

## Clearinghouse Rule 22-045

The statement of scope for this rule, SS 043-20, was approved by the Governor on April 20, 2020, published in Register No. 773A3 on May 18, 2020, and approved by the Natural Resources Board on October 28, 2020. This rule was approved by the Governor on insert date.

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

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** NR 162 relating to the Clean Water Fund Program.

#### CF-12-19

#### Analysis Prepared by the Department of Natural Resources

- 1. Statute Interpreted:** Sections 281.58 and 281.59, Wis. Stats.
- 2. Statutory Authority:** Section 281.58(2), Wis. Stats., authorizes the department to promulgate rules necessary for the execution of its responsibilities under the Clean Water Fund program. This program provides financial assistance to municipalities for water infrastructure projects including wastewater treatment plants, collection systems, and storm water best management practices.
- 3. Explanation of Agency Authority:** This order implements s. 281.58 (2), Wis. Stats., which requires the department to promulgate rules that are necessary for the proper execution of its responsibilities under s. 281.58, Wis. Stats. This order provides the rules for municipalities and the department in determining eligibility of an applicant and of a project for Clean Water Fund Program financial assistance, preparing and submitting a complete financial assistance application, processing a financial assistance application, documenting the costs of a project, preparing financial assistance agreements, developing and maintaining a user charge system, including specific provisions in financial assistance agreements, following procurement laws, amending a financial assistance agreement, cooperating with the Board of Commissioners of Public Lands (BCPL) to provide interest rate subsidy on a loan taken out by an applicant from BCPL for a wastewater or storm water construction project, scoring and ranking projects, allocating available funds, developing and publishing project priority and funding lists, amending a financial assistance agreement, determining the amount of subsidy to be provided to a municipality for their project, and requesting and processing disbursement of financial assistance.
- 4. Related Statutes or Rules:** Concurrent with this effort, the department is also repealing and recreating ch. NR 166, Wis. Adm. Code, relating to the Safe Drinking Water Loan Program. The Clean Water Fund Program and the Safe Drinking Water Loan Program are part of the Environmental Improvement Fund.
- 5. Plain Language Analysis:** Revisions to ch. NR 162, Wis. Adm. Code, relating to the Clean Water Fund Program, bring the code in line with statutory changes that occurred after the current version became effective, clarify eligibility criteria, streamline processes, revise the scoring system, and update implementation issues since the rule was last revised. No new significant changes to the program result from the rule revisions. The main topics for revision include:
  - Definitions – adds, modifies, and removes various definitions to add clarity to several sections of the code.
  - Types of financial assistance – adds language to state that the statutes allow funds from the federal capitalization grant to be used as allowed under federal law, including providing principal forgiveness.

- Funding list – adds language to state that a funding list will be created annually for projects of municipalities competing for principal forgiveness.
- Eligible projects/activities – updates language to incorporate current practices.
- Dates for ITA/PERF submittals – revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.59, Wis. Stats.).
- Application process – requires applicant use of the online intent to apply and application systems, revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.59, Wis. Stats.), and modifies requirements for application submittals, including removing submittals no longer needed, adding clarity for certain submittals, revising requirements for intermunicipal agreements, and adding a design life calculation worksheet requirement for municipalities requesting loan terms greater than 20 years since language was added to the statutes allowing terms of up to 30 years.
- Deadline for signing a financial assistance agreement – modifies the language regarding the timeframe within which a municipality must sign a financial assistance agreement to provide flexibility for potential modifications to the loan process timeline.
- Legal opinion on land ownership and easements – codifies the policies the department has developed over time regarding what needs to be addressed in the legal opinion regarding who owns the land on which a project is being constructed.
- Procurement and disbursement processes – adds language to clarify what documentation is expected when from municipalities for these processes.
- Loan interest rates – revises the statutory references and some language to bring the code in line with the statutes which were changed the same day the last revision to ch. NR 162, Wis. Adm. Code, took effect.
- Amendments – revises the financial assistance agreement amendment process as it was previously based on availability of present value subsidy, which was removed from the statutes, and clarifies the type of financial assistance that may be provided in an amendment.
- Hardship financial assistance – removes all language regarding hardship financial assistance since the statutes sunset the program.
- Storm water projects – removes storm water language from subchapter II and creates a new subchapter III for storm water projects to clarify procedures for urban runoff projects.
- Interest rate subsidy projects – adds language to clarify using this type of assistance for a storm water project and revises the explanation of the interest rate subsidy calculation to clarify the steps taken to determine that amount of subsidy that is provided for a project.
- Priority scoring system – revises system to incorporate language currently included in the Clean Water Fund Program’s intended use plan, adds clarifying language for projects in which regionalization of wastewater treatment is taking place, provides additional explanation of the reevaluation request process, and shifts the priority when two projects on the priority list have the same score from higher population municipalities to lower population municipalities.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** All state programs must comply with the federal requirements for the program, as outlined in 33 USC 1251 to 1376 and 33 USC 1381 to 1388. This rule complies with the requirements of the Federal Clean Water Act.

**7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:**

**8. Comparison with Similar Rules in Adjacent States:** Each state implements the Clean Water Act consistently with the associated state statutes and federal requirements. Every state revolving fund program

throughout the country has unique features, but all of the programs are designed to meet federal Clean Water Act requirements. Each state has a unique priority scoring system based on state priorities but consistent with federal priorities. The U.S. Environmental Protection Agency reviews program implementation to ensure consistency with the federal requirements.

**9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** The implementation of the Clean Water Fund Program does not include regulatory activities. Refinements to the program were established with both internal and external advisory groups with the intent of streamlining processes and clarifying criteria for program implementation.

**10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:** These rule revisions are expected to have minimal impact on small businesses. The revisions streamline and clarify existing processes and criteria. The revisions do not contain new requirements for small businesses. The department did a section-by-section analysis of potential impacts to local governments and businesses.

**11. Effect on Small Business (initial regulatory flexibility analysis):** Minimal.

**12. Agency Contact Person:** Jeanne Cargill, Bureau of Community Financial Assistance, 101 S. Webster Street, PO Box 7921, Madison WI 53707; [jeanne.cargill@wisconsin.gov](mailto:jeanne.cargill@wisconsin.gov); 608-436-6080.

**13. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, or email to:

Jeanne Cargill  
Department of Natural Resources  
Environmental Loans – CF/2  
P.O. Box 7921  
Madison WI 53707-7921  
Phone: 608-436-6080 Fax: 608-267-0496  
Email: [jeanne.cargill@wisconsin.gov](mailto:jeanne.cargill@wisconsin.gov)

Comments may be submitted to the department contact person listed above or to [DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov) until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

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RULE TEXT

**SECTION 1. NR 162 is repealed and recreated to read:**

**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., to implement and administer a financial assistance program for the engineering and construction of treatment works and best management practices.

(2) Establish a priority system for distributing clean water fund program financial assistance as provided in s. 281.58, Stats., and the mechanisms and methodology to be used to modify the priority scoring system.

(3) Establish rules under s. 281.58 (6) (b) 8., Stats., to implement and administer interest rate subsidies for loans issued by the board of commissioners of public lands for projects to engineer and construct treatment works and best management practices with total estimated project costs of \$2,000,000 or less.

**Note:** All forms necessary for funding under this chapter are available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and in paper form from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921. The forms are also available on the Department of Natural Resources website. Some information, including most applications, is required to be submitted through the department's online application system.

**NR 162.002 Applicability.** This chapter applies to all applicants for and recipients of financial assistance for the engineering and construction of treatment works and best management practices made under 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) "Amendment" means a formal, written change to an existing legal agreement or contract executed by all parties to the original agreement or contract.

(2) "American Community Survey" or "ACS" means the nationwide survey conducted by the U.S. bureau of the census to collect demographic, social, housing, and economic data and produce 1-year, 3-year, and 5-year estimates based on population thresholds.

(3) "Applicant" means any municipality that submits to the department any of the following for financial assistance under this chapter:

(a) Intent to apply form and priority evaluation and ranking form.

(b) A financial assistance application.

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

(5) "Best management practices" or "BMPs" has the meaning given in s. NR 151.002 (4).

Note: Under s. NR 151.002 (4), "Best management practices" or "BMPs" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.

(6) "Block group" means a subdivision of a census tract made up of a cluster of blocks having the same first digit of their 4-digit identifying numbers within the tract.

(7) "Board of commissioners of public lands" or "BCPL" means the organization comprised of the secretary of state, the state treasurer, and the attorney general that operates under the authority of ch. 24, Stats.

**Note:** The BCPL is also known as state trust funds.

**(8)** “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 interest rate subsidy 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.

**(9)** “Capital improvement” means construction resulting in improvements to real property or depreciable property, or both, and adding to the value or useful life of these assets, including structural improvements, or improvements that enhance usefulness or productivity. “Capital improvement” includes capital assets that are not structural but are necessary for water quality protection or improvement, such as trucks, street sweepers, land for buffer areas, and other tangible assets with a single item cost of greater than \$5,000.

**Note:** The following are examples of capital improvements: constructing permeable pavement or an infiltration pond to control runoff; constructing an entirely new treatment works, or new clarifiers, aeration tanks, or other major components of an existing treatment works or BMP; upgrading existing equipment or installing new, more efficient process equipment, such as equipment for pumping, dewatering, aeration, scraping, skimming, or disinfection; constructing new process, administration, and storage buildings; adding to or constructing major renovations of existing facilities; replacing or rehabilitating aged or undersized sanitary sewer pipes; replacing a roof on a treatment plant building; constructing a new lift station or upgrading an existing lift station; installing security, a supervisory control and data acquisition system, or monitoring equipment as part of a scored project; or purchasing an existing treatment facility, land on which a treatment facility will be constructed, land for buffer areas, agricultural or industrial land taken out of production in order to improve water quality in the area, or necessary mobile assets, such as a street sweeper. Replacing an old pump with a new pump that is the same size and efficiency as the old pump is not considered a capital improvement; rather, it is maintenance.

**(10)** “Census block” means the smallest unit for which the U.S. census bureau collects and tabulates population information in the decennial census and income information in the ACS.

**(11)** “Census designated place” means a statistical area delineated for each decennial census according to U.S. census bureau guidelines for the purpose of presenting census data and ACS data for a concentration of population, housing, and commercial structures that is locally identifiable by name, but is not within an incorporated place.

**(12)** “Census tract” means a small, relatively permanent statistical subdivision of a county used in the decennial census and the ACS, delineated for the purpose of presenting data, typically following visible features or governmental boundaries or both, including approximately 4,000 inhabitants, and designed to be a relatively homogeneous unit with respect to population characteristics, economic status, and living conditions.

**(13)** “Change order” means an action that specifies and justifies a change to a construction contract that alters the time of completion or the total price, or both.

**(14)** “Clean water fund program” or “CWFP” 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, design, and construction of treatment works and BMPs.

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

(16) “Construction” means a set of actions taken to make a capital improvement, including any of the following actions:

(a) Building, erecting, extending, or assembling a treatment works or BMP or a new major asset for an existing treatment works or BMP.

(b) Preparing a construction site or sites of a scored project for work activities, including grading, staking, digging, and demolition or abandonment of existing structures.

(c) Purchasing a package wastewater treatment system or capacity in an existing treatment works.

(d) Altering, modifying, improving, upgrading, rehabilitating, or adding to existing treatment works facilities or BMPs.

(e) Performing major repairs or replacing major components of existing facilities.

(f) Installing new piping or mechanical, electrical, or electronic equipment or facilities.

(g) Remediation of illicit discharges to an MS4 or runoff treatment works.

(17) “Custom tabulation” means a special tabulation of income data from the ACS microdata files that is performed by the U.S. bureau of the census, is not part of the standard ACS data tabulations, and results in generation of a median household income for an area designated by the applicant as the boundaries of a town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewerage district, or of the area served by the treatment works if the treatment works serves only a portion of the place or minor civil division in which it is located.

(18) “Department” means the department of natural resources.

(19) “Design flow” means the average annual flow or average daily flow specified in an approved facilities plan or approved plans and specifications, the flow specified in a WPDES permit, or the flow required to meet performance standards.

(20) “Disadvantaged business enterprise” or “DBE” means a business entity certified as disadvantaged under the U.S. department of transportation unified certification program or other program approved by the U.S. environmental protection agency to certify disadvantaged businesses.

(21) “Discharge” has the meaning given in s. 283.01 (4), Stats.

**Note:** Under s. 283.01 (4), Stats., “discharge,” when used without qualification, includes a discharge of any pollutant. Under s. 283.01 (5), Stats., “discharge of pollutant” or “discharge of pollutants” means any addition of any pollutant to the waters of this state from any point source.

(22) “DOA” means the department of administration.

(23) “Effluent limitation” has the meaning given in s. 283.01 (6), Stats.

**Note:** Under s. 283.01 (6), Stats., “effluent limitation” means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of this state. Flow rates and flow volumes are considered to be physical constituents restricted by WPDES permits.

