

CR 90-137



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES


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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CA-48-90 was duly approved and adopted by this Department on September 27, 1990. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 27th day of November, 1990.


Bruce B. Braun, Deputy Secretary

(SEAL)

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DEC 7 1990

10:50 am
Revisor of Statutes
Bureau

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES
BOARD REPEALING, RENUMBERING, RENUMBERING AND AMENDING,
AMENDING, REPEALING AND RECREATING AND CREATING RULES

.....
IN THE MATTER of repealing ss. NR 162.03(1), 162.05(2)(d), . . .
162.06(2)(e), 162.10(7)(b), 162.14(3)(c), 162.17(2)(b) and .
162.18(3); renumbering ss. NR 162.14(3)(d) and 162.17(2)(d) .
and (e); renumbering and amending ss. NR 162.10(7)(a) and .
162.17(2)(c); amending ss. NR 162.01, 162.02, 162.03(3), .
(19), (24)(intro), (26), (27), (30), (32)(c)2., (38) and .
(46), 162.04(intro) and (2), 162.05(title), (1), (3)(b), .
(4)(a)3., (7)(a)(intro)27. and 28. and (b)8., 162.06(1) .
(intro), (a) and (b), (2)(a)(intro) and 3., (2)(b) and (c), .
162.07(1), (2), (3), (4)(a), (b) and (c), (5)(a)(intro), .
162.08(2)(a)5., (3)(a)4., (b)4., (4)(a)6. and 7. and (b), .
162.09(9)(title), 162.10(14), 162.11(2)(a) and (b)2., .Order CA-48-90
162.13, 162.14(1), (3)(intro), (5)(a) and (b), 162.15(3) .
and (4)(intro), 162.17(1)(intro), (a), (b) and (e), 162.18 .
(1), (2)(a), (b) and (g), and (4), 162.20(3)(b) and (c), .
(4)(a)4., 162.21(1)(a), (2)(intro), (c) and (3), and .
162.23; repealing and recreating ss. NR 162.05(2)(c), .
(7)(b)10., 162.14(2) and (3)(b) and 162.16; and creating .
ss. NR 162.03(6m), (12e), (12t), (27m), (30m) and (45m), .
162.05(3)(am) and (g), (7)(a)29. to 32., 162.06(1)(am), .
(2)(a)4., and (3), 162.07(4)(am), (bm), (d) and (e), .
162.08(4)(a)5m. and 8., 162.09(13), 162.18(2)(h), 162.20(3) .
(d), 162.23(3) and 162.24 of the Wisconsin Administrative .
Code pertaining to the program for Clean Water Fund .
Assistance for Water Pollution Control Facilities. .
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DEC 7 1990

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Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.241, 144.2415 and 227.11(2)(a), Stats.
Statutes interpreted: ss. 144.241 and 144.2415, Stats.

This rule revises ch. NR 162, Wis. Adm. Code, to incorporate recent statutory changes made to ss. 144.241 and 144.2415, Stats. Major changes resulting from the statutory revisions are as follows:

1. The Clean Water Fund program is modified to a leveraged loan program to provide for greater financial assistance to municipalities for implementation of necessary wastewater treatment facility construction and nonpoint source pollution abatement.

2. Financial management of the Clean Water Fund program is transferred to the Department of Administration. The Department of Natural Resources continues as the lead state agency responsible for the environmental, technical and administrative components of the program.

3. Allocation of financial assistance to municipalities is based on revenue and general obligation bonding authority, present value subsidy and the DNR's annual funding lists established under ch. NR 161, Wis. Adm. Code. "Present Value Subsidy" is a measure of the long term financial obligation of the State of Wisconsin to fund interest rate subsidies for less than market rate loans to be provided by the Clean Water Fund.

4. A capital cost loan program to provide market interest rate loans to municipalities that contract with the Milwaukee Metropolitan Sewerage District (MMSD) for wastewater treatment is created. These communities may use the Clean Water Fund to finance capital costs associated with the purchase of wastewater treatment facility capacity if settlements are reached between the MMSD and certain communities that contract for wastewater treatment with the MMSD.

SECTION 1. NR 162.01 and 162.02 are amended to read:

NR 162.01 PURPOSE. The purpose of this chapter is to establish rules under ~~ss.~~ ss. 144.241 and 144.2415, Stats., for the implementation and administration of a financial assistance program for the planning, engineering design and construction of point source pollution abatement facilities.

NR 162.02 APPLICABILITY AND CROSS REFERENCING. This chapter applies to all applicants and recipients of funding for planning, design and construction of point source pollution abatement facilities made pursuant to ~~ss.~~ ss. 144.241 and 144.2415, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ~~ss.~~ ss. 144.241 and 144.2415, Stats. This chapter does not apply to applications for financial assistance for nonpoint source pollution abatement facilities under ~~ss.~~ ss. 144.241 and 144.2415, Stats.

SECTION 2. NR 162.03(1) is repealed.

SECTION 3. NR 162.03(3) is amended to read:

NR 162.03(3) "~~Annual~~ Biennial finance plan" means the proposed plan described in s. ~~144.241(4)~~ 144.2415(3), Stats.

SECTION 4. NR 162.03(6m), (12e) and (12t) are created to read:

NR 162.03(6m) "Capital cost loan" means a loan to a municipality to finance its payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats.

(12e) "Contingency" means an amount, established at 10% of the estimated project costs obtained from the approved loan application or 5% of the awarded project costs, to fund cost overruns and amendments for the project.

(12t) "Contractor" means a person or firm who agrees to furnish materials or performs services at a specified price using assistance from the clean water fund.

