

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.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. am. (1) (intro.) and (a), (b), (2) (a) (intro.) and 3., (b) and (c), cr. (1) (am), (2) (a) 4. and (3), r. (2) (e), eff. 8-15-90; am. (1) (intro.) and (a), (b), (2) (a) (intro.) and 3., (b) and (c), cr. (1) (am), (2) (a) 4. and (3), r. (2) (e), Register, January, 1990, No. 421, eff. 2-1-91.

NR 162.07 Loan interest rate. The determination of the specific interest rate for a particular cost item or set of items shall be the interest rate or composite interest rate assigned to the type of project which required the particular item. The interest rate on loans made under this chapter shall be determined based on the following:

(1) **INTEREST RATE CRITERIA.** Interest rates shall be set at a level 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:

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| (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. | 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) **ESTIMATED MARKET INTEREST RATE.** Each year the department, in consultation with the department of administration, shall establish an estimated market interest rate as part of an annual funding policy for the fiscal year.

(4) **PROJECT INTEREST RATE.** (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.

(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.

(b) The department shall determine an estimated interest rate for a project at the time of the notice of financial assistance commitment. The estimated project interest rate shall be based on the estimated market interest rate in effect at the time of the notice of financial assistance 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.

(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.

(c) Except as provided in s. 144.2415 (13), Stats., recipients that have received 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.

(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.

(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.

(5) MULTI-PART PROJECTS. (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) (am), (c) and (d) shall be computed before an interest rate for the project can be determined:

1. Compliance maintenance or new or changed limits under s. NR 162.05 (2) (a) and (b).

2. Unsewered municipality under s. NR 162.05 (2) (c).

3. Violator under s. NR 162.05 (3) (e).

(b) The following methods, in the order listed, shall be used to estimate the costs associated with each category in par. (a). The resulting estimates shall be provided in the facility plan and revised, if necessary, at the time the financial assistance application is submitted, based on the final approved engineering design.

1. If the cost of each treatment works unit can be allocated, based on its purpose, to any one of the categories, the sum of the treatment units costs allocable to each category shall be used.

2. If the cost of a treatment works unit cannot be allocated to a particular category, the cost of that unit shall be divided between the appropriate categories based on the portion of the design flow of the unit attributable to each category.

(6) **COMPOSITE INTEREST RATE.** A project which contains costs associated with 2 or more interest tiers shall receive a composite interest rate. The composite interest rate shall be computed as follows:

$$RC = \frac{(RT_1)(CT_1) + (RT_2)(CT_2) + (RT_3)(CT_3)}{(CT_1 + CT_2 + CT_3)}$$

Where:

RC is the composite interest rate for the project.

RT₁ is the tier 1 interest rate.

RT₂ is the tier 2 interest rate.

RT₃ is the tier 3 interest rate.

CT₁ is the eligible construction cost for portions of the project under s. NR 162.05 (2) (a) and (b).

CT₂ is the eligible construction cost for portions of the project under s. NR 162.05 (2) (c).

CT₃ is the eligible construction cost for portions of the project under s. NR 162.05 (3).

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. am. (1) to (5) (a) (intro.), cr. (4) (am), (bm), (d) and (e), eff. 8-15-90; am. (1) to (5) (a) (intro.), cr. (4) (am), (bm), (d) and (e), Register, January, 1990, No. 421, eff. 2-1-91; emerg. am. (4) (d), eff. 3-1-91; am. (4) (d), Register, November, 1991, No. 431, eff. 12-1-91.

NR 162.08 Financial assistance application. (1) PROCEDURE. An application shall be submitted to the department for each step 3 project. For step 1 or step 2 projects, an application shall also be submitted if the municipality is applying for direct financial assistance and qualifies for financial hardship assistance under s. 144.241 (13), Stats. If the municipality does not qualify for financial hardship assistance, an application for a step 1 or step 2 project will not be accepted and processed until the application for the step 3 project is submitted. If any information required under sub. (2), (3) or (4) has been furnished with an earlier application, the applicant may incorporate the information by reference and, if necessary, revise such information utilizing the previous application.

(2) CONTENTS OF APPLICATION - FINANCIAL HARDSHIP. (a) Step 1 projects. An application for financial hardship assistance for a step 1 project shall include the following:

1. A statement of the type of financial assistance being applied for and the reasons for each type being requested;

2. A plan of study showing the proposed planning area; an identification of the entity or entities who will be conducting the planning; the nature and scope of the proposed step 1 project, including a schedule for the completion of specific tasks; and an itemized description of the total estimated costs of the project and, if appropriate, the description and

costs of each portion of the project for which a different interest rate may apply under s. NR 162.07;

3. Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project;

4. Required comments or approvals of appropriate state, local and federal agencies;

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

6. Financial assistance payment projections and a proposed repayment schedule.

7. Invoices documenting the costs incurred during the preparation of the facility plan, for which refinancing is being requested.