**(24)** “Engineering” includes all of the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works or BMP, including preparing a facilities plan.

(b) Performing engineering, architectural, geotechnical, hydrogeological, environmental, archaeological, biological, fiscal, or economic investigations or studies.

(c) Identifying illicit discharges to an MS4, a BMP, or a wastewater treatment works if the identification work is directly related to the scored project.

(d) Preparing surveys, designs, plans, bidding documentation, working drawings, specifications, or as-built drawings.

(e) Coordinating, observing, inspecting, or supervising any of the activities under pars. (a) to (d) or under sub. (16).

**(25)** “Equipment replacement fund” means a separate fund established by a municipality for the purpose of making expenditures for major repair or replacement of equipment necessary for continuing operation of wastewater or runoff treatment works, or for maintenance of a BMP.

**(26)** “Financial assistance” includes one or more of the following actions taken by the department and DOA under ss. 281.58 and 281.59, Stats.:

(a) Providing a loan, principal forgiveness, interest rate subsidies, a guarantee, or credit enhancement to a municipality.

(b) Refinancing a municipality’s interim debt obtained for the scored project.

(c) Purchasing insurance for a municipality.

**(27)** “Financial assistance agreement” means a written agreement between a municipality, the department, and DOA that contains the terms and conditions of the financial assistance provided to the municipality under subch. II or III.

**(28)** “Financial assistance agreement amendment” means a formal, written change to an existing financial assistance agreement executed by all parties to the original agreement.

**(29)** “Force account work” means engineering, construction, or other project-specific activities performed by a municipality’s paid employees or use of equipment owned by the municipality in construction of the project, or both.

**(30)** “Groundwater” has the meaning given in s. 160.01 (4), Stats.

**(31)** “Illicit discharge” has the meaning given in s. NR 216.002 (11).

**(32)** “Industrial user” has the meaning given in s. 281.58 (1) (c), Stats.

**(33)** “Infiltration” has the meaning given in s. NR 110.03 (16).

**(33m)** “Infiltration system” has the meaning given in s. NR 151.002 (20).

**(34)** “Inflow” has the meaning given in s. NR 110.03 (17).

**(35)** “Interest rate subsidy” means the subsidy provided by the CWFP under ss. 281.58 and 281.59, Stats., to reduce the interest cost of loans provided to municipalities by the BCPL under ch. 24, Stats.

**(36)** “Interest rate subsidy agreement” means a written agreement between a municipality, the department, and DOA that contains the terms and conditions of financial assistance provided to the municipality under subch. IV.

**(37)** “Interim debt” means a financial liability that is subject to repayment and incurred by an applicant to temporarily finance a scored project until permanent financing is obtained from the CWFP, including liabilities in the form of lines of credit, short-term bank or BCPL loans, bond anticipation notes, general obligation bonds, revenue bonds, general obligation promissory notes, and certificates of indebtedness.

**(38)** “Interim debt costs” means the net interest, fees, and charges associated with issuing interim debt, including municipal advisor fees, attorney fees, printing costs, bond rating charges, and trustee fees.

**(39)** “Lateral” means a sewer service line that connects a residence, commercial establishment, institutional facility, or industrial user to a municipal sewage collection system or individual system.

**(40)** “Maintenance” means activities or procedures that are established, commonplace, or repetitive, and are performed or should be performed frequently or on a schedule to sustain the functional integrity and efficiency of existing facilities and to provide upkeep for prevention of early decline or failure, or are performed as needed in response to minor emergencies, such as sewer pipe repair or replacement when a pipe bursts, including all of the following types of maintenance:

(a) Preventive maintenance, including scheduled service, repair, inspection, adjustment, or replacement of parts, to keep equipment or facilities in satisfactory operating condition, to avoid frequent breakdowns and premature replacements, and to achieve the expected life of constructed assets and installed building equipment, conducted with a frequency of one year or less.

(b) Corrective maintenance, including unscheduled maintenance repairs to correct deficiencies during the year in which they occur.

(c) Mobile equipment maintenance, including all corrective, preventive, emergency, or replacement maintenance work done on mobile equipment assets, except when performed at the time of purchase of used equipment to bring the purchased equipment to a fully functional or improved condition, or both.

(d) Recurring maintenance, including preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 1 year, but less than 10 years.

(e) Component renewal, which is preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 10 years, unless performed within the scope of a larger scored project.

(f) Emergency maintenance, typically initiated within a very short amount of time from when a need is identified, to correct an emergency need to prevent injury, loss of property, or human health impacts, or to quickly return an asset to service, subject to all of the following:

1. Unscheduled activities and repairs, such as repairing sanitary sewer breaks or mechanical malfunctions in aged or damaged infrastructure, are considered emergency maintenance under this paragraph.

2. Emergency repairs or replacement needed due to damage caused by severe weather, cyber-attacks, or other unforeseen serious emergency situations over which the municipality has no control are not considered emergency maintenance under this paragraph.

(g) Minor equipment replacement that substitutes or exchanges one existing asset, asset component, or item of installed equipment for another having the same specifications and the same capacity to perform the same function, except when performed within the scope of a larger capital improvement.

(h) Demolition occurring outside of the construction site of a scored project or that is not necessary for construction of a scored project.

**(41)** “Market interest rate” has the meaning given in s. 281.59 (1) (b), Stats.

**Note:** Under s. 281.59 (1) (b), Stats., “market interest rate” means the effective interest rate on a fixed-rate revenue obligation issued by the state to fund a loan made under this section or, if the DOA determines that there has been a significant change in interest rates after the fixed-rate revenue obligation has been issued or if a fixed-rate revenue obligation has not been issued by the state to fund a loan made under this section, the effective interest rate that DOA determines would have been paid if a fixed-rate revenue obligation had been issued on the date financial assistance is allotted.

**(42)** “Median household income” has the meaning given in s. 281.58 (1) (cm), Stats.

**Note:** Under s. 281.58 (1) (cm), Stats., “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.

**(43)** “Minor civil division” means the primary governmental divisions of a county, including towns, as designated by the U.S. bureau of the census to collect and publish data.

**(44)** “Minority business enterprise” or “MBE” means a DBE that is owned or controlled on a daily basis by one or more minority group members.

**(45)** “Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, that meets all of the following criteria:

(a) Is owned or operated by a municipality.

(b) Is designed or used for collecting or conveying storm water.

(c) Is not a combined sewer conveying both wastewater and storm water.

(d) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

**(46)** “Municipal WPDES storm water discharge permit” means any permit issued to a municipality by the department under s. 283.33 (3), Stats., for the purpose of controlling storm water discharges from an MS4.

**(47)** “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, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, joint local water authority created under s. 66.0823, Stats., or federally recognized American Indian tribe or band in this state.

**(48)** “New or changed WPDES permit limits” means an effluent limitation in a municipality’s most recent WPDES permit that is a completely new limit previously not included in the WPDES permit or is a change to a previous limit with which the municipality was already complying.

**(49)** “Nonpoint source” has the meaning given in s. 281.65 (2) (b), Stats.

**Note:** Under s. 281.65 (2) (b), Stats., “nonpoint source” means a land management activity that 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.

**(50)** “Operations” means labor, materials, and chemicals used regularly, and work activities performed on a recurring basis throughout the year that are intended to meet routine, daily functional needs. Work activities may include any of the following:

(a) Operational maintenance activities related to continuing normal performance of the functions for which a treatment works or BMP asset or item of equipment is intended, including activities to keep building systems such as HVAC, lighting, and electrical utilities working properly.

(b) Custodial maintenance activities, such as housekeeping duties, rodent and pest control, and lawn mowing, associated with general day-to-day care and cleaning necessary to maintain constructed assets.

(c) Trash removal activities to dispose of hazardous and non-hazardous waste and debris and to recycle products such as paper, cans, and bottles.

(d) Snow and ice removal and activities to treat surfaces to eliminate unsafe weather-related conditions.

(e) Office activities related to billing, collections, customer communications, personnel, and other types of work activities that support the administration of the treatment works or BMP.

(f) Routine walk-through and other surveillance activities associated with identifying operational anomalies and ensuring all treatment works or BMP components are working as intended.

**(51)** “Parallel cost percentage” means, for a scored project, the proportion of costs eligible for below-market rate financing, as delineated in s. NR 162.04 (1), relative to the total costs eligible for CWFP financing.

**Note:** The calculation of the parallel cost percentage is described in s. NR 162.04 (1) (c).

**(52)** “Performance standards” means nonagricultural performance standards established by the department in ch. NR 151, under s. 281.16 (2), Stats.

**(53)** “Place” means a concentration of population either legally bounded as an incorporated place, such as a city or village, or identified as a census designated place by the U.S. bureau of the census.

**(54)** “Plans and specifications” means project drawings and specification manuals for all construction work to be included in the financial assistance for the scored project.

**(55)** “Population” means the most recent year’s final population estimate published by the DOA demographic services center for the city, town, or village that submitted an intent to apply form. For a municipality other than a city, town, or village, “population” means the most recent population count or estimate done for the municipality and provided to the department by the municipality for purposes such as completing a sanitary survey or an estimate determined by multiplying the number of households served by the sanitary sewer system by the average household size in the area, as determined by the department.

**(56)** “Priority score” means the numerical value determined by the department that is assigned to each project in accordance with s. NR 162.50.

**(57)** “Professional services” means non-construction work provided under contract for the project, including engineering, archaeological, legal, financial, or technical services provided by a higher education institution or a formally certified member of a professional body, such as a trade association or organized profession.

**(58)** “Project” means a set of activities intended to result, or that has resulted, in completed construction of wastewater related or storm water related facilities or practices.

**(59)** “Project closeout” means the procedures described in s. NR 162.13 (4) for projects funded under subchs. II and III, and in s. NR 162.46 (4) for projects funded under subch. IV.

**(60)** “Project completion date” means the earliest date on which all of the following apply:

(a) Construction of the scored project is complete.

(b) The department or its agents have certified that the scored 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 project closeout is complete.

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

**(61)** “Proportional share” means the costs of the operation and maintenance of the treatment works or BMP shared equitably and proportionately among the users through a user charge system.

**(62)** “Receiving municipality” means a municipality that owns a treatment works and accepts discharges from one or more other municipalities into its treatment works for treatment and disposal.

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

**(64)** “Replacement” means obtaining and installing equipment, accessories, or appurtenances that are necessary during the useful life of the treatment works or BMP project funded through the CWFP to maintain or improve the capacity and performance levels for which the treatment works or BMP was designed and constructed.

**(65)** “Residential user” means a structure or part of a structure, including a mobile home or individual apartment unit, 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. “Residential user” does not include an institutional, commercial, industrial, or governmental facility.

**(66)** “Runoff” has the meaning given in s. NR 151.002 (40).

**Note:** In s. NR 151.002 (40), “runoff” means storm water or precipitation, including rain, snow, ice melt, or similar water that moves on the land surface via sheet or channelized flow.

**(67)** “Scored project” means a project for which the department reviewed the scope provided by the applicant and assigned a priority score based on the scope determined by the department to be eligible for financial assistance under a single CWFP project number.

**(68)** “Septage” has the meaning given in s. NR 113.03 (55).

**Note:** Under s. NR 113.03 (55), “septage” means the scum, liquid, sludge, or other waste in any of the following: (a) a septic or holding tank, dosing chamber, grease interceptor, seepage bed, seepage pit, seepage trench, distribution cell, or other component of private onsite wastewater treatment systems; or (b) a privy or portable restroom.

**(69)** “Sewage collection system” has the meaning given under s. NR 110.03 (28), and includes individual systems, such as septic tanks, holding tanks, mound systems, and cluster systems, if the individual systems meet the criteria established under s. NR 162.03 (2).

**Note:** Under s. NR 110.03 (28), “sewage collection system” means the common sanitary sewers, interceptor sewers, and appurtenant equipment, such as lift stations, within a sewerage system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection “Y” fittings and private interceptor sewers, from private property to the public sanitary sewer, or its equivalent, are specifically excluded from the definition of “sewage collection system”; except that pumping units and pressurized lines for individual structures or groups of structures are included as part of a “sewage collection system” when such units are cost-effective and are owned and maintained by the sewerage system owner.

**(70)** “Sewer” means a sewage collection system or an MS4, a portion of a sewage collection system or MS4, or other pipes that carry water to a treatment facility.

**(71)** “Sewer service area” means that area served by a wastewater treatment works, or an area for which an agreement has been reached for future wastewater service, or an area for which capacity is provided to allow disposal of septic tank or holding tank wastes.

**(72)** “Storm water” has the meaning given in s. NR 216.002 (33).

**Note:** Under s. NR 216.002 (33), “storm water” means runoff from precipitation, including rain, snow, ice melt, or similar water that moves on the land surface via sheet or channelized flow.

**(73)** “Subscribing municipality” means a municipality that discharges or plans to discharge all or part of its wastewater or storm water to another municipality for treatment and disposal.

