

NR 162.19 Noncompliance. Upon failure of the recipient to comply with ss. 281.58 and 281.59, Stats., or with provisions of ch. NR 162 or 165, the department may:

- (1) Refuse to enter into a financial assistance agreement.
- (2) Seek penalties as provided in ch. 281, Stats.
- (3) Seek any other appropriate remedy, relief or penalty.

NR 162.20 Variances. (1) GENERAL. The department may, on its own initiative or pursuant to a written request from an applicant, approve a variance from a requirement of ch. NR 162 or 165 when it determines that special circumstances make a variance in the best interest of the state. Any variance approved shall be consistent with the objectives of ss. 281.58 and 281.59, Stats.

(1) APPLICABILITY. The department may only approve a variance from any non-statutory requirement of ch. NR 162 or 165.

(2) REQUEST FOR VARIANCE. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient and financial hardship. A request for a variance shall be submitted in writing to the department, as soon as it is determined a variance is needed. Each request for a variance shall contain the following:

- (a) The name of the applicant and project number.
- (b) The section of ch. NR 162 or 165 from which a variance is sought and a statement explaining why the variance is necessary.
- (c) An adequate description of the variance desired, and the facts which the recipient believes warrant the department's approving the variance.
- (d) A statement as to whether the same or a similar variance has been requested previously by the recipient, and if so, the circumstances of the previous request.

NR 162.21 Administrative fees. (1) An administrative fee, if one is imposed, shall be included in the biennial finance plan, as described in s. 182.59 (3), Stats., which is approved by the building commission under s. 13.48, Stats.

1 (2) Assistance provided for hardship financial assistance under subch. III is
2 not subject to an administrative fee.

3
4 **SUBCHAPTER II – PRIORITY SCORING AND RANKING SYSTEM**

5
6 **NR 162.30 Project scoring system.** The following factors, when applied to
7 particular projects in accordance with s. NR 162.31, shall determine the priority
8 scoring of treatment works and structural urban BMP projects for clean water fund
9 program financial assistance pursuant to s. 281.58, Stats.

10 (1) **PROJECT CATEGORY SCORE.** Projects which are properly
11 assignable to any of the project categories enumerated in this subsection shall be
12 assigned a project score as follows:

13 (a) Projects that the department determines are necessary to prevent a
14 municipality from significantly exceeding an effluent limitation contained in a
15 permit issued under ch. 283, Stats., shall be assigned 50 points. This includes
16 eligible projects identified under s. NR 162.03 (1) (a) and (d) 1.

17 (b) Projects needed to provide treatment to achieve compliance with an
18 enforceable requirement changed or established after May 17, 1988, if the project is
19 for a municipality that is in substantial compliance with its permit, issued under ch.
20 283, Stats., in regard to the changed or established enforceable requirements shall
21 be assigned 45 points. This includes eligible projects identified under s. NR 162.03
22 (1) (b) and (d) 1.

23 (c) Projects for unsewered municipalities shall be assigned 25 points. This
24 includes eligible projects identified under s. NR 162.03 (1) (e).

25 (d) Structural urban BMPs projects identified under s. NR 162.03 (1) (d) 2.
26 and 3 shall be assigned 20 points.

27 (e) Projects for the planning, design, construction or replacement of a
28 treatment works that violate a permit issued under ch. 283, Stats., or projects that
29 have been the subject of an enforcement action pursuant to s. 281.98, Stats., of a
30 performance standard, shall be assigned 5 points. This includes eligible projects or
31 costs identified under s. NR 162.03 (1) (c) or s. NR 162.04 (1) (b).

1 (f) A multi-category project shall receive the project category score for the
2 project type which has the largest estimated cost percentage of the total cost of the
3 project, as approved by the department.

4 (2) HUMAN HEALTH SCORE. A project shall be assigned a human health
5 score only if the project is necessary to eliminate a health hazard. The human
6 health score (HHS) is the product of the severity subscore (SS) as defined in par. (c)
7 and the population multiplier (PM) as defined in par. (d), expressed as follows:

8
$$\text{HHS} = \text{SS} * \text{PM}$$

9 (a) *Maximum Score.* The maximum human health score assignable to a
10 project is 40 points.

11 (b) *Applicability.* Scores shall be assigned for only those human health
12 hazards for which the applicant submits supporting documentation and that have
13 occurred within 5 years prior to the applicant's submittal of a request for a project
14 priority score.

15 (c) *Severity subscore.* A project is assigned a severity subscore (SS) which is
16 the cumulative total of the following applicable categories. A holding tank may not
17 be included in the percentages calculated under subsds. 1., 7., and 9., if the discharge
18 or malfunction of the holding tank is the result of improper maintenance.

19 1. Projects necessary to reduce or eliminate pollution of groundwater, where
20 contaminant levels exceed or are projected to exceed safe drinking water standards
21 in ch. NR 809 for public water supplies, or to reduce or eliminate discharges from
22 private sewage systems or reduce untreated urban runoff discharges from municipal
23 stormwater conveyance systems located within 3 feet of groundwater or crevassed
24 bedrock, shall be assigned a score based on the percentage of the water supplies
25 that are affected, or the percentage of the private sewage systems discharging to
26 high groundwater or crevassed bedrock as follows:

27 b. 75% or more: 15 points.

28 c. 50% to 74.99%: 12 points.

29 d. 33% to 49.99%: 9 points.

30 e. 20% to 32.99%: 6 points.

- 1 f. 10% to 19.99%: 4 points.
- 2 g. 5% to 9.99%: 2 points.
- 3 h. 3% to 4.99%: 1 point.
- 4 i. Less than 3%: 0 points.

5 2. Wastewater projects necessary to achieve or maintain compliance with
6 effluent limitations based on groundwater quality standards in ch. NR 140 shall be
7 assigned the highest applicable score from the following:

- 8 a. Effluent limitations based on public health standards under s. NR 140.10
9 shall be assigned 10 points.
- 10 b. Effluent limitations based on public welfare standards under s. NR
11 140.12 shall be assigned 8 points.
- 12 c. Effluent limitations based on indicator parameter standards under s. NR
13 140.20 shall be assigned 6 points.
- 14 d. Correction of excessive leakage from a lagoon or pond as required by a
15 WPDES permit shall be assigned 4 points.

16 3. Urban runoff projects that contribute to the achievement or maintenance
17 of groundwater standards under ch. NR 140 shall be assigned the highest applicable
18 score from the following:

- 19 a. A project designed to reduce or eliminate substances of public health
20 concern identified under s. NR 140.10 or other substances identified by the
21 department under s. NR 140.02 (4) shall be assigned 10 points.
- 22 b. A project designed to reduce or eliminate substances of public welfare
23 concern identified under s. NR 140.12 or other substances identified by the
24 department under s. NR 140.02 (4) shall be assigned 8 points.
- 25 c. A project designed to reduce or eliminate substances necessary to comply
26 with the preventative action limit for an indicator parameter identified under s.
27 140.20 shall be assigned 6 points.

28 4. Wastewater projects necessary to achieve or maintain compliance with
29 effluent limitations based on surface water quality criteria as enumerated in ss. NR
30 105.08 and 105.09 shall be assigned a score as follows:

- 31 a. Effluent limitations based on water supply human threshold or human
32 cancer water quality standards shall be assigned 10 points.

1 b. Effluent limitations based on non-water supply human threshold or
2 human cancer water quality standards shall be assigned 5 points.

3 5. Urban runoff projects contributing to the achievement or maintenance of
4 surface water quality standards under ss. NR 105.08 and NR 105.09 shall be
5 assigned the highest applicable score from the following:

6 a. A project designed to reduce or eliminate substances contributing to an
7 existing or anticipated violation of water supply human threshold or human cancer
8 water quality standards shall be assigned 10 points.

9 b. A project designed to reduce or eliminate substances contributing to an
10 existing or anticipated violation of non-water supply human threshold or human
11 cancer water quality standards shall be assigned 5 points.

12 6. A project designed to reduce or eliminate substances contributing to an
13 existing or probable violation of recreational use standards under s. NR 102.04 (5)
14 shall be assigned 4 points.

15 7. Projects necessary to eliminate the ponding or discharge of sewage by
16 private sewage systems onto the ground or into roadside ditches, or to a watercourse
17 or waterbody, shall be assigned a score based on the percentage of systems in the
18 project area contributing to the ponding or discharge, as follows:

19 a. 50% or more: 4 points.

20 b. 25% to 49.99%: 3 points.

21 c. 15% to 24.99%: 2 points.

22 d. 5% to 14.99%: 1 point.

23 e. Less than 5%: 0 points.

24 8. Projects necessary to eliminate or prevent bypasses and overflows, as
25 defined in s. NR 110.05 (2), from a municipal sewerage system to a watercourse or
26 waterbody shall be assigned a score as follows:

27 a. For category 1 bypasses and overflows: 4 points.

28 b. For category 2 bypasses and overflows: 2 points.

29 9. Projects necessary to eliminate basement backups caused by
30 malfunctioning private sewage systems or overloaded sanitary sewer collection
31 systems, except for malfunctions caused by improper maintenance, shall be

1 assigned a score based on the percentage of residences in the project area with
2 basement backups, as follows:

- 3 a. 50% or more: 4 points.
- 4 b. 25% to 49.99%: 3 points.
- 5 c. 15% to 24.99%: 2 points.
- 6 d. 5% to 14.99%: 1 point.
- 7 e. Less than 5%: 0 points.

8 (d) *Population multiplier*. The population multiplier (PM) shall be the
9 logarithm to the base 10 (log 10) of the residential population which will initially be
10 served by the project.

11 (e) *Regional project*. 1. If the regional project is a multi-category project, it
12 shall be assigned the total human health scores of the several categories.

13 2. If a regional project is proposing to serve another municipality and the
14 subscribing municipality's design flow constitutes 10% or more of the design flow of
15 the regional project, then:

16 a. The health hazard score of the subscribing municipality may be added to
17 the health hazard score of the regional project.

