

01-053

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-25-01

Legislative Council Rules Clearinghouse Number 01-053

Subject of Rules Safe drinking water loan
program financial assistance

Date of Transmittal to Presiding Officers August 28, 2001

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

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

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

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

The Natural Resources Board proposes an order to repeal and recreate ch. NR 166 relating to safe drinking water loan program financial assistance.

CF-25-01

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 227.11 (2) and 281.61, Stats.

Statutes Interpreted: ss. 281.59, 281.61, subch. III of 227, subch. II of 19, 196, 283, and 70 Stats.

The department administers the Safe Drinking Water Loan Program under existing ch. NR 166. Chapter NR 166 is proposed to be repealed and recreated as ch. NR 166. Currently, ch. NR 166 does not allow new public water systems projects to be funded from the Safe Drinking Water Loan Program (SDWLP), due to federal statutes. The United State Environmental Protection Agency has recently interpreted 40 CFR Part 35 to allow for SDWLP funding of new public water systems. The proposed changes to ch. NR 166 allow these projects to be ranked with other public water systems projects and to be considered for funding under the Safe Drinking Water Loan Program. Additionally, modifications have been made to better reflect current NR 166 policies and procedures.

No part of this rule is inconsistent with federal requirements.

SECTION 1. Chapter NR 166 is repealed and recreated to read:

Chapter NR 166
SAFE DRINKING WATER LOAN PROGRAM

Subchapter I – General

NR 166.01 Purpose. The purposes of this chapter are all of the following:

- (1) Establish rules under ss. 281.59 and 281.61, Stats., for the implementation and administration of a financial assistance program to plan, design, construct or modify public water systems.
- (2) Establish a priority system for the distribution of safe drinking water loan program financial assistance as provided in s. 281.61, Stats.

Note: All forms necessary for financial assistance 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 166.02 Applicability. This chapter applies to all applicants and recipients of financial assistance to plan, design, construct or modify public water systems made pursuant to ss. 281.59 and 281.61, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.59 and 281.61, Stats.

NR 166.03 Definitions. In this chapter:

(1) "Action level" or "AL" is the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a public water system is required to complete.

(2) "Applicant" means any local governmental unit that applies for financial assistance under ss. 281.59 and 281.61, Stats.

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

(4) "Biennial finance plan" means the proposed plan described in s. 281.59 (3), Stats.

Note: The biennial finance plan is an estimate of wastewater treatment, safe drinking water and land recycling project needs of the state and available financial assistance, and other information for the 4 state fiscal years of the next 2 biennia. The plan is jointly prepared by the department and DOA by October 1 of each even-numbered year.

(5) "Breach of contract" means the failure of the local governmental unit to comply with any of the following:

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

(b) The terms and conditions of the municipal or local governmental unit obligation resolution which is required by the financial assistance agreement and which authorizes the issuance and sale of bonds or notes to the safe drinking water loan program.

(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.

(6m) "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.

(7) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Any water system serving 7 or more homes, 10 or more mobile homes, 10 or more apartment units or 10 or more condominium units shall be considered a community water system unless information is provided by the owners indicating that 25 year-round residents will not be served.

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

(a) Preparing an engineering report containing the controlling assumptions made and the factors used in the functional design of the water system facility as a whole or of individual component units.

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

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

(d) Building or modifying a water system, or purchasing a package water system.

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

(9) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

(10) "Contractor" means a person or firm that agrees to furnish materials or perform services for consideration for a project funded by the safe drinking water loan program.

(10m) "Debt" means a liability for a project, including general obligation bonds, revenue bonds, promissory notes and special assessment bonds.

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

(12) "Distribution system" means all pipes or conduits by which water is delivered to consumers except piping inside buildings served and water service from a building to a distribution main or pipe.

(13) "DOA" means the department of administration.

(14) "Financial assistance" means loans, refinancing debts, debt guarantees, purchases of insurance or credit enhancements provided to a local governmental unit under ss. 281.59 and 281.61, Stats.

(15) "Financial assistance agreement" means an agreement between a local governmental unit, the department and DOA which provides for financial assistance to the local governmental unit and contains the terms and conditions of the financial assistance.

(16) "Force account work" means work that meets all of the following requirements:

(a) qualifies under sub. (8) as costs of construction, construction-related activities, repairs or improvements to a water system.

(b) is performed by the local governmental unit using its own employees or equipment.

(17) "Future growth" means distribution system expansion beyond the existing system and excess capacity built into facilities which exceeds normally accepted standard engineering practice.

(18) "Interim financing" means a debt necessary to temporarily finance a project until permanent financing is obtained.

(19) "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 trustee fees.

(20) "Loan" means a sum of money lent to a local governmental unit pursuant to a financial assistance agreement.

(21) "Local governmental unit" has the meaning given in s. 281.61 (1) (a), Stats.

Note: Under s. 281.61 (1) (a), Stats., "local governmental unit" means a city, village, town, county, town sanitary district, public inland lake protection and rehabilitation district or municipal water district.

(22) "Maintenance" means the preservation of the functional integrity and efficiency of a water system, such as its equipment and structures, including preventive maintenance, correctional maintenance and replacement of equipment.

(23) "Market interest rate" means the effective interest rate, as determined by DOA for a revenue obligation issued by the state to fund a project loan or a portion of a project loan under ss. 281.59 and 281.61, Stats., and in effect at the time of preparing the financial assistance agreement.

(24) "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. "Maximum contaminant level" or "MCL" does not include contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality.

Note: The maximum permissible level and the sampling and analytical requirements vary depending on the specific contaminant. Chapter NR 809 should be consulted for specific information regarding any contaminant.

(25) "MCL exceedance" means, for inorganic, organic, synthetic organic, volatile organic, total trihalomethane and radionuclide contaminants, the numerical value, as determined by methodology outlined in ch. NR 809, in excess of the MCL of the contaminant.

(26) "Median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(27) "Minority business enterprise" 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).

(28) "Non-community water system" means a public water system that is not a community water system.

(29) "Operation" means control of the unit processes and equipment which make up a water system including financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(30) "Population" means the most recent year's final population estimate published by the DOA demographic services center for the city, town, village or county which submitted an intent to apply form. For a public water system owned by other than a city, town or village, "population" means the most recent population count or estimate done for the system and approved by the department.

(31) "Priority score" means the numerical value, determined by the department, which is assigned to each project in accordance with s. NR 166.25.

(32) "Project" means a combination of activities listed under sub. (8) and s. NR 166.06 (1) to construct a water system or a modification thereof that are reasonably necessary and appropriate to address a public health concern and are addressed in the engineering report.

(32e) "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.

(32m) "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.

(33) "Public water system" means a system for the provision to the public of piped water for human consumption if the water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days each year. A public water system is either a community water system or a non-community water system.

Note: The definition of public water system as regulated by this chapter is broader and includes more water systems than those governed by the Public Service Commission under its definition of a public utility in ch. 196, Stats.

(34) "Recipient" means any local governmental unit or group of local governmental units that has been awarded or has received financial assistance under ss. 281.59 and 281.61, Stats.