**(74)** “Subsidy” means the amount provided by the environmental improvement fund to a recipient of CWFP financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

(a) To reduce the interest rate of CWFP loans from market interest rate to a lower subsidized rate.

(b) To reduce the interest payments on eligible loans or portions of loans made by the BCPL.

(c) To forgive a portion of the principal of a CWFP loan.

(75) “Substantial completion” means the date on which construction of the scored project is sufficiently complete in accordance with the contract documents so that the owner can occupy or utilize the scored project for its intended use.

(76) “TSS” means total suspended solids.

(77) “Treatment work” has the meaning given in s. 283.01 (18), Stats.

**Note:** Under s. 283.01 (18), Stats., “treatment work” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the work, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, “treatment work” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. This definition of “treatment works” includes storm water BMPs for municipalities that are required to obtain a municipal WPDES storm water discharge permit under ch. 283, Stats., and other department-approved projects to reduce wastewater and storm water pollutants entering our waterways. This definition does not apply to nonpoint source projects funded under the department’s pilot projects program created under s. 281.58 (6) (b) 9. and (7) (b) 7., Stats.

(78) “Treatment facility” means a structure or group of structures constructed and used for purposes of treating wastewater, including municipal biosolids, to reduce pollutants entering waters of the state.

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

(80) “Useful life” means one of the following:

(a) The period during which a treatment works operates, if the treatment works was constructed partially or wholly with U.S. environmental protection agency title II construction grants.

(b) The term of the financial assistance agreement for the project, if the treatment works was originally constructed partially or wholly with CWFP financing or financing other than that identified in par. (a).

(81) “User charge” means a charge levied on users of a treatment works or BMP for the user’s proportional share of the cost of operation, maintenance, and replacement of the treatment works or BMP.

(82) “User charge system” means a system of charges meeting requirements established in s. NR 162.07, and s. 281.58 (14) (b) 1. and 7., Stats., for projects funded under subch. II, or a set of minimum control measure programs described in s. NR 216.06 (2) (c) to (e) for projects funded under subch. III.

**Note:** User charge system requirements for storm water utility districts may include a requirement for a system of charges.

(83) “Wastewater” means a waste stream conveyed to a treatment works via a sewage collection system, including a combined sewer conveying both sanitary wastewater and storm water, or the sewage sludge or other

byproducts of wastewater treatment trucked or discharged to another treatment facility, such as a biosolids facility, for additional treatment.

(84) “Women business enterprise” or “WBE” means a DBE that is owned or controlled on a daily basis by a woman or women.

(85) “WPDES permit” means a Wisconsin pollution discharge elimination system permit issued under ch. 283, Stats.

## **SUBCHAPTER II — FINANCIAL ASSISTANCE REQUIREMENTS**

**NR 162.01 Types of financial assistance available.** The department and DOA may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., and ch. Adm 35, provide to an eligible applicant for a scored project any of the following types of financial assistance unless the project has been substantially complete for 3 years or longer or the applicant already has long-term affordable debt outstanding for its completed or substantially completed project:

(1) Subject to the limits established in s. NR 162.04 (3), the purchase or refinance of a municipality’s interim debt.

(2) The guarantee of, or purchase of insurance for, municipal obligations for construction of a treatment works or BMP if the guaranteed or purchased insurance would improve credit market access or reduce interest costs on the municipal obligations.

(3) Loans at or below the market interest rate.

(4) Interest rate subsidies under subch. IV.

(5) Using funds received as federal capitalization grants, any other type of assistance that is consistent with the federal program for state water pollution control revolving funds under 33 USC 1381 to 1387 or any other federal law providing funding for or otherwise relating to that program.

**Note:** The language under sub. (5) and under s. 281.58 (6) (b) 9., Stats., allows the department to provide principal forgiveness as part of a financial assistance agreement in accordance with 33 USC 1383 (i) (1), which states, “In any case in which a State provides assistance to an eligible recipient under subsection (d), the State may provide additional subsidization, including forgiveness of principal.”

**NR 162.02 Annual funding policy, project priority list, and funding list.** (1) **FUNDING POLICY AND PROJECT PRIORITY LIST.** The department may produce an annual CWFPP funding policy in conjunction with the fiscal year’s priority list established under s. NR 162.52. The funding policy may be in the form of the intended use plan and may describe methods for making funding determinations and other policies related to the fiscal year. When the department publishes a funding policy for a given year, it shall provide an opportunity for public comment regarding the funding policy.

(2) FUNDING LIST. The department shall prepare a funding list of all CWWP-eligible applicants, including applications submitted under subchs. II to IV, when the amount available under s. 20.866 (2) (tc) or 281.59 (3e) (d) or (4) (f), Stats., is insufficient in accordance with s. 281.58 (9m) (f), Stats., and, for municipalities wishing to compete for principal forgiveness funds, when the department has principal forgiveness funds available to distribute in a year during which s. 281.58 (9m) (f), Stats., does not apply.

**NR 162.03 Project eligibility.** (1) TRADITIONAL WASTEWATER TREATMENT PLANT AND COLLECTION SYSTEM PROJECTS. A municipality may receive financial assistance under this chapter for a publicly-owned wastewater treatment works scored project, including a treatment plant or sewage collection system project, that meets any of the following criteria:

(a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. All of the following types of projects are included under this paragraph:

1. Projects for which construction will completely take place inside the fence or on site of a wastewater treatment plant, such as projects to build or modify headworks, clarifiers, aeration basins, stabilization ponds, sludge processing equipment, sludge storage facilities, or on-site administrative buildings, and projects to build or modify facilities for the receiving, storage, or treatment of septage, as defined in s. 281.58 (1) (cv), Stats. The department may determine that a lift station pumping all of the wastewater flow directly to the wastewater treatment plant with no other influent pump at the plant site is part of a project that takes place inside the fence. The department may also determine that other facilities, such as a septage receiving station that conveys the septage directly into the wastewater treatment plant, are considered part of the work inside the fence.

**Note:** "Septage," under s. 281.58 (1) (cv), Stats., means the scum, liquid, sludge, or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system.

2. Projects for which construction takes place outside of the fence of the wastewater treatment plant that are necessary to maintain or improve the integrity and performance of wastewater treatment works facilities serving the municipality, including sanitary sewer replacement or rehabilitation, sanitary sewer lining, publicly-owned lateral lining, lift station upgrades, and construction of new interceptors, lift stations, pretreatment facilities, septage receiving stations, and other treatment works facilities outside of the fence of the wastewater treatment plant.

(b) The project 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) The project is necessary to correct violations of an effluent limitation contained in a permit issued under ch. 283, Stats.

(d) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality. All of the following types of projects are included under this paragraph:

1. Projects for construction of a new wastewater treatment plant or upgrade of an existing plant to accept and treat wastewater from a previously unsewered area, such as projects to build or add capacity to clarifiers, aeration basins, stabilization ponds, or sludge facilities.

2. Sewage collection system projects to install sewer pipes where there were none and interceptors to carry wastewater to a new or existing wastewater treatment plant.

**Note:** The projects described under this section are considered “traditional wastewater treatment plant and collection system projects” and are those that use common infrastructure and processes to collect and treat wastewater, including pipes to collect wastewater from homes and businesses and carry the water to a treatment plant that uses techniques and equipment to filter and settle out solids, aerate the water to encourage natural processes of growth of bacteria and other organisms to consume much of the waste, disinfect the processed water, and process the sludge removed from the wastewater. Traditional projects tend to collect and treat point-source pollution only, unless storm sewers contribute to the flow of water to the wastewater treatment plant or the system has infiltration or inflow problems. The purpose of some traditional projects is to fix these types of excess flow issues. Traditional wastewater treatment is discussed in the Primer for Municipal Wastewater Treatment Systems, Publication EPA 832-R-04-001, dated September 2004, available on the U.S. environmental protection agency’s website at <https://www.epa.gov/sites/default/files/2015-09/documents/primer.pdf>.

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

1. The municipality owns each individual system.

2. The municipality is responsible for the proper installation, operation, and maintenance of each individual system.

3. The municipality has 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. The municipality establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual systems, and for monitoring the impact of the systems on groundwater where required by the department.

5. The municipality complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

(b) The access required under par. (a) 3. shall be established through easements, covenants running with the land, or local 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) Individual wastewater treatment systems include cluster systems, mound systems, holding tanks, septic tanks, pipes to transport wastewater, and other alternative systems for small communities.

(3) STORM WATER PROJECTS. A municipality may receive financial assistance under this chapter in accordance with subch. III or IV for a publicly owned project that is necessary to control storm water runoff pollution in order to achieve water quality standards.

(4) INELIGIBLE PROJECTS. The department may determine that an entire project or a portion of a project is ineligible for CFWP financial assistance. If the department determines that a portion of a project is ineligible, it shall specifically identify the ineligible portion and the associated costs, or prorate the amount of financial assistance provided to reflect the appropriate proportion of eligible to ineligible project costs, or both, in the financial assistance agreement. All of the following types of projects or portions of projects are not eligible for financial assistance under this chapter:

(a) Projects of a municipality that is failing to substantially comply with conditions or requirements of s. 281.58 or 281.59, Stats., ch. Adm 35, ch. NR 162, an existing financial assistance agreement or interest rate subsidy agreement with the CFWP, a financial assistance agreement with the safe drinking water loan program under s. 281.61, Stats., or the terms of a federal or state grant used to pay the costs to plan, design, or construct a treatment works or BMP.

(b) As specified in s. 281.58 (8) (a) 2., Stats., privately-owned connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(c) Public sanitary sewer mains, interceptors, and individual systems that exclusively serve development not in existence as of the date the department receives an application submitted by a municipality under this chapter.

(d) Any project from which no construction costs are to be funded through the CFWP, unless another governmental agency is providing financing for the construction costs and the department receives acceptable documentation of the other agency's commitment, as determined by the department, except if purchasing existing treatment works is the general scope of the project.

(e) Dams, pipes, conveyance systems, and BMPs, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(f) Any project of an unsewered municipality that will be disposing of wastewater in the treatment works of another municipality and the unsewered municipality has not executed an intermunicipal agreement under s. 66.0301, Stats., with the other municipality to receive, treat, and dispose of the wastewater of the unsewered municipality.

(g) Any project that includes 2 or more municipalities that utilize shared or interconnected treatment works or a BMP, unless the municipalities served by the project execute an intermunicipal agreement that meets the requirements described in s. NR 162.05 (4) (h). This paragraph does not apply to a metropolitan sewerage district in which all municipalities being served have been annexed into the sewerage district or to a situation in which the intermunicipal exception under s. NR 162.05 (5) has been met.

(h) Projects that have been substantially complete for 3 years or longer.

**NR 162.04 Cost eligibility. (1) ELIGIBLE COSTS.** (a) *Eligible at a subsidized rate.* Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include expenses incurred by the municipality for any of the following items and activities when specific to the scope of a scored project, or when approved by the department as necessary and reasonable for the efficient operation or integrity of the overall treatment works:

1. ‘Abandonment.’ Abandonment of treatment works if approved in the plans and specifications of a scored project or by department staff, including activities such as demolition, re-landscaping, and removal and disposal of municipal waste or other debris.
2. ‘Access roads.’ Construction of roadways necessary to provide appropriate access to facilities such as lift stations and treatment plants.
3. ‘Acquisition of facilities.’ Costs associated with acquiring facilities of an existing treatment works if the municipality will own, operate, and maintain the facilities throughout the term of the financial assistance agreement.
4. ‘Administrative buildings and equipment.’ Buildings, offices, and office equipment and furnishings used for purposes of operating a treatment works, such as administration and storage buildings, if included in the approved plans and specifications or otherwise approved by department staff. The department may prorate costs for buildings, offices, and office equipment and furnishings that are partially used for purposes not related to the treatment works.
5. ‘Administrative costs of a commission.’ Administrative, legal, and other costs incurred by a commission solely for the scored project if identifiable in a contract or agreement between the member municipalities.
6. ‘Compliance with state and federal requirements.’ Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

**Note:** Federal and state requirements may include any of the following: Americans with Disabilities Act design and construction; green project reserve documentation; Davis-Bacon and Related Acts administration as required under Section 513 of the Federal Water Pollution Control Act 33 USC 1372 or other activities associated with wage rate requirements; DBE solicitation and documentation; activities associated with the use of products made in the United States; environmental review of project sites and other activities related to ch. NR 150 compliance, including costs of public notices and hearings; historical, architectural, archaeological, and cultural resources work identified during planning, design, or construction of the project and incurred prior to project closeout; signage requirements, including on a website or at a wastewater treatment facility or project site; audit activities related to the federal single audit act portion of the municipality’s annual audit report until the project is complete.