SECTION 5. NR 162.03(19), (24)(intro), (26) and (27) are amended to read:

NR 162.03(19) "Fundable range" means that range of projects on the funding list compiled under s. NR 162.06 which are projected to consume all available clean water fund financial assistance ~~funds appropriated~~ present value subsidy or bond authority allocated by the legislature and delineated in the annual funding policy under s. NR 162.17 for the each fiscal year.

(24)(intro) "Interceptor sewer" means a sewer and associated pump stations whose primary purpose is to transport wastewaters from collector sewers to a treatment facility, or which is designed for one or more of the following purposes:

(26) "Market interest rate" means the ~~average~~ effective interest rate ~~obtained of a revenue obligation issued by the state on its general obligation bond issuances during the preceding 6 month period~~ to fund a project loan or a portion of a project loan under ss. 144.241 and 144.2415, Stats.

(27) "Municipality" means any city, town, ~~town utility district~~, village, county, ~~utility district~~, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or any federally recognized tribal governing body.

SECTION 6. NR 162.03(27m) is created to read:

NR 162.03(27m) "Nonlocal share of a project" means costs for a project or a portion of a project that receives funding under s. 144.2415(13), Stats., is eligible for financial assistance under 33 USC 1251 et seq. or s. 144.24 or 144.242, Stats., and did not receive financial assistance under 33 USC 1251 et seq. or s. 144.24 or 144.242, Stats., because there were insufficient funds.

SECTION 7. NR 162.03(30) is amended to read:

NR 162.03(30) "Physical completion" means that project construction has been completed and the treatment process operation has been initiated or is capable of being put into operation, or wastewater treatment conveyance has been initiated or is capable of being initiated for projects or portions of projects which provide little or no treatment.

SECTION 8. NR 162.03(30m) is created to read:

NR 162.03(30m) "Present value subsidy" 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 7% per year to the first day of the biennium during which the loans are made.

SECTION 9. NR 162.03(32)(c)2. and (38) are amended to read:

NR 162.03(32)(c)2. The equipment to be specifically manufactured for the project could not be readily utilized ~~on nor~~ or diverted to another job; and

(38) "Sewage collection system" means the public sanitary sewer mains and associated pump stations, including service connection "Y" fittings, which are primarily installed to receive wastewater directly from connection laterals. Pumping units and pressurized lines from the pumping units to the public sanitary sewer main may be included as part of a sewage collection system when they are cost-effective and owned and maintained by the applicant municipality. Holding tanks and septic tanks which serve one or more residences or small commercial establishments and their sewer lines to a public sanitary sewer main may also be included as part of a sewage collection system when they are cost-effective and owned and maintained by the applicant municipality.

SECTION 10. NR 162.03(45m) is created to read:

NR 162.03(45m) "Subsidy" means the amounts provided by the clean water fund to projects receiving financial assistance under ss. 144.241 and 144.2415, Stats., for the following purposes:

1. To reduce the interest rate of clean water fund loans from market rate to a subsidized rate.
2. To provide for financial hardship assistance, including grants.
3. To reduce interest rates for the portion of a loan for additional costs under s. 144.2415(3)(g), Stats.

SECTION 11. NR 162.03(46) is amended to read:

NR 162.03(46) "Transition project" means a treatment works project that is eligible for financial assistance under s. 144.241(7)(b), Stats., and which meets the requirements of s. ~~144.241(20)~~ 144.2415(13), Stats.

SECTION 12. NR 162.04(intro) and (2) are amended to read:

NR 162.04 TYPES OF FINANCIAL ASSISTANCE AVAILABLE. The department may, subject to applicable requirements of ss. 144.241 and 144.2415, Stats., and ch. Adm 35, provide the following types of financial assistance to eligible recipients:

(2) Purchase or refinance the debt obligation of a municipality if the debt was incurred to finance the cost of constructing an eligible treatment works project located in the state when the debt was initially incurred after March 7, 1985 and before May 17, 1988. The use of this method shall be limited to circumstances where financial assistance commitments under s. 144.241(15), Stats., are not sufficient to ~~meet the requirements of 33 USC 1382(b)(3)~~ obligate all of the funding available for that fiscal year.

~~Note: Chapter Adm 35, which is expected to be promulgated by September 17, 1990, will include the requirements of the department of administration for the certification of a municipality's ability to repay a loan under the clean water fund; the disbursement of loan proceeds; and the accountability of loans made under the fund.~~

SECTION 13. NR 162.05(title) and (1) are amended to read:

NR 162.05(title) PROJECT AND COST ELIGIBILITY FOR FINANCIAL ASSISTANCE.
(1) ELIGIBILITY - GENERAL. Municipalities are eligible to participate in the financial assistance program established by this chapter for the construction of a point source pollution abatement facility. A project, except for capital

cost projects, shall meet the cost effectiveness analysis criteria contained in ch. NR 110 to be eligible for financial assistance under this chapter.

SECTION 14. NR 162.05(2)(c) is repealed and recreated to read:

NR 162.05(2)(c) Projects necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered municipalities or portions thereof, including projects for the planning, design and construction of collection system, interceptor and individual system projects in an unsewered municipality. Such financial assistance may be provided only if the department determines that:

1. At least two-thirds of the initial flow for collection system, interceptor and individual system projects will be for wastewater originating from residences in existence on October 17, 1972;

2. Population density of the area to be served has been considered in determining the cost-effectiveness of the proposed project;

3. The project is consistent with an approved areawide waste treatment management plan; and

4. The unsewered municipality has executed an agreement under s. 66.30, Stats., with another municipality to receive, treat and dispose of wastewater if the unsewered municipality will be disposing of wastewater in the treatment works of another municipality.

SECTION 15. NR 162.05(2)(d) is repealed.