18 b. The subscribing municipality may be assigned the prior health hazard
19 score of the regional project.

20 **Note:** The human health score may not exceed the maximum points in par.
21 (a).

22 **(3) FISH AND AQUATIC LIFE SCORE.** The fish and aquatic life score for
23 wastewater projects shall be the score assigned under par. (b), and for urban runoff
24 projects shall be the score assigned under par. (c).

25 (a) *Maximum score*. The maximum fish and aquatic life score assignable to a
26 project is 40 points.

27 (a) *Wastewater project score*. The fish and aquatic life score for a wastewater
28 project shall be the water quality standard score plus the classification score.

29 **Note:** Score = water quality standard score + water quality classification
30 score.

1 1. 'Water quality standard score.' The water quality standards score shall
2 be the addition of subparagraphs a. and b.

3 a. Projects necessary to achieve or maintain compliance with effluent
4 limitations based on a water quality standard contained in s. NR 102.04 (4) (a), (b),
5 (c), or (e) shall receive 10 points.

6 b. Projects necessary to achieve or maintain compliance with effluent
7 limitations based on water quality standard contained in s. NR 102.04 (4) (d) shall
8 receive 10 points only if an acute or chronic criterion contained in or calculated
9 under s. NR 105.05 or 105.06 is the basis of the effluent limitation.

10 2. 'Water quality classification score.' Each project where there is an
11 existing surface water discharge shall receive a classification score based on the
12 potential impact of that discharge on the receiving water and the classification of
13 the receiving water. A water quality classification score shall be the product of the
14 dilution ratio point value and the classification point value.

15 **Note:** Score = dilution ratio point value x classification point value.

16 3. 'Dilution ratio point value.' The dilution ratio point value shall be as
17 follows:

18 a. Waste load allocated streams: 4 points.

19 b. Dilution ratio of 0.00 to 0.99: 4 points.

20 c. Dilution ratio of 1.00 to 4.99: 3 points.

21 d. Dilution ratio of 5.00 to 9.99: 2 points.

22 e. Dilution ratio of 10.00 or greater: 1 point.

23 f. Lakes and wetlands: 1 point.

24 4. 'Classification point value.' The classification point value shall be based
25 on the classification contained in s. NR 102.04 (3). The point value shall be the
26 highest of any of the following:

27 a. Outstanding or exceptional resource water, or impaired waters: 7 points.

28 b. Great Lakes communities and cold water communities: 6 points.

29 c. Warm water sport fish communities: 5 points.

30 d. Warm water forage fish communities: 4 points.

31 e. Limited forage fish communities: 2 points.

32 f. Limited aquatic life: 1 point.

1 (c) *Urban runoff project score.* The fish and aquatic life score for an urban
2 runoff project shall be the water quality standard score plus the classification score.

3 **Note:** Score = water quality standard score + water quality classification
4 score.

5 1. 'Water quality standard score.' Projects contributing to the achievement
6 or maintenance of surface water quality standards established by the department
7 under s. 281.15, Stats., or performance standards established by the department
8 under s. 281.16 (2), Stats., shall be assigned 15 points.

9 2. 'Water quality classification score.' Each urban runoff project where
10 there is an existing surface water discharge shall receive a score based on the
11 potential impact of that discharge on the receiving water and the classification of
12 the receiving water. A water quality classification score shall be the product of the
13 classification point value and the pollution reduction value.

14 **Note:** Score = classification point value x pollution reduction value

15 3. 'Classification point value.' The classification point value shall be based
16 on the classification contained in s. NR 102.04 (3). The point value shall be the
17 highest of any of the following:

- 18 a. Outstanding or exceptional resource water, or impaired waters: 7 points.
- 19 b. Great Lakes communities and cold water communities: 6 points.
- 20 c. Warm water sport fish communities: 5 points.
- 21 d. Warm water forage fish communities: 4 points.
- 22 e. Limited forage fish communities: 2 points.
- 23 f. Limited aquatic life: 1 point.

24 4. 'Pollution reduction value.' The pollution reduction value shall be based
25 on the percentage of the total pollutant or water load contributing the nonpoint
26 source pollution which will be controlled by the project, as follows:

- 27 a. Greater than or equal to 75%: 4 points.
- 28 b. 50% – 74.99%: 3 points.
- 29 c. 25% – 49.99%: 2 points.
- 30 d. Less than 25%: 1 point.

31 (d) *Regional project.* 1. If the regional project is a multi-category project, it
32 shall be assigned the total fish and aquatic life scores of the several categories.

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1 2. If a regional project is proposing to serve another municipality and the
2 subscribing municipality's design flow constitutes 10% or more of the design flow of
3 the regional project, then:

4 a. The fish and aquatic life score of the subscribing municipality may be
5 added to the fish and aquatic life score of the regional project.

6 b. The subscribing municipality may be assigned the prior fish and aquatic
7 life score of the regional project.

8 **Note:** The fish and aquatic life score may not exceed the maximum points in
9 par. (a).

10 **(4) IMPAIRED WATERS SCORE.** A proposed project shall receive 5 points if
11 the project will reduce the level of pollutants currently affecting a 303(d) listed
12 waterbody and the pollutants proposed to be reduced or removed are related to the
13 impairment. A 303(d) listed waterbody means the list of impaired waterbodies in
14 the state developed by the department pursuant to 33 USC 1313 and 40 CFR s.
15 130.7.

16 **(5) WILD AND DOMESTIC ANIMAL SCORE.** (a) Wastewater projects
17 necessary to achieve or maintain compliance with effluent limitation based on a
18 water quality standard contained in s. NR 102.04 (7) shall receive 5 points.

19 (b) Urban runoff projects contributing to the achievement or maintenance of
20 surface water quality standards contained in s. NR 102.04 (7) shall receive 5 points.

21 **(6) OUTSTANDING AND EXCEPTIONAL RESOURCE WATERS**
22 **CATEGORY SCORE.** A proposed project which will reduce the level of pollutants
23 currently affecting an outstanding or exceptional resource water, designated under
24 ss. NR 102.10 and 102.11 shall be assigned 5 points.

25 **(7) LOCAL PRIORITIES SCORE.** Projects which are identified in or are
26 consistent with local resource management plans or ordinances, where such plans
27 or ordinances provide a strategy for controlling water pollution sources or will
28 otherwise have an effect on reducing existing or future sources of water pollution
29 shall receive 5 points. Examples of local resource management plans include, but
30 are not limited to: stormwater management, land use, growth management,
31 wellhead protection, lake management, sewer service area, parks and recreation,
32 county land and water resource management plans, comprehensive plan.

1 (8) SEPTAGE AND LEACHATE SCORE. A wastewater project whose
2 approved facilities plan includes facilities to receive and treat septage or leachate
3 shall be assigned a score of 2 points.

4 (9) POPULATION SCORE. Each project shall receive a population score.
5 The population score is the logarithm to the base 10 of the residential population to
6 be served by the project, divided by 10.

7 **Note:** Population score = $\frac{\log_{10} \text{residential population}}{10}$
8
9

10 **NR 162.31 Project priority score.** (1) A project priority score shall be
11 assigned by the department to each project for which a completed priority
12 evaluation and ranking form (PERF) has been submitted pursuant to s. NR 162.32.
13 The project priority score shall be determined using the following formula:

14 project priority score = A + B + C + D + E + F + G + H + I

15 where

16 A = Project category score

17 B = Human health score

18 C = Fish and aquatic life score

19 D = Impaired waters score

20 E = Wild and domestic animal score

21 F = Outstanding and exceptional resource waters score

22 G = Septage and leachate score

23 H = Local priorities score

24 I = Population score.

25
26 (2) In computing the project priority score, the department shall consider
27 only those scores properly assignable to a particular project. If a project does not
28 satisfy the necessary criteria associated with the assignment of a particular score, a
29 score of zero will be recorded for that particular factor.

30 (3) A subscribing municipality shall receive the same priority score as the
31 receiving municipality to which it will discharge if either (a) and (c), or (b) and (c)
32 conditions are met.)

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(b) The receiving municipality needs to expand its treatment works' or structural urban BMP design flow by 10% or more to treat the flow from the subscribing municipality.

(c) An approved facilities plan or WPDES permit requires the receiving municipality facility expansion and subscribing municipality project to occur concurrently.

(d) The receiving municipality and subscribing municipality have certified to the department that they will prepare and submit an intermunicipal agreement to the department prior to the award of financial assistance for construction of the project.

NR 162.32 Procedure for determination and reevaluation of project priority score. (1) An applicant intending to apply for clean water fund program assistance for the first time shall submit to the department a written request for priority determination on a priority evaluation and ranking form (PERF).

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

(2) No project shall be assigned a priority score greater than 0 until a completed PERF for the project has been submitted by the applicant and evaluated by the department.

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

(4) Annually, the department may review and, if necessary under the requirements of ch. NR 162, recalculate priority scores to assure accuracy and timeliness of information. The department shall notify the applicant in writing of any change in priority score.

(5) After approval of a facilities plan, the department shall reevaluate the priority score of the project, making revisions if necessary. The department shall notify the applicant in writing of any change in priority score.

(6) If the applicant objects to the department's determination of the priority score in sub. (3), (4) or (5), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (3), (4), or (5). The

1 notice shall state the specifics of the objection. The applicant shall submit any
2 information which supports the objection and the priority score which the applicant
3 believes should be assigned to the project based on this information.

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

7 (8) Notwithstanding sub. (6), an applicant may request a reevaluation of its
8 project priority score or any factor thereof within 45 days of the application
9 deadline. The department shall notify the applicant of the results of the
10 reevaluation in the same manner as required in sub. (3).