7. ‘Construction activities.’ Activities defined in s. NR 162.003 (16) and included in construction contracts or performed as force account work, including any of the following:

- a. Replacing, repairing, or rehabilitating a treatment works if identified in the plans and specifications as cost-effective and necessary.
  - b. Restoring streets and rights-of-way and repairing damage to items such as pavement, sidewalks, watermains, and storm sewers necessary as a direct result of construction of the scored project.
  - c. Punch list item activities.
  - d. Acquiring, consuming, or expending materials.
  - e. Obtaining products that comply with federal requirements to use products made in the United States in CWWP projects.
  - f. Other capital costs incurred solely for purposes of the scored project.
8. 'Demolition.' Demolishing existing structures if the demolition is part of a scored project and any of the following applies:
- a. The existing structure is part of the wastewater treatment works.
  - b. The demolition is necessary for site preparation.
  - c. The demolition is included in abandonment procedures as approved in the plans and specifications of the scored project or when otherwise approved by department staff.
  - d. The demolition entails removal of equipment or materials, or both, from inside an existing building or other structure that is part of the treatment works being modified or repurposed as part of the scored project.
9. 'Discharge monitoring.' The cost of equipment owned or to be owned by the municipality for monitoring, sampling, and analyzing industrial discharges to a municipal wastewater treatment works.
10. 'Easements and rights-of-way.' Acquisition of easements and rights-of-way, including purchase cost and administrative and legal expenses.
11. 'Equipment.' Equipment related to the scored project, the costs of which the department may prorate if the municipality intends to use the equipment for multiple purposes rather than solely for the treatment works. Eligible equipment includes any of the following:
- a. Mobile equipment, such as portable stand-by generators, portable emergency pumps, and grounds and maintenance equipment for mowing and snow removal, for the treatment works.
  - b. Spare parts if included in the plans and specifications or otherwise approved by the department.
  - c. Machinery for manufacturing or repairing necessary tools or equipment for the treatment works.
  - d. Computers, tablets, and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the treatment works. Equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, communications, geographic information, and supervisory control and data acquisition are included under this subdivision paragraph.
12. 'Fees.' Fees paid by the municipality for any of the following:

a. Permits obtained for construction, including building, electrical, and plumbing permits, pit or trench dewatering permits, construction site storm water permits, and railroad crossing permits.

Note: Permit fees are not required by the department for waterway projects authorized under ch. 30, Stats., that are funded in whole or in part by any federal or state agency. Therefore, if a municipality at the time of purchase of a permit under ch. 30, Stats., pays a fee for the permit due to not identifying the project as being funded with state or federal funds, the fee is not eligible for reimbursement by the CWFP.

b. Legal fees of an attorney that is not an on-staff municipal attorney, including costs of legal reviews of architectural, engineering, or construction contracts, user charge systems and sewer use ordinances, management plans, intermunicipal agreements, and legal work necessary for securing eligible permits.

c. Service fees paid to a state or federal agency, except administrative fees paid annually along with principal and interest payments on a CWFP loan.

13. 'Groundwater monitoring.' Installing groundwater monitoring equipment or facilities.

14. 'Insurance.' Purchasing insurance necessary during construction of the scored project, including property, liability, builder's risk, and construction insurance.

15. 'Interim debt.' Costs associated with interim debt for the scored project as delineated in sub. (3).

16. 'Laboratories.' Laboratory equipment related to initial setup or a significant upgrade or expansion of an on-site laboratory if requested in the financial assistance application.

17. 'Land Acquisition.' Acquiring land, including purchase cost and administrative and legal expenses if any of the following applies:

a. The land will be used for storage of treated wastewater in land treatment systems before land application.

b. The land will be used for composting or temporary storage of compost residues that result from wastewater treatment if the department has approved a program for use of the compost.

c. The land is property on which the wastewater treatment works, biosolids facility, or lift stations will be located.

d. The land will serve to isolate a treatment facility as required under s. NR 110.15 (3) (d).

e. The land will be used for sludge spreading.

f. The land is the property on which individual systems are or will be located if the systems are publicly owned and maintained.

18. 'Lines to public sewer mains.' Pumping units and pressurized lines from the pumping units to the public sanitary sewer main, or holding and septic tanks and their sewer lines to the public sanitary sewer main, that are included in a sewage collection system, are cost-effective, and are owned and maintained by the applicant municipality.

19. 'Management plans.' Developing a detailed management plan related to a scored project.

20. 'Municipal staff, equipment, and materials.' Municipal expenses incurred solely for the scored project and documented by the municipality as force account work, including any of the following:

a. Salary and benefits of municipal employees, except elected officials or on-staff attorneys, for time spent working directly on the scored project.

b. Expendable material costs incurred by the municipality.

c. Estimated costs incurred using equipment owned by the municipality.

21. 'Municipally owned facilities on private property.' Grinder pumps, sewer laterals, service connections, service branches, risers, and riser pipes if located on private property and municipally owned and municipally maintained or if located on municipally owned land.

22. 'Pretreatment or toxicity reduction.' Developing a municipal pretreatment or toxicity reduction program and constructing facilities to be used by the municipal treatment works in the program, including monitoring equipment.

23. 'Professional services.' Engineering, architectural, legal, and other professional services and fees, including any of the following:

a. Conducting value engineering studies or analyses during the design phase.

b. Conducting system evaluations and studies.

c. Developing facilities plans and engineering reports.

d. Developing, preparing, and submitting plans and specifications.

e. Preparing, printing, and distributing bidding documents.

f. Gathering documents and information for, completing, and submitting CWWFP financial assistance applications or interest rate subsidy applications and other forms required for financial assistance.

g. Developing or revising an operations and maintenance manual.

h. Preparing a plan of operation for the project.

i. Advertising for and conducting bid lettings.

j. Analyzing bids, preparing award recommendations, and preparing contracts.

k. Providing construction management, observation, and inspection.

L. Preparing for and facilitating public education and participation opportunities.

m. Travel, indirect costs, and labor for services provided for the scored project.

n. Developing or updating a user charge system or a sewer use ordinance for wastewater treatment and the sewerage system in the municipality.

o. Preparing environmental assessment reports and evaluations.

p. Conducting archaeological surveys and gathering historical site information.

q. Providing municipal advisor or bond counsel services related to loan closing or the issuance of bonds.

r. Preparing a water conservation plan.

s. Producing record drawings.

t. Updating or upgrading treatment works maps of the areas impacted by the scored project.

u. Monitoring required use of American-made products.

v. Providing administration of activities related to the federal Davis-Bacon and Related Acts or other wage requirements.

**Note:** Links to the Davis-Bacon and Related Acts can be found on the U.S. department of labor's website at <https://www.dol.gov/agencies/whd/government-contracts/construction/laws>. The Davis-Bacon Act is found in 40 USC 3141 et seq. with procedures and rules in 29 CFR Parts 1 to 7.

w. Conducting research or energy audits for incorporation of energy and water efficiency and conservation into the planning and design of a project.

**Note:** When 10 percent or more of the project's construction and equipment costs are deemed ineligible for CWWP financial assistance, the costs associated with engineering for those ineligible construction and equipment costs are also ineligible under sub. (2) (h).

24. 'Project site.' Construction-related work activities at the project site of a scored project, including any of the following:

a. Landscaping areas impacted by construction of the scored project.

b. Reconnecting laterals due to the rehabilitation of a publicly-owned treatment works.

c. Relocating watermains or storm sewers if necessary for construction, and replacing pipes with the same size or required minimum size pipe if breakage from construction occurs.

d. Erecting project and treatment works identification signs.

e. Preparing a site for construction, including surveying, staking, and grading.

f. Restoring the construction site to original condition or, when necessary, upgrading the site to meet state and local requirements.

g. Removing, relocating, or replacing utilities, providing temporary utilities, installing new utility equipment, or upgrading utilities if necessary for construction of the scored project and the recipient is legally obligated to pay these costs. This subdivision paragraph does not apply to storm water pipes.

25. 'Safety.' Purchasing and installing safety equipment related to the scored project.

26. 'Sanitary sewers.' Evaluation, new installation, replacement, and lining and other rehabilitation of sanitary sewer pipes.

27. 'Security.' Purchasing and installing security equipment and appurtenances for the treatment works, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.

28 'Septage facilities.' Facilities for receiving, storing, or treating septage.

**Note:** "Septage," under s. 281.58 (1) (cv), Stats., means the scum, liquid, sludge, or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system.

29. 'Sludge removal.' Removing sludge when necessary as part of a scored project, including treatment plant upgrades, lagoon abandonment, conversion of a lagoon into an equalization basin, or other capital improvements.

30. 'Special assessment fees.' Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments toward repayment of its CWFPP loan.

31. 'Staffing evaluations.' Conducting an evaluation of staffing needs to determine appropriate changes to staffing levels as a result of the scored project.

32. 'Startup.' Startup expenses for a treatment works incurred solely because of the scored project, including costs for any of the following:

a. Preparing a startup curriculum and training materials.

b. Initial training of operating personnel on new or modified equipment, laboratory procedures, computers, controls, records management, and treatment processes.

c. Obtaining expert operational assistance for adjustments to the treatment process.

d. Implementing a maintenance management system.

e. Trucking seed sludge for startup of the activated sludge process.

f. Attending off-site formal training programs if necessary for the initial operation of the constructed treatment works.

g. Purchasing the first fuel fill-up for new equipment, such as generators.

h. Obtaining necessary computers, upgrades, and software.

33. 'Storm sewers.' a. Replacing storm sewers of the same size or required minimum size if breakage occurs due to construction of a scored project and the existing storm sewers are in direct conflict with the installation of new sanitary sewer pipes in a new location.

b. Installing new or replacing existing storm sewers or BMPs for controlling on-site runoff at treatment facilities, lift stations, septage receiving facilities and other treatment works facilities and properties.

**Note:** Storm water control sewers or BMPs described in subd. 33. are considered wastewater treatment projects as they are designed for purposes of controlling storm water around wastewater treatment works facilities, and projects for these sewers or BMPs would be funded under subch. II rather than under subch. III for storm water projects.

34. 'Street restoration.' Restoring streets and rights-of-way, and repairing items damaged during construction of the scored project, such as pavement, sidewalks, water mains, and storm sewers. Eligibility of costs may be prorated based on participation by one or more other funding sources, or on the percent of the project attributable to CWFPP-eligible activities.

**Note:** Other funding sources that tend to participate in the types of projects that involve street restoration include the department of transportation, the community development block grant program, and the U.S. department of agriculture rural development community programs. Proration of costs can be due to the other funding source covering a portion of costs that would otherwise be eligible for CWFPP funding or because some of the project costs are not eligible, such as watermain costs being ineligible when the project purpose is to replace both watermains and sanitary sewers.

35. 'Watermains.' Relocating watermains if necessary for construction, and, if breakage due to construction of a scored project occurs, replacing watermains of the same size or required minimum size.

(b) *Eligible at market rate.* Costs eligible for market interest rate financing of a scored project include any of the following:

1. The cost of reserve capacity for sewage collection system, interceptor, or individual system projects in unsewered municipalities necessary to serve projected flows beyond the initial flows expected at the project completion date.
2. The cost of reserve capacity for wastewater projects necessary to treat projected flows beyond 10 years from the project completion date.
3. The cost of capacity for present and future flows from industrial wastewater users or from industrial areas regulated under ch. NR 216.
4. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5 percent of the total flow to the treatment works.
5. The cost of any portion of a project to correct violations of effluent limitations contained in a permit issued under ch. 283, Stats.
6. Costs for providing sewers in a previously unsewered area in accordance with s. 281.58 (8) (c), Stats.

**Note:** A scored project in an unsewered area is eligible for below-market-rate financing if the department finds that at least two-thirds of the initial flow will be wastewater originating from residences in existence at least 20 years prior to submittal of the financial assistance application. If an unsewered project does not meet the two-thirds rule, s. 281.58 (8) (c), Stats., allows the CWFP to fund the project at market rate only.

7. The amount of project costs determined appropriate for a sanction under s. NR 162.08 (4) (b) for noncompliance with DBE good faith effort requirements established in s. NR 162.08 (4) (a).

(c) *Market rate cost calculation.* 1. The amount of the costs described in par. (b) 1. to 4. is determined using a parallel cost percentage that is calculated as follows:

- a. Determine the total design capacity based on total flows and loadings.
- b. Calculate a reduced capacity condition by subtracting the flows and loadings associated with par. (b) 1. to 4. from the total design capacity.
- c. Estimate the eligible project costs associated with each of the conditions in subd. 1. a. and b.
- d. Divide the cost of the reduced capacity condition by the costs of the total design capacity.

$$PC = RC/DC$$

Where:

PC . . . is the parallel cost percentage expressed as a decimal.

RC . . . is the cost associated with the reduced capacity condition.

DC . . . is the cost associated with the total design capacity.

2. The amount of market rate project costs in par. (b) 1. to 4. is calculated as follows:

$$EM = (TP)(1-PC)$$

Where:

EM . . . is the amount of project costs eligible for market rate financing only.

TP . . . is the total project cost eligible for CWFP financing.

PC . . . is the parallel cost percentage expressed as a decimal.

3. If the department determines that the project includes other market rate costs as described in par. (b) 5. and 6., the amount of those costs shall be subtracted from the amount eligible for below-market rate financing and added to the amount of market rate costs calculated in subd. 2.