SECTION 16. NR 162.05(3)(am) is created to read:

NR 162.05(3)(am) The amount 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.

SECTION 17. NR 162.05(3)(b) is amended to read:

NR 162.05(3)(b) Planning, design and construction costs related to public sanitary sewer mains, interceptors and individual systems in unsewered municipalities ~~where~~ for projects meeting the criteria established in sub. (2)(c) unless the department finds that less than two-thirds of the initial flow will be from wastewater originating from residences or small commercial establishments constructed prior to October 17, 1972.

SECTION 18. NR 162.05(3)(g) is created to read:

NR 162.05(3)(g) A project for which a municipality applies for a capital cost loan.

SECTION 19. NR 162.05(4)(a)3.(intro) is amended to read:

NR 162.05(4)(a)3.(intro) Clean water fund financial assistance. Failure to substantially comply with conditions of state financial assistance issued under ~~ss.~~ ss. 144.241 and 144.2415, Stats., includes but is not limited to:

SECTION 20. NR 162.05(7)(a)(intro), 27. and 28. are amended to read:

NR 162.05(7)(a)(intro) The recipient's allocable project costs which are reasonable and necessary are eligible for financial assistance, except those expenditures which are found ineligible for financing under 26 USC 1 et seq. Eligible costs may include, but are not limited to:

27. Costs for value engineering studies or analyses performed during step 2; ~~and~~

28. Capitalized interest ~~cost~~ costs and capitalized issuance costs incurred by a municipality for the eligible portion of a project that proceeded before receipt of financial assistance-;

SECTION 21. NR 162.05(7)(a)29. to 32. are created to read:

NR 162.05(7)(a)29. Costs associated with capital cost projects;

30. Costs associated with financial audits;

31. Bond counsel and financial consultant services contracted by the recipient to obtain interim financing for the project; and

32. Costs of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.

SECTION 22. NR 162.05(7)(b)8. is amended to read:

NR 162.05(7)(b)8. Costs for which payment has been or will be received under another federal or state ~~financial assistance~~ grant program;

SECTION 23. NR 162.05(7)(b)10. is repealed and recreated to read:

NR 162.05(7)(b)10. Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others;

SECTION 24. NR 162.06(1)(intro) and (a) are amended to read:

NR 162.06(1) GENERAL. Financial assistance shall be allocated to those projects ~~placed on the funding list~~ within the fundable range and in the sequence specified in ch. NR 161, except as provided for capital cost loans in s. NR 162.24.

(a) Between October 1 and December 31 of each year, each municipality intending to apply for financial assistance during the following state fiscal

year shall notify the department of its intent in writing. For those municipalities that notify the department by December 31, and submit complete approvable and biddable plans and specifications and a financial assistance application by June 30, the department shall annually compile a funding list which ranks those municipalities in the same order as they appear on the federal project priority list and specified in ch. NR 161. The funding list shall be compiled no earlier than July 1 of the fiscal year for which it is effective. If sufficient ~~funds~~ bonding authority or present value subsidies are not available to ~~fund~~ provide subsidy to all requests in the fiscal year, the department shall ~~award~~ allocate available ~~funds~~ bonding authority or present value subsidy to projects in the order in which they appear on the funding list. The department shall provide ~~a notice entitled~~ a "notice of financial assistance commitment" to municipalities which appear on the funding list and which fulfill the requirements of sub. (2)(a). The department may provide a notice of financial assistance commitment for a market interest rate loan to municipalities not in the fundable range which fulfill the requirements of sub. (2)(a).

SECTION 25. NR 162.06(1)(am) is created to read:

NR 162.06(1)(am) Municipalities which meet the January 1 notification date but submit complete, approvable and biddable plans and specifications or a financial assistance application after June 30, but submit both on or before June 30 of the subsequent year, may be placed on a supplemental funding list. Such projects may be funded if present value subsidy and bonding authority remain after municipalities meeting both the January 1 and June 30 submission dates have received an allocation of present value subsidy and bonding authority. The order of funding for the supplemental funding list shall be based on the date the department receives complete biddable and approvable

plans and specifications and the date the department receives the complete application for the project.

SECTION 26. NR 162.06(1)(b), (2)(a)(intro) and (2)(a)3. are amended to read:

NR 162.06(1)(b) The ~~list~~ lists established under ~~par. (a) and (am)~~ is ~~are~~ effective for the fiscal year beginning on July 1. The ~~list expires~~ lists expire on June 30 of the fiscal year. The department may allocate funds to a municipality on the ~~list~~ lists after the expiration of ~~the~~ each list if a municipality received a notice of financial assistance commitment before the expiration of ~~the~~ each list and the requirements of sub. (2)(b) are met.

(2)(a) The department shall issue a notice of financial assistance commitment ~~of funds~~ to a municipality on the list ~~compiled~~ compiled under sub. (1) upon the submittal of the following and within 90 days of the department's approval of the financial assistance application:

3. A financial assistance application which meets the requirements of s. NR 162.08 and ch. Adm 35 or an application which, in the opinion of the department and the department of administration, can be completed by the submission of minor additional information. For applications submitted by June 30, 1990 for financial assistance during fiscal year 1990-91, information regarding the certification that the municipality possesses the ability to repay the financial assistance and supporting documentation shall be submitted by August 31, 1990.

SECTION 27. NR 162.06(2)(a)4. is created to read:

NR 162.06(2)(a)4. Written certification from the department of administration that the municipality has the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life

and to pay the debt service on the obligation that the municipality issues for the project.