11
12 **NR 162.33 Project ranking system.** (1) The department shall maintain a
13 project priority list which shall rank the projects for which priority scores have been
14 determined. The projects shall be ranked in the order of descending priority score,
15 with the project with the highest priority score ranked first.

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

19 (3) The project priority list shall be prepared by the department. It shall be
20 used for prioritizing clean water fund program assistance to eligible projects.

21
22 **SUBCHAPTER III - HARDSHIP FINANCIAL ASSISTANCE**

23
24 **NR 162.40 Applicability.** (1) GENERAL. This subchapter applies to all
25 applicants for and recipients of hardship financial assistance pursuant to s. 281.58
26 (13), Stats. Compliance with the applicable requirements of ch. NR 162 is a
27 prerequisite to receiving financial assistance under s. 281.58 (13), Stats. Subch. III
28 does not apply to assistance for structural urban best management practices under
29 subchs. I and II.

30 (2) ADMINISTRATIVE OR SERVICE FEES. Administrative or service fees
31 under s. NR 162.21 may not be charged to hardship financial assistance recipients.
32

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

3 (1) Loans with interest rates lower than the interest rates specified in s. NR
4 162.11.

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

6
7 **NR 162.42 Eligibility for hardship financial assistance. (1) ELIGIBLE**
8 **MUNICIPALITIES.** Municipalities which meet the following criteria are eligible for
9 hardship financial assistance:

10 (a) The median household income in the municipality is 80% or less of the
11 median household income in this state.

12 1. If the municipality is a city, town, village, county, census designated
13 place or federally recognized tribal governing body, the department shall obtain a
14 median household income figure for the municipality from the most recent federal
15 census as published by the U.S. bureau of the census.

16 2. If the municipality is a town sanitary district or public inland lake
17 protection and rehabilitation district, the municipality shall submit to the
18 department with its intent to apply form a map showing the boundaries of the
19 municipality. The department shall compare this map to a census block map and
20 determine which census blocks contain any portion of the municipality. The
21 department shall then obtain from the U.S. bureau of the census a median
22 household income figure for the municipality through special tabulation of census
23 block data collected in the most recent federal census for the appropriate census
24 blocks.

25 3. Median household income figures from the most recent federal census
26 shall be adjusted to reflect the estimated change in annual income. The department
27 shall apply to the census data the percent increase in per capita income since the
28 most recent federal census in the county in which the municipality is located. The
29 percent increase in per capita income data shall be determined using figures
30 published by the U.S. department of commerce.

31 4. If a municipality is located in more than one county, the percent increase
32 in per capita income used to adjust the median household income figure shall be

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1 weighted according to population or number of households located within each
2 county's portion of the local governmental unit.

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

6 (2) ELIGIBLE PROJECTS. Wastewater projects described in s. NR 162.03
7 (1) (a), (b), and (e) are eligible for hardship financial assistance.

8 (3) REFINANCING AND REIMBURSEMENT. (a) The department may
9 refinance a project with hardship financial assistance for a municipality in the
10 hardship fundable range if one of the following applies:

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

14 2. The municipality received a financial assistance agreement for a clean
15 water fund program loan at an interest rate specified in s. NR 162.11 for the project
16 and:

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

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

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

25 1. An applicant for refinancing shall meet the planning and design criteria
26 and application requirements as established in subch. I for clean water fund
27 program financing.

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

30 3. Reimbursement of the municipality's internal funds for previously paid
31 project costs shall be in accordance with s. NR 162.10 (1) and subject to the
32 reimbursement regulations of the U.S. treasury.

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2 **NR 162.43 Application. (1) NOTICE OF INTENT TO APPLY.** Each
3 municipality intending to apply for hardship financial assistance shall inform the
4 department of its intent by the December 31 prior to the hardship application
5 deadline specified in sub. (2).

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

9 **(3) PROCEDURE.** Subject to sub. (2), hardship financial assistance
10 applicants shall follow the procedure described in s. NR 162.06 (2) (a) and (c) and s.
11 281.58 (9) (a) to (d) and (f). *Don't know*

12 **(4) CONTENTS OF APPLICATION.** An application for hardship financial
13 assistance shall comply with the requirements of s. NR 162.06 (3).

14 **(5) AMENDED APPLICATION.** An applicant may submit an amended
15 application prior to publishing of the hardship financial assistance funding list.
16

17 **NR 162.44 Funding list. (1) GENERAL.** The department shall establish a
18 hardship financial assistance funding list in accordance with s. 281.58 (13) (d),
19 Stats., and the funding policy established in s. NR 162.02 (1).
20

21 **(2) ELIGIBILITY CALCULATION.**

22 (a) The department shall determine eligibility for hardship financial
23 assistance using the following method:

24
$$S = \frac{(AT + M + O + W) R}{(MHI)(N)}$$

25 where:

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

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

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

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

6 W is the total remaining prior wastewater debt service of the municipality plus the
7 estimated debt service for project costs ineligible for clean water fund program
8 funding, such as hook-up fees owed another municipality and debt for lateral
9 sewers, divided by 20 years.

10 **Note:** In order to include ineligible project costs in the total amount for "W," the
11 municipality shall incur debt for the ineligible costs for a term of at least 10 years.

12 R is the residential percentage.

13 MHI is the median household income in the municipality.

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

15 (b) If S is greater than 2% and the municipality meets the criterion listed in
16 s. NR 162.42 (1) (a), the municipality is eligible for hardship subsidy and the project
17 will be placed on the hardship financial assistance funding list. If S is 2% or less,
18 the municipality is not eligible for hardship subsidy and may request a non-
19 hardship loan unless the municipality has already received a clean water fund
20 program loan for the project.

21
22 **NR 162.45 Allocation of funds.** At the time of publication of the funding
23 list, ^{the} hardship present value subsidy shall be allocated to those projects within the
24 hardship fundable range in the order specified in s. 281.58 (13) (e), Stats. The
25 amount allocated shall be based on figures in the current application and
26 information provided to the department prior to publication of the funding list.

27
28 **NR 162.46 Requirements and conditions for receiving hardship**
29 **financial assistance. (1) REQUIREMENTS.** Before awarding hardship financial
30 assistance for any project, the department shall determine that all of the applicable
31 application requirements of s. NR 162.43 have been met and that sufficient

1 documentation has been submitted to show that the applicant has complied, or will
2 comply, with the financial assistance requirements listed in s. NR 162.07. 04
23

3 (2) CONDITIONS. Each hardship financial assistance agreement shall bind
4 the recipient to the conditions listed in s. NR 162.12. 04
23

5
6 **NR 162.47 Procedure for determining amount of hardship financial**
7 **assistance. (1) GENERAL.** The type and amount of hardship financial assistance
8 shall be determined at the time the hardship financial assistance agreement is
9 awarded.

10 (2) CALCULATION OF HARDSHIP FINANCIAL ASSISTANCE AMOUNT.

11 (a) The department may provide financial assistance in the form of a loan or a
12 combination of loan and grant for eligible project costs for the amount specified in s.
13 281.58 (13) (c), Stats. The municipality shall pay at least 30% of the project costs
14 eligible for below-market interest rate. The interest rate for a hardship financial
15 assistance loan on eligible below-market project costs shall be no greater than a rate
16 specified in s. NR 162.11. The department may only provide grant funding to a
17 municipality if it is necessary in order to bring the total annual charges per
18 household down to 2% of the median household income.

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

23 $(MHI)(N)(.02) = A$

24 $A / R = B$

25 $B - O - W - M = C$

26 $P / 20 = D$

27 $D - C = H$

28 where:

29 MHI is the median household income in the municipality.

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

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

1 R is the residential percentage.
2 B is the estimated amount the residential and nonresidential users can afford for all
3 wastewater treatment costs annually.

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

6 W is the total remaining prior wastewater debt service of the municipality plus the
7 estimated total municipal debt service for project costs ineligible for clean water
8 fund program funding, such as hook-up fees owed another municipality and
9 debt for lateral sewers, divided by 20 years.

10 **Note:** In order to include ineligible project costs in the total amount for "W," the
11 municipality shall incur debt for the ineligible costs for a term of at least 10 years.

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

15 C is the estimated amount the residential and nonresidential users can afford
16 annually to pay for debt service on the clean water fund program project loan.

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

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

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

5 - daily

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

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

29 b. If H is negative, the municipality is eligible for a below market interest
30 rate loan with no grant portion. The interest rate is determined by entering figures
31 from the calculation in subd. 1.a. as the following into a financial calculator, such as
32 the Hewlett Packard HP-12C or equal, and solving for the interest rate:

1 C = payment

2 P = principal or present value

3 20 = term

4 "Interest rate" means the discount rate at which the present value of the periodic
5 payments (the clean water fund program loan payments) equals the clean water
6 fund program loan amount.

7 c. If it is determined that the affordable interest rate for hardship financial
8 assistance is greater than the interest rate for that project type defined in s. NR
9 162.11 (1), the interest rate for the project shall be determined according to the
10 method described in s. NR 162.11 (2).

11 (b) If portions of the project costs are only eligible for funding at the market
12 interest rate, pursuant to s. NR 162.04 (1) (b), then a composite interest rate shall
13 be calculated for the project. The composite interest rate for a hardship project shall
14 be computed as follows:

15
$$\text{HRC} = \frac{(i)(P) + (im)(CT\ 3)}{P + CT\ 3}$$

16 where:

17 HRC is the composite interest rate.

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

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

20 im is the clean water fund program market interest rate.

21 CT3 is the project costs eligible for clean water fund program market interest rate
22 funding under s. NR 162.04 (1) (b).

23

24
25 **NR 162.48 Operation, maintenance, and replacement cost estimates.**

26 (1) The maximum amount allowable for operation, maintenance and replacement
27 cost estimates used in ss. NR 162.45 (2) and 162.47 (2) shall be two standards
28 deviations above the mean operation, maintenance and replacement costs, as
29 obtained from a regression analysis of the operation, maintenance and replacement
30 costs of previously funded clean water fund program projects on population size,
31 segregated by project type.