**Note:** All questions relating to cost eligibility or allocation shall be resolved prior to the execution of the financial assistance agreement in accordance with s. NR 162.15.

(2) **INELIGIBLE COSTS.** Costs for items and activities not directly associated with or not necessary for the construction or startup of a scored project are not eligible for financial assistance unless specifically approved by the department as necessary and reasonable for the efficient operation or integrity of the overall treatment works or BMP. Ineligible items and activities include all of the following:

(a) *Allowances.* Any allowance or contingency amounts built into a bid contract for nonspecific or ineligible items or activities.

(b) *Basin planning.* Basin or areawide planning not related to the scored project.

(c) *BCPL ineligibles.* For a project receiving interest rate subsidy under subch. IV, project costs determined to be ineligible for loan assistance from the BCPL.

(d) *Bonus payments.* Bonus payments not legally required for completion of construction before a contractual completion date.

(e) *Buying capacity.* Purchase cost of buying capacity in an existing treatment works that is not being expanded.

(f) *Certification.* Fees for operator certification training.

(g) *Conflict of interest.* Costs incurred under a contract that 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, award, or administration of a contract supported by the CWFP and any of the following conditions exist:

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

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

(h) *Engineering.* Engineering costs relating to ineligible construction costs when the ineligible construction and equipment costs are more than 10 percent of total construction and equipment costs.

(i) *Grant administration.* Any costs for administering or applying for funding from sources other than the CWFP, such as U.S. department of agriculture's rural development programs, a community development block

grant program, federal state and tribal assistance grants, U.S. army corps of engineers, focus on energy, or other non-CWFP federal or state government loan or grant programs, or other types of financial assistance programs.

(j) *Hookup charges.* Hookup charges imposed by one municipality on another for hooking into a treatment works or BMP, or transport system to such a facility, unless the charges are based on identifiable capital improvement costs incurred by the municipality imposing the charge, proportional to the capacity to be used by the municipality hooking up, and included in an intermunicipal agreement meeting the requirements of s. NR 162.05 (4) (h).

(k) *Industrial facilities.* Costs associated with privately-owned pretreatment facilities and monitoring equipment used by industry for sampling discharges to a municipal treatment works.

(L) *Interim debt.* Interest or principal payments on interim debt paid by the municipality out of its internal funds rather than capitalized funds, unless DOA notifies the department that such payments are eligible under the particular circumstances.

**Note:** The ineligibility of interest or principal payments in par. (L) is based on U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(m) *Late fees.* Interest or late fees on payments for services provided to the municipality in relation to the scored project.

(mm) *Laterals.* Privately-owned connection laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(n) *Leases.* Costs related to leasing land or buildings.

(nm) *Mismanagement and litigation.* Costs of claims against the recipient resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others and costs resulting from litigation of contract disputes, liquidated damages, appeals, and other related disputes.

(o) *Negligence.* Costs incurred due to negligence or error of a party contracted by the municipality.

(om) *No construction.* All costs of a project if the municipality does not finance some construction costs through the CWFP, unless the department is cooperating with another governmental funding agency to provide an affordable financing package for the project, the other funding agency is financing the construction costs, and the department receives acceptable documentation of the other agency's commitment.

(p) *O&M.* Operations and maintenance expenses as defined in s. NR 162.003 (50) and (40), respectively.

(pm) *Ordinary municipal operating expenses.* Ordinary operating expenses of a municipality, such as salaries and expenses of elected officials and on-staff attorneys, postage, utility bills, and annual financial audits.

(q) *Other funding.* Costs for which payment has been or will be received from another funding source, including costs for which funds from the U.S. department of agriculture's rural development program or a community development block grant program are committed or costs covered by a focus on energy grant. If the municipality does not receive the funds expected from the other source, the department may consider the costs of

the work that was to be funded through the other source to be eligible for CWWP financial assistance unless the costs are considered ineligible under another paragraph in this subsection. This paragraph does not apply to a municipality receiving a loan from the BCPL for a scored project receiving interest subsidy under subch. IV.

(qm) *Outside of scope.* Costs outside the scope of the scored project unless the department approves the costs as necessary and reasonable to improve the overall integrity, operation, or functionality of the treatment works or BMP.

(r) *Personal injury.* Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise.

(rm) *Post-closeout.* Expenses incurred after the project completion date of the scored project.

(s) *Private septic payments.* Credits or payments to private septic owners made as a result of complying with s. 60.726, Stats.

(sm) *Sludge removal.* Removing sludge from a wastewater facility unless it is part of the activities necessary for a scored project.

(t) *Special devices.* Waste-generating fixtures and associated plumbing from a residence or commercial establishment to a treatment unit, and modifications to homes or other buildings for installation of special devices.

(tm) *Special districts.* Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, and joint commissions.

(u) *Storm water pipes.* Storm sewer pipes unless the pipes are carrying water to treatment. Portions of storm sewer pipe construction may be eligible in a scored project if the pipes need repair or replacement due to breakage during construction of the scored project, as determined by the department.

(um) *Violation penalties.* Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

(v) *Warranty inspections after construction completion.* Costs related to post-construction warranty inspections, including costs of a consulting engineer or a third-party inspector, and costs of extended warranties or service contracts that go beyond construction completion.

(vm) *Watermains.* Watermain construction, replacement, or repair unless the watermain is needed to carry water to a part of the treatment works, or the watermain work is necessary as a direct result of work performed for a scored project, such as moving a watermain to allow appropriate distance between it and a sanitary sewer pipe being constructed in the scored project or repairing or replacing a watermain damaged during construction of the scored project.

(w) *Wisconsin fund facilities.* The acquisition of a treatment works built with Wisconsin fund grant program monies.

**Note:** The Wisconsin fund grant program was created to fund municipal wastewater treatment facility projects required to achieve the federal goal of “fishable and swimmable” for the state’s waters. The grant program was administered under ch. NR 128, which

was created in 1978. Final grant closeouts of Wisconsin fund projects occurred during the 1990s. This grant program preceded the CWFP which was created in 1987 Wisconsin Act 399.

(x) *WPDES permit fees.* The cost of a WPDES permit unless it is a special permit specific to the project construction.

(3) **LIMITATION ON ELIGIBILITY OF INTERIM DEBT COSTS.** (a) *Net interest expense.* Interim debt interest expenses shall be offset with any interest earnings from the investment of the proceeds from the interim debt to determine the amount eligible for CWFP financial assistance.

(b) *Interim debt issuance costs.* The amount of interim debt issuance costs eligible for financial assistance is limited to \$15,000 plus 0.5 percent of the total eligible face amount of the interim debt. If interim debt is rolled over or renewed, the face amount may not be counted multiple times in calculating the eligible face amount of interim debt for purposes of this limit.

(c) *Interim interest costs.* The period of time for which interest on interim debt is eligible for financial assistance shall run from no earlier than 18 months prior to the start of construction to the earliest of the following:

1. The date of the first disbursement of the financial assistance.
2. One year following substantial completion of the project.

(d) *Cost proration.* If the term of the interim debt exceeds the limit in par. (c), the interim debt costs shall be prorated using the length of the eligible term divided by the total time that the interim debt is outstanding. If the interim debt is not exclusively for the CWFP scored project, costs shall be prorated according to the proportion of the total debt that is for the scored project.

(e) *Maximum principal.* The amount of interim debt principal that may be refinanced with CWFP financial assistance shall not exceed the total amount of the interim debt that was spent on eligible project costs.

**NR 162.05 Application process. (1) NOTICE OF INTENT TO APPLY SUBMITTAL.** A municipality shall submit notice of its intent to apply for financial assistance via the department's online intent to apply and priority evaluation and ranking form system by any applicable deadline set in the CWFP annual intended use plan. The municipality or its designated representatives shall complete the requirements established by the department for gaining access to and submitting information through the department's online intent to apply system. Information provided to the department through the intent to apply system shall include all of the following:

**Note:** Instructions regarding the online intent to apply system are available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html).

(a) A clear, concise, and comprehensive project description that includes the problem or concern being addressed, the general solution proposed through a single project, and detailed information regarding what structures are to be constructed, what equipment is to be purchased and installed, and project location, including detailed information for purposes of eligibility determinations regarding storm sewer or watermain construction

being done at the same time as sanitary sewer construction on the same block of a street or in the same intersection.

(b) Contact information.

(c) An estimate of the total project cost and what amount of the cost is likely to be requested from the CWWFP.

(d) Estimated or actual dates related to the bidding and construction timeline of the project.

(e) Any other information required to complete the submission in the department's online intent to apply and priority evaluation and ranking form.

**(2) FACILITIES PLAN.** A municipality shall submit a facilities plan or other applicable plan to the department for approval. The municipality shall receive approval of the facilities plan or other applicable plan prior to submitting an application for financial assistance under this subchapter.

**(3) APPLICATION PROCEDURES.** A municipality shall apply for financial assistance in accordance with s. 281.58 (9), Stats. All applicants must submit the required information and documentation through the department's online application system.

**Note:** Directions regarding online submittal are available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/EIF.html>. An interest rate subsidy application is a different form and must be submitted in accordance with s. NR 162.40.

**(4) CONTENTS OF APPLICATION.** The applicant shall submit a complete application, including each of the following items, if applicable to the project:

(a) Evidence of compliance with sub. (2).

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats. An applicant may be denied funding if the applicant does not provide appropriately complete project plans and specifications to the department prior to or with the application. The applicant shall submit a copy of approvable plans and specifications with the application in addition to the plans and specifications submittal to the department for plan review under chs. NR 108 and 110.

(c) Completion of the required fields in and upload of required documentation to the department's online application system, including all of the following:

1. A clear, concise, and comprehensive project description, including any modifications to the project description provided in the online intent to apply system.

2. Estimated or actual construction costs.

3. Identification of known ineligible costs included within the total budget provided in the online application.

4. Information regarding assistance received or expected from another funding source.

**Note:** The project description may already be included in the online application as it should transfer over to the application system from the online intent to apply system. When that transfer of information is successful, the applicant must only provide information

regarding any modifications to the project description that is already included in the application rather than providing an additional complete project description.

**Note:** Under s. NR 162.04 (2) (om), the CWFPP shall not provide any financial assistance for a project if construction costs are not included as part of the project costs to be funded by the CWFPP, with the exception of certain situations in which other funding sources are also participating in the financing of the project or the project is the purchase of a package wastewater treatment plant or solely the purchase of equipment in a phase of a multi-phase project.

(d) Items or information for compliance with federal regulations identified by the department in the online application system as required for a complete application; these items may include documentation of compliance with wage rate laws, completed federal forms, and information regarding green project components, cost and effectiveness of the project, or procuring American-made products for use in the project.

(e) A copy of each executed engineering contract and any associated existing contract amendments for planning and design of the project if funds are requested for planning and design in the application project budget.

(f) A copy of each executed engineering contract and any associated contract amendments for construction management if funds are requested for construction management in the application project budget and the contract or amendment is available at the time of application submittal.

(g) A copy of each executed non-engineering professional services contract related to the project and any associated amendments if funds are requested in the application project budget for services included in the contract and the contract or amendment is available at the time of application submittal.

(h) A proposed or an executed intermunicipal agreement for each municipality served by the project when 2 or more municipalities utilize shared or interconnected wastewater treatment works. This paragraph does not apply to a metropolitan sewerage district in which all municipalities being served have been annexed into the sewerage district or to a situation in which the intermunicipal exception established in sub. (5) has been met. This paragraph does apply to biosolids or other treatment facilities when the applicant has ownership in the facility or has purchased capacity in the facility. Prior to receiving financial assistance, the applicant shall ensure that each required intermunicipal agreement does all of the following that are applicable to the project:

1. Identify ownership for each individual portion of the wastewater treatment works, including wastewater treatment plants, interceptors, sewage collection systems, lift stations, biosolids facilities, and privately-owned treatment works.

2. Establish the term of the intermunicipal agreement unless it is effective in perpetuity. If the intermunicipal agreement is new or being negotiated specifically for the project for which financial assistance is being requested, the term shall be for at least the term of the loan. If there is an existing intermunicipal agreement in place that meets the requirements of this paragraph but expires during the term of the loan, the municipality shall renegotiate or extend the existing agreement prior to the end of its term and maintain the intermunicipal agreement throughout the term of the loan.

3. Demonstrate the basis for generating revenue for operation, maintenance, and replacement costs based on actual use or another equitable method, and state the parties that are responsible for paying these charges.

4. Indicate the method for generating revenue for capital costs and indicate who is responsible for payment.

5. Indicate that the owner of the regional facility shall accept the applicant's wastewater and identify the boundary from which the applicant's discharge originates.

(i) Financial information required by DOA to be used in determining the affordability of the proposed project, the financial capability of the municipality, and the adequacy of the pledge of revenues to repay the obligation securing the proposed financial assistance.

(j) A copy of the existing user charge system information regarding the proposed user charge system, and a sewer use ordinance for the wastewater treatment works.