(35) "Safe drinking water act" means the federal safe drinking water act, 42 USC 300f to 300j-26.

(36) "Safe drinking water loan program" has the meaning given in s. 281.61 (1) (d), Stats.

Note: Under s. 281.61 (1) (d), Stats., "safe drinking water loan program" means the program established under ss. 281.59 and 281.61, Stats., for the purpose of providing financial assistance to local governmental units for the construction or modification of water system projects.

(37) "Significant noncomplier" means a public water system that has been reported to the department by the U. S. environmental protection agency as in continuing noncompliance.

(38) "Subsidy" means the amounts provided by the safe drinking water loan program for projects receiving financial assistance under ss. 281.59 and 281.61, Stats., to reduce the interest rate of a loan made under the safe drinking water loan program from the market interest rate to a lesser rate.

(39) "Substantial completion" means the point in time at which the project can be utilized for the purposes for which it is intended.

(40) "Total or fecal coliform positive" means that a bacteriological water test from the public water system was determined to be positive from a state approved drinking water certified laboratory.

(41) "Treatment technique" means one or more methods of treatment that are known to remove or inactivate giardia and viruses as determined in ss. NR 809.76 and 809.77.

(42) "Utility" means a public utility as defined in s. 196.01 (5), Stats.

(43) "Water rates" means a charge or system of charges levied on users of a water system for the user's proportional share of the revenue requirement of a water system which consists of operation and maintenance expenses, depreciation, taxes and return on investment.

(44m) "Water service" means connection of a publicly-owned or privately-owned water system to a residence, commercial establishment, institutional or industrial user whether located in the public right-of-way or on private property.

(44) "Water system" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served and service pipes from buildings to street mains.

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

Subchapter II – Financial assistance

NR 166.04 Types of financial assistance available. The department and DOA may, subject to applicable requirements of ss. 281.59 and 281.61, Stats., and ch. Adm 35, provide any of the following types of financial assistance to eligible applicants:

(1) Purchase or refinance the debt obligation of a local governmental unit if the debt was incurred to finance the cost of constructing an eligible project located within the state and the debt obligation was incurred after July 1, 1993.

(2) Guarantee, or purchase insurance for, municipal obligations for the construction of public water systems, if the guarantee or purchase would improve credit market access or reduce interest rates applicable to the obligation.

(3) Make loans below the market interest rate.

NR 166.05 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 for the fiscal year in conjunction with the project priority list under s. NR 166.26. The funding policy shall be subject to public hearing.

(2) **FUNDING LIST.** The department shall prepare an annual funding list in accordance with s. 281.61 (8), Stats., and sub. (1).

NR 166.06 Project eligibility. (1) **ELIGIBLE PROJECTS.** A local governmental unit may receive financial assistance under this chapter for a project which has any of the following purposes:

(a) Address safe drinking water act health standards that have been exceeded or to prevent future violations of health standards and regulations contained in ch. NR 809, Wis. Adm. Code. This includes projects to maintain compliance with existing regulations for contaminants with acute health effects and regulations for contaminants with chronic health effects.

(b) Replace infrastructure if necessary to maintain compliance or further the public health protection goals of the safe drinking water act. This includes projects with any of the following purposes:

1. Rehabilitate or develop sources, excluding reservoirs, dams, dam rehabilitation and water rights, to replace contaminated sources.

2. Install or upgrade treatment facilities, if in the department's opinion, the project would improve the quality of drinking water to comply with primary or secondary drinking water standards.

3. Install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the public water system.

4. Install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.

(c) Consolidate existing community water systems that have technical, financial, or managerial difficulties. Projects for consolidating existing systems shall be limited in scope to the service area of the systems being consolidated.

(d) Purchase a portion of another public water system's capacity if it is the most cost-effective solution.

(e) Restructure a public water system that is in noncompliance with the safe drinking water act requirements or lacks the technical, managerial and financial capability to maintain the system if the

assistance will ensure that the system will return to and maintain compliance with the safe drinking water act requirements.

(f) Create a new community water system or expand an existing community water system that, upon completion, will address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Projects to address existing public health problems associated with individual wells or surface water sources shall be limited in scope to the specific geographic area affected by contamination. These would include projects where the MCL for microbiological, nitrate/nitrite or chronic contaminant is exceeded by 50% or more of the individual wells or surface water sources within the affected area.

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

(a) Construction or rehabilitation of dams.

(b) Water rights, except if the water rights are owned by a public water system that is being purchased through consolidation as part of a capacity development strategy.

(c) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located.

(d) Projects needed primarily for fire protection.

(e) Projects for systems that lack the adequate technical, managerial and financial capability, unless assistance will ensure compliance.

(f) Projects for systems determined to be significant noncompliers unless funding will ensure compliance with safe drinking water act requirements.

(g) Projects primarily intended to serve future growth.

(h) Projects for systems owned by state or federal agencies.

(i) Projects or portion of projects that are not reasonably necessary and appropriate to address a public health concern.

NR 166.07 Cost eligibility. (1) ELIGIBLE COSTS. (a) Project costs which are reasonable and necessary are eligible for financial assistance. Eligible costs include, but are not limited to, any of the following:

1. Costs of salaries, benefits and expendable material, incurred by the recipient for the project.

2. Planning work directly related to the water system.

3. Preparation of environmental assessment reports and evaluations.

4. Preparation of engineering reports.

5. Preparation of construction drawings, specifications, estimates and construction contract documents.

6. Landscaping.

7. Removal, relocation, replacement or temporary provision for utilities, for which the recipient is legally obligated to pay.

- 8. Materials acquired, consumed or expended specifically for the project.
- 9. Acquisition of land that is an integral part of the treatment process.
- 10. An inventory of laboratory chemicals and supplies.
- 12. Development and preparation of an operation and maintenance manual.
- 13. Costs for the development of water conservation plans, water rates and water system ordinances.
- 14. Project identification signs.
- 15. Costs necessary to mitigate demonstrated direct adverse physical impacts resulting from the project construction.
- 16. The cost of safety equipment.
- 17. On-site inspection during construction and to complete punch list items.
- 18. Professional, consulting and engineering services.
- 19. Costs associated with the federal single audit portion of the audit report until the project is complete.
- 20. Interim financing costs in accordance with s. NR 166.13 (2).
- 21. Cost of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.
- 22. Issuance costs related to eligible project debts.
- 23. Other capital costs incurred solely for the purpose of the project.
- 24. Acquisition of easements and rights-of-way, including administrative and legal costs.

(b) Project costs attributable to state and federal facilities are eligible for financial assistance.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for financial assistance. Ineligible costs include, but are not limited to any of the following:

- (a) Basin or area wide planning not related to the project.
- (b) Bonus payments not legally required for completion of construction before a contractual completion date.
- (c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation or otherwise.
- (d) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws.
- (e) Costs outside the scope of the approved project.
- (f) Laboratory fees for monitoring.

(g) Operation and maintenance expenses.

