

Chapter NR 125

**STATE GRANTS FOR WATER POLLUTION
CONTROL FACILITIES**

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Note: Chapter NR 125 as it existed on July 31, 1976 was repealed and a new chapter NR 125 was created, effective August 1, 1976.

NR 125.01 Purpose. The purpose of this chapter is to establish rules for the administration of state grants to municipalities for the construction of sanitary sewage treatment facilities and sanitary sewage collection systems serving municipalities under s. 144.21, Stats.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.02 Definitions. (1) "Department" means the department of natural resources.

(2) "Municipality" means a city, township, village, county, sanitary district, county utility district, metropolitan sewerage district or school district that is authorized by state statute to own, operate, maintain, finance and construct a publicly owned sewer system or sewage treatment plant.

(3) "Intercepting sewer" means a sewer constructed:

(a) To receive and convey the dry weather flow from a sanitary sewage collection system terminus in a previously developed area, other than from a dwelling or building, and to convey the flow to an existing sanitary sewer or to a treatment works, whichever is nearer, or

(b) To serve in lieu of an existing or proposed treatment works.

(4) "Industrial wastes" means the liquid wastes from manufacturing processes or food processing.

(5) "Combined sewer" means a sewer which was originally approved, designed, intended and installed to convey sanitary sewage and surface runoff.

(6) "Start of construction" means the signing of all eligible project construction contracts by the contractors and the municipality or the first excavation if the work is done by force account.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.03 Eligibility for a state grant. (1) **ELIGIBLE PROJECTS.** State grants may be made for the following water pollution abatement types of projects:

(a) Construction of new permanent sewage treatment works, or additions to or improvements of existing permanent sewage treatment works to treat sanitary sewage.

(b) Intercepting sewers.

(c) The outfall sewer from a municipal sewage treatment plant to the point of discharge of effluent.

(d) A municipal sanitary sewer collection system or sanitary sewer extensions constructed to eliminate pollution from private waste disposal systems in developed areas in existence prior to enactment of chapter 353, Laws of 1969 (January 17, 1970). In order for the sewer to be eligible, the maximum spacing between lateral connections to the gravity sewer from buildings existing on 1-17-70 shall be no greater than 300 feet and the average spacing of connections to the sewer shall be no greater than 200 feet. An exception will be allowed to provide a sewer connection used exclusively to serve a publicly-owned facility which accommodates at least 50 persons daily per 1,000 feet of connecting sewer length and which is in use for at least 8 months a year.

(e) A project to provide a cost effective and environmentally acceptable separation of combined sewers.

(f) A project to provide a cost effective and environmentally acceptable waste treatment for potable water treatment plant existing prior to 1-17-70.

(g) The laterals from the public commonly used sewer in the public street right-of-way to the property line.

(2) **INELIGIBLE PROJECTS.** Grants shall not be made for the following projects:

(a) Sewers to carry only industrial wastes.

(b) Projects to replace existing sewers or to increase the capacity of an existing sanitary sewer collection system.

(c) Construction of any part of a storm sewer system or storm water treatment facilities, except where such construction is eligible in accordance with sub. (1) (e).

(d) A project to repair or replace existing components or devices which are part of a pollution prevention and abatement facility and which are needed to maintain the degree of treatment or flows for which the facility was designed prior to when the service life has been exceeded and when it is more cost effective to replace the entire plant than to repair parts of it.

(e) Projects not in conformance with the applicable waste treatment management plans approved by the department.

(f) A project on which the municipality has awarded contracts or on which force account construction has commenced prior to approval by the department of the final detailed construction plans and specifications.

(g) The portion of a project which receives a grant under ch. NR 127.

(h) Maintenance, administrative, operational and garage facilities for sewer systems.

(i) A project not competitively bid in accordance with chs. 59, 60, 61, 62 and 66, Stats.

(j) The laterals (both pressure and gravity) from the public street property line to the building.

(k) A project that receives a Step III construction grant under P.L. 92-500 as amended.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76; cr. (2) (k), Register, October, 1976, No. 250, eff. 11-1-76.

NR 125.04 Eligible costs. (1) **PRELIMINARY PLANNING.** Costs of studies, investigations, surveys, planning and other steps necessary to determine the economic and engineering feasibility of a proposed project are eligible.

(2) **ENGINEERING, ARCHITECTURAL, INSPECTION AND OTHER FEES FOR TECHNICAL SERVICES.** Costs of services include preparation of preliminary and final engineering reports, design of facilities, preparation of plans and specifications, inspection and supervision of construction and any other services necessary for the construction of the project. Where technical services are provided by regularly employed persons of a municipality, actual documented applicable costs are allowable, provided they do not exceed costs determined by the department to be reasonable if the work were performed by a consulting engineer on a fee basis. Technical service costs for study of sewer infiltration-inflow problems performed in accordance with requirements of the federal grant program (P.L. 92-500) are allowable.