SECTION 28. NR 162.06(2)(b) and (c) are amended to read:

NR 162.06(2)(b)The department may enter into a financial assistance agreement with a municipality on the funding list compiled under sub. (1) if the municipality has submitted a bid tabulation with a recommendation to the department for review and concurrence within 3 months of the department's notice given under par. (a) and the department of administration has certified in writing that the municipality meets the conditions for receiving financial assistance established in ss. 144.241 and 144.2415, Stats., and ch. Adm 35, as appropriate.

(c) Upon departmental concurrence with bid tabulations and the recipient's compliance with all applicable financial assistance conditions and other provisions of this chapter and ch. Adm 35, the department may give notice to the recipient to proceed with construction.

SECTION 29. NR 162.06(2)(e) is repealed.

SECTION 30. NR 162.06(3) is created to read:

NR 162.06(3) ADDITIONAL COSTS AND AMENDMENTS. (a) The department shall allocate present value subsidy under s. 144.2415(3)(g)1., Stats., to projects within the fundable range based on the date an applicant submits approvable bid tabulations or requests for amendments not funded from contingency. The determination of the interest rate provided for additional costs or amendments not funded out of contingency shall be based on ss. NR 162.07(6) and 162.15(4), as appropriate. The department may not allocate additional financial assistance to a project at less than market interest rate for

additional costs or amendments not funded from contingency if the municipality's allocation of present value subsidy for additional costs and amendments not from contingency exceeds 0.8% of the amount specified in s. 144.2415(3)(d), Stats.

(b) If additional present value subsidy under s. 144.2415(3)(g)1., Stats., has been allocated or is not available to a municipality under par. (a), the municipality may receive additional financial assistance in the form of a loan at market interest rate for additional costs or amendments not funded from contingency provided the conditions under ss. NR 162.06(2)(a)4. and (b) will continue to be met after the additional assistance is extended.

(c) Refinancing of a market interest rate loan for additional costs or amendments not funded from contingency shall conform with the requirements of s. NR 162.16. A municipality that has been allocated 0.8% of the present value subsidy established in a previous biennium under s. 144.2415(3)(g)1., Stats., is not eligible for refinancing of market rate interest loan assistance for additional costs or amendments not funded from contingency.

SECTION 31. NR 162.07(1), (2), (3) and (4)(a) are amended to read:

NR 162.07(1) INTEREST RATE CRITERIA. Interest rates shall be set at a level ~~sufficient to contribute to maintaining the purchasing power of the fund and to support the administration of the program~~ consistent with standards contained in s. 144.241(12)(c), Stats. Interest rates which are below the market interest rate shall be set as a percentage of the market interest rate.

(2) INTEREST RATE TIERS. Interest rates for projects shall be based on the following 3 tiered approach:

- (a) Tier 1 projects shall be funded at the lowest available interest rate, exclusive of the rate available to transition projects. Compliance maintenance projects and new/changed limits projects.
- (b) Tier 2 projects shall be funded at an interest rate below the market interest rate. Unsewered projects which meet the requirements of s. NR 162.05(2)(c), urban storm-water projects and nonpoint source projects.
- (c) Tier 3 projects shall be funded at the market interest rate. ~~Violator~~ Unsewered projects which meet the requirements of ss. NR 162.05(3)(a), and (b), violator projects, future growth and reserve capacity, industrial capacity, and capital cost projects.

(3)(title) ESTIMATED MARKET INTEREST RATE. Each year the department, in consultation with the department of administration, shall establish ~~a proposed~~ an estimated market interest rate as part of an annual funding policy for the fiscal year. ~~The proposed market interest rate shall be included in the annual finance plan.~~

(4)(a) The interest rate for projects shall be set at a percent of the market interest rate and shall be prioritized based on the order in sub. (2). Tier 1 projects shall receive an interest rate of 55% of market interest rate.

Tier 2 projects shall receive an interest rate of 70% of market interest rate.

Tier 3 projects shall receive an interest rate of 100% of market interest rate.

SECTION 32. NR 162.07(4)(am) is created to read:

NR 162.07(4)(am) Modifications to the percentages of market interest rate for Tier 1 and Tier 2 projects listed in par. (a) shall be made in conformance with the requirements of s. 144.241(12)(f), Stats.

SECTION 33. NR 162.07(4)(b) is amended to read:

NR 162.07(4)(b) The department shall determine ~~the~~ an estimated interest rate for a project at the time of the ~~award of the~~ notice of financial assistance agreement commitment. The estimated project interest rate shall be based on the estimated market interest rate in effect at the time of the ~~award of the~~ notice of financial assistance agreement commitment. Step 1 and step 2 projects financed at the time of step 3 shall receive the same interest rate as the step 3 project.

SECTION 34. NR 162.07(4)(bm) is created to read:

NR 162.07(4)(bm) Recipients that have received an advance commitment for reimbursement under s. 144.24, Stats., shall receive the interest rate in effect at the time it is converted to a financial assistance agreement.

SECTION 35. NR 162.07(4)(c) is amended to read:

NR 162.07(4)(c) ~~Recipients~~ Except as provided in s. 144.2415(13), Stats., recipients that have received ~~an advanced a~~ notice of financial assistance commitment shall receive the interest rate in effect at the time the commitment is converted to a financial assistance agreement.

SECTION 36. NR 162.07(4)(d) and (e) are created to read:

NR 162.07(4)(d) The department shall determine the market interest rate at the time the revenue obligation is issued by the state to fund all or a final portion of a project loan. The project interest rate shall be based on the market interest rate, the percent of market interest rate established in par. (a) and on the terms and conditions established in the financial assistance agreement. The department shall notify the municipality in writing of the project interest rate in conformance with the terms and conditions of the financial assistance agreement. Step 1 and step 2 projects shall receive the same percent of market interest rate as the step 3 project for projects not receiving financial hardship assistance.