(h) Ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or city attorney, or an annual financial audit.

(i) Site acquisition expenses other than those integral to the approved project.

(j) Costs for which payments will be made under another federal or state program.

(k) Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others.

(L) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, awarding or administration of a contract supported by the safe drinking water loan program and any of the following conditions exist:

1. The official or employee, the official's or employee's spouse, or the official's or employee's partner has an ownership interest in the firm selected for the contract.

2. Any person identified in subd. 1. receiving any contract, gratuity or favor from the award of the contract.

(m) Project costs incurred after the project completion date.

(n) Water service downstream of curb stop.

(2m) FAILURE TO MEET UTILIZATION OF MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES REQUIREMENT. The applicable portion of costs of projects which are in non-compliance of the utilization of MBEs and WBEs criteria in s. NR 166.12 (4) (e) shall be determined ineligible.

(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS. (a) *Net interest expense.* Interim financing interest expense shall be offset with any interest earnings from the investment of the proceeds from the interim financing to determine the amount eligible for safe drinking water loan program funding.

(am) *Interim financing issuance costs.* The amount of interim financing issuance costs eligible for funding is limited to \$7,500 plus 1/2 percent of the total eligible face amount of the interim financing. The total eligible face amount of interim financing may not exceed the face amount of the financial assistance agreement.

Note: If interim financing is rolled over or renewed, the face amount may not be counted multiple times in calculating the eligible face amount of interim financing for purposes of this limit.

(b) *Interim interest costs.* The period of time for which interest on interim financing is eligible for funding shall run from no earlier than 6 months prior to the start of construction through the earliest of any of the following:

1. The closing date of the safe drinking water loan program loan.

2. One year following substantial completion of construction.

3. September 30th in the year after the project's listing on the safe drinking water loan program funding list.

(c) *Cost proration.* If the term of the interim financing exceeds the limit in par. (am), the interim financing costs shall be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the debt used for interim financing is not exclusively for the safe drinking water loan program project, costs shall be prorated according to the proportion of the total debt that is for the department approved project.

NR 166.08 Notice of intent to apply. (1) A local governmental unit shall submit to the department a notice of its intent to apply for funding. The notice shall be filed with the department by December 31, if the application for financial assistance will be submitted by the following April 30. The notice shall be submitted on a form provided by the department.

Note: All forms necessary for financial assistance 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.

(2) The department may waive the requirement in sub. (1) upon the written request of a local governmental unit pursuant to s. 281.61 (3) (c), Stats.

NR 166.09 Engineering report. (1) Prior to submitting an application for financial assistance under this section, a local governmental unit shall submit to the department, for approval, an engineering report.

(2) An engineering report shall comply with the requirements of s. NR 811.13 (3).

(3) The department shall determine what qualifies as a project under s. NR 166.03 (32).

NR 166.10 Application. (1) PROCEDURES. (a) Local governmental units shall apply by April 30 to be considered for funding in the following fiscal year. The application shall be on a form provided by the department.

Note: An application form is available from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

(2) CONTENTS OF APPLICATION. The applicant shall submit a complete application. The department shall accept an application as complete when each of the following items, when applicable, is received from the applicant or included in the application form:

(a) Evidence of approval of an engineering report in accordance with s. NR 166.09.

(b) Copies of executed engineering contracts for planning and design, and a proposed or executed engineering contract for construction, if funds are requested for the activity.

(c) Copies of proposed or executed contracts for performance of architectural or engineering work for construction, if funds are requested for the activity.

(d) A copy of biddable construction plans and specifications which are approvable by the department.

(e) Financial information required by DOA necessary to determine the affordability of the proposed project, the financial capability of the local governmental unit, and the adequacy of the pledge of revenues to repay the obligation securing the proposed safe drinking water program loan.

(f) A statement of the types of financial assistance being applied for and the reasons for each type being requested.

(g) A proposed or an executed intermunicipal agreement if the project involves serving more than one local governmental unit.

(h) A completed financial assistance application form.

(i) Construction costs, which shall be included as a project cost in order to receive loan funds for planning or design costs, or both.

(j) A resolution authorizing one individual to act as the applicant's representative in connection with the application and with any additional information required for financial assistance.

(k) The proposed user charge system for the project.

(L) Any existing contracts with users of the water system.

(m) Documentation applicable to U.S. internal revenue service tax information.

(n) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds if required by U.S. treasury reimbursement regulations 26 CFR 1.150-2.

Note: All forms necessary for financial assistance 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 166.11 Financial assistance requirements. Before entering into a financial assistance agreement for any project, the department shall make a determination that all of the following conditions have been met:

(1) All of the applicable requirements of s. NR 166.10 have been satisfied.

(2) The department has approved the plans and specifications for the project.

(3) The project is entitled to priority in accordance with s. NR 166.25.

(4) The applicant has the legal, institutional, managerial, technical and financial capability to insure adequate construction, operation and maintenance of the water system throughout the applicant's jurisdiction.

(5) DOA is satisfied that the local unit of government has the financial capacity as described in ch. Adm 35 to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations it issues for the project.

(6) The applicant has, or has applied for, permits required by the department including those under ch. 283, Stats.

(7) The applicant has made satisfactory provision to assure the efficient operation and maintenance of the water system during and after the project.

(8) If a public water system is regulated by the public service commission, the applicant has filed the appropriate applications to increase water rates with the public service commission and the corresponding order authorizing the water rates and rules has been issued by the public service commission.

(9) If a public water system is not regulated by the public service commission, the applicant has, to the satisfaction of the department and DOA, developed and adopted water rates and operating rules.

(10) All of the following documentation, if applicable to the project, is submitted to the department:

- (a) Certification as required by s. NR 166.12 (5).
- (b) Legal opinion on land ownership, and acquisition of easements and right-of-ways necessary for the project.
- (c) Items related to bids including all of the following:
 - 1. The proposal of the successful bidder.
 - 2. An engineer's evaluation of the bids, including bid tabulation, and a recommendation.
 - 3. If a contract is awarded to other than the low bidder, a legal opinion that the award is in compliance with state statutes.
 - 4. Contract and utilization information regarding MBEs and WBEs and, if applicable, small business in rural areas.
 - 5. Any addenda to plans and specifications.
 - 6. Evidence of bid advertisement.
 - 7. A copy of the bid bond.
 - 8. Evidence of a resolution awarding the construction contract.
 - 9. A copy of the executed construction contract.
 - 10. A construction start date and expected substantial and final completion dates.
- (d) Request for disbursement and supporting invoices.
- (e) Draft legal documents related to the authorization and issuance of bonds.
- (f) A copy of the title for land purchased for the project, if land purchase costs are requested.
- (g) An executed copy of the construction engineering contract.

NR 166.12 Procurement. (1) APPLICABILITY. Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law. No contract may be awarded to any person or organization which does not operate in conformance with state and federal civil rights, equal opportunity and affirmative action laws.

(2) PROFITS. Only fair and reasonable profits may be paid to contractors by local governmental units under financial assistance agreements. Profits included in a formally advertised, competitively bid, fixed price or unit price construction contract are presumed to be reasonable.