(b) *Step 2 projects.* An application for financial hardship assistance for a step 2 project shall include the following:

1. The information required under subd. 1;

2. A facilities plan approved in accordance with s. 144.04, Stats.;

3. Proof of the availability of the proposed site;

4. For any treatment works serving 2 or more municipalities, proposed intermunicipal agreements necessary for the construction and operation of the proposed treatment works;

5. Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project; and

6. A schedule showing the dates of initiation and completion of the project, including appropriate milestones.

7. Invoices documenting the costs incurred during the preparation of design plans and specifications, for which refinancing is being requested.

(3) **CONTENTS OF APPLICATION-NONFINANCIAL HARDSHIP.** (a) *Step 1 projects.* For all nonfinancial hardship assistance, applicants shall apply for step 1 financial assistance at the time they apply for step 3 financial assistance. The applicant shall submit the following:

1. A department approved facility plan or other approved planning documents;

2. Copies of any executed subagreements for performance of any portion of the step 1 project;

3. Invoices documenting the costs incurred to complete the work reflected in the approved planning document; and

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) *Step 2 projects.* For all nonfinancial hardship assistance, applicants shall apply for step 2 financial assistance at the time they apply for step 3 financial assistance. The municipality shall furnish the following:

1. A copy of construction drawings and specifications which are bid-able and have been approved by the department;

2. Copies of any executed subagreements for performance of any portion of the step 2 project;

3. Invoices documenting the costs incurred to complete the construction drawings and specifications; and

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.

(4) **STEP 3 PROJECTS.** (a) An applicant shall submit the following:

1. A statement of the types of financial assistance being applied for and the reasons for each type being requested;

2. An executed intermunicipal agreement, if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality. The department may waive the requirement of an executed intermunicipal agreement if an order under s. 144.07 (1), Stats., has been issued;

3. The most current construction drawings and specifications for the project which are suitable for bidding purposes and which have been approved by the department;

4. A schedule for or evidence of compliance with ss. NR 162.09 (8) and 162.10 (8);

5. Proposed user charge system and sewer use ordinance;

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.

6. A proposed repayment schedule;

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

8. Invoices documenting the costs incurred during construction for which refinancing is being requested.

(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.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. am. (2) (a) 5., (3) (a) 4., (b) (4), (4) (a) 6., 7. and (b), cr. (4) (a) 5m. and 8., eff. 8-15-90; am. (2) (a) 5., (3) (a) 4., (4) (a) (b) 4. 6., 7. and (b), cr. (4) (a) 5m. and 8., Register, January, 1991, No. 421, eff. 2-1-91; emerg. cr. (2) (a) 7. and (b) 7., eff. 3-1-91; cr. (2) (a) 7 and (b) 7., Register, November, 1991, No. 431, eff. 12-1-91.

NR 162.09 Financial assistance conditions. Before awarding financial assistance for any project, the department shall determine that all of the applicable requirements of s. NR 162.08 have been met and that sufficient documentation has been submitted to show that the municipality has complied or will comply with the following:

(1) **FACILITIES PLANNING.** If the award is for step 2 or step 3 assistance, the facilities planning requirements of chs. NR 110 and 208 have been met.

(2) **AREAWIDE PLAN.** The project is consistent with an approved area-wide waste treatment management plan and the applicant is a wastewater management agency designated in the approved plan.

(3) **PRIORITY DETERMINATION.** The project is entitled to priority in accordance with chs. NR 160 and 161, as applicable.

(4) **FUNDING AND OTHER CAPABILITIES.** The applicant has:

(a) Agreed to pay any non-state or non-federal project costs, as well as to repay any financial assistance granted under this chapter.

(b) Has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works throughout the applicant's jurisdiction.

(c) Provide proof of the acquisition of appropriate land and easements.

(5) **PERMITS.** The applicant has, or has applied for, the permit or permits as required by ch. 147, Stats.

(6) **DESIGN.** The treatment works design is based upon the following:

(a) The design, size and capacity of such works are cost effective and related directly to the needs they serve, including adequate reserve capacity.

(b) Such works will meet applicable water quality related effluent limitations and will attain not less than secondary treatment as defined by ch. NR 210.

(c) The sewer system evaluation and rehabilitation requirements of s. NR 110.09 (6) have been met.

(7) **ENVIRONMENTAL REVIEW.** The Wisconsin environmental policy act (WEPA) requirements applicable to the project have been met.

(8) OPERATION AND MAINTENANCE PROGRAM. If the award of financial assistance is for a step 3 project, the applicant has made satisfactory provision to assure the efficient operation and maintenance of the treatment works, in accordance with s. NR 162.10 (8).

(9) USER CHARGE SYSTEMS AND SEWER USE ORDINANCES. (a) For a step 3 project, an approvable plan and a schedule of implementation have been developed for a system of user charges in compliance with s. NR

Next page is numbered 926-33

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ments 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 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.