(e) Projects which have disbursements more than 2 years after the financial assistance agreement date may receive an interest rate based on the market interest rate applicable at the beginning of the third year for disbursements occurring after the 2 years.

SECTION 37. NR 162.07(5)(a)(intro) is amended to read:

NR 162.07(5)(a) If a project contains costs from 2 or more of the following categories, a further breakdown of costs for treatment works necessary to provide capacity exclusive of portions under s. NR ~~162.05(3)(a)~~ 162.05(3)(am), (c) and (d) shall be computed before an interest rate for the project can be determined:

SECTION 38. NR 162.08(2)(a)5., (3)(a)4. and (3)(b)4. are amended to read:

NR 162.08(2)(a)5. Certification and other supporting documentation, including audited financial statements, if required, that the municipality possesses the ability to repay the financial assistance, and calculations showing that the income of the municipality will be sufficient to satisfy the

requirements of the financial assistance, including debt service, coverage and financial reserves. This certification shall be supported by documentation of the applicant's financial capability; and

(3)(a)4. Certification and other supporting documentation, including audited financial statements, if required, that the municipality possesses the ability to repay the financial assistance, and calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage and financial reserves. This certification shall be supported by documentation of the applicant's financial capability.

(b)4. Certification and other supporting documentation, including audited financial statements, if required, that the municipality possesses the ability to repay the financial assistance, and calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage and financial reserves. This certification shall be supported by documentation of the applicant's financial capability.

SECTION 39. NR 162.08(4)(a)5m. is created to read:

NR 162.08(4)(a)5m. A progress payment schedule showing the estimated start date for loan disbursements, the estimated date of all subsequent disbursements, and a final disbursement date. This schedule shall also include the sources and uses of all funds, including the clean water fund, that have been or will be used to pay project costs.

SECTION 40. NR 162.08(4)(a)6. and 7. are amended to read:

NR 162.08(4)(a)6. ~~Financial assistance payment projections and a~~ A proposed repayment schedule; ~~and~~

7. Certification and other supporting documentation, including audited financial statements, if required, that the municipality possesses the ability to repay the financial assistance. This certification shall be supported by documentation of the applicant's financial capability-; and

SECTION 41. NR 162.08(4)(a)8. is created to read:

NR 162.08(4)(a)8. Invoices documenting the costs incurred during construction for which refinancing is being requested.

SECTION 42. NR 162.08(4)(b) and 162.09(9)(title) are amended to read:

NR 162.08(4)(b) If a financial assistance application is submitted between June 1 and June 30 in any year, the municipality may revise the estimated project cost, but shall do so no later than July 15 of that year. Applications submitted by June 30, 1990 for assistance during fiscal year 1990-91 shall have the estimated project costs revised no later than August 31, 1990.

NR 162.09(9)(title) USER CHARGE SYSTEMS AND SEWER USE ORDINANCES.

SECTION 43. NR 162.09(13) is created to read:

NR 162.09(13) DEPARTMENT OF ADMINISTRATION REQUIREMENTS. The municipality has demonstrated to the satisfaction of the department of administration the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligation the municipality issues for the project, and can meet the terms and conditions for receiving financial assistance under ch. Adm 35.

SECTION 44. NR 162.10(7)(a) is renumbered NR 162.10(7) and amended to read:

NR 162.10(7) Repayment of financial assistance is to begin not later than 12 months after the date of physical completion of the project and the final payment shall be made not later than 20 years after the ~~physical completion date~~ of the financial assistance agreement.

SECTION 45. NR 162.10(7)(b) is repealed.

SECTION 46. NR 162.10(14), 162.11(2)(a) and (b)2. are amended to read:

NR 162.10(14) REVENUE BONDING CONDITIONS. If the source of the financial assistance is from the state's issuance of revenue bonds, the recipient shall comply with all applicable requirements of the bond issuance and ch. Adm 35. Compliance with these requirements shall be a condition of the financial assistance agreement.

NR 162.11(2)(a) Each recipient shall establish a financial management system that accounts for revenues generated and expenditures for operation and maintenance, including replacement, and debt service costs, reserves, and coverage requirements of the treatment system.

(b)2. Generate sufficient revenue to pay the total operation and maintenance costs necessary for the proper operation and maintenance, including replacement, and debt service costs, reserves, and coverage requirements of the treatment works;

SECTION 47. (Note to Revisor) Amend the note following NR 162.11(2)(c) to read as follows:

Note: A recipient who received a federal or state wastewater treatment grant under s. 144.24, Stats., or under 33 USC 1251 to 1376 should have established and be implementing a replacement fund according to s. NR

128.13(2)(c) or 40 CFR Part 35. The requirement for a replacement fund under s. NR 128.13(2)(c) or 40 CFR Part 35 is not superseded by this chapter and remains in effect for the design life of the facility which was funded with federal or state grant assistance under 33 USC 1251 to 1376 or s. 144.24, Stats.

SECTION 48. NR 162.13 and 162.14(1) are amended to read:

NR 162.13 FINANCIAL ASSISTANCE DISBURSEMENTS AND LOAN REPAYMENT. (1) GENERAL. The department of administration may pay the recipient shall be paid all project costs incurred within the scope of an approved project that are due and payable by the recipient, excluding withheld or deferred amounts, subject to the limitations of sub. (6), up to the amount in the financial assistance agreement and any approved amendments. The department shall initially determine conformance with the terms and conditions of the financial assistance agreement.