(3) FINANCIAL ASSISTANCE RECIPIENT RESPONSIBILITY. The recipient is responsible for the administration and successful completion of the project as well as acceptance of the terms of the financial assistance agreement.

(4) UTILIZATION OF SMALL BUSINESS IN RURAL AREAS, MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES. In order to provide small business in rural areas, MBEs and WBEs with an opportunity to compete for work related to the project, the recipient, their contractors and subcontractors shall comply with all of the following:

(a) Use small business in rural areas, MBEs and WBEs to the extent possible.

(b) Make good faith efforts to provide small business in rural areas, MBEs and WBEs the maximum feasible opportunity to compete for contracts and subcontracts. Good faith efforts include but are not limited to the following:

1. Soliciting bids from qualified MBEs, certified by the department of development and qualified small business in rural areas and WBEs whenever contracts and subcontracts are awarded.

2. Providing to small business in rural areas, MBEs and WBEs, upon request, a list of individuals and firms in possession of plans, specifications and other information relevant to the project.

3. Breaking down work into smaller projects to maximize the opportunity of small business in rural areas, MBEs and WBEs to compete for contracts and subcontracts.

4. Establishing work schedules which will allow small business in rural areas, MBEs and WBEs to compete for contracts and subcontracts.

5. Using the assistance of the department as appropriate.

(c) Document the efforts made to provide small business in rural areas, MBEs and WBEs with the opportunity to compete for contracts and subcontracts.

(d) If requested, a recipient shall explain to a small business in rural areas, MBEs and WBEs which bid but did not receive a contract, why the contract was not awarded to it.

(e) Failure to comply with pars. (b) to (d) for MBEs and WBEs shall result in up to 8% of the project costs otherwise eligible for financial assistance, being determined ineligible for financial assistance. This paragraph does not apply to procurement of small business in rural areas or any recipient that awards contracts to MBEs and WBEs or both in an amount equal to or greater than the applicable fair share objectives. Fair share objectives means the percentage of participation in project costs by MBEs and WBEs which can be reasonably procured, as determined by the department as negotiated with and agreed to by the U.S. environmental protection agency under 40 CFR part 35, subpart L, given the availability of qualified MBEs and WBEs in the state.

(f) This subsection applies to each recipient of financial assistance and those employed by the recipient to plan, design, construct or modify the project. It applies to contracts for services, equipment, raw materials, and supplies.

Note: The utilization goal for MBEs and WBEs is negotiated annually between the department and the U.S. environmental protection agency.

(5) **FORCE ACCOUNT WORK.** The department may approve financial assistance for force account work based on the applicant's certification that one of the following conditions exist:

(a) The applicant has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of force account work.

(b) Emergency circumstances dictate the use of force account work.

(6) **CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department may not provide financial assistance for costs which are not eligible or reasonable.

(b) Reasonableness reviews shall consider the of scope of work, the recipient's procurement and negotiation process associated with the costs, conditions unique to the project and any other factors affecting costs.

(c) Architectural or engineering service contracts shall define a scope of work and shall indicate a maximum estimated cost for the defined scope of work which cannot be exceeded without a negotiated contract amendment prior to incurring additional costs.

(7) CONSTRUCTION CONTRACTS AND SUBCONTRACTS. (a) *Type of contract.* The project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized by sub. (5). Each contract shall be a fixed or unit price contract, unless the department gives advance written approval for the recipient to use some other acceptable type of contract. In any event, the cost-plus-a-percentage-of-cost contract may not be used.

(b) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for any contract change orders.

2. The department may require that change orders for projects funded under this chapter be approved by the department.

NR 166.13 Reimbursements and refinancing. (1) REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS. The department may reimburse eligible project costs previously paid by the local governmental unit from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150-2.

(2) REFINANCING OF INTERIM FINANCING. The department may refinance the eligible portion of the local governmental unit's interim financing subject to the limits established in s. NR 166.07 (3).

NR 166.14 Loan interest rates. Interest rates for eligible projects as determined in s. NR 166.06 shall be set in accordance with s. 281.61 (11), Stats., and all of the following:

(1) The loan interest rate shall be 33% of market interest rate if the local governmental unit meets all of the following criteria:

(a) The population of the local governmental unit is less than 10,000.

(b) The median household income of the local governmental unit is 80% or less of the median household income in this state. The median household income shall be determined as follows:

1. If the local governmental unit is a city, town, village, county or census designated place, the department shall obtain a median household income figure for the local governmental unit from the most recent federal census as published by the U.S. bureau of the census.

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

3. Median household income figures from the most recent federal census shall be adjusted for inflation. The department shall apply to the census data the percent increase in per capita income since the most recent federal census in the county in which the local governmental unit is located. The percent increase in per capita income data shall be determined using figures published by the U.S. department of commerce.

4. If a local governmental unit is located in more than one county, the percent increase in per capita income used to adjust the median household income figure for inflation shall be weighted according to population or number of households located within each county's portion of the local governmental unit.

(2) The loan interest rate shall be 55% of market interest rate if the local governmental unit does not meet all of the criteria established in sub. (1).

Note: The interest rate shall be based on the market rate in effect at the time the financial assistance agreement is executed.

NR 166.15 Financial assistance agreement conditions. (1) Each financial assistance agreement shall bind the recipient to all of the following conditions:

- (a) Maintain system water rates and operating rules in accordance with s. NR 166.11 (8) or (9).
- (b) Comply with all pertinent requirements of federal, state and local environmental laws and regulations.
- (c) Comply with the requirements contained in the safe drinking water act amendments of 1996, section 1452.
- (d) Pay the costs of water system construction which are ineligible for financial assistance under this chapter.
- (e) Comply with all state and local laws regarding procurement and public contracts.
- (f) Provide department representatives access to the project, including construction activities, whenever the project is in preparation or in progress, or for a final inspection when the project is complete. The recipient shall include a provision in each of its contracts for the project that requires the recipient and its contractors or subcontractors to allow the department access to records of the contractor and subcontractor which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow DOA or its agent access to records for audits.
- (g) Expediently initiate and complete the project in accordance with the financial assistance agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of contract.
- (h) Promptly notify the department of changes to the project.
- (i) Promptly submit to the department a copy of any prime contract or modification of it and of revisions to plans and specifications.
- (j) The recipient shall begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement, and shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.
- (k) Submit an operations and maintenance manual to the department. The project engineer and the authorized representative of the recipient shall certify that the operations and maintenance manual meets or exceeds the requirements of this chapter. The operations and maintenance manual shall address all of the following areas:

- 1. General information.

2. Staffing.
3. Records and recordkeeping.
4. Laboratory.
5. Safety.
6. Utility systems.
7. A description of the process, operations and controls.
8. Maintenance.
9. Manufacturer's information.
10. Sample collection locations and methods.
11. Monitoring schedules.

(L) Provide construction site erosion control in accordance with the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision. WDNR publication WR-222 is incorporated by reference for this chapter.