(3) **LEGAL AND FISCAL COSTS.** Reasonable fees and expenses based on actual records for legal services rendered in connection with the construction of the project are eligible provided that they are documented. Reasonable costs incurred in the development of the information necessary for the bond issue, including preparation of the prospectus, bond advertising, printing of bonds and other similar costs are eligible. When bond counsel and attorney fees cover all the steps from the drafting of the bond resolution through the final sale of the bonds, no additional financing costs are eligible.

(4) **CONSTRUCTION COSTS.** Construction costs incurred under competitively bid contracts or actual cost of labor and competitively purchased equipment and materials incurred under force account procedures consistent with the provisions of chs. 59, 60, 61, 62 and 66, Stats., are eligible.

(5) **REPAIR OF ROADS, STREETS, SIDEWALKS, CURBS AND GUTTERS, ETC.** These costs shall be limited to the costs of repair or replacing in kind the areas damaged (by the construction of eligible facilities) to the same condition, quality, type and dimensions as that which existed before the construction of the eligible facilities. The eligible cost shall be the most cost effective repair or replacement in terms of the initial capital cost. Higher incremental replacement costs to reduce future maintenance or operation costs are not eligible. The width of the eligible repaired area shall not be greater than that of the top width of the sewer trench unless it can be demonstrated that it is less expensive to remove and replace the entire width of road pavement. Eligible costs of replacement of badly deteriorated road pavements shall be limited to that of the least expensive all weather road pavement regardless of the type of original material.

Where the replaced item is better than the original item, the eligible cost shall be limited to a pro rata share of the replacement cost.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.05 Costs not eligible. The following costs are not allowable for state participation:

(1) **INELIGIBLE WORK.** The cost of any work not included in the eligible portion of the project as approved by the department.

(2) **COST OF SITE.** The cost of the site or easements or any estate or interest therein, and any cost associated with the survey or acquisition thereof.

(3) **REBATES, REFUNDS, TAX EXEMPTIONS.** Any costs exceeding the actual net cost of materials or services are not eligible. A rebate or refund received from a firm or individual is not an allowable project cost. Where municipalities are exempt from the payment of sales taxes and excise taxes, such taxes are not an allowable cost.

(4) **FEE NOT RELATED TO CONSTRUCTION.** Any portion of a fee which covers services performed in staffing of the facility, training of personnel or other functions not directly related to the actual construction of the project.

(5) **ADMINISTRATIVE COSTS.** Costs such as office space, telephone service and municipal personnel, including accountants, bookkeepers and clerks except as allowed by NR 125.04(2).

(6) **LEGAL SERVICES.** Costs of legal services rendered in connection with ineligible parts of the projects, such as acquisition of site or easements.

(7) **INTEREST.** Interest on bonds (including discounts below par) or any other form of indebtedness.

(8) **DAMAGE AWARDS.** Damage awards arising out of the construction, equipping or operation of the project, whether such awards are determined by judicial procedure, arbitration, negotiation or otherwise.

(9) **BONUS PAYMENTS.** Bonus payments made by the applicant to the contractor for completing work in advance of a specified time.

(10) **COST IN EXCESS OF BID PRICE.** When a bid is rejected and later reinstated in the contract, its eligible cost may not exceed the original bid price.

(11) **NORMAL GOVERNMENT COSTS.** Costs incident to normal operating costs of government such as bond election costs and salaries and expenses of statutory governmental officials such as the mayor, city manager, city council members, etc.

(12) **UNNECESSARY OR UNREASONABLE COSTS.** Any costs found by the department to be unreasonable or unnecessary to construction of the approved eligible project.

(13) **OPERATION AND MAINTENANCE.** The costs of operation, maintenance or administration or replacement in kind of equipment or facilities.

(14) **COSTS INCURRED PRIOR TO AUGUST 1, 1966.** Costs for any purpose paid prior to or work covered by construction contracts awarded prior to August 1, 1966, the date on which the first appropriation for state grants for construction of water pollution abatement projects under the State Water Resources Act was authorized.

(15) **COSTS.** The portion of the costs of the sewage treatment plant that is allocable for the treatment of industrial wastes to be determined as the average of the percent of design flow, design BOD, and design total suspended solids for industrial waste treatment as compared to the total design capacity of the sewage treatment plant.