32 (2) The estimated operation, maintenance and replacement costs used for
33 "O" under ss. NR 162.45 (2) and 162.47 (2) (a) 1. shall be the operation, maintenance

1 and replacement costs contained in the application and the approved user charge,
2 respectively, or the maximum allowable amount derived under sub. (1), whichever is
3 less.

4 (3) The department shall periodically update the operation, maintenance and
5 replacement costs used under sub. (1) to reflect new data and inflation.

6
7 **NR 162.49 Hardship financial assistance agreement. (1) NOTICE OF**
8 **HARDSHIP FINANCIAL ASSISTANCE COMMITMENT.** The department may
9 issue a notice of hardship financial assistance commitment to a municipality in the
10 hardship fundable range upon the municipality's request and its compliance with
11 the requirements in s. NR 162.46.

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

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

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

23 (3) DEADLINE FOR SIGNING A FINANCIAL ASSISTANCE
24 AGREEMENT. The applicant shall sign the financial assistance agreement by
25 August 30 of the calendar year following the project's inclusion in the fundable
26 range of the hardship financial assistance funding list. If a financial assistance
27 agreement is not signed by that August 30, the subsidy allocated for the applicant's
28 project will be released for reallocation to other projects.

29
30 **NR 162.50 Hardship financial assistance disbursements. (1)**
31 **GENERAL.** Disbursements shall be made in accordance with s. NR 162.14.

5-Active

5-Active

1 (2) ORDER OF LOAN AND GRANT DISBURSEMENTS. Disbursements of
2 hardship financial assistance shall first be made in the form of a loan, up to the loan
3 amount identified in the hardship financial assistance agreement. Grant
4 disbursements, if any, shall be made after all hardship loan proceeds have been
5 disbursed.

6
7 **NR 162.51 Funding additional project costs. (1) APPLICABILITY.** The
8 department may provide additional funding in the form of a loan or grant for
9 eligible project costs incurred beyond the amount specified in the hardship financial
10 assistance agreement. The department may not process a request to provide
11 additional funding for a project until such time as the total remaining costs to
12 complete the project can be reasonably determined. Additional funding for a project
13 is subject to availability of present value subsidy.

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

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

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

31 (c) *Continuous funding cycle loan, new biennium.* If there is not sufficient
32 project commitment or hardship present value subsidy available from the biennium

1 in which the original hardship financial assistance agreement was funded, and the
2 clean water fund program is accepting applications on a continuous funding cycle
3 basis for the fiscal year in which the additional costs are to be funded, the
4 municipality may receive funding for the additional costs from the current
5 biennium's project commitment present value subsidy. If the interest rate and final
6 maturity date for the additional funding are the same as in the original financial
7 assistance agreement, the funds may be provided in an amendment to the original
8 hardship financial assistance agreement. If the interest rate or final maturity date
9 of the additional funding is different than those in the original financial assistance
10 agreement, the funds shall be provided in a new financial assistance agreement in
11 the form of a loan for up to 20 years at the interest rate corresponding to the project
12 type as defined in s. NR 162.11.

13 (d) *Compete for hardship PV, new biennium.* A municipality may compete
14 for hardship financial assistance for additional project costs through the application
15 process in a biennium other than that in which the original hardship financial
16 assistance agreement was funded. The application for additional funding may be
17 submitted in any fiscal year through the second year of the biennium following the
18 substantial completion date of the project indicated in the original hardship
19 financial assistance agreement. The application will be ranked on the hardship
20 financial assistance funding list based on the priority score the project received in
21 the fiscal year in which the original hardship financial assistance agreement was
22 funded.

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

28 2. 'Partial hardship PV available.' If there is hardship present value
29 subsidy available to only partially fund the additional costs, the municipality may
30 receive funding from the current biennium's project commitment present value
31 subsidy for any eligible costs beyond the amount funded with the available hardship
32 present value subsidy. The funds shall be provided in a financial assistance

1 agreement in the form of a loan or a combination of grant and loan for up to 20
2 years with an interest rate determined by the department and the department of
3 administration based on the proportion of hardship and non-hardship funding.

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

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

18 (a) *Letter, sufficient PV, original biennium.* If sub. (1) (a) or (b) is applicable,
19 the municipality shall submit a letter to the department that justifies the need for
20 the additional funding and details the additional eligible costs. A revised budget
21 sheet shall be attached to the letter, indicating in one column the requested
22 additional costs and in a second column the total project costs. All costs in the
23 revised budget sheet shall be assigned to the appropriate budget line items from
24 which disbursement will be requested.

25 (b) *Application, competing for commitment PV.* If sub. (1) (c) or (e) is
26 applicable, the municipality shall submit a clean water fund program application,
27 requesting a loan for additional project costs. The application may be submitted
28 through the second fiscal year of the biennium following the biennium that contains
29 the substantial completion date of the project written in the original hardship
30 financial assistance agreement. If the municipality submits its application for
31 additional funding as part of the continuous funding cycle and intends to later apply
32 for hardship financial assistance for these same project costs, the municipality shall

1 inform the department in writing that waiting to obtain hardship financial
2 assistance to pay those costs would have negative impacts on the municipality.

3 (c) *Application, competing for hardship PV.* If sub. (1) (d) is applicable, the
4 municipality shall submit a clean water fund program application requesting
5 hardship financial assistance for additional project costs. The application shall be
6 postmarked by the June 30 prior to the fiscal year from which the additional funds
7 are requested. The application may be submitted through the second fiscal year of
8 the biennium following the biennium that contains the substantial completion date
9 of the project written in the original hardship financial assistance agreement.

10
11 **NR 162.52 Sale of hardship financed treatment works.** The sale of
12 clean water fund program hardship financed treatment works may not take place
13 without prior written approval from the department.

14
15 **NR 162.53 Breach of contract and noncompliance.** The rules
16 established in ss. NR 162.18 and 162.19 shall apply upon breach of contract or
17 noncompliance by the recipient.

which contract

5

OCT 27 2000

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. CF-18-00

Legislative Council Rules Clearinghouse Number 00-089

Subject of Rules CLEAN WATER FUND PROGRAM
FINANCIAL ASSISTANCE

Date of Transmittal to Presiding Officers OCTOBER 26, 2000

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 161, 162 and 163, Wis. Adm. Code
Clean water fund program financial assistance

Board Order No. CF-18-00
Clearinghouse Rule No. 00-089

Statement of Need

The department is proposing to modify and add language to the rule for the Clean Water Fund program to make funding available for nonpoint source pollution and urban storm water runoff practices. The department has an agreement with the U.S. Environmental Protection Agency to administer the State Revolving Loan Program which is one of sources of funding for the Clean Water Fund program. US EPA has encouraged the use of these funds for nonpoint source pollution and urban storm water runoff practices, and s. 281.58, Stats., allows for the funding of nonpoint source pollution and urban storm water runoff practices.

Currently, ch. NR 162 contains the general requirements for the Clean Water Fund program, ch. NR 161 is the basis for scoring projects to establish a priority funding list, and ch. NR 163 is the basis for determining the implementing hardship financial assistance for eligible Clean Water Fund program applicants. Combining these 3 chapters into one administrative chapter enhances clarity and convenience in locating the requirements for Clean Water Fund financial assistance. Also, modifications have been made to better reflect current policies and procedures and to provide further clarity.

Existing ch. NR 161 establishes a priority system for the distribution of Clean Water Fund program financial assistance. Each project seeking a loan is awarded points for the severity of the environmental problems it will address. The priority scores are used to rank the projects on a list that determines the priorities for available funding. It is proposed that the content of this chapter become subch. III of ch. NR 162. Also, changes are proposed to the priority scoring section to include nonpoint source pollution and urban storm water runoff abatement projects.

Existing ch. NR 162 establishes overall guidelines for the administration of the Clean Water Fund program, including types of financial assistance, annual funding policy, eligibility, application procedures, requirements of the program, agreement conditions, payments, and agreement amendments. The requirements specifying a process for submitting an amendment request have been expanded and clarified. The period an "intent to apply" is eligible is proposed to be changed from 2 fiscal years to one fiscal year to aid in preparing a priority funding list should the need arise. It is proposed that the contents of this chapter become subch. II of ch. NR 162.

Existing ch. NR 163 establishes criteria and special conditions for municipalities requesting hardship financial assistance under the Clean Water Fund program. A hardship applicant may be eligible for additional financial assistance in the form of a lower interest rate loan or a grant. Nonpoint source pollution and urban storm water runoff practices are not eligible for hardship financial assistance. It is proposed that the content of this chapter become subch. IV of ch. NR 162.

Modifications as a Result of Public Hearings

No modifications were made as a result of comments at the public hearings.

Appearances at the Public Hearing and Their Position

June 19, 2000 – Stevens Point – no appearances

June 21, 2000 – Waukesha

In support:

Terrence R. Tavera, Ruckert & Mielke, Inc., W239 N1812 Rockwood Drive, Waukesha, WI 53188
Steven A. Godfrey, P.E., 256 South Pine Street, Burlington, WI 53105

In opposition – none

As interest may appear – none

June 22, 2000 – Madison

In support – none

In opposition – none

As interest may appear:

Mike Friis, Wis. Dept. of Administration, 101 E. Wilson Street, Madison, WI 53702

Response to Legislative Council Rules Clearinghouse Report

See attached response.

Final Regulatory Flexibility Analysis

Since only municipalities are eligible for Clean Water Fund program assistance, there is no direct effect on small businesses. Therefore, there is no need for a final regulatory flexibility analysis.

Ch. NR 162 Rules Revision Comments

Clearinghouse Comments

Ch. NR 162 had a public comment period and the department held public hearings in June in Stevens Point, Waukesha, and Madison. Three citizens attended the hearings and made no comments. Two comments were received during the public comment period supporting the addition of urban stormwater projects as eligible for funding. Therefore, the following discussion responds only to comments made by the Rules Clearinghouse.

