects shall be awarded the following points:
 - a. Ten points for projects for which the overall percentage of the drainage area connected to high density impervious surfaces such as commercial strip malls, commercial downtowns, or shopping centers are greater than 80%.
 - b. Five points for projects for which the overall percentage of the drainage area connected to medium density impervious surfaces such as schools, high density residential, mobile homes, freeways, multifamily, light industrial, hospital, office park are between 40% and 80% impervious.
 - c. One point for projects for which the overall percentage of the drainage area connected to low density impervious surfaces such as open space, suburban, park, cemetery, low or medium density residential are less than 40% impervious.
2. Urban runoff projects that provide TSS removal shall be awarded the following points:
 - a. Ten points for greater than 80% TSS removal

- b. Five points for TSS removal between 60% and 80%
- c. One point for TSS removal between 40% and 60%
- 3. Urban runoff projects that include the following features shall be awarded the following points:
 - a. Three points for greater than 55% phosphorus removal.
 - b. Three points for mechanical nutrient removal technology or other green technology.
 - c. Three points for infiltration.
 - d. Ten points for urban runoff projects that include pretreatment of contaminants before discharging to the groundwater through a seepage cell.

(4) **POPULATION.** Projects that have the same score as other projects within their category shall have a population multiplier added to the score. The population multiplier shall be the logarithm to the base 10 of the population of the municipality served by the project.

(5) **INTENDED USE PLAN.** The department may add additional or modify existing scoring criteria in the annual intended use plan.

NR 162.31 Project priority score. (1) A project priority score shall be assigned to each project for which a completed priority evaluation and ranking form has been submitted pursuant to s. NR 162.32. The project priority score is based on the additive of each criteria within the project category for the project. Each project shall be scored in only one category.

(2) In computing the project priority score, the assigned points must be accompanied by documentation as determined by department. If documentation to support points awarded to a particular factor is not submitted at the time of submittal of the priority evaluation and ranking form, , zero points shall be awarded to that particular factor.

NR 162.32 Procedure for determination and reevaluation of project priority score. (1) An applicant intending to apply for clean water fund program assistance for a project shall submit to the department a priority evaluation and ranking form in the manner prescribed by the department.

Note: An Intent to Apply form is available on the Environmental Improvement Fund website at dnr.wi.gov/Aid/EIF.html and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707-7921.

(2) Upon completion of the review and determination of a priority score, the department shall notify the applicant in writing that the determination is available.

Note: Email notifications of the score availability on the web meet this requirement.

(3) Annually, the department may review and, if necessary under the requirements of this chapter, recalculate priority scores to ensure accuracy and timeliness of information. The department shall notify the applicant in writing of any change in priority score.

(4) If the applicant objects to the department's determination of the priority score in sub. (3), (4) or (5), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (3), (4) or (5). The notice shall state the specifics of the objection. The applicant shall submit any new information not available at the time of the original submittal that supports the objection and the priority score which the applicant believes should be awarded to the project based on this new information.

(5) Upon receipt of a notice under sub. (6), the department shall reevaluate its determination of the project priority score and shall notify the applicant. If the department denies the requested priority score, it shall state the reasons in writing.

(6) Notwithstanding sub. (6), an applicant may submit a new priority evaluation and ranking form within 30 days of the application deadline. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (3).

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

NR 162.33 Project ranking system. (1) The department shall maintain a project priority list that ranks the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first.

(2) If 2 or more projects have the same priority score, the project serving the larger population, as based on the population factor score, shall be considered to have the higher priority.

(3) The department shall prepare a project priority list and shall use it for prioritizing clean water fund program assistance to eligible projects.

History: CR 03-027: cr. Register November 2003 No. 575, eff. 12-1-03.

SECTION 3. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)