(2) INTERIM REQUESTS FOR DISBURSEMENT. The recipient ~~may~~ shall submit to the department and the department of administration requests for disbursements for eligible costs in accordance with the disbursement schedule included in the financial assistance agreement. Upon receipt of the disbursement request, the department shall certify to the department of administration whether the recipient is in conformance with appropriate terms and conditions of the financial assistance agreement. Upon receipt of a ~~request for disbursement~~ the certification from the department, subject to the limitations in sub. (6) and ch. Adm 35, the department of administration shall cause to be disbursed from available funds such amounts as are necessary. The total amount of disbursements shall be equal to the actual ~~or estimated~~ eligible project costs incurred to date, as the recipient certified in its most recent request for disbursement.

(3) ADJUSTMENT. At any time before final disbursement under the financial assistance agreement, the department may ~~cause~~ recommend to the department of administration that any request for disbursement ~~to~~ be reviewed or audited. Based on such review or audit, the department of administration may reduce any disbursement ~~may be reduced~~ for prior overpayment or may increased increase any disbursement for prior underpayment.

(4) REFUNDS, REBATES AND CREDITS. Any refunds, rebates, credits or other amounts, including any interest, that accrue to or are received by the recipient for the project, and that are properly allocable to costs for which the recipient has been paid under the financial assistance agreement, shall be used to reduce the amount of the financial assistance received. Reasonable expenses incurred by the recipient while securing such refunds, rebates, credits or other amounts ~~shall~~ may be eligible costs under the financial assistance agreement and the terms of the revenue bond.

(5) FINAL DISBURSEMENT. ~~After completion of~~ Prior to the final disbursement, the department shall complete a final inspection under s. NR 162.10(13), ~~approval of a final request for disbursement,~~ for the project and certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement, ~~the department shall pay to the recipient any balance of the eligible project cost which has not already been paid.~~ The final request for disbursement shall be submitted by the recipient promptly after completion of the project and final inspection. Before the department of administration makes a final disbursement under the financial assistance agreement, the recipient shall:

(a) Submit an executed assignment to the state of Wisconsin, of the refunds, rebates, credits or other amounts, including any interest, properly

allocable to costs for which the recipient has been paid under the financial assistance agreement.

(b) Submit an executed release discharging the state of Wisconsin, its officers, agents and employees from any liabilities, obligations and claims arising out of the project work or under the financial assistance agreement, subject only to the exceptions specified in the release.

(c) Have received final approval of its operation and maintenance manual.

(d) Have received final approval of and adopted its user charge system and sewer use ordinance.

(e) Have certified to the department its acceptance of the project from its contractors.

(6) WITHHOLDING OF FUNDS. ~~(a)~~ It is department policy that full and prompt disbursement be made to the recipient for properly documented eligible project costs. The department may authorize direct the ~~withholding of~~ department of administration to withhold financial assistance disbursements ~~only~~ where ~~it~~ 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 ~~award conditions or reporting requirements~~. ~~The withholding of financial assistance disbursements shall be limited to that amount necessary to assure compliance.~~

~~(b) The department shall withhold disbursement to the extent of any indebtedness to the state of Wisconsin, unless it determines that collection of the indebtedness will impair accomplishment of the project objectives and that continuation of the project is in the best interests of the state.~~

(7) LOAN REPAYMENT (a) The recipient shall repay the department of administration in accordance with the repayment schedule included in the financial assistance agreement.

(b) Loans issued under this chapter shall accrue interest beginning on the day the funds are released to a recipient.

~~(c) If a recipient fails to make a payment within 180 days after the due date, the department may take enforcement actions pursuant to s. 144.241 (16)(b), Stats.~~

~~(d) The recipient has the option to prepay any or all the financial assistance without penalty upon a minimum of 30 days notice to the department. Prepayment shall be made on the regularly scheduled payment date.~~

NR 162.14(1) FINANCIAL CAPABILITY. The department of administration shall evaluate a municipality's financial capability to repay its loan based on generally accepted financial indicators used by lending institutions and bonding companies for conformance with s. 144.2415(9), Stats., and ch. Adm 35 and shall certify in writing to the department the municipality's financial capability. The department may not issue a notice of financial assistance commitment unless the department of administration has notified the department in writing that the municipality has satisfied the department of administration requirements under ss. 144.241 and 144.2415, Stats., and ch. Adm 35.

SECTION 49. NR 162.14(2) is repealed and recreated to read:

NR 162.14(2) MUNICIPAL OBLIGATION. The department of administration may determine the type of municipal obligation as set forth in s. 66.36, Stats., which is required for the repayment of the financial assistance. Upon written notification by the department of administration of the conditions regarding municipal obligation, the department shall include these conditions in the notice of financial assistance commitment and the financial assistance agreement.

SECTION 50. NR 162.14(3)(intro) is amended to read:

NR 162.14(3)(intro) FINANCIAL MANAGEMENT. The recipient is responsible for ~~maintaining a financial management system which shall adequately provide for:~~

SECTION 51. NR 162.14(3)(b) is repealed and recreated to read:

NR 162.14(3)(b) The maintenance of a financial management system which conforms with the requirements, terms and conditions of the financial assistance agreement and ch. Adm 35.

SECTION 52. NR 162.14(3)(c) is repealed.

SECTION 53. NR 162.14(3)(d) is renumbered NR 162.14(3)(c).

SECTION 54. NR 162.14(5)(a) and (b), 162.15(3) and (4)(intro) are amended to read:

NR 162.14(5)(a) ~~Preaward, interim and final project closeout audits may be performed by the department on financial assistance applications and awards.~~ The department or the department of administration may perform or require the municipality to commission an audit prior to execution of the financial assistance agreement, during project development, prior to project completion, or at any time during the term of project financing. Recipients and subcontractors of recipients shall preserve and make their records available pursuant to sub. (4). Disbursements made under the financial assistance agreement may be adjusted because of underpayment or overpayment identified by audit.