1. Statutory Authority

a. Section NR 162.03 (3) (d) and (e) identify projects that are not eligible to receive financial assistance under ch. NR 162. Since the projects in pars. (d) and (e) are not listed in s. 281.58 (8) (a), Stats., the authority for the department to exclude these projects is not apparent.

DNR Response: Section NR 162.03 (3) (d) identifies projects that are now ineligible as per 1999 Wisconsin Act 9. Section NR 162.03 (3) (e) refers to projects that are for water quantity problems. Section 281.58 (7), Stats. identifies water quality and public health as the primary criteria for eligibility and accordingly, projects which only manage water quantity should be ineligible.

b. Under s. NR 162.08 (3) (j), a user charge system must be "based on actual or estimated use." If this requirement is not meant to conflict with the exemption for user charge systems authorized under s. 281.58 (14) (b) 7., Stats., a note describing the statutory exemption could be added to the rule.

DNR Response: Section NR 162.08 (3) (j) has been redrafted as suggested.

4. Adequacy of References to Related Statutes, Rules and Forms

a. SECTION I should repeal chs. NR 161 to 163. SECTION 2 should create ch. NR 162.

DNR Response: This has been redrafted as suggested.

b. Since the department has divided ch. NR 162 into subchapters, the entire chapter should be placed in subchapters. Sections NR 162.001 to 162.003 are not in a subchapter.

DNR Response: Section NR 162.001 to NR 162.003 has been redrafted and are now contained in Subchapter I. Subchapters I, II, and III have been redrafted to be subchapters II, III, and IV, respectively.

c. Notes should not include substantive requirements and are not part of the substantive provisions of the rule. [See s. 1.09 (1), Manual.] As such, the department

should review all of the notes in the rule to ensure that they do not include substantive requirements. See, for example, the notes following ss. NR 162.003 (9) and (76), 162.04 (3) (c) 3. and 162.11 (2) (b) 3.

DNR Response: All Notes have been reviewed. Section NR 162.003 (9) and (30) have been redrafted to incorporate the Note into the definition. The Note in s. NR 162.003 (76) has been determined to add nothing to the definition of the term and has been deleted. The Note in s. NR 162.04 (3) (c) has been redrafted to be s. NR 162.04 (2) (o). The Note in s. NR 162.11 (2) (b) has been redrafted to be s. NR 162.11(2) (c).

d. The definitions in s. NR 162.003 which are identical to statutory or other administrative code definitions should use a consistent format. For example, s. NR 162.003 (16) uses the phrase "has the meaning designated in;" s. NR 162.003 (27) uses the phrase "has the meaning in;" and s. NR 162.003 (29) uses a phrase "has the meaning specified in." The appropriate phrase is "has the meaning given in."

DNR Response: All definitions have been reviewed. Section NR 162.003 (16), (21), (27), (29), (40), (43), (70), have been redrafted as suggested.

e. Since the definition of "median household income" in s. NR 162.003 (36) repeats the statutory definition of this term, the definition in sub. (36) should cross-reference the statutory definition.

DNR Response: All definitions have been reviewed and definitions that are identical to statutes have been redrafted as suggested.

f. The preferred drafting style is to avoid the use of "thereof." For example, in s. NR 162.003 (54) (b) and (c), the preferred style would be to refer to either "the department's agent" or "its agents." See also s. NR 162.32 (8).

DNR Response: The entire rule has been reviewed. Section NR 162.003 (51) and (54), and section NR 162.32 (8) have been redrafted to eliminate the use of "thereof."

g. To avoid ambiguity and facilitate any future amendments to the rule, lists of items should be drafted in the standard format that includes the use of "following" in the introductory clause to the list, delineation of whether the list is exclusive or inclusive through the use of terms such as "any of" versus "all of" in the introductory clause and ending each item in the list with a period. This format was not followed in numerous lists in the rule, including lists in ss. NR 162.001 (intro.), 162.003 (3) L, (41) and (67), 162.01 (intro.), 162.15 (1), 162.18 (1), 162.19 and 162.30 (3) (b) 2.

DNR Response: The entire rule has been reviewed and has been redrafted as suggested.

h. Since the statutes use the phrase "storm water" rather than the single word "stormwater," the rule should also use "storm water." See s. NR 162.03 (1) (d) (intro.) and 1.

DNR Response: The entire rule has been reviewed. All instances of "stormwater" have been redrafted to say "storm water."

i. The department should review the entire rule and remove any redundant phrases. See, for example, the inclusion of "newly" before "established" in s. NR 162.003 (42) and "but are not limited to" after "include" in s. NR 162.04 (1) (a) (intro.) and (b) (intro.).

DNR Response: The entire rule has been reviewed. Section 162.003 (42) uses the phrase "newly established" to denote the first time an effluent limitation was established for the municipality as opposed to an effluent limitation established at a later date due to a modification. The use of "but not limited to" in sections NR 162.04 (1) (a) (intro.) and (b) (intro.) acknowledges that the rule doesn't list all possible expenses for a particular project and needs eligibility determination during the application review.

j. If the department uses an acronym in the rule, then the acronym must be defined and used consistently. [See s. 1.01 (8) Manual.] The rule uses the acronyms "IRS" and "BOD" which are not defined in s. NR 162.003. See s. NR 162.06 (4) and the note following s. NR 162.04 (3) (c) 3.

DNR Response: The entire rule has been reviewed. Sections 162.06 (4), the note following 162.04 (3) (c) 3., and 162.08 (11) have been redrafted as suggested.

k. In s. NR 162.06 (3), par. (c) has a title and all other paragraphs in sub. (3) do not. Either all of the paragraphs in sub. (3) should have a title or none should. [See s. 1.05 (1), Manual.] Similarly, in s. NR 162.08, subs. (1) and (2) have titles, and subs. (3) to (11) do not.

DNR Response: The entire rule has been reviewed. The sections have been redrafted as suggested.

l. In s. NR 162.08 (3) and (9), the paragraphs should begin with par. (a). [See also s. NR 162.31.]

DNR Response: The entire rule has been reviewed. The paragraph ordering for sections NR 162.08 (3) and (9), NR 162.30 (3), and NR 162.31 (3) has been redrafted.

m. In s. NR 162.09 (1), the phrase "is responsible for the administration and successful completion of" should be replaced by the phrase "shall administer and successfully complete."

DNR Response: The section has been redrafted as suggested.

n. The text preceding sub. (1) in s. NR 162.11 should be either redrafted to be an introduction or placed within a subsection. [See s. 1.03 (8), Manual.]

DNR Response: The section has been redrafted as suggested.

o. Section NR 162.20 contains two subsections numbered as "sub. (1)."

DNR Response: The subsection ordering has been redrafted.

p. The references to pars. (a) to (c) in s. NR 162.31 (3) (intro.) do not conform to standard drafting style. [See s. 1.07 (2), Manual.] Also, since the text of sub. (3) is not an introduction to a list, it should not end with a colon. Also, par. (a) does not exist.

DNR Response: The section has been redrafted as suggested.

q. The text of the rule should not contain parentheses. [See s. 1.01 (6), Manual.] See the use of parentheses in the definition of "interest-rate" in s. NR 162.47 (2) (a) 2. b.

DNR Response: The entire rule has been reviewed. The section has been redrafted as suggested.

r. A rule should use "shall" to denote a mandatory or absolute duty or directive and "may" to denote an optional or permissive privilege, right or grant of discretionary authority. Use of "will" should be avoided. [See s. 1.01 (2), Manual.] This drafting style was not followed, for example, in ss. NR 162.003 (6) and 162.04 (3) (a) and (4).

DNR Response: The entire rule has been reviewed and has been redrafted as appropriate.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The analysis accompanying the rule cites s. 281.58, Stats., as authorizing rule-making. This reference is unduly broad. The specific provisions within s. 281.58, Stats., that authorize rule-making, including s. 281.58 (2) and (13) (cm), Stats., should be cited.

DNR Response: There are 8 citations within s. 281.58, Stats. authorizing rule making. The analysis will keep the general citation of s. 281.58, Stats.

b. The analysis accompanying the rule cites s. 281.59, Stats., as being interpreted by the rule. This reference is unduly broad, as parts of s. 281.59 are administered by the Department of Administration and s. 281.59 (3m) and (3s), Stats., do not relate to the clean water fund program. Also, if the department is interpreting s. 1.13, Stats., under s. NR 162.04 (1) (b) 7., then s. 1.13, Stats., should be listed in the analysis as a statute being interpreted by the rule.

DNR Response: There are 6 citations within s. 281.59, Stats. that are being interpreted. The analysis will keep the general citation of s. 281.58, Stats. but will include references to s. 1.13, s. 281.43, s. 281.49., and ch. 19.

c. The references in the last paragraph in the analysis accompanying the rule are broad. For example, the reference to "s. 281.58, Stats." should be to "s. 281.58 (7) (b) 5., Stats."

DNR Response: The analysis has been redrafted as suggested.

d. Section NR 162.07 (1) should include a statutory citation.

DNR Response: The citation appropriate for this section is chapter NR 150 which has been incorporated into this section.

e. The rule incorporates standards by reference. See s. NR 162.12 (1) (m). If this standard was not included in the prior versions of ch. NR 161, 162 or 163 that are repealed by this rule, then consent for incorporation of the standard must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. In this case, the analysis accompanying the rule should, but does not, indicate that this consent has been given either prior to this rule promulgation or concurrently with this rule promulgation.

DNR Response: The standard in s. NR 162.12 (1) (m) has been included in previous versions of ch. NR 162. It has been noted in the analysis.

f. The internal cross-reference at the end of s. NR 162.08 (1) should be to "this subsection" rather than "sub. (1)."