(16) **COSTS.** The portion of the costs of the sewer greater than the minimum allowable 8 inch diameter allocable for the conveyance of industrial wastes to be determined as the percent of industrial waste flow to the design flow of the sewer.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.06 Preliminary project evaluation. Municipalities desiring a preliminary priority rating and eligibility determination made for a project, prior to the submission of an application or plans and specifications, may submit such a request with accompanying documents or such alternative information as is needed for eligibility and priority determinations, in NR 125.07(1)(b), (c) and (f). The department will review the project and notify the applicant of the priority rating and eligibility and when the grant may be available, conditioned upon the availability of funds, the prompt submission of the completed application and the approval of the final detailed approvable construction plans and specifications. However, the project will not be placed on the priority list until final detailed approvable construction plans and specifications and the complete grant application are submitted to the department.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.07 Grant applications. (1) **APPLICATION FORMS.** Municipalities shall submit applications in accordance with instructions and on forms supplied by the department. Applications shall be updated by the applicant as necessary to keep the information current.

(2) **DOCUMENTS TO ACCOMPANY APPLICATIONS.** (a) Municipalities shall submit certified copy of the recent authorization by the applicant's governing body authorizing the filing of the application and appointing a municipal official as the authorized representative.

(b) Description of project, including maps and/or layouts.

(c) Engineering reports that are up to date containing information as outlined in NR 110.08.

(d) Final approvable project plans and specifications as described in chs. NR 108 and 110 unless they have been previously submitted to or approved by the department.

(e) Contracts or agreements applicable to engineering and other technical services, and legal services and other information concerning the basis upon which fees or costs for such services were determined.

(f) An itemized estimate of construction costs, or bid tabulation, if available.

(g) If the site has been acquired, a copy of the site title opinion showing municipal ownership and description of the site which has been acquired.

(h) If the site has not been acquired, a statement of the nature and extent of interest in lands which are to be acquired and the proposed method and time required for acquisition. Specify statutory requirements and authority affecting acquisition procedures shall be specified.

(i) If the project is in an area served by a regional or county planning agency, that agency's evaluation and comment on conformance of the project with the comprehensive plan developed or in process of development for the metropolitan or regional area.

(j) An environmental assessment which meets the requirements of the Wisconsin Environmental Policy Act, s. 1.11, Stats., and which includes an evaluation of feasible alternatives and provides clear justification for selecting a particular course of action based on monetary, environmental and other considerations. (The assessment shall be available for public information and public participation in evaluation of the project.) Projects under construction prior to 4-30-72 do not require an environmental assessment.

(k) Adequate analysis and data establishing that the works or modification is the most cost efficient method of meeting the limitations and standards required of the facility.

(l) A dated statement, signed by the authorized municipal representative, the municipal attorney, and the engineer as to whether the municipality has all the necessary public easements and rights-of-way, and all construction will take place only on public easements or rights-of-way.

(m) A dated statement, signed by the authorized municipal representative and the consulting engineer, as to whether any sewer laterals are to be installed on private property under any contracts of this project.

(n) Other information as required to determine the eligibility of a project or to determine the eligible costs.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.08 Departmental processing of applications. (1) **PROJECT NUMBER ASSIGNMENT.** Upon receipt of an application, the department will assign a project number in chronological order of receipt. The project number will be used on all documents and correspondence relating to the project.

(2) **INITIAL REVIEW.** The department will review the application and accompanying supporting documents in sufficient detail to assure completeness and whether the proposed project is eligible as pursuant to NR 125.03. Applications which are incomplete may be returned to the applicant for the appropriate information. Applicants having projects which are determined to be ineligible will be notified of such determination.

(3) **OBSOLETE APPLICATIONS.** The application and supporting materials must be current and correct before the project can be placed on the priority list or before the state grant offer can be made. Generally information that is more than one year old is considered out of date and must be resubmitted or recertified as being up to date.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.
Register, October, 1985, No. 358

NR 125.09 Priority designation. (1) **POINT RATING SYSTEM.** In ranking projects for priority for grants, financial capacity will be considered. A combined maximum of 30 points is assigned to these 3 measures of financial capacity and will be computed in accordance with the following table:

Points Applicable to Each Column	Per Capita Income % of State Average*	Project Cost Dol- lars Per Capita Based on Current Population	Local Share of Project Cost Plus Current Long- Term Nonschool Indebted- ness as a Percent of Statutory Limitation Based on Equalized Valuation
1	Over 135%	\$ 1 - 200	Less than 10%
2	100 to less than 135	201 - 400	10% to less than 20%
3	89 to less than 100	401 - 600	20% to less than 30%
4	80 to less than 89	601 - 800	30% to less than 40%
5	72 to less than 80	801 - 1,000	40% to less than 50%
6	65 to less than 72	1,001 - 1,200	50% to less than 60%
7	59 to less than 65	1,201 - 1,400	60% to less than 70%
8	54 to less than 59	1,401 - 1,600	70% to less than 80%
9	50 to less than 54	1,601 - 1,800	80% to less than 90%
10	Less than 50	Over 1,800	90% to less than 100%

* Based on the most recent Wisconsin department of revenue publications, "Long Term Indebtedness of Wisconsin Political Subdivisions" and "Taxes, Aids and Shared Taxes" and confirmation of its applicability by department investigation.