(b) Recipients of financial assistance provided directly from the federal capitalization grant ~~are required to~~ shall comply with the federal

single audit act and OMB circular A-128 and ch. Adm 35. Recipients of assistance from other sources may, at their option, commission a single audit in accordance with the single audit act, OMB circular A-128, and state of Wisconsin single audit guidelines. All reasonable, allocable costs of single audits are eligible costs under the project.

NR 162.15(3) Approval of assistance agreement amendment requests which increase the amount of financial assistance shall be subject to the availability of ~~funds~~ bonding authority or present value subsidy as determined in s. NR 162.06(3).

(4)(intro) ~~The~~ If sufficient bonding authority or present value subsidy is available, the interest rate on additional financial assistance provided under an approved assistance agreement amendment may, based on the determination of the department, vary between the market interest rate and the overall project composite interest rate ~~approved under the original assistance agreement or, if amended, the most recent approved amendment~~ determined under s. NR 162.07. The determination of the appropriate interest rate shall be based on the following criteria:

SECTION 55. NR 162.16 is repealed and recreated to read:

NR 162.16 ADVANCE COMMITMENTS AND REFINANCING. (1) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. Advance commitments for reimbursement issued under s. 144.24, Stats., may be converted to financial assistance agreements and awarded with step 3 financial assistance agreements.

(2) REFINANCING. (a) General. Refinancing may be provided for step 1, 2 or 3 projects if sufficient funds are not available in any fiscal year.

(b) Eligibility. 1. A municipality which did not receive a notice of financial assistance commitment prior to the start of the project shall be eligible for refinancing if a notice of financial assistance commitment under

s. NR 162.06(2) is issued within 5 years of the date of the initiation of construction for the step 3 project. For step 3 projects where construction was initiated between May 17, 1988 and June 30, 1990, the 5 year period for refinancing shall begin on July 1, 1990.

2. A municipality which received a notice of financial assistance commitment for a market rate loan covering the entire project or received market rate loan funding for cost increases or amendments greater than contingency shall be eligible for refinancing if the notice of financial assistance commitment for refinancing is issued within 5 years of the date of the initiation of construction for the step 3 project. For step 3 projects where construction was initiated between May 17, 1988 and June 30, 1990, the 5 year period shall begin on July 1, 1990.

3. A project for which financial assistance was provided under ss. 144.241 and 144.2415, Stats., may not be refinanced unless it meets one of the following conditions:

a. Substantial alteration in project performance standards, type of wastewater treatment, facility plan or other planning documents, design drawings and specifications, or the location, size, capacity or quality of any major part of the project is needed to maintain compliance with a discharge permit or to meet new or changed permit limits.

b. The municipality is subject to a catastrophic natural or manmade event beyond its control and has or will incur significant financial hardship, as defined in ch. NR 163.

c. The municipality qualifies as a financial hardship community under ch. NR 163.

4. The project received a notice of financial assistance commitment for a market rate interest loan in a previous fiscal year and is in the fundable range established in s. NR 162.06(1)(a) for the current fiscal year.

5. The municipality received a market rate interest loan in a previous fiscal year for additional costs or amendments not covered by contingency subject to the limitations established in s. 144.2415(3)(d), Stats., and the annual funding policy described in s. NR 162.17.

(c) Refinancing process. 1. A municipality shall meet the planning and design criteria and application requirements as established in this chapter for other recipients.

2. The department's annual funding policy shall establish the funding priority for refinancing projects.

SECTION 56. NR 162.17(1)(intro), (a), (b), and (e) are amended to read:

NR 162.17(1)(intro) GENERAL. Each year, ~~prior to the department's submittal of the annual finance plan,~~ the department shall prepare an annual funding policy for the fiscal year. The funding policy shall be subject to public hearing and shall be submitted to the natural resources board for approval. The department shall consider the following factors in developing the funding policy:

(a) How much funding, including present value subsidy and bonding authority, is available.

(b) ~~How much funding is needed for advance commitments from the prior fiscal year~~ The biennial finance plan.

(e) The ~~project~~ priority value of projects ~~projected~~ anticipated to request funding in the applicable fiscal year.

SECTION 57. NR 162.17(2)(b) is repealed.

SECTION 58. NR 162.17(2)(c) is renumbered NR 162.17(2)(b) and amended to read:

NR 162.17(2)(b) The amount of funding available for amendments and additional bidding costs.

SECTION 59. NR 162.17(2)(d) and (e) are renumbered NR 162.17(2)(c) and (d), respectively.

SECTION 60. NR 162.18(1), (2)(a), (b) and (g) are amended to read:

NR 162.18(1) APPLICABILITY. This section applies to financial assistance agreements issued pursuant to s. ~~144.241(20)~~ 144.2415(13), Stats.

(2)(a) To become eligible for financial assistance under this section, a municipality shall comply with the submission date, approvability and other requirements contained in s. ~~144.241(20)~~ 144.2415(13), Stats., and shall meet the requirements for submittal of an intent to apply notice, plans and specifications and a grant application in accordance with s. NR 128.09(1)(a) and (b) during 1989.

(b) Funding shall be allocated to transition projects in accordance with s. ~~144.241(20)~~ 144.2415(13), Stats., using the federal priority list as established under s. 144.24(6)(a), Stats.

(g) Eligible costs shall be determined in accordance with s. 144.24, Stats., and ch. NR 128 where applicable.

SECTION 61. NR 162.18(2)(h) is created to read:

NR 162.18(2)(h) Financial assistance for projects which receive funding under 33 USC 1251 et seq., or s. ~~or s.~~ 144.24, Stats., may include the nonlocal share of a project.

SECTION 62. NR 162.18(3) is repealed.

