

Report to
Legislative Council Rules Clearinghouse
Chapter NR 162, Wis. Adm. Code
Natural Resources Board Order No. CF-12-19

Wisconsin Statutory Authority: Section 281.58(2), Wis. Stats., authorizes the department to promulgate rules necessary for the execution of its responsibilities under the Clean Water Fund Program. This program provides financial assistance to municipalities for water infrastructure projects including wastewater treatment plants, collection systems, and storm water best management practices.

Federal Authority: 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 1388. This rule complies with the requirements of the Federal Clean Water Act.

Comparison of Adjacent States: Each state implements the Clean Water Act consistently with the associated state statutes and federal requirements. Every state revolving fund program throughout the country 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 U.S. Environmental Protection Agency reviews program implementation to ensure consistency with the federal requirements.

Court Decisions Directly Relevant: None.

Analysis of the Rule - Rule Effect - Reason for the Rule: Revisions to ch. NR 162, Wis. Adm. Code, relating to the Clean Water Fund Program, bring the code in line with statutory changes that occurred after the current version became effective, clarify eligibility criteria, streamline processes, revise the scoring system, 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:

- Definitions – adds, modifies, and removes various definitions to add clarity to several sections of the code.
- Types of financial assistance – adds language to state that the statutes allow funds from the federal capitalization grant to be used as allowed under federal law, including providing principal forgiveness.
- Funding list – adds language to state that a funding list will be created annually for projects of municipalities competing for principal forgiveness.
- Eligible projects/activities – updates language to incorporate current practices.
- Dates for ITA/PERF submittals – revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.59, Wis. Stats.)
- Application process – requires applicant use of the online intent to apply and application systems, revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.59, Wis. Stats.), and modifies requirements for application submittals, including removing submittals no longer needed, adding clarity for certain submittals, revising requirements for intermunicipal agreements, and adding a design life

calculation worksheet requirement for municipalities requesting loan terms greater than 20 years since language was added to the statutes allowing terms of up to 30 years.

- Deadline for signing a financial assistance agreement – modifies the language regarding the timeframe within which a municipality must sign a financial assistance agreement to provide flexibility for potential modifications to the loan process timeline.
- Procurement and disbursement processes – adds language to clarify what documentation is expected when from municipalities for these processes.
- Loan interest rates – revises the statutory references and some language to bring the code in line with the statutes which were changed the same day ch. NR 162's last revisions took effect.
- Amendments – revises the financial assistance agreement amendment process as it was previously based on availability of present value subsidy which was removed from the statutes, and clarifies the type of financial assistance that may be provided in an amendment.
- Hardship financial assistance – removes all language regarding hardship financial assistance since the statutes sunset the program.
- Storm water projects – removes storm water language from subchapter II and creates a new subchapter III for storm water projects to clarify procedures for urban runoff projects.
- Interest rate subsidy projects – adds language to clarify using this type of assistance for a storm water project and revises the explanation of the interest rate subsidy calculation to clarify the steps taken to determine that amount of subsidy that is provided for a project.
- Priority scoring system – revises system to incorporate language currently included in the Clean Water Fund Program's intended use plan, adds clarifying language for projects in which regionalization of wastewater treatment is taking place, provides additional explanation of the reevaluation request process, and shifts the priority when two projects on the priority list have the same score from higher population municipalities to lower population municipalities.

Agency Procedures for Promulgation: The department will hold a hearing online on June 21, 2022, at 11:00 a.m. The hearing will be followed by board adoption, expected in September 2022, followed by a request for the governor's approval and legislative review.

Description of any Forms (attach copies if available): Existing program forms may need some minor revisions, but no new forms are planned at this time.

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