Note: Copies of the WDNR publication WR-222, Wisconsin Construction Site Best Management Practice Handbook, November 1993 Revision, are available for inspection in the offices of the department of natural resources, secretary of state, and revisor of statutes, Madison, Wisconsin. Copies can be purchased from DOA Document Sales, 202 S. Thornton Ave., P.O. Box 7840, Madison, WI 53707-7840. For current document prices, contact DOA Document Sales at the address above, or by phone at (608) 266-3358.

(m) Provide and maintain adequate construction inspection for conformance with the approved plans and specifications.

(n) Notify the department of the substantial completion of the project.

(2) The financial assistance agreement is not effective until it is executed by all parties to the agreement.

NR 166.16 Financial management. The recipient shall comply with all of the following:

(1) Maintain project accounts in accordance with generally accepted governmental accounting standards.

(2) Maintain a financial management system which conforms with the requirements, terms and conditions of the financial assistance agreement and ch. Adm 35.

(3) Comply with any U.S. treasury requirements for maintaining the tax-exempt status of the bonds or notes sold to the safe drinking water loan program.

NR 166.17 Financial assistance disbursements. (1) **REQUESTS FOR DISBURSEMENT.** The recipient shall submit to the department requests for disbursement for eligible costs in the format specified by the department.

(2) **ADJUSTMENT.** Before the final disbursement under the financial assistance agreement, the department may recommend to DOA that any request for disbursement be reviewed or audited.

(3) **WITHHOLDING OF FUNDS.** The department may withhold funds on the basis of any of the following:

(a) The department may direct DOA to withhold financial assistance disbursements where the department determines in writing that a recipient has failed to comply with project objectives, or the terms, conditions or reporting requirements of the financial assistance agreement.

(b) The department may withhold 5% of the principal amount of the loan until the requirements of the project closeout have been completed.

(4) **FINAL DISBURSEMENT AND PROJECT CLOSEOUT.** (a) The recipient shall submit the final request for disbursement after completion of the project. The recipient shall include written certification that it has accepted the project from its contractors in the final disbursement request.

(b) All of the following shall occur prior to the final disbursement:

1. The department shall complete a final inspection and sign-off of the project.

2. The municipality shall obtain department approval of all change orders and amendments for which disbursement is requested.

3. The municipality shall document final utilization of MBEs and WBEs on a form provided by the department.

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

(c) The department shall certify in writing to DOA the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

NR 166.18 Amendments to financial assistance agreement. (1) The local governmental unit may request an amendment to a financial assistance agreement if it is proposing one of the following:

(a) Altering the type of water treatment.

(b) Substantially altering the engineering report, plans and specifications, or any major part of the project.

(2) Changes in the project that are consistent with the objectives of the project, within the scope of the financial assistance agreement and which do not require review under ch. NR 809 or 811 will not require the execution of an amendment before the recipient implements the change.

(3) The amount of financial assistance in the financial assistance agreement may only be increased by an amendment and may only be made upon department review and acceptance of any cost increases as eligible, reasonable and necessary for the accomplishment of project objectives.

(4) Financial assistance agreement amendments which increase the amount of financial assistance shall be subject to the availability of funds, subsidy, and any bonding authority needed in accordance with s. 281.59, Stats.

(5) The interest rate for loan funds advanced in accordance with an amended financial assistance agreement shall be the same as the interest rate of the original financial assistance agreement unless

there is not sufficient subsidy or funds available. The loan maturity shall remain the same as established in the financial assistance agreement.

(6) A financial assistance agreement amendment shall be effective on the date it is executed by the department and DOA.

NR 166.19 Disputes. (1) DECISION OF THE DEPARTMENT. Except as otherwise provided by law, any dispute arising under this chapter, prior to the execution of a financial assistance agreement, shall be decided in writing by the department. The department shall serve a copy of the decision on the recipient personally or by mail.

(2) REVIEW OF THE DECISION. A final decision of the department shall be reviewed pursuant to subch. III of ch. 227, Stats., and ch. NR 2.

NR 166.20 Records and records retention. (1) REQUIREMENTS. The recipient shall maintain books, documents, papers, records and accounting procedures in accordance with generally accepted government accounting standards, the financial assistance agreement and ch. Adm 35 and retain them in accordance with subch. II of ch. 19, Stats. The recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers and records related to the project which are necessary for the recipients' compliance with this section.

(2) INSPECTION. The department or its agents may, during normal business hours, inspect and copy the recipient's records and the records of its contractors.

(3) RECORD RETENTION. The recipient and contractors of recipients shall preserve and make their records available to the department for a minimum of 3 years after the closeout date.

(a) If a financial assistance agreement is partially or completely terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years after the date of any resulting final termination settlement.

(b) Records which relate to appeals, disputes or litigation arising out of the performance of the project, shall be retained until any appeals, disputes or litigation have been finally resolved or for a period of 3 years after the closeout date, whichever is later.

(4) FEDERAL SINGLE AUDIT. Recipients of financial assistance provided directly from the federal capitalization grant shall comply with the federal single audit act 31 USC 7501 to 7507, OMB circular A-133 and ch. Adm 35.

NR 166.21 Breach of contract. (1) Upon breach of contract by the recipient, the department and DOA may initiate any of the following:

(a) Declare the unpaid loan balance mature and immediately payable.

(b) Increase the interest rate on the unpaid balance of the loan to the market interest rate in effect on the date the financial assistance agreement was executed.

(c) Immediately terminate the agreement and disburse no additional loan funds, if the loan has not been fully disbursed.

(d) Seek an injunction or any other equitable or judicial relief from a court of appropriate jurisdiction.

(e) Seek any other appropriate administrative remedy.

(2) DOA's receipt of any payment after the occurrence of a breach of contract does not constitute the department's waiver of any rights and remedies under this section.

Note: DOA may, under s. 281.59 (11) (b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

NR 166.22 Noncompliance. Upon failure of the recipient to comply with ss. 281.59 and 281.61, Stats., or with provisions of this chapter, the department may do any of the following:

- (1) Refuse to enter into a financial assistance agreement.
- (2) Seek penalties as provided in s. 281.59 or 281.61, Stats.
- (3) Seek any other appropriate remedy, relief or penalty.

NR 166.23 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 this chapter 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. 281.59 and 281.61, Stats.

(2) **APPLICABILITY.** The department may only approve a variance from any non-statutory requirement of this chapter.

(3) **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 all of the following:

- (a) The name of the applicant and the project number.
- (b) The provision of this chapter from which a variance is sought and a statement explaining why the variance is necessary.
- (c) 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.
- (d) An adequate description of the variance desired, and the facts which the recipient believes warrant the department's approving the variance.