(k) Any existing or proposed contracts with users of the wastewater treatment works.

(L) Documentation applicable to U.S. internal revenue service tax information as indicated in the department's online application system.

(m) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds that meets the requirements established in U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(n) A copy of the debt instrument of any interim debt to be refinanced with CWFPA financial assistance.

(o) A completed design life calculation worksheet if the applicant at the time of application requests or is interested in a loan term that is greater than 20 years. All of the following apply to applicants requesting a loan term greater than 20 years:

1. An applicant requesting a loan term greater than 20 years shall pledge system revenues to secure the CWFPA loan.

2. A loan term greater than 20 years is not available for projects for which the applicant pledges general obligation bonds to secure the loan.

Note: The design life calculation worksheet is an excel spreadsheet that is available on the department's website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html#cwform>.

**(5) INTERMUNICIPAL EXCEPTION.** The department may waive the requirement of an intermunicipal agreement if an order under s. 281.43 (1), Stats., has been issued, or if the department has obtained executed intermunicipal agreements for subscribing municipalities and the receiving municipality whose annual debt payments, design flow capacities, design suspended solids capacities, and wastewater projects' design biochemical oxygen demand (BOD) capacities total at least 90 percent of the total for the regional treatment works or BMP.

**(6) APPLICATION SUBMITTAL DEADLINE.** In fiscal years for which the department sets an application submittal deadline for all or a specific type of funding, the applicant shall submit the items and information required in the department's online application system by the application submittal deadline in order to be

considered eligible to obtain financial assistance from funds available during the funding cycle for which the deadline is set. The department may set application submittal deadlines in the intended use plan.

(7) APPLICATION ACCEPTANCE. The department shall accept an application as complete after all of the following occur:

(a) The department determines that it received all the applicable items and information required under sub. (4) for the scored project. The department may consider a submitted application complete for purposes of acceptability if the application is otherwise complete but a wrong document was uploaded to the department's online application system, the proper document existed at the time of application submittal, and the applicant uploads the proper document to the system within a timeframe specified by the department.

(b) The department receives a certification worksheet documenting DOA's initial determination that there is a reasonable likelihood the municipality will be financially capable of repaying a loan from the CWFPP.

(8) PROJECTS FUNDED JOINTLY WITH OTHER AGENCIES. If a project is receiving funding from another state or federal agency, and the department is unable to obtain the same type of documentation typically submitted for a specific project requirement due to differences between agencies in items or procedures, including a project that is let with a group of projects by the Wisconsin department of transportation or a project for which the contents of a contract includes language specific to another agency, the department may determine what documentation is appropriate to satisfy the application requirements.

(9) DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT. The department shall set in the CWFPP annual intended use plan a deadline for signing a financial assistance agreement. An applicant shall sign the financial assistance agreement within the timeframe set by the department. An applicant shall time its submittal of the application accordingly. If a financial assistance agreement is not signed within the established timeframe, the applicant's project shall lose its CWFPP allocated subsidy.

**NR 162.055 Legal opinion regarding land ownership.** For all projects for which an applicant requests financial assistance through the application process under s. NR 162.05 or 162.24, the applicant shall obtain a legal opinion regarding ownership of the land on which the project takes place. The applicant shall assure that all of the following requirements applicable to the project, the legal opinion regarding land ownership, and the land on which the project is being constructed are met:

(1) ATTORNEY'S REVIEW. The legal opinion regarding land ownership shall be written by the applicant's attorney and shall include information regarding the documents the attorney reviewed or researched to prepare the legal opinion. The purpose of the legal opinion regarding land ownership is to provide evidence to the department that the project is being constructed on land that is and will continue to be under the control of the municipality; therefore, appropriate documents for the attorney to review include any of the following:

(a) Plat maps.

- (b) Department of transportation permits.
- (c) Municipal easement documents.
- (d) Utility easement documents.
- (e) County property tax documentation.
- (f) Property titles and deeds.
- (g) Project site maps and plans.
- (h) Other permits and legal documents applicable to the land on which the project is taking place.

**(2) MUNICIPALITY OWNS THE LAND.** If the applicant already owns the land on which the project is taking place, the legal opinion under sub. (1) shall include all of the following:

(a) A statement confirming that the applicant owns and controls the land on which the project is being constructed.

(b) A statement confirming that the land on which the project is taking place is available for the project or will be available prior to the start of construction.

(c) A statement confirming that the project is being constructed within the boundaries of the land owned and controlled by the municipality.

**(3) TITLE OPINION IN LIEU OF LAND OWNERSHIP LEGAL OPINION.** If a municipality is unable to obtain a legal opinion as proof of land ownership from their municipal attorney for purposes of meeting the requirements under subs. (1) and (2), the department may accept or require a title opinion as proof of land availability.

**(4) MUNICIPALITY DOES NOT OWN THE LAND.** If the municipality does not own all of the land on which the project is being constructed, the applicant shall obtain and maintain for at least for the term of the financial assistance agreement but preferably in perpetuity easements or permits for access to the property that is not under ownership of the municipality but is necessary for the project. For land not owned by the municipality, the land ownership legal opinion under sub. (1) shall include all of the following:

(a) A statement confirming that all necessary easement rights are secured for the property on which the project is taking place.

(b) A statement affirming that the easement rights are at least for the term of the financial assistance agreement.

(c) Information regarding permit access to the land if the applicant cannot obtain an easement, including situations under sub. (5) in which the department of transportation has control of a highway that is disturbed during project construction.

**(5) PERMIT ACCESS.** (a) If project construction requires work on a state or federal highway, the applicant shall assure that all permits necessary for the project are obtained from the department of transportation for constructing, operating, and maintaining the applicant's infrastructure in DOT rights-of-way throughout the term of the financial assistance agreement.

(b) If the applicant receives a permit from the department of transportation for a project, the attorney writing the legal opinion under sub. (1) regarding land ownership and control shall include the department of transportation permit number in text regarding easements and rights-of-way and include a statement affirming the applicant's legal ability to perform future maintenance of pipes, catch basins, manholes, or any other infrastructure that is part of the project at least throughout the term of the financial assistance agreement.

(c) If there are other permits or agreements necessary for access to the land on which the project is taking place, and the permits or agreements needed are not from the department of transportation, the attorney shall include information regarding the permit or agreement access similar to that required when there is a department of transportation permit.

**NR 162.06 Financial assistance requirements.** Before executing a financial assistance agreement for any project under this subchapter, the department shall determine that all of the applicable requirements of s. NR 162.05 are met and that all of the following are satisfied:

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

(a) Certification for force account work as required by s. NR 162.08 (5).

(b) Initial flow documentation, if the scored project or a portion of the scored project is to construct a sewage collection system in or extend an interceptor to an unsewered area.

(c) Legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project. The legal opinion must include all the applicable information required under s. NR 162.055.

(d) Items related to bids for each prime contract, including all of the following:

1. The proposal of the successful bidder.

2. An engineer's evaluation of the bids, including bid tabulation and an award recommendation.

3. If an applicant awards a construction or equipment contract to a contractor other than the lowest bidder, any of the following:

a. Written documentation of the reasons why the lowest bidder is considered nonresponsive or not responsible.

b. A legal opinion stating that the award to a contractor other than the lowest responsive, responsible bidder meets the requirements of municipal bidding law.

4. Solicitation and utilization information regarding DBEs.

5. Evidence of bid advertisement, including a copy of the affidavit of publication and a copy of the advertisement, which should include appropriate language regarding DBEs submitting bid proposals, American-made product requirements, and wage rates, when applicable.

6. A copy of the bid bond and the performance bond.

7. Evidence of award of the construction contract by the municipality, which may be a notice of award, a municipal resolution, or minutes from the municipal meeting at which the determination of award was made.

8. A complete copy of the executed construction contract with up-to-date copies of all addenda, attachments, appendices, appropriate Davis-Bacon or other wage rate information, and all other applicable documentation that makes the contract complete. If available, the contract submittal should be a copy of the conformed contract.

9. Documentation of the construction start date and expected substantial and final completion dates.

**Note:** A notice of award and a notice to proceed are preferred but not required for this documentation.

10. All negotiated pending change orders and all executed change orders.

(e) A request for disbursement and required supporting invoices, payoff statements for interim debt, and other applicable documentation of expenditures, including a copy of the title or deed for land purchased for the project if the applicant is requesting financial assistance for land purchase costs, and complete copies of any contract change orders for which costs are included in the request for disbursement, along with a copy of the department construction management engineer's change order approval.

(f) Evidence that a bond counsel is drafting legal documents related to the authorization and issuance of bonds for action at a municipal meeting prior to the scheduled loan closing.

(g) Completed federal forms, if applicable, and any other required documentation of compliance with federal requirements, which may include certification of compliance with Davis-Bacon wage rate requirements, certification of use of American-made products in the project, and the cost, effectiveness, energy efficiency, and water efficiency of the selected design.

(h) Parallel cost percentage information.

(i) An executed intermunicipal agreement or multiple executed agreements described under s. NR 162.05 (4) (h), if 2 or more municipalities utilize shared or interconnected wastewater treatment works.

(j) Proof that applicable ordinances required under s. NR 162.07 have been adopted by the municipality.

(k) A copy of the adopted user charge system and proof that the municipality adopted the user charge system.

(L) A copy of each executed construction management or other professional services contract associated with the project if funds are requested for services included in the contract.

(m) A completed design life calculation worksheet with any backup documentation required by the department if, after the application submittal, the applicant requested a loan term greater than 20 years. All of the following apply to applicants requesting a loan term greater than 20 years:

1. The applicant shall submit the design life calculation worksheet at least 9 weeks prior to loan closing.

2. An applicant requesting a loan term greater than 20 years shall pledge system revenues to secure the CWFP loan.

3. A loan term greater than 20 years is not available for projects for which the applicant pledges general obligation bonds to secure the loan.

**Note:** The design life calculation worksheet is an excel spreadsheet that is available on the department's website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html#cwform>. The department strongly encourages applicants to submit the design life calculation worksheet with the rest of its application submittal in order to allow enough review and response time for the worksheet contents. Later submittal of the design life calculation worksheet may delay a loan closing.

(2) The department has done all of the following, if applicable to the scored project:

(a) Complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

(b) Reviewed and approved the plans and specifications.

(c) Reviewed and concurred with the parallel cost percentage provided by the applicant.

(d) Reviewed and concurred with the design life calculation for the scored project if the applicant is requesting a loan term greater than 20 years.

(3) The scored project has met the priority requirements of subch. V.

(4) The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the wastewater treatment works throughout the applicant's jurisdiction.

(5) DOA finds that the municipality is likely to be able to meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

(6) The applicant has received or applied for permits required by the department for the scored project, including those under chs. 30 and 283, Stats.

**NR 162.07 Requirements for a user charge system and sewer use ordinance. (1) GENERAL.** Any user charge system and applicable ordinances adopted by a recipient shall be maintained in accordance with s. 281.58 (14) (b) 7., Stats., for the useful life of a wastewater treatment works. The applicant shall submit user charge information to the department and shall certify to the department that the user charge system meets all the applicable requirements in this section.

(2) **APPLICABILITY.** A user charge system and sewer use ordinance is required of the applicant receiving financial assistance under this subchapter for any wastewater treatment works project.

(3) **USER CHARGE SYSTEM REQUIREMENTS.** Any user charge system under this section shall do all of the following:

(a) Require that each user or user class pays its proportionate share of operation and maintenance costs, including replacement costs, of the wastewater treatment works within the recipient's service area.

(b) Provide that the costs of operation and maintenance for all flow not directly attributable to users be distributed proportionally among all users of the recipient's wastewater treatment works.

(c) Require that the charges for users or user classes generate sufficient revenue to pay costs identified in par. (e) 2. and 3.

(d) Require that the recipient establish an equipment replacement fund, maintain the equipment replacement fund as a separate fund of the municipality, and make deposits to this fund on an annual basis or maintain a balance acceptable to the department. This fund is to be used for the costs of replacing equipment related to the wastewater treatment works. The municipality may also use the equipment replacement fund for unexpected, unbudgeted costs incurred for continuing effective operations of the treatment works. The municipality shall periodically make appropriate adjustments to the equipment replacement fund deposit schedule or balance, including adjustments needed to restore the fund balance following an expenditure from the fund.

(e) Establish a financial management system that accounts for all of the following:

1. Revenues generated.

2. Costs of operations and maintenance of the wastewater treatment works, including an appropriate amount of money to be deposited annually into the equipment replacement fund.

3. Debt service costs, including debt service reserves and debt coverage requirements. In this subdivision, “debt coverage” means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

(f) Require the review, at least once every 2 years, of the wastewater contribution of users and user classes, the total costs of operations and maintenance of the wastewater treatment works, and the overall user charge system.

(g) Require that each user that discharges any toxic pollutants or high strength wastes to a wastewater treatment works pay for any increased costs associated with the discharge.

(h) Provide that each user is notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to service provided by the wastewater treatment works.