(2) **PROJECT PRIORITY.** Projects shall be rated for priority for grants in descending order of the sum of the points (maximum possible points: 30). In case of a tie in the priority ranking, the project with final detailed approvable construction plans received at the earlier date shall be given the higher rating.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76; am. Register, November, 1976, No. 251, eff. 12-1-76.

NR 125.10 Priority ranking and notice of funding allocation. (1) **PRIORITY RANKING OF PROJECTS FOR FUNDING.** (a) During January and July, all pending complete grant applications (for which final approvable construction plans and specifications meeting chs. NR 108 and 110 have been approved by the department) and for which the nonstate portion of the financing is available will be evaluated in accordance with NR 125.09 to determine the priority ranking of the projects if there are more such projects than can be funded with the available funds.

(b) At that time, if the department determines that the estimated cost of these projects for which grant applications are pending exceeds the grant funds available under this program, the department shall notify all affected applicants that construction grants shall be awarded on the basis of the priority ranking of the projects in accordance with NR 125.09.

(c) If the department determines that sufficient funds exist to provide a construction grant for all projects, on the project priority ranking list, the grant offers will be made in accordance with NR 125.11 in the order in which the projects are placed under construction.

(2) **NOTICE OF FUNDING ALLOCATION.** The department will determine which projects, in accordance with the priority list, can be funded with the available funds and notify the respective applicants of this. If the project has not already been bid the applicant will be advised to bid the project within 60 days after state plan approval and submit the results to

the department so that a formal grant offer can be extended to the applicant. Failure of the applicant to bid the entire project within 60 days and to promptly execute all eligible construction contracts will result in the project not being considered again until funds are available and one priority deadline has elapsed.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.11 Offer and acceptance. (1) **GRANT OFFER.** (a) No grant offer shall be made for any project unless such project conforms with all department requirements and has been determined by the department as entitled to priority over other eligible projects. All grant offers shall be made to a municipality (see NR 125.02(2)) on forms prepared by the department. The grant offer shall be signed by the authorized representative of the department and will set forth the terms and conditions of the offer.

(b) All grant offers shall be made only after the grant application is complete and the department has approved all the project construction plans and specifications, all the bidding information and all of the proposed contract awards in accordance with this code. If all the contracts are not signed by both the municipality and the contractors within 30 days of the grant offer, the grant offer shall become null and void.

(c) If a municipality receives a grant under s. 144.23, Stats., it cannot receive or retain a grant under s. 144.21, Stats., for that same portion of the project.

(d) A municipality can receive a grant under section 144.21 for one portion of an eligible project and a grant under section 144.23 for different portion of that same eligible project. If a priority ranking conflict develops, the ranking under section 144.23 shall govern the award of the grants.

(2) **AMOUNT OF GRANT OFFER.** A state grant shall not exceed 25% of the eligible costs of an approved project. The state grant plus grants from other nonlocal sources shall not exceed 75% of the eligible project costs.

(3) **GRANT OFFER CONDITION.** All grant offers made after July 1, 1976 are subject to the special condition that percentages of state grant involvement are conditional upon the availability of funds. Allocation and payments of available funds shall be determined by the order in which projects are placed under construction.

(4) **ACCEPTANCE OF GRANT OFFER.** If the recipient of a grant offer agrees to the terms and conditions thereof, acceptance shall be effected by signature of the authorized representative of the municipality in the designated place on all copies of the Offer and Acceptance Form. Two signed copies of the form shall be returned to the department with a certified copy of a resolution by the municipality's governing body accepting the grant offer and authorizing their representative to accept the grant offer. The offer must be accepted within 45 days from the date of offer or it will be withdrawn and the funds will be obligated to another applicant.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76; am. (2), Register, October, 1976, No. 250, eff. 11-1-76; renum. (3) to be (4) and cr. (3), Register, November, 1976, No. 251, eff. 12-1-76.

Register, October, 1985, No. 358

NR 125.12 Payment procedure. (1) **PARTIAL PAYMENTS.** Partial payments will be made after inspection at the 25, 50, and 75% stages of completion of the project. Payments shall not exceed 90% of the grant offer prior to final inspection and auditing.

(2) **FINAL PAYMENT.** Final payment will be made only after the project is fully functional and final inspection and audit and evidence of satisfactory operation and maintenance. The total state grant will be based on the final audited eligible costs.

History: Cr. Register, July, 1976, No. 247, eff. 8-1-76.

NR 125.13 Severability. **History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. under s. 13.93 (2m) (b) 16, Stats., Register, October, 1985, No. 358.