Subchapter III – Priority Scoring and Ranking System

NR 166.24 Priority scoring criteria. The purpose of the priority scoring criteria is to establish a list of eligible projects to be funded in a manner that is in accordance with the federal requirements of the safe drinking water act, 42 USC 300j-12. Consistent with the act, all of the following criteria shall apply:

Note: The act requires, to the maximum extent practicable, that priority ranking be given to projects that: 1) address the most serious risk to human health; 2) are necessary to ensure compliance with the requirements of the safe drinking water act (including requirements for filtration); and 3) assist systems most in need on a per household basis according to state affordability criteria. The department will give first priority to acute public health risk, particularly those related to microbiological organisms and second priority given to situations that pose chronic and longer term health risks to consumers, such as organic chemical contamination. The scoring criteria also considers issues that are related to

infrastructure upgrading or replacement to address those projects (or portions of a project) which are eligible for funding but not included in the first two sections.

(1) RISK TO HUMAN HEALTH. The following criteria are divided into acute and chronic risk categories. A project shall be assigned points based on criteria in a single category in par. (a) or a single category in par. (b), but not from both. If the severity of the problem is not reflected in any of the categories in par. (a) or (b), the department shall determine the number of points the project is assigned.

(a) Project addresses a maximum contaminant level violation, action level exceedance or treatment technique violation, or an acute or chronic health hazard.

1. Acute contaminants: The acute contaminants are divided into 3 groups. Points are awarded in the following manner for a project that eliminates a problem that poses an acute health hazard from one of these groups:

a. Five hundred points shall be awarded to a project that proposes to eliminate a microbiological MCL violation that has occurred or will address a confirmed waterborne disease outbreak as defined in s. NR 809.04 (79), or a demonstrated microbiological contamination problem for a newly created community water system or expanding an existing community water system in accordance with s. NR 166.06 (1) (f).

b. Four hundred points shall be awarded to a project that eliminates violations of filtration requirements given in s. NR 809.76 and disinfection requirements in s. NR 809.77, or confirmed microbial, including giardia and cryptosporidium, contamination found in finished water.

c. Three hundred points shall be awarded to a project that eliminates a continuing nitrate or nitrite MCL exceedance or demonstrated nitrate or nitrite problem for a newly created community water system or expanding an existing community water in accordance with s. NR 166.06 (1) (f).

2. Chronic contaminants: The chronic contaminants are divided into the 5 subgroups of: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides and total trihalomethane compounds. For a newly created community water system or expanding an existing community water system in this subdivision, points shall be assigned by determining the 90 percentile sample for the project area. All individual wells or surface water sources in the project area shall be included in the determination. A single water sample from each individual well or surface water source shall be used for the determination. All water samples submitted shall be collected within the same 6 month period and shall be representative of current conditions. If there is no sample for an individual well or surface water source, a value of zero or no detect shall be used in the determination. The maximum point total that shall be awarded in this subdivision is 250 points. Points shall be awarded in the following manner for a project that eliminates a chronic health hazard from these groups of chemicals:

a. For each subgroup, other than the trihalomethane subgroup, only the MCL exceedance of greatest percentage magnitude is to be used for the point calculation, even though multiple contaminant MCL exceedances might be occurring. For exceedances in multiple subgroups, see subd. 2. c. The MCL exceedance shall be divided by the current MCL or AL and then multiplied by 50 to obtain a subgroup point total.

b. For the THM subgroup, the total sum THM exceedance as defined in s. NR 809.23 is used for the calculation similar to subd. 2. a.

c. For MCL exceedances in more than one subgroup, the highest point level of the subgroups shall be used as the primary number to be divided by the current MCL or AL and then multiplied by 50. The other subgroup exceedances will be divided by their respective MCL or AL and then multiplied by 10. The total point value shall be the sum of points in each subgroup.

(b) Project prevents an anticipated MCL, AL or treatment technique violation or critical health hazard. Points shall be awarded to a single group under either subd. 1. or 2. to a project that proposes to eliminate an anticipated acute or chronic health hazard.

1. Acute contaminants: The acute contaminants are divided into 3 groups. Points shall be awarded from one of the following groups for a project that eliminates an anticipated acute health hazard.

a. Three hundred points shall be awarded to a project that eliminates an anticipated MCL violation, where no actual violation has yet occurred.

b. Two hundred points shall be awarded to a project that proposes to eliminate anticipated violations of filtration requirements, or turbidity, given in s. NR 809.76, interim enhanced surface water treatment rule requirements, or microbial, including giardia and cryptosporidium, detections in the raw water.

c. One hundred points shall be awarded to a project that proposes to eliminate an anticipated nitrate or nitrite violation.

2. Chronic contaminants: The chronic contaminants are divided into the 5 subgroups of: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides and total trihalomethane compounds. Points shall be awarded in the following manner for a project that eliminates an anticipated chronic health hazard from these groups of chemicals:

a. Twenty points shall be awarded to a project that proposes to eliminate an anticipated exceedance of an inorganic, volatile organic chemical, synthetic organic chemical, radionuclide or total trihalomethane chemical contaminant.

b. Five points shall be awarded for each additional subgroup addressed by a project that eliminates an anticipated exceedance.

(2) FINANCIAL NEED. Projects shall be granted additional points if the project is associated with a system considered most in need of financial assistance on a per household basis. The number of points shall be determined by evaluating table A and table B for the public water system in question and totaling the points allocated in the point columns. A public water system shall have a population less than 10,000 and a median household income less than or equal to 80% of the state's median household income to acquire any points in this section.

TABLE A

Population	Points
0-99	30
100-999	25
1000-1999	20
2000-2999	15
3000-4999	10
5000-9999	5

TABLE B

Median Household Income	Points
75%-80%	5
70%-74%	10
65%-69%	15
60%-64%	20
<60%	25

(3) SECONDARY CONTAMINANT VIOLATION OR SYSTEM COMPLIANCE WITH CH. NR 811. No points will be awarded for specific areas already receiving points under sub. (1). A project shall be assigned points from the following categories:

(a) Ten points shall be awarded if the project will reduce a secondary drinking water contaminant, as listed in s. NR 809.60 (2), to a level below the aesthetic standard.

(b) Ten points shall be awarded if the project addresses areas of inadequate distribution system pressure, as defined in s. NR 811.63 (1).

(c) Ten points shall be awarded if the project will address a documented storage deficiency, excluding fire demand, within an existing public water supply system.

(d) Ten points shall be awarded if the project addresses a source or capacity deficiency where there is a demonstrated need within the existing public water supply system.

(e) Four points shall be awarded if the project includes replacement of lead service lines.

(f) Four points shall be awarded if the project includes long-term zebra mussel control.

(g) Four points shall be awarded if the project includes installation of an auxiliary power source to a well, pump station or water treatment plant.

(h) Four points shall be awarded if the project includes replacement of asbestos-cement pipe material.

(i) Four points shall be awarded if the project includes upgrading of existing supervisory control and data acquisition system.

(j) Four points shall be awarded if the project includes installation or replacement of fluoridation equipment.

(k) Four points shall be awarded if the project includes the upgrading of existing facilities for capturing, holding or disposing of liquid or solid waste generated from the water system operation.

(L) Four points shall be awarded if the project includes the replacement of a water main or mains less than 6 inches in diameter.