(i) Be based on actual or estimated use except as provided for under s. 281.58 (14) (b) 7., Stats.

**(4) MUNICIPAL RESPONSIBILITIES.** The municipality shall do all of the following:

(a) Incorporate the user charge system in one or more municipal ordinances or other legislative enactments and make reference to the user charge system or systems in intermunicipal agreements if the project serves more than one municipality.

(b) Terminate any term or condition of any pre-existing agreement or contract between the recipient and a user that is inconsistent with the requirements of this section.

(c) Maintain records to document compliance with this section.

(d) For a wastewater treatment works, enact and enforce a sewer use ordinance that does all of the following:

1. Prohibits any new connections from sources that will add substantial infiltration or inflow into the sanitary sewer system.
2. Requires that new sewers and connections to the sewer system be properly designed and constructed.
3. Requires that wastewater introduced into the treatment works not do any of the following:
  - a. Endanger public safety or the environment.
  - b. Jeopardize the physical integrity of the treatment works.
  - c. Cause substantial upset to the treatment process.
  - d. Cause a violation of effluent or water quality limitations.
4. Defines normal domestic strength of the wastewater.
5. Controls and monitors industrial discharges by requiring control manholes, pretreatment, and grease, oil, and sand interceptors.
6. Provides a methodology for establishing sewer use rates that complies with sub. (3). A municipality may include an optional class of low-income residential users, with incomes below a level established by the municipality, who are charged at a lower rate than other residential users.
7. Defines violations and penalties for violators.

(5) DEPARTMENT REVIEW. The department may annually review a recipient's user charge system to ensure that it continues to meet the requirements of this section.

**NR 162.08 Procurement.** (1) APPLICABILITY. Procurement of professional services and construction contracts by financial assistance recipients under this chapter shall be in accordance with local, state, and federal laws applicable to the CWFP project. No contract may be awarded to any person or organization that does not operate in conformance with state and federal civil rights and equal opportunity laws.

(2) 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 received under this subchapter or subch. III or the interest rate subsidy agreement received under subch. IV.

**Note:** See ss. 60.47, 60.77 (6) (a), 61.54, 61.55, 62.15, 66.0131 and 66.0901, Stats.

(3) PROFITS. Contractors may earn only fair and reasonable profits under contracts for projects receiving CWFP assistance. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

(4) SOLICITATION OF DISADVANTAGED BUSINESS ENTERPRISES. (a) Whenever a recipient or its prime contractor is procuring construction, equipment, raw materials, or supplies for a project funded wholly or in part with CWFP financial assistance, the recipient or contractor shall make a good faith effort to provide DBEs opportunities to compete for participation in the project. Recipients and their prime contractors shall comply with DBE regulations contained in s. 40 CFR part 33, as modified by memoranda and exceptions, in the manner

determined by the CFWP. Failure to comply with DBE regulations and requirements may result in a sanction as provided under par. (b). Recipient and contractor efforts under this subsection may include any of the following activities:

1. Using outreach and recruitment activities to make DBEs aware of contracting opportunities, including any of the following activities:
  - a. Including a sentence in bid advertisements that encourages DBEs to submit bids or proposals and submitting a copy of the advertisement to the department with evidence of publishing.
  - b. Contacting DBEs via telephone, faxed or mailed letter, e-mail, or other methods of correspondence, informing the DBEs of the project and encouraging their participation, and submitting documentation of those contacts to the department.
  - c. Advertising the project in trade publications, and submitting a copy of the advertisement and evidence of publishing to the department.
2. Arranging timeframes for contracts and establishing delivery schedules when possible in a way that encourages and facilitates participation by DBEs in the competitive process, including posting solicitations for bids or proposals for at least 30 calendar days before the bid or proposal closing date, when possible.
3. Dividing total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by DBEs in the competitive process.
4. Considering contracting with a consortium of DBEs when a contract is too large for one DBE to handle individually.
5. Using the services and assistance of the federal small business administration and the minority business development agency of the U.S. department of commerce.
6. Using required federal forms when applicable.
7. Including in project bidding documents DBE information prescribed by the department.
8. Soliciting DBEs certified under the unified certification program or by the U.S. environmental protection agency or an agency approved by the U.S. environmental protection agency to certify DBEs, and providing to the department documentation of solicitation efforts made.

**Note:** The Wisconsin department of transportation unified certification program's list of certified DBEs is available online at <https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>.

9. Documenting all participation of DBEs, including MBEs and WBEs, and submitting the documentation in the required form to the department. Documentation of all participation of DBEs under this subdivision includes documenting participation of engineering or other professional services firms, materials suppliers, equipment suppliers and contractors, and construction contractors that are certified DBEs as described in subd. 8.

(b) Failure to comply with par. (a) may result in a sanction of up to 8 percent of the construction costs eligible for subsidy being financed at the market interest rate. This paragraph does not apply to any recipient that

awards at least one contract directly related to the project to at least one MBE or WBE selected through proper solicitation methods.

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

(a) The applicant's staff has the necessary competence required to accomplish the work and can accomplish the required tasks more economically as force account work.

(b) Emergency circumstances make force account work necessary.

(6) CONTRACTS FOR PROFESSIONAL SERVICES. (a) The department may review professional services contracts and amendments for the eligibility and reasonableness of costs. The department shall only provide financial assistance for costs that are eligible, necessary, and reasonable for the scored project.

(b) Reasonableness reviews may include a comparison of professional services fees for the project to the range of professional services fees for similar work on similar projects undertaken within the state. The department may consider the scope of work, conditions unique to the project, and any other factors affecting costs.

(c) Professional services contracts shall indicate a maximum estimated cost for a defined scope of work that the contractor may not exceed without a negotiated contract amendment for additional costs.

(d) The department shall disburse funds for professional services costs in excess of the estimated or not-to-exceed amount of a contract only after the applicant submits an amendment to the contract that includes signatures of all parties to the contract, a description of the additional work covered by the amendment, and a revised not-to-exceed amount.

(e) The recipient shall submit each professional services agreement amendment within 90 days of execution of the amendment, or, for amendments executed prior to submittal of the CWFP application, with the application submittal. The department may deny the costs included in the amendment if the recipient does not submit the amendment within the timeframes specified in this paragraph.

(7) CONSTRUCTION CONTRACTS AND SUBCONTRACTS. (a) *Applicability.* This subsection applies to construction contracts or subcontracts awarded by recipients for any construction activity. The department may only provide CWFP financial assistance for costs of a construction contract if the municipality complies with all applicable procurement laws in obtaining the construction contractor.

(b) *Type of contract.* The scored project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized under sub. (5). Unless the department gives advance written approval for the recipient to use some other acceptable type of contract, each contract shall be one of the following types or a combination of these types: lump sum, unit price, or time and expense. A cost-plus-a-percentage-of-cost type contract may not be used in any circumstance.

(c) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for each contract change order.

2. The recipient shall promptly and no later than 90 days after execution of the change order submit to the department construction management engineer each change order and all associated backup documentation.

3. If a change order is executed fewer than 90 days but no more than 9 weeks prior to the estimated loan closing date for the project, the recipient shall submit the change order to the department promptly after execution and no later than 9 weeks prior to the loan closing in order to have the impact of the change order on the contract reflected in the financial assistance agreement budget.

4. The department may deny the costs of the change order if the recipient does not submit the change order to the department within the timeframes specified in subds. 2 and 3.

5. If the recipient is in the process of negotiating a change order, has a change order pending execution, or executes a change order less than 9 weeks but no more than 3 weeks prior to the estimated loan closing date, the recipient shall provide information regarding the purpose of and likely cost for the change order in writing to the department construction management engineer or loan project manager for consideration of inclusion in the financial assistance agreement budget.

6. The recipient shall submit for approval by the department all change orders for all contracts included in whole or in part in a project funded under this subchapter or subch. III.

7. The recipient shall receive the department construction management engineer's approval of the costs included in the change order prior to submitting to the department a request for disbursement of funds for costs of the change order.

**NR 162.09 Reimbursement and refinancing.** (1) REIMBURSEMENT OF PREVIOUSLY PAID DEBT. The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150-2 are met, the project has not been substantially complete for 3 years or longer, and the municipality does not already have outstanding long-term affordable debt for its for its completed or substantially completed project.

(2) REFINANCING OF INTERIM DEBT. The department may refinance the eligible portion of a municipality's interim debt subject to the limits established in s. NR 162.04 (3).

**NR 162.10 Loan interest rate.** The department shall calculate interest rates in accordance with s. 281.58 (12), Stats., and all of the following:

(1) INTEREST RATES. (a) For costs of projects or portions of projects described in ss. NR 162.03 (1) (a), (b), and (d), 162.03 (2) and (3), 162.04 (1) (b), 162.22, and 162.23 (1) (a) and (b), the interest rate shall be the interest rate specified in s. 281.58 (12) (a), Stats.

(b) For project costs sanctioned under s. NR 162.08 (4) (b) for noncompliance with requirements for solicitation of DBEs, the interest rate shall be the market interest rate.

(c) For project costs under s. NR 162.03 (1) (c), the department shall determine the appropriate interest rate in accordance with s. 281.58 (8) (h) and (12) (a) 4., Stats.

**(2) PROJECT INTEREST RATE CALCULATION.** (a) If all of the eligible costs of a scored project are described under only one paragraph under sub. (1), the interest rate shall be the rate stated in the applicable section of s. 281.58 (12), Stats. If a scored project contains eligible costs described under more than one paragraph under sub. (1) and s. 281.58 (12), Stats., specifies interest rates for the categories that are different from each other, a composite interest rate shall be computed for the scored project under par. (b).

(b) The composite interest rate shall be computed as follows:

$$RC = (RT 1)(PR 1) + (RT 2)(PR 2) + (RT 3)(PR 3)$$

where:

RC . . . . is the composite interest rate for the project.

RT 1 . . . . is the interest rate stated under s. 281.58 (12) (a) 1. a., b., or c., Stats., for the municipality based on its population as described in s. NR 162.003 (55) and median household income as determined under par. (d).

RT 2 . . . . is the market interest rate as defined under s. 281.58 (1) (cg), Stats.

RT 3 . . . . is the interest rate established under s. 281.58 (12) (a) 5., Stats., for projects that provide facilities to receive or store septage, or provide treatment capacity for septage, as defined in s. 281.58 (1) (cv), Stats.

PR1 . . . . is the percentage of the project under s. NR 162.03 (1) (a), (b), and (d) and (2) that is eligible for a subsidized rate and being financed by the CWFP, and under s. NR 162.03 (1) (c) if the municipality is not a violator of an effluent limitation as defined in s. 281.58 (1) (e), Stats.

PR2 . . . . is the percentage of the project being financed by the CWFP that is eligible under s. NR 162.04 (1) (b), and under s. NR 162.03 (c) if the municipality is a violator of an effluent limitation as defined in s. 281.58 (1) (e), Stats.

PR3 . . . . is the percentage of the project being financed by the CWFP that is eligible under s. NR 162.03 (1) (a) 1. and eligible for a zero percent interest rate under s. 281.58 (12) (a) 5., Stats.

(c) The interest rate shall be based on the market rate in effect at the time the municipality passes a bond resolution to secure the loan from the CWFP.

(d) The department shall determine median household income for purposes of determining the loan interest rate as established in s. 281.58 (12) (a) 1. a. to c., Stats., as follows:

1. If the municipality is a place, including a city, village, or census designated place, or the municipality is a county or a minor civil division, such as a town, the department shall obtain the most recent median household

income figure published for the municipality by the U.S. bureau of the census prior to the department's publishing of the project priority list.

**Note:** The department uses the U.S. census bureau's municipal incomes as derived from the American Community Survey and published annually in the 5-year survey data. At the time of writing of this administrative code, the U.S. census bureau is not collecting income data during the decennial census. The U.S. census bureau does not publish data for all types of municipalities eligible for CWFPP financial assistance.

2. The department may require a municipality for which the U.S. census bureau does not publish median household income data to provide information to assist the department in determining a median household income for the municipality for purposes of this chapter. The information required may include the number of residential users served by the municipality, a map showing the municipal boundaries, and the number of residential users served by or the population of the municipality within each town or county for municipalities that cross town or county boundaries. Alternatively, if the municipality is a town sanitary district or public inland lake protection and rehabilitation district, the municipality may supply a median household income provided by the U.S. bureau of the census, along with documentation of how the median household income was determined. Whether the median household income is initially determined by the department or supplied by the municipality for the department's approval, this median household income of the municipality shall be derived from the same ACS data release as that being used by the department for the fiscal year applicable to the funding cycle for which the intent to apply notice was submitted and shall be one of the following:

a. A median household income derived by requesting a custom tabulation of income data at the census block level from the ACS.