DNR Response: This section has been redrafted as suggested.

g. The cross-reference to s. NR 162.12 (1) (k) in s. NR 162.07 (6) does not appear to relate to the content in sub. (6), as s. NR 162.12 (1) (k) does not relate to the operation or maintenance of a treatment works or structural urban BMP. Is this cross-reference correct?

DNR Response: The cross-reference has been corrected.

h. Section NR 162.13 (3) refers to compliance with "any U.S. Treasury requirements for maintaining the tax-exempt status of the bonds sold to the clean water fund program." Can the department provide a more specific reference to these requirements?

DNR Response: There is no single section of the U.S. Treasury regulations that cover tax-exempt status. Financial and legal counsels to municipalities are familiar with the requirements.

i. The reference in s. NR 162.14 (3) (b) to final project close-out requirements "outlined in the financial assistance agreement" is vague. Can the department provide a specific reference to a financial assistance agreement condition in s. NR 162.12?

DNR Response: Section NR 162.14 (3) (b) has been redrafted.

j. The references to chs. 19 and 227, Stats., in ss. NR 162.16 (2) and 162.17 (1) are too broad, as these chapters contain substantive provisions not pertinent to the subject matter in the rule in which they are referenced. The department should provide more specific references.

DNR Response: These sections have been redrafted as suggested.

k. The U.S. Code reference should be used for citations to a federal law. [See s. 1.07 (3) (a), Manual.] This style was not followed in the reference to the Federal Single Audit Act in s. NR 162.17 (4).

DNR Response: This duplicates wording in s. Adm 35.07 (3) except the number of the OMB circular which has since been changes to number 133. To only cite s. Adm 35.07 (3) will make this section less clear to readers of the rule. This section

has been redrafted for the Federal Single Audit Act. Section 162.04 (2) (n), 162.10 (1), and 162.42 (3) (b) 3. have been redrafted.

l. The reference to penalties provided in ch. 281, Stats., in s. NR 162.19 (2) is vague. The department should reference the specific penalty provisions that may apply under ch. 281, Stats.

DNR Response: This section has been redrafted as suggested.

m. In s. NR 162.30 (2) (c) 3. c., the notation "NR" should precede the cross-reference.

DNR Response: This section has been redrafted as suggested.

n. The department should identify where the reader of the rule may obtain the list of "303(d) listed waterbodies" referenced in s. NR 162.30 (4).

DNR Response: A Note has been added to the end of s. NR 162.30 (4).

o. In s. NR 162.40 (1), the references "ch. NR 162" and subch. III" should be replaced by the references "this chapter" and "this subchapter," respectively.

DNR Response: The entire rule has been reviewed. This and other sections of the rule have been redrafted as suggested.

p. The reference in s. NR 162.42 (3) (b) 3. to "reimbursement regulations of the U.S. Treasury" is vague. The department should be more specific.

DNR Response: Section 162.42 (3) (b) 3. has been redrafted.

q. The reference in s. NR 162.43 (3) to s. NR 162.06 (2) (a) and (c) is in error as s. NR 162.06 (2) does not contain any paragraphs. Also, the reference in s. NR 162.43 (3) to s. 281.58 (9) (d) and (f), Stats., is in error as pars. (d) and (f) relate to the collection of administrative and service fees, and s. 281.58 (9) (d), Stats., exempts applicants for hardship financial assistance from these fees.

DNR Response: Section NR 162.43 (3) has been redrafted.

r. The reference to s. 281.58 (9) (a) to (d) and (f), Stats., in s. NR 162.43 (3) should include "Stats." at the end of the reference.

DNR Response: Section NR 162.43 (3) has been redrafted.

s. The reference in s. NR 162.44 (2) (b) should be to s. NR 162.42 (1) (b) rather than s. NR 162.42 (1) (a).

DNR Response: The reference to s. NR 162.42 (1) (a) is correct. Section NR 162.42 (1) (b) duplicates the first part of the "and" statement in s. NR 162.44 (2) (b).

t. The references to s. NR 162.45 (2) in s. NR 162.48 (1) and (2) are in error as s. NR 162.45 does not contain any subsections.

DNR Response: These sections have been redrafted.

u. All references to provisions of ch. 66, Stats., should be reviewed in light of the enactment of 1999 Wisconsin Act 150.

DNR Response: All references to provision of ch. 66, Stats. were reviewed in light of 1999 Wisconsin Act 150 and all corrections have been made.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis accompanying the rule needs to be more elaborate. It should contain sufficient details to enable the reader to understand the content of the rule. The format of the rule is to repeal and recreate existing chapters in the administrative code and the text of the rule does not reveal the changes made in existing code. The analysis should summarize the modifications that are made to existing rules to better reflect current policies and procedures and provide further clarity. The analysis should also identify if the rule is inconsistent with any federal requirement applicable to the clean water fund financial assistance program cited in s. 281.58 or 281.59, Stats.

DNR Response: The analysis summarizes major and significant changes to the rule. A sentence has been added regarding consistency with federal requirements. Additional changes have been made based on comment 4. e.

b. In the second paragraph in the analysis accompanying the rule, "to" should be inserted after the second "related."

DNR Response: The analysis has been redrafted as suggested.

c. Since s. NR 162.001 establishes three purposes of ch. NR 162, the introduction to this section should be written in the plural, "The purposes of ch. NR 162 are to:".

DNR Response: The section has been redrafted as suggested.

d. The references to paragraphs in s. NR 162.003 (25) and (53) are missing the subsection in s. NR 162.11 that contains the cited paragraphs. Similarly, the reference to "an interest rate specified in s. NR 162.11" in s. NR 162.003 (26) is incomplete. Which of the five interest rate categories identified in s. NR 162.11 (1) does the department intend to reference in sub. (26)?

DNR Response: Section NR 162.003 (25), (26), and (53) have been redrafted as suggested.

e. In s. NR 162.003 (37) (a), it appears that the word "resident" should be replaced by the word "residence."

DNR Response: Section NR 162.003 (37) (a) has been redrafted as suggested.

f. The reference in s. NR 162.04 (4) should be to "sub. (3) (c)" rather than "sub. (3)."

DNR Response: Section NR 162.04 (4) has been redrafted as suggested.

g. In s. NR 162.003 (8), "an" should precede "effluent."

DNR Response: Section NR 162.003 (8) has been redrafted as suggested.

h. The list of activities identified in s. NR 162.003 (19) as "any activity listed in sub.... (46)" is vague, as sub. (46) contains a definition of "performance standards" and does not list any activities. Can the department be more specific?

DNR Response: Section NR 162.003 (19) has been redrafted.

i. Definitions should be drafted in the singular rather than the plural, and a singular subject and singular predicate should be used in each sentence containing the definition. The department should review all of the definitions in s. NR 162.003 to ensure that the predicates in the definitions appropriately match the subject. See, for example, s. NR 162.003 (20), (28), (31) and (42).

DNR Response: All of the definitions have been reviewed. Changes have been made to sections NR 162.003 (7), (17), (20), (26), (28), (31), and (67).

j. Since under s. 281.58 (13) (d), Stats., the department must establish a financial hardship assistance funding list that ranks projects in municipalities that are eligible for state or federal financial hardship assistance, should "and" in the reference to "s. 281.58 (13) (b) and (be), Stats." in s. NR 162.003 (23) be replaced by "or"?

DNR Response: This section has been redrafted as suggested.

k. To improve the clarity of definitions that contain two sentences, the second sentence should repeat the term being defined rather than use a reference such as "the term" or "it." See, for example, s. NR 162.003 (34) and (44).

DNR Response: All definitions have been reviewed. Sections NR 162.003 (12), (34), and (44) have been changed as suggested.

l. The department should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule:

(1) "Useful business function" in s. NR 162.003 (37) (b).

DNR Response: Section NR 162.003 (37) has been redrafted.

(2) "Designed figure for total flow" in s. NR 162.003 (59). If this term is the same as the defined term "design flow," then "design flow" should be used in sub. (59).

DNR Response: Section NR 162.003 (37) has been redrafted.

(3) "Annual funding policy" in s. NR 162.02 (1). Does this policy cover hardship financial assistance under subch. III in ch. NR 162? Section NR 162.02 (1) does not reference any provision in subch. III but s. NR 162.44 (1) references this policy.

DNR Response: Section NR 162.02 (1) has been redrafted.

(4) "Enforceable wastewater requirement" in s. NR 162.03 (1) (b) and "enforceable requirement" in s. NR 162.30 (1) (b).

DNR Response: The wording in these 2 sections mirror language in s. 281.58 that refers to requirements of ch. 283, Stats. No definition is needed.

(5) "Indirect project costs" in s. NR 162.04 (1) (a) 30.

DNR Response: No definition is needed. There are other rules that refer to this term that do not include a definition.

(6) "Toxic pollutants" and "high strength waste" in s. NR 162.08 (3) (h).

DNR Response: These are defined as part of the wastewater permit process and by the municipality's user charge system and sewer use ordinance for each municipality.

m. Since the definition of "municipality" in s. NR 162.003 (40) is based upon identifying types of political entities and not their governing bodies, the last phrase in this definition should refer to "any federally recognized American Indian tribe or band" rather than "any federally recognized tribal governing body." See also the use of "federally recognized tribal governing body" in s. NR 162.42 (1) (a).

DNR Response: Section NR 162.003 (40) and s. NR 162.42 (1) (a) have been redrafted.

n. The definition of "parallel cost ratio" in s. NR 162.003 (45) is not clear. A ratio implies specification of a numerator divided by a denominator. These terms are not evident in this definition.

DNR Response: Sections NR 162.003 (45) and 162.04 (1) (b) have been redrafted, and NR 162.07 (9) (j) has been added to address this comment.

o. The department should review the clarity of the definition of "project" in s. NR 162.003 (51). The article preceding "project assign" should be "a" rather than "the."