(m) Four points shall be awarded if the project includes the looping of water mains or the elimination of dead end water mains.

(n) Four points shall be awarded if the project includes treatment that reduces the potential for formation of disinfection by-products, including trihalomethanes.

(o) Four points shall be awarded if the project as a secondary benefit will increase the fire protection of the community.

Note: If the primary purpose of the project is to improve the fire protection of the system, the project is not eligible for funding.

(p) Four points shall be awarded if the project will include the installation of a water booster station or pressure reducing station to improve the quality of service to the customers by supplying water at a more acceptable level.

(q) Four points shall be awarded if the project includes the installation of an additional river, railroad or highway crossing to a major system divide that results in better system reliability.

(r) Four points shall be awarded if the project includes the replacement of one or more pumps or pump motors that are no longer functional, or have reached the end of their useful life.

(s) Four points shall be awarded if the project improves the intake structure for a surface water plant.

(t) Four points shall be awarded if the public water system currently has a documented water loss in excess of 30% and the project reduces the water loss within the system.

(u) Four points shall be awarded if the project includes removal of water mains that pass through sanitary sewer manholes.

(4) SYSTEM CAPACITY POINTS. Points shall be awarded to a project based on the technical, financial and managerial capacity of the existing public water system or upon completion of construction of a newly created community water system in the following manner:

(a) Five points shall be awarded if the applicant has a written emergency action plan for the public water system.

(b) Five points shall be awarded if the applicant has implemented a private well abandonment ordinance for the public water system.

(c) Five points shall be awarded if the applicant has a wellhead protection plan and ordinance for all the wells in the public water system.

(d) Five points shall be awarded if the applicant has a certified operator and provisions for a certified back-up operator.

(e) Five points shall be awarded if the applicant has a cross connection control program for the public water system.

(f) Five points shall be awarded if the applicant has a dedicated replacement fund for the water system.

(4m) CONSOLIDATED SYSTEMS CAPACITY POINTS. For consolidating existing systems that are eligible in accordance with s. NR 166.06 (1) (c), 30 points shall be awarded for each existing water system that is consolidated which is having technical, financial, or managerial difficulties. The maximum points that shall be awarded for this paragraph is 90 points.

(5) PROJECT PRIORITY SCORE. The total points from subs. (1) to (4m) shall be added together to determine the final project priority score.

NR 166.25 Procedure for determining and updating project priority scores. (1) An applicant intending to apply for safe drinking water loan program financial assistance under this chapter shall submit to the department a project priority evaluation and ranking form by December 31, if the funding will be requested the following April 30 or after.

Note: All forms necessary for financial assistance 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.

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

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

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

(5) If the applicant objects to the department's determination of the priority score in sub. (3) or (4), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (3) or (4). The notice shall state the specifics of the objection. The applicant shall submit any information which supports the objection and the priority score which the applicant believes should be assigned to the project based on this information.

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

(7) Notwithstanding sub. (5), an applicant may request a reevaluation of its priority score within 45 days after the application for financial assistance deadline. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (3).

Note: All forms necessary for financial assistance 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 166.26 Project ranking system. (1) The department shall maintain a project priority list which shall be based on the intent to apply forms submitted and shall rank the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first. A funding list shall be developed consisting of all projects for which applications have been submitted under s. NR 166.05 (2).

(2) If 2 or more projects have the same priority score, the project serving the larger population shall have the higher priority.

(3) Projects shall be funded in the order they appear on the funding list, except that projects may be given priority or removed from the list, upon written notice by the department, if any of the following situations occur:

(a) Ranking the projects in descending order does not result in at least 15% of the funds allocated to small systems serving less than 10,000 persons. In this case, systems serving less than 10,000 persons shall be given priority until the 15% funding allocation requirement is met.

(b) Requirements of s. NR 166.10 are not met.

(c) A project is canceled or the funding request is withdrawn by an applicant.

(d) The department determines that the applicant is unable to proceed with construction of the project in the fiscal year in which funds are requested.

(e) The project fails to meet the engineering review requirements or does not have department approval of the project.

(f) The applicant has reached the 25% biennial present value subsidy cap, as established under ss. 281.61(8)(a)2 and 281.59(3s)(b), Wis. Stats.

Note: In any biennium, no local governmental unit may receive more than 25% of the safe drinking water loan program present value subsidy amount approved by the legislature for that biennium.

(g) DOA is not satisfied that the local governmental unit has the financial capacity as described in ch. Adm 35 to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations it issues for the project.

(h) Federal or state refinancing or reimbursement restrictions prevent funding.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 15, 2001

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

REPORT TO LEGISLATURE

NR 166, Wis. Adm. Code
Safe drinking water loan program financial assistance

Board Order No. CF-25-01
Clearinghouse Rule No. 01-053

Statement of Need

The United States Environmental Protection Agency recently interpreted federal statutes to allow for Safe Drinking Water Loan Program (SDWLP) funding of new public water systems. Currently, ch. NR 166 does not allow new public water systems projects to be funded from the SDWLP. Changes in the code are necessary to enable SDWLP funding of new public water systems, revise the SDWLP priority scoring and ranking system to include scoring of new public water system projects and make general improvements to better reflect current SDWLP policies and procedures.

Modifications as a Result of Public Hearing

There were no modifications as a result of public hearing.

Appearances at the Public Hearings and Their Position

Video conference participation in the public hearing was available in Madison, Eau Claire, Green Bay, Milwaukee, Rhinelander and Spooner. The only appearances were as interest may appear in Green Bay. The appearances were:

Tim Busch, Mead & Hunt, Inc., 1345B North Road, Green Bay, WI 54313
Joseph N. Linssen, Town of Ledgeview, 4717 Dickenson Road, DePere, WI 54115
Brian Sturtevant, Town of Hobart, 2990 S. Pine Tree Road, Oneida, WI 54155
Thomas C. Meier, 1649 S. Webster Avenue, Green Bay, WI 54301

Response to Legislative Council Rules Clearinghouse Report

The department accepted all of the recommendations made in the Legislative Council Report, except for comments 5f, 5m and 5o. These comments were not substantive and would create inconsistency with the SDWLP and other Environmental Improvement Fund loan programs if accepted.

Final Regulatory Flexibility Analysis

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 166

Subject
 NR 166 Wis. Adm. Code; Safe Drinking Water Loan Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No

Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input checked="" type="checkbox"/> Decrease Costs
<input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others mun. water district
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

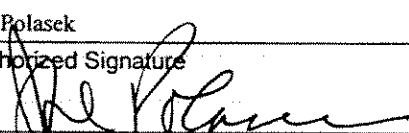
Assumptions Used in Arriving at Fiscal Estimate

Rule Summary: This rule repeals and recreates Wis. Adm. Code Ch. NR 166 to allow for funding of new public water systems projects from the Safe Drinking Water Loan Program (SDWLP). The U.S. EPA has recently interpreted federal statutes as allowing for SDWLP funding of new public water systems. However, existing rules do not allow for such funding.