(c) The department shall rely on commissioned audits to the extent feasible once it satisfies itself of the quality of the audit by appropriate tests or other acceptable methods as described in government auditing standards issued by the comptroller general of the United States. The department shall rely on and not duplicate single audits performed in accordance with the federal and state auditing standards. The department may perform additional audits to supplement work done in single audits to the extent it deems necessary to carry out its responsibilities under the program.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. am. (1), (3) (intro.), (5) (a) and (b), r. and recr. (2) and (3) (b), r. (3) (c), renum. (3) (d) to be (3) (c), eff. 8-15-90; am. (1), (3) (intro.), (5) (a) and (b), r. and recr. (2) and (3) (b), r. (3) (c), renum. (3) (d) to be (3) (c), Register, January, 1991, No. 421, eff. 2-1-91.

NR 162.15 Financial assistance agreement amendments. (1) Changes in the project that are consistent with the objectives of the project, within the scope of the financial assistance agreement and which do not require review under ch. NR 110 will not require the execution of an amendment before the recipient implements the change. However, the amount of financial assistance in the financial assistance agreement may be increased by an amendment only and can be made only upon department review and acceptance of such cost increase as eligible, reasonable and necessary for the accomplishment of project objectives. The recipient shall receive prior approval or a formal amendment from the department before implementing changes which:

1. Alter the project performance standards;
2. Alter the type of wastewater treatment provided by the project;
3. Substantially alter the facilities plan, design drawings and specifications or the location, size, capacity or quality of any major part of the project. This section does not apply to estimated payment schedules under agreements for construction of treatment works.

(2) An assistance agreement amendment shall become effective after it has been executed by the department and the authorized representative of the recipient.

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

(4) 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 determined under s. NR 162.07. The determination of the appropriate interest rate shall be based on the following criteria:

(a) If the factors or circumstances which led to the requested increase could reasonably have been predicted by the recipient in the original design or most recent amended design approved by the department, the market interest rate shall apply.

(b) If the factors or circumstances which led to the requested increase were caused by the department or could not have reasonably been predicted by the recipient, the interest rate for the increased financial assistance shall be the most recent approved composite rate for the project.

(c) If the factors or circumstances which led to the requested increase contain elements of pars. (a) and (b), the department may establish an interest rate between the market interest rate and the most recent project composite interest rate.

(d) The recipient may appeal an amendment interest rate determination pursuant to s. NR 162.19.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. am. (3) and (4) (intro.), eff. 8-15-90; am. (3) and (4) (intro.), Register, January, 1991, No. 421, eff. 2-1-91.

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.

Register, November, 1991, No. 431

c. The municipality qualifies as a financial hardship recipient under ch. NR 163 and received a notice of financial assistance commitment during the 1989-1991 biennium.

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.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. r. and recr., eff. 8-15-90; r. and recr., Register, January, 1991, No. 421, eff. 2-1-91; emerg. r. (2) (b) 3. b., am. (2) (b) 3. c., eff. 3-1-91; r. (2) (b) 3. b., am. (2) (b) 3. c., Register, November, 1991, No. 431, eff. 12-1-91.

NR 162.17 Annual funding policy. (1) **GENERAL.** Each year, 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) The biennial finance plan.

(c) The priority value of new projects.

(d) Whether all new projects can be funded.

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

(f) Other relevant factors.

(2) **CONTENTS.** The funding policy shall include:

(a) The amount of funding available for new projects.

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

(c) The amount of funding available for financial hardship assistance.

(d) The amount of funding available for refinancing projects.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; emerg. am. (1) (intro.) to (b) and (e), r. (2) (b), renum. (2) (c) to (e) to be (2) (b) to (d) and am. (b), eff. 8-15-90; am. (1) (intro.) to (b) and (e), r. (2) (b), renum. (2) (c) to (e) to be (2) (b) to (d) and am. (b), Register, January, 1991, No. 421, eff. 2-1-91.

NR 162.18 Transition projects. (1) **APPLICABILITY.** This section applies to financial assistance agreements issued pursuant to s. 144.2415 (13), Stats.

(2) **ELIGIBILITY.** (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. 144.2415 (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. 144.2415 (13), Stats., using the federal priority list as established under s. 144.24 (6) (a), Stats.

(c) Step 2 costs approved through an advance commitment for reimbursement may be awarded with the step 3 loan subject to s. 144.24 (9m) (a), Stats. These costs shall be added to the step 3 application costs for the purpose of determining the fundable range on the intent to apply list.

(d) The application requirements of s. NR 162.08 shall be met in order to receive a loan.

(e) Transition projects shall comply with all other applicable limitations and conditions as required under this chapter.

(f) Additional step 1 planning work necessary for step 3 projects is not eligible for financial assistance under this section.

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

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

(c) Eligible costs shall be determined in accordance with s. 144.24, Stats.

(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 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 local share of project costs for projects which received financial assistance under 33 USC 1251 et seq., as amended, or s. 144.24, Stats.

(5) **LIMITATIONS.** (a) The eligibility of specific costs for projects funded under this section shall be subject to the requirements of s. 144.241 (8) (b) and (f), Stats.

(b) A municipality which rejects a ready to allocate notice or grant award for a project issued under s. 144.24, Stats., or 33 USC 1251 et seq.