DNR Response: Section NR 162.003 (51) has been redrafted as suggested.

p. Rules should be drafted in the active voice. [See s. 1.01 (1), Manual.] The department should review the entire rule and redraft provisions that are in the passive voice. For example, since the determination in s. NR 162.003 (65) is written in the passive voice, it is not clear if a municipality or the department will be making this determination. Furthermore, if these determinations are project specific, then this definition contains a substantive provision that should be placed in the text of the rule and not in a definition. [See s. 1.01 (7) (b), Manual.] Other examples of provisions in the passive voice are ss. NR 162.43 (5) and 162.49 (3).

DNR Response: The entire rule has been reviewed and redrafted as suggested.

q. Section NR 162.02 (2) is not clear. This subsection refers to the Legislature authorizing present value below the percentage specified in s. 281.58 (9m), Stats., but sub.

(9m) does not contain any provision relating to the Legislature specifying any percentage. Also, if "present value" in sub. (2) is the same as "present value subsidy," as defined in s. NR 162.003 (48), then the defined term should be used. Otherwise, "present value" should be clarified.

DNR Response: Section NR 162.02 (2) has been redrafted.

r. In s. NR 162.04 (2) (f), "or an" should be substituted for the last comma.

DNR Response: Section NR 162.04 (2) (f) has been redrafted as suggested.

s. Under s. NR 162.04 (2) (m), operation expenses of the treatment works on structural urban BMP are ineligible costs. Section NR 162.04 (2) (intro.) states that "costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for financial assistance." Subsection (2) (intro.) implies that operation costs that are directly associated with an eligible project are eligible for financial assistance which conflicts with the prohibition in sub. (2) (m). The department should review these provisions to ensure that they do not conflict.

DNR Response: Section NR 162.04 (2) (m) has been redrafted.

t. The second sentence in s. NR 162.05 (1) could be read to not establish a deadline for the filing of a notice of intent to apply for funding if the application for financial assistance will be submitted at any time other than within the following fiscal year. If the department intends to require this notice by December 31 in the year preceding the fiscal year in which the application will be made, then this sentence should be redrafted. In addition, the sentence would be clearer if it was drafted in the active voice.

DNR Response: This section is worded correctly.

u. The reference to "this requirement" in s. NR 162.05 (2) and (3) is vague. Is "this requirement" the requirement to file a notice of intent to apply for funding specified in s. NR 162.05 (1), the requirement to file the notice by the date specified in s. NR 162.05 (1), the requirement to submit the notice on a form provided by the department specified in s. NR 162.05 (1) or a different requirement?

DNR Response: Sections NR 162.04 (2) and (3) have been redrafted.

v. In s. NR 162.07 (9) (d), the word "A" should begin subd.7.

DNR Response: Section NR 162.07 (9) (d) has been redrafted as suggested.

w. In s. NR 162.08 (2) (c), the last sentence should begin with the phrase: "In this paragraph, "user" means."

DNR Response: Section NR 162.08 (2) (c) has been redrafted.

x. In s. NR 162.07 (5) (d), a comma should be inserted after the word "bid."

DNR Response: Section NR 162.08 (5) (d) has been redrafted.

y. The word "EFFECTIVE" in the title in s. NR 162.15 (4) should be "EFFECTIVE."

DNR Response: The entire rule has been reviewed for spelling errors. The titles in sections NR 162.08 (2) and 162.15 (4) have been redrafted.

z. Section NR 162.18 (1) (intro.) refers to a breach of contract by the recipient but does not identify the contract that is being breached. Is this contract the financial assistance agreement? A similar ambiguity exists in the unqualified reference to a contract in s. NR 162.53.

DNR Response: "Breach of contract" is defined in s. NR 162.003. There are no changes needed.

aa. In s. NR 162.30 (7), "and" should be substituted for the last comma.

DNR Response: Section NR 162.30 (7) has been redrafted as suggested.

ab. Section NR 162.42 (1) (a) 1. refers to a municipality that is a "census designated place." Since the definition of "municipality" in s. NR 162.003 (40) does not include a "census designated place," for s. NR 162.42 (1) (a) 1. to be consistent with this definition, the definition should be modified to include this type of municipality. Also, as necessary to convey the plain meaning of subd. 1., "census designated place" should be defined.

DNR Response: The rule has been redrafted to include definitions and to keep the integrity of the definition of municipalities as defined in statute.

ac. In the first sentence in s. NR 162.45, "the" should be inserted before the first "hardship."

DNR Response: Section NR 162.45 has been redrafted as suggested.

ad. The formula for computing the total maximum hardship grant under s. NR 162.47 (2) (a) 1. b. is not clear. How is "H (20)" computed?

DNR Response: "H (20)" is a common mathematical expression for "H multiplied by 20" and no change is needed.

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

The Natural Resources Board proposes an order to repeal chs. NR 161, 162, and 163 and create ch. NR 162 relating to Clean Water Fund Program financial assistance.

CF-18-00

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 227.11(2) and 281.58, Stats.

Statutes Interpreted: ss. 281.58, 1.13, subch.II of 19, subch.III of 227, 281.43 (1m), 281.49, and 281.59, Stats.

The department administers the Clean Water Fund Program under existing chapters NR 161, 162, 163 and 165. Chapter NR 161, 162 and 163 are proposed to be repealed and recreated as ch. NR 162. Currently, ch. NR 162 contains the general requirements for the Clean Water Fund Program, ch. NR 161 is the basis for scoring projects to establish a priority funding list, and ch. NR 163 is the basis for determining and implementing hardship financial assistance for eligible Clean Water Fund Program applicants. Combining these 3 chapters into one administrative chapter enhances clarity and convenience in locating the requirements for the Clean Water Fund financial assistance. A change has been made to the time an Intent to Apply is valid from 2 fiscal years to 1 fiscal year. This will aid in the implementation of preparing an annual funding list should the need arise. Additionally, modifications have been made to better reflect current policies and procedures and to provide further clarity. Chapter NR 165 which deals with the Clean Water Fund Small Loan Program is not being changed.

In addition, pursuant to 1999 Wisconsin Act 9, language related to capital cost loans and language related to projects for planning and design only is being deleted.

Also, pursuant to 40 CFR Part 35 and s. 281.58 (7) (b) 5., Stats., projects for the treatment of nonpoint source pollution and urban storm water runoff are now eligible for financial assistance. The proposed changes to ch. NR 162 allow these projects to be ranked with other treatment works projects and to be considered for funding under the Clean Water Fund Program.

No part of this rule is inconsistent with federal requirements.

Consent has been obtained from the Revisor of Statutes and the Attorney General in previous rule revisions for the incorporation of standards in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision.

Section 1. Chapters NR 161 to 163 are repealed.

Section 2. Chapter NR 162 is created to read:

**Chapter NR 162
CLEAN WATER FUND PROGRAM**

SUBCHAPTER I -- GENERAL

NR 162.001 Purpose.

NR 162.002 Applicability.

NR 162.003 Definitions.

SUBCHAPTER II -- FINANCIAL ASSISTANCE

NR 162.01 Types of financial assistance available.

NR 162.02 Annual funding policy, project priority list, and funding list.

NR 162.03 Project eligibility.

NR 162.04 Cost eligibility.

NR 162.05 Notice of intent to apply.

NR 162.06 Application.

NR 162.07 Financial assistance requirements.

NR 162.08 Requirements for a user charge system and sewer use ordinance.

NR 162.09 Procurement.

NR 162.10 Reimbursement and refinancing.

NR 162.11 Loan interest rate.

NR 162.12 Financial assistance agreement conditions.

NR 162.13 Financial management.

NR 162.14 Financial assistance disbursements.

NR 162.15 Amendments to a financial assistance agreement.

NR 162.16 Disputes.

NR 162.17 Records and record retention.

NR 162.18 Breach of contract.

NR 162.19 Noncompliance.

NR 162.20 Variances.

NR 162.21 Administrative fees.

SUBCHAPTER III -- PRIORITY SCORING AND RANKING SYSTEM

NR 162.30 Project scoring system.

NR 162.31 Project priority score.

NR 162.32 Procedure for determination and reevaluation of project priority score.

NR 162.33 Project ranking system.

SUBCHAPTER IV -- HARDSHIP FINANCIAL ASSISTANCE

NR 162.40 Applicability.

NR 162.41 Types of hardship financial assistance.

NR 162.42 Eligibility for hardship financial assistance.

NR 162.43 Application.

NR 162.44 Funding list.

NR 162.45 Allocation of funds.

NR 162.46 Requirements and conditions for receiving hardship financial assistance.

NR 162.47 Procedure for determining amount of hardship financial assistance.

NR 162.48 Operation, maintenance, and replacement cost estimates.

NR 162.49 Hardship financial assistance agreement.

NR 162.50 Hardship financial assistance disbursements.

NR 162.51 Funding additional project costs.

NR 162.52 Sale of hardship financed treatment works.

NR 162.53 Breach of contract and noncompliance.

SUBCHAPTER I -- GENERAL

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

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

(2) Establish a priority system for the distribution of clean water fund program financial assistance as provided in s. 281.58, Stats.

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

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

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

NR 162.003 Definitions. In this chapter:

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

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

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

(a) The terms and conditions of the financial assistance agreement or hardship financial assistance agreement.

(b) The terms and conditions of the municipal resolution authorizing the issuance and sale of bonds or notes to the clean water fund program.

(4) "Census block" means the smallest entity for which the U.S. census bureau collects and tabulates decennial census information.

(5) "Census designated place" means a statistical entity defined for each decennial census according to U.S. census bureau guidelines, comprising a densely settled concentration of population that is not within an incorporated place, but is locally identified by a name.

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

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

(8) "Closeout date" means the date the department records the project as being completed and after which no further disbursements shall be made under the financial assistance agreement.