SECTION 63. NR 162.18(4) is amended to read:

NR 162.18(4) REFINANCING. (a) Refinancing may be provided for step 3 projects and associated step 2 costs only if sufficient funds are not available in any fiscal year to give notices of financial assistance commitment ~~or advance commitments under sub. (3)~~ to all recipients.

(b) Eligible costs shall be determined in accordance with s. 144.24, Stats., and ch. NR 128 where applicable.

(c) Refinancing may not be provided for the ~~non-local~~ local share of project costs for projects which received financial assistance under 33 USC 1251 et seq., or s. 144.24, Stats.

SECTION 64. NR 162.20(3)(b) and (c) are amended to read:

NR 162.20(3)(b) There is substantial evidence the financial assistance agreement was obtained by fraud; ~~or~~

(c) There is substantial evidence of gross abuse or corrupt practices in the administration of the project; or

SECTION 65. NR 162.20(3)(d) is created to read:

NR 162.20(3)(d) The recipient has failed to comply with the terms or conditions of the financial assistance agreement.

SECTION 66. NR 162.20(4)(a)4., 162.21(1)(a), (2)(intro), (2)(c), (3) and 162.23 are amended to read:

NR 162.20(4)(a)4. Service on the recipient under subds. 2 and 3 shall be on ~~the individual designated in the financial assistance agreement~~ any appropriate municipal official.

NR 162.21(1)(a) ~~Payment~~ Progress payments otherwise due to the recipient of up to ~~10%~~ 20% may be withheld under s. NR 162.13(6).

(2) If the recipient fails to make timely payments to the department of administration when due under a financial assistance agreement or amendment and fails to cure such nonpayment within 10 days of the ~~department's~~ department of administration's written notice, or ~~commits more than 3 events~~ of is in substantial noncompliance with the provisions of this chapter or any financial assistance agreement or amendment and fails to cure such matters within 20 days of the department's written notice; the department shall have cause for the imposition of one or more of the following sanctions at the discretion of the department:

(c) The department may seek recovery of some or all financial assistance payments made pursuant to ~~s.~~ ss. 144.241 and 144.2415, Stats., unless the conditions set forth in the financial assistance agreement have been fully satisfied.

(3) Notwithstanding subs. (1) and (2) and ch. Adm 35, in the event of any material noncompliance with the provisions of this chapter or any financial assistance agreement or amendment made under this chapter, project costs directly related to the noncompliance may be declared ineligible for financial assistance.

NR 162.23 ADMINISTRATION FEES. (1) An administration fee ~~of 0.5% of the outstanding principal shall be collected at the execution of the financial assistance agreement and semi-annually for the duration of the loan. The fees shall accrue semi-annually and shall be paid at the beginning of each interest payment period.~~ if one is imposed, shall be included in the biennial finance plan approved by the building commission under s. 13.48, Stats. The administration fee shall be placed in a separate administrative account.

(2) ~~Grants~~ Any assistance provided for financial hardship under s. NR 162.04(5) ~~are~~ is not subject to an administration fee.

SECTION 67. NR 162.23(3) and 162.24 are created to read:

NR 162.23(3) Any assistance provided for transition projects under s. NR 162.18 is not subject to an administration fee.

NR 162.24 CAPITAL COST LOANS. (1) ELIGIBILITY. Municipalities may be eligible to participate in the financial assistance program established in s. 144.241(8)(L), Stats., at such time as the requirements of that section are met.

(2) INTEREST RATE AND FUND DISTRIBUTION. Capital cost projects shall be funded at the market interest rate. Loan funds shall be distributed based on the date the application for financial assistance is received and on the date that the application meets applicable requirements contained in s. NR 162.08 and ch. Adm 35.

(3) APPLICATION REQUIREMENTS. (a) Deadline. Applications for funding under this section shall be submitted by March 31 of the fiscal year that funding is requested.

(b) Contents. The applicant shall submit a certification that the municipality possesses the ability to repay the financial assistance. This certification shall be supported by documentation of the applicant's financial capability, including calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage, and financial reserves.

(c) Eligible costs. Only those costs to finance a municipality's payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats., shall be eligible for financial assistance under this section.

(d) Financial assistance conditions. Each financial assistance agreement shall conform to the requirements contained in ss. NR 162.09(9) and (13) and ch. Adm 35.

(e) Financial assistance requirements. Each notice of financial assistance commitment and financial assistance agreement shall bind the recipient to the following conditions:

1. Repayment of financial assistance shall begin no later than the last day of the first month after the date of the financial assistance agreement for capital cost cost loans.

2. The recipient shall comply with all applicable requirements of the state's revenue bond issuance. Compliance with these requirements shall be a condition of the financial assistance agreement.

3. The recipient shall comply with any other terms, conditions or restrictions contained in the notice of financial assistance commitment or the financial assistance agreement.

(f) Financial assistance disbursements, loan repayments and recipient accountability. The department of administration may finance eligible costs incurred within the scope of a capital cost project established in the financial assistance agreement. The recipient shall repay the department of administration in accordance with the repayment schedule included in the financial assistance agreement. The recipient shall conform with requirements contained in s. NR 162.14 and ch. Adm 35.

(g) Refinancing prohibition. The department may not refinance a capital cost loan which was issued under ss. 144.241 and 144.2415, Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on September 27, 1990.

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin November 27, 1990

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)

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State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

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November 28, 1990

Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

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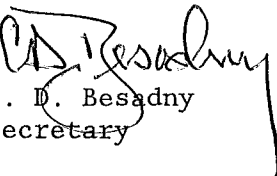
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Bureau

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CA-48-90. These rules were reviewed by the Assembly Special Committee on Bonding for Clean Water and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.