Fiscal Estimate: The Department anticipates no state fiscal effect. Local government costs may decrease to the extent that the SDWLP provides loan rates that are more favorable than those otherwise available to a local government for funding new public water systems. The difference in rates in any locality at any time is subject to a number of variables, so the Department cannot reliably estimate an average annual decrease in costs to local governments.

Long-Range Fiscal Implications

None.

Prepared By: Joe Polasck	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07/09/2001



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-053

AN ORDER to repeal and recreate chapter NR 166, relating to safe drinking water loan program financial assistance.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-10-01 RECEIVED BY LEGISLATIVE COUNCIL.

06-07-01 REPORT SENT TO AGENCY.

RS:MCP:rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-053

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

General Comment:

The proposed rule repeals and recreates ch. NR 166, Wis. Adm. Code, although it appears that a relatively small part of ch. NR 166 is actually changed by the proposed rule. Standard drafting practice calls for the use of strikethroughs to show deleted materials and underscoring to show new material whenever practicable. Repealing and recreating provisions in the rule should be done only when changes are extensive, and only within the smallest subunit of the proposed rule where such extensive changes occur. Standard drafting practice gives the greatest possible notice of the changes that are being made to the current rule. The repeal and recreation of the entire chapter makes it difficult for the public, loan applicants, consultants and the Legislature to determine what changes are being made.

2. Form, Style and Placement in Administrative Code

a. It is unclear why "project" is included in the title of s. NR 166.03. Normally, the definitions section is simply titled "definitions."

b. The meaning of "biennial finance plan" in s. NR 166.03 (4) cannot be determined without reading the cross-referenced statute. A note that briefly describes the statutory plan would aid the reader.

c. A number of rules and standards are referenced in s. NR 166.06 (1) (a). A cross-reference should be provided for each of these rules or standards.

d. "Cost-effective" should be hyphenated in s. NR 166.06 (1) (d).

e. In s. NR 166.14 (1) (b), the first sentence does not grammatically lead into the following subunits. Consequently, the sentence should be renumbered as subd. 1. and the remaining subdivisions and internal cross-references, if any, should be renumbered accordingly. [See also ss. NR 166.15 (1) (k), 166.18 (2), 166.20 (3) and 166.24 (1).]

f. It appears that "breach of the financial assistance agreement" should be replaced by the defined term "breach of contract" in s. NR 166.15 (1) (g).

g. In s. NR 166.15 (1) (k) 2., the phrase "all of" should proceed the phrase "the following areas." [See also ss. NR 166.23 (3) (intro.) and 166.24 (intro.).]

h. It appears that the phrase "final project closeout" in s. NR 166.17 (3) (b) should be replaced by the defined term "project completion." See also the title of s. NR 166.17 (4) and s. NR 166.20 (3) (b). Also, it is not clear how the requirements for final disbursement in s. NR 166.17 (4) (b) relate to the requirements for project completion in the definition of that term in s. NR 166.03 (32m). If the term "final project closeout" is different than the term "project completion," it should be defined.

i. Does the reference to the date that the project is closed out in s. NR 166.20 (3) (intro.) mean the same thing as the date of project completion?

j. In s. NR 166.24 (1), the use of the phrase "and or" should be avoided. The phrase should be replaced by the word "or."

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

a. In s. NR 166.03 (16), is the cross-reference to "sub. (8)" correct?

b. The U.S. Code citation should be included in the federal cross-reference in s. NR 166.24 (intro.).

c. In s. NR 166.24 (1) (intro.), the phrase "any of the following categories" should be replaced by the phrase "in any of the categories in par. (a) or (b)."

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

a. The term "breach of contract" is defined in s. NR 166.03 (5). One element of this definition is failure of a local governmental unit to comply with its resolution authorizing the issuance of bonds. Is this resolution a type of a contract, or is it merely a unilateral action of the local governmental unit?

b. An unnecessary hyphen is included between "system" and "included" in s. NR 166.03 (16).

c. The definition of "future growth" in s. NR 166.03 (17) refers to excess capacity that is beyond normally accepted standard engineering practice. This suggests that there is a standard engineering practice to account for future growth. Is this the intent of this definition? If there is such a standard engineering practice, should it be codified in the rule? "Above and beyond" should be replaced by "exceeds." Is "normally accepted" surplusage?

d. The first part of the definition of "population" in s. NR 166.03 (30) is reasonably clear and precise. The second part of that definition is vague. Who may make population estimates for a public water system that is not owned by a city, village or town? What methodology for making this population count is acceptable?

e. In determining project eligibility under s. NR 166.06 (1) (b), is age the only reason for replacing infrastructure? It appears that the conditions that require infrastructure replacement could have other causes.

f. In s. NR 166.06 (1) (e), it is not clear how a public water *system* is "restructured." The remainder of that paragraph suggests that it is the *management* of a public water system that is to be restructured.

g. The word "impacting" should be replaced by "affecting" in s. NR 166.12 (6) (b).

h. In s. NR 166.12 (4), in the phrase "small business in rural areas, minority- and women-owned businesses," the comma following the word "areas" should be replaced by the word "and."

i. The phrase "defined scope of work" in s. NR 166.12 (6) (c) could be clarified. This phrase is vague.

j. Section NR 166.15 (1) (f) provides that a financial assistance agreement must require that a recipient allow the department access to records of the contractor and the subcontractor which are pertinent to the project. How will the recipient comply with this requirement if the recipient does not maintain custody of the records? At the least, a financial assistance agreement should require a recipient to enter into an agreement with a contractor that either provides contractor and subcontractor records to the recipient or provides the recipient with access to these records.

k. The reference to the expected substantial completion date in s. NR 166.15 (1) (j) is unclear. Is this the predicted or the actual substantial completion date?

l. The word "final" in s. NR 166.18 (2) (c) appears to be surplusage.

m. The phrase "final termination settlement" in s. NR 166.20 (3) (a) could be clarified.

n. The concept of final resolution of litigation in s. NR 166.20 (3) (b) could be clarified by specifying what events constitute final resolution. Also, in that paragraph, it appears that "from" should be replaced by "after."

o. Does the phrase "from a court of appropriate jurisdiction" add anything to s. NR 166.21 (1) (d)?

p. The request for variance must state the "section of this chapter" from which a variance is sought. See s. NR 166.23 (3) (b). Should this be replaced by "provision of this chapter," in order to allow variances from a part of a section?

q. It appears that "main" in s. NR 166.24 (3) (L) should be replaced by either "a main" or "water mains."

r. Should the cross-reference in s. NR 166.24 (5) be to "subs. (1) to (4m)"?

s. In s. NR 166.25, is sub. (7) a statement of sub. (5)? If so, it should be deleted. If not, the phrase "45 days of" should be replaced by the phrase "45 days after" and the reference to "sub. (5)" should be replaced by a reference to "sub. (6)."

t. In s. NR 166.26 (3) (a), the word "do" should be replaced by the word "does." Also, in sub. (3) (f), what is the "biennial present value subsidy cap"? A definition or an appropriate cross-reference may be helpful.