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

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

(11) "Connection lateral" means a sewer service line which connects a residence, commercial establishment, institutional or industrial user to a municipal sewage collection system or individual system, including house service pipes whether located in the public right-of-way or on private property which connect to the "Y" fitting of a public sanitary sewer main.

(12) "Construction" means any of the following:

(a) Erecting, building, altering, remodeling, improving or extending a treatment works or structural urban BMP.

(b) Purchasing a package wastewater treatment system.

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

(13) "Contractor" means a person or firm that agrees to furnish materials or perform services at a specified price for a project funded by the clean water fund program.

(14) "Debt" means a liability for a project, including general obligation bonds, revenue bonds, promissory notes and special assessment bonds.

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

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

(17) "Dilution ratio" means the quotient obtained by dividing the 7-day Q10 of the surface waters receiving the wastewater discharge, in cubic feet per second (cfs), by the design flow of the wastewater treatment works, in million gallons per day (mgd).

$$\text{Dilution ratio} = \frac{\text{7-day Q10 of receiving water in cfs}}{\text{design flow in mgd} \times 1.55 \text{ cfs per mgd}}$$

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

Note: Flow rates and flow volumes are considered to be physical constituents restricted by WPDES permits.

(19) "Financial assistance" means loan funds, refinancing, guarantees, purchase of insurance, credit enhancement or grant funds provided to a municipality under ss. 281.58 and 281.59, Stats.

(20) "Financial assistance agreement" means a written agreement between a municipality, the department and the department of administration which provides for financial assistance to the municipality and contains the terms and conditions of the financial assistance.

(21) "Force account work" means the work a municipality performs using its own employees or equipment for construction, construction-related activities, repairs or improvements to a treatment works or structural urban BMP.

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

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

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

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

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

(27) "Hardship present value subsidy" or "hardship PV" means the present value subsidy provided to municipalities to reduce loan interest rates below those interest rates in s. NR 162.11 (1) (a) and (b), including 0% interest loans, and to provide grants.

(28) "Hardship subsidy" means the amount of subsidy provided by the clean water fund program under s. 281.58 (13), Stats., to reduce the interest rate of a clean water fund program loan to a rate below any interest rate specified in s. NR 162.11, and to provide grants.

(29) "Illicit discharge" has the meaning given in s. NR 216.002 (10).

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

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

(32) "Inflow" means water other than wastewater that enters a sewage system, including water entering the sewage system from sources such as roof leaders, cellar drains, yard drains, area

drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface run-off, street wash waters or other drainage.

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

(34) "Interim financing" means a debt necessary to temporarily finance a project until permanent financing can be obtained from the clean water fund program.

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

(36) "Maintenance" means the preservation of the functional integrity and efficiency of a treatment works or structural urban BMP, such as its equipment and structures, including preventive maintenance, correctional maintenance and replacement of equipment.

(37) "Market interest rate" means the effective interest rate determined by the department of administration for a revenue obligation issued by the state to fund a project loan or a portion of a project loan under ss. 281.58 and 281.59, Stats.

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

(39) "Minority owned business" or "MBE" means a business, sole proprietorship, partnership, joint venture or corporation that is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

(40) "Multi-category project" means a project that can be assigned to more than one of the project types listed in s. NR 162.30 (1).

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

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

Note: Under s. 281.59 (1) (c), Stats., "municipality" means any city, town, village, county, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or any federally recognized tribal governing body.

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

- (a) Owned or operated by a municipality.
- (b) Designed or used for collecting or conveying storm water.
- (c) Is not a combined sewer conveying both sanitary wastewater and urban runoff.
- (d) Is not part of a publicly owned treatment works or structural urban BMP which provides secondary or more stringent treatment.

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

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

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

(46) "Operation" means control of the unit processes and equipment which make up a treatment works or structural urban BMP, including financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(47) "Parallel cost percentage" means the proportion of project costs eligible for below-market rate financing relative to the total project cost eligible for clean water fund program financing as established in s. NR 162.04 (1).

(48) "Performance standards" means non-agricultural performance standards established by the department under s. 281.16 (2), Stats.

(49) "Planning and design" means any of the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works or structural urban BMP.

(b) Performing engineering, architectural, legal, fiscal or economic investigations or studies.

(c) Identifying illicit discharges to a portion of a municipal storm water conveyance system draining to an urban runoff project.

(d) Preparing surveys, designs, plans, working drawings or specifications.

(e) Inspecting or supervising construction or any of the activities under pars. (a) to (d).

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

(51) "Prior debt service" means the principal and interest of debt incurred for a previous capital project which is related to the treatment works or structural urban BMP and is documented as incurred in the past.

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

(53) "Project" means any of the following:

(a) An activity described by a municipality on a notice of intent to apply for as the project description which then is assigned a clean water fund program project number by the department.

(b) An activity proposed by a municipality through submittal of plans to the department pursuant to s. 281.41, Stats, which then is assigned a project number by the department.

(54) "Project closeout" means the process for reconciling costs between the municipality and the department, and final steps that shall be taken by the municipality and the department so that a final disbursement may be made.

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

(56) "Project completion" means all of the following:

(a) The project construction is complete.

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

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

(d) The department has completed all necessary project closeout procedures.

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

(57) "Project ranking" means the ranking of eligible projects during a funding year based on their priority score which is used to establish a funding list.

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

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

(60) "Replacement" means obtaining and installing mechanical, operating equipment, accessories or appurtenances which are necessary during the useful life of the treatment works or structural urban BMP to maintain the capacity and performance for which the works or BMP were designed and constructed.

(61) "Residential percentage" means the figure for residential design flow divided by the figure for total design flow.

(62) "Residential user" means a structure or part of a structure, including a mobile home, that is used primarily as a home, residence or sleeping place by one or more persons maintaining a

common household and that uses a publicly owned treatment works or structural urban BMP.

"Residential user" does not include an institutional, commercial, industrial or governmental facility.

(63) "7-day Q10" means the average 7 day low flow which occurs once in 10 years.

(64) "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.

(65) "Sewer" means either a sewage collection system or a municipal storm water conveyance system.

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

(67) "Structural urban best management practice" or "structural urban BMP" means a practice, which is determined to be an effective means of preventing or reducing pollutants generated from nonpoint sources of urban runoff, including land acquisition, storm sewer rerouting, and the removal of structures.

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

(69) "Subsidy" means the amount provided by the clean water fund program to projects receiving financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

(a) To reduce the interest rate of clean water fund program loans from market interest rate to a subsidized rate.

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

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

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

(70) "Substantial completion" means the point in time when project construction has been completed and the treatment process operation has been initiated or is capable of being put into operation.

(71) "Total annual charges" means the annual treatment works or structural urban BMP costs, including operation, maintenance and replacement costs, clean water fund program debt service, prior debt service, debt service for project costs ineligible for clean water fund program assistance and hookup fees owed another municipality.

(72) "Treatment works" has the meaning given in s. 283.01 (18), Stats.

Note: Treatment works includes urban runoff projects for municipalities which are required to obtain a WPDES permit under ch. 283, Stats.

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

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

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

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

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

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

(78) "Women owned business" or "WBE" means an independent business concern which is at least 51% owned by a woman or women who also control and operate it.

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

SUBCHAPTER II – FINANCIAL ASSISTANCE

NR 162.01 Types of financial assistance available. The department may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., provide any of the following types of financial assistance to eligible applicants:

(1) Purchase or refinance the debt obligation of a municipality if the debt was incurred to finance the cost of constructing an eligible treatment works or structural urban BMP project located in the state and the project has not been substantially complete for more than 5 years.

(2) Guarantee, or purchase insurance for, municipal obligations for the construction of treatment works if the guarantee or insurance would improve credit market access or reduce the interest cost on the municipal obligations.

(3) Make loans at or below the market interest rate.

- (4) Provide hardship financial assistance to eligible applicants.
- (5) Provide interest rate subsidies pursuant to ch. NR 165.

NR 162.02 Annual funding policy, project priority list, and funding list. (1) FUNDING POLICY AND PROJECT PRIORITY LIST. Each year, the department shall prepare an annual funding policy, which applies to all types of financial assistance including hardship assistance, for the fiscal year in conjunction with the project priority list under s. NR 162.33. The funding policy shall be subject to public hearing.

(2) **FUNDING LIST.** The department shall prepare a funding list when the amount available to the program is 85% or less than the amount requested in the biennial finance plan, according to s. 281.58 (9m) (f), Stats.

(3) **HARDSHIP FINANCIAL ASSISTANCE FUNDING LIST.** The department shall prepare an annual funding list for all applicants requesting hardship financial assistance.

NR 162.03 Project eligibility. (1) ELIGIBLE PROJECTS. A municipality may receive financial assistance under this chapter for a publicly owned project which meets any of the following:

(a) Is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes projects necessary for the replacement or major rehabilitation of an existing sewage collection system and is necessary to maintain the total integrity and performance of the wastewater treatment works serving the municipality.

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

(c) Is necessary to correct violations of effluent limitation contained in a permit issued under ch. 283, Stats.

(d) Is necessary to control storm water runoff rates, volumes and discharge quality, including projects necessary for the replacement or major rehabilitation of an existing municipal storm water conveyance system and is necessary to maintain the total integrity and performance of the urban runoff treatment works or structural urban BMP serving the municipality, as required by any of the following:

1. A WPDES storm water permit issued under subch. I of NR 216.
2. A performance standard.
3. A plan approved by the department.

(e) Is necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered areas within a municipality.

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

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

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

(c) The department may grant a variance to allow the individual system to be privately owned if the municipality can show that public ownership of the system is not feasible and that private ownership will not adversely affect the tax-exempt status of the municipal obligations that the municipality sells to the clean water fund program.

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

(a) Projects of a municipality that has failed to substantially comply with any of the conditions or requirements of the clean water fund program or a financial assistance agreement, or the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works or structural urban BMP.

(b) Connection laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

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

(d) Projects solely for planning and design.