**Note:** To obtain a custom tabulation, the municipality will likely need to compare a map showing the boundaries of the municipality to a census block map and determine which census blocks contain any portion of the municipality. The municipality would then submit the appropriate census block numbers to the U.S. bureau of the census with a request for a custom tabulation of a median household income figure for that set of identified blocks only.

b. The median household income of the census tract, block numbering area, or block group that encompasses the municipality. If the municipality falls within 2 or more census tracts, block numbering areas, or block groups, the median household income shall be weighted by the population of the municipality that resides within each census tract, block numbering area, or block group.

c. The median household income of the minor civil division, such as a town, within which the municipality is located. If the municipality falls within 2 or more minor civil divisions, the median household income shall be weighted by the population of the municipality that resides within each minor civil division.

3. If the sewer service area of the treatment works within the boundaries of the municipality is different than the municipality's boundaries, the municipality may choose to follow the custom tabulation procedure as described under subd. 2. a. and submit the result to the department to use in lieu of the median household income obtained by the department as described under subd. 1.

**NR 162.11 Financial assistance agreement conditions.** (1) Each financial assistance agreement shall require the recipient to do all of the following:

(a) Maintain a system of user charges and a sewer use ordinance in accordance with s. NR 162.07 for the useful life of the treatment works or BMP.

(b) Comply with all pertinent requirements of federal, state, and local environmental laws and regulations.

(c) For financial assistance provided directly from a federal capitalization grant, comply with the requirements contained in 33 USC 1251 to 1274 and 33 USC 1381 to 1387 if required by the terms of the capitalization grant.

(d) Provide timely sewerage service to all users of the treatment works within the delineated service area except in areas where annexation is refused under s. 281.43 (1m), Stats.

(e) Comply with all state and local laws regarding procurement and public contracts.

(f) Provide department representatives access to the scored project, including all construction activities, whenever the project is in preparation or progress. For purposes of providing access, the recipient shall do all of the following:

1. The recipient shall in each of its contracts for the project include a provision that requires the recipient and its contractors to allow the department access to records of contractors and subcontractors pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions.

2. The recipient shall allow DOA or its agent access to records for audits.

(g) Expeditiously initiate and complete the project in accordance with the financial assistance agreement and application, including construction of and payments for the portions ineligible for CWFP financial assistance and any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

(h) Promptly notify the department of changes to the project, including notifying a department plan reviewer and the department construction management engineer when plans and specifications are being revised.

(i) Promptly submit to the department a copy of any prime contract or modification to it and any revisions to plans and specifications.

(j) 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 make the final principal payment no later than 20 years after the date of the financial assistance agreement unless the financial assistance agreement term is greater than 20 years but not more than 30 years. If the loan term is greater than 20 years, the municipality shall make the final principal payment no later than 30 years after the date of the financial assistance agreement.

(k) Make available an operations and maintenance manual for the treatment works. All of the following apply to the provision of an operations and maintenance manual:

1. A recipient shall develop a new or modify an existing operations and maintenance manual that, based on the scored project, is applicable to any of the following:

- a. The entire wastewater treatment works.
- b. The collection system, including all wastewater treatment works facilities outside of the fence of the wastewater treatment plant.
- c. The wastewater treatment plant, including all wastewater treatment works facilities inside the fence of the wastewater treatment plant.

2. Address in the manual developed or modified under subd. 1. all of the following:

- a. General information.
- b. Staffing.
- c. Records and recordkeeping.
- d. Laboratory.
- e. Safety.
- f. Utility systems.
- g. A description of the process, operations, and controls.
- h. Maintenance.
- i. Sludge management.
- j. Manufacturer's information.

3. Provide a copy of the operations and maintenance manual developed or modified under subd. 1. to the department. For projects or facilities that have an existing operations and maintenance manual that was submitted to the department in the past, the recipient may meet the requirements of subsd. 1. to 3. by developing and submitting an addendum to the previously submitted manual.

4. Certify to the department, in the form required by the CWFPP, that the operations and maintenance manual developed or modified under subd. 1. meets or exceeds the requirements under subd. 2. The project engineer and a municipal official of the recipient municipality shall make the certification required under this paragraph.

**Note:** Operations and maintenance manual certification checklists and additional information regarding operations and maintenance manual requirements are available on the environmental improvement fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/Guide/Opmanwcf.html>.

(L) Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(m) Comply with requirements established under s. 281.49, Stats., regarding accepting septage into the wastewater treatment works from septic tanks or holding tanks within the recipient's sewer service area.

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

(o) Maintain all required intermunicipal agreements throughout the term of the financial assistance agreement as described in s. NR 162.05 (4) (h) 2.

(p) Comply with all applicable provisions of any outstanding CWFPP and safe drinking water loan program financial assistance agreements and CWFPP interest rate subsidy agreements.

(q) Obtain and maintain full legal right and authority required to own, control, operate, and maintain the project for at least the term of the financial assistance agreement, including assuring that any of the following requirements regarding the land on which the project takes place are met:

1. If the municipality prior to signing a financial assistance agreement owns all of the land on which the project takes place, the municipality shall maintain ownership of the land on which the project is built for at least the term of the financial assistance agreement unless the municipality obtains approval from the department to discontinue operation of, sell, or otherwise dispose of the project.

2. If the municipality prior to signing a financial assistance agreement does not own any of the land on which the project takes place, the municipality shall obtain and maintain for at least the term of the financial assistance agreement all necessary permits, licenses, easements, and approvals required to give the municipality the authorities and permissions needed to construct, operate, and maintain the project on the land on which the project is built unless the municipality obtains approval from the department to discontinue operation of, sell, or otherwise dispose of the project.

3. If the municipality prior to signing a financial assistance agreement owns some but not all of the land on which the project takes place, the municipality shall follow the requirements under subs. 1 and 2 regarding maintaining ownership of or access needed to the land on which the project takes place to allow the municipality to construct, operate, and maintain the project on the land on which it the project is built for at least the term of the financial assistance agreement.

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

**NR 162.12 Financial management.** The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles, governmental accounting standards board requirements, or other methods of accounting accepted by the department or required by the federal government.

(2) Maintain a financial management system that meets 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 sold to the CWFPP.

**NR 162.13 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 if the department determines 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 percent of the principal amount of a loan until all of the project closeout requirements under sub. (4) (b) are completed.

(c) The department may withhold payment of costs that fall outside of the beginning or end dates of a contract or that are in excess of the estimated not-to-exceed amount in the contract until the recipient amends the contract.

(d) The department may withhold payment of costs of a contract until the recipient submits the required documentation for the costs, including a copy of the department construction management engineer's approval letter for any change order for which payment is requested and any amendments to engineering or other professional services contracts for which disbursement of financial assistance for costs of the contract will be requested.

(4) FINAL DISBURSEMENT AND PROJECT CLOSEOUT. (a) The recipient shall submit the final request for disbursement as soon as is practicable after final completion of project construction.

(b) All of the following project closeout procedures shall occur prior to the final disbursement or as soon as is practicable after final completion of project construction if the recipient determines it will not be requesting any additional funds but did not previously label a request for disbursement as the final request:

1. The department shall complete a final inspection and sign off on the scored project.

2. The recipient shall submit to the department for review all change orders and amendments for all contracts associated with the project that the recipient did not submit before or during construction of the project.

3. The recipient shall certify its acceptance of the project from its contractors and engineers on a form provided by the department.

**Note:** A project acceptance certification form is available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html> or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

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

**Note:** An MBE/WBE utilization form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921. This form is also provided in the financial assistance agreement as an exhibit.

5. The recipient shall certify its compliance with federal requirements as detailed in the financial assistance agreement.

6. The recipient shall submit to the department a completed operations and maintenance manual certification checklist.

**Note:** Operations and maintenance manual certification checklist forms are available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html> or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

7. The department shall inform DOA of the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

8. After the department determines that the project closeout requirements under subds. 1. to 6. are completed, the department shall notify the recipient that the project is closed out, or, if there is a final disbursement yet to be sent to the recipient, the department shall notify the recipient of the date and amount of the final disbursement and that the project will be closed out on the date of the final disbursement.

(c) If construction of a project is complete prior to the CWFP loan closing for the project, the recipient shall submit project closeout documents within 90 days of the loan closing date.

(d) If the recipient does not provide the required documents for project closeout of a completed project to the department for any CWFP financial assistance agreement or any other financial assistance from the environmental improvement fund and applies for funding from the environmental improvement fund for another project, the department may deny financial assistance for the new project until the previous project is closed out according to requirements under this chapter.

**NR 162.14 Amendments to a financial assistance agreement. (1) ADDITIONAL FUNDING.**

(a) *General.* 1. 'Additional assistance at end of project.' The department may issue an amendment to a financial assistance agreement to provide additional financial assistance for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may process a request to provide additional financial assistance for a project only after the total remaining costs to complete the project can be reasonably determined.

2. 'Consistent with scope.' To be eligible for additional financial assistance, any changes in the project necessitating the amendment must be consistent with the objectives and scope of the project as described in the original financial assistance agreement.

3. 'Plans and specifications approval.' If there are changes in the project that require department approval of plans and specifications, the municipality shall obtain department approval prior to the amendment loan

closing. Changes that necessitate an amendment must be due to unforeseen circumstances or approvable change orders to a project construction contract.

4. ‘New financial assistance agreement.’ An amendment shall be in the form of a new financial assistance agreement tied to the original project through the budget and project description. The department and the department of administration shall determine the appropriate interest rate for the amendment based on the market interest rate in effect on the date of the municipality’s meeting at which they pass the related bond resolution.

5. ‘Debt coverage requirements.’ The municipality must meet debt coverage requirements for the additional financial assistance.

(b) *Applicability.* Additional financial assistance under par. (a) for a scored project is subject to all of the following:

1. ‘Availability of funds as determined under s. 281.59, Stats.’ If there are sufficient loan funds available, a municipality may receive loan funds for additional project costs incurred that cause the total eligible project costs to be greater than the amount provided in the original financial assistance agreement. The loan interest rate and loan maturity date shall be determined by the department and DOA.

2. ‘No principal forgiveness.’ The department shall not provide additional principal forgiveness funds in the amendment to the financial assistance agreement.

(c) *Requesting funds.* A municipality may request financial assistance for additional project costs using any of the following options:

1. ‘Request in writing.’ The municipality shall submit a written request to the department that justifies the need for additional financial assistance and details the additional eligible costs. A revised budget shall be submitted with the request indicating in one column the line item totals in the financial assistance agreement, in a second column the requested additional costs, and in a third column the total project costs requested to be funded through the CFWP via an amendment to the original financial assistance agreement. If there are other funding sources participating in the project, the revised budget shall indicate all funding changes applicable to the additional financial assistance being requested. All costs in the revised budget shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. ‘Electronic submittal.’ The department may require the written request for an amendment to be submitted as an email message with an attachment, as input into the department’s online application system, or by other appropriate means determined by the department.

(d) *Plans and specifications.* A municipality shall submit to the department any plans and specifications required for changes in the project that necessitate the amendment to the financial assistance agreement. The department shall issue an amendment for the additional project costs only after the department approves any facilities plans or plans and specifications required for the work related to the additional costs.

(e) *Notice of intent to apply.* A new notice of intent to apply for funding as described under s. NR 162.05 (1) is not required for purposes of requesting a financial assistance agreement amendment.

(2) **EFFECTIVE DATE.** A financial assistance agreement amendment is effective when executed by all parties to the agreement.

**NR 162.15 Disputes.** (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under subch. II, III, IV, or V prior to the execution of a financial assistance agreement or interest rate subsidy agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the applicant personally or by mail.

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

**NR 162.16 Records and record retention.** (1) **REQUIREMENTS.** The recipient shall maintain books, documents, papers, records, and accounting procedures in accordance with generally accepted accounting principles, governmental accounting standards board requirements, or another method of accounting accepted by the department or required by the federal government and authorized under 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 that 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) **RECORDS RETENTION.** (a) The recipient and its contractors shall retain and make all files, books, documents, and records relating to the construction of the scored project available to the department for a minimum of either 3 years from the date the department notifies the recipient that the project closeout is complete or 3 years from final completion of construction, whichever is later.

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

(c) Records that 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 from the date the department notifies the recipient under s. NR 162.13 (4) (b) 8. that the project closeout is complete, whichever is later.

(d) All other files and records relating to the scored project shall be retained so long as the financial assistance agreement for the project remains in effect. As-built plans for the project shall be retained for at least the useful life of the project.

(4) FEDERAL SINGLE AUDIT. Recipients of financial assistance provided directly from the federal capitalization grant shall comply with federal single audit requirements established in 31 USC 7501 to 7506, 2 CFR part 200 subpart F, and ch. Adm 35.

**NR 162.17 Breach of contract.** (1) Upon breach of contract by the recipient, the department may do any of the following:

(a) Declare the unpaid loan balance due 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) Rescind any grant and convert the grant amount to a loan.

(d) Immediately terminate the financial assistance agreement and disburse no additional funds if the financial assistance has not been fully disbursed.

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

(f) 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 162.18 Noncompliance.** Upon failure of the recipient to comply with s. 281.58 or 281.59, 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 281.98, Stats.

(3) Seek any other appropriate remedy, relief, or penalty.

**NR 162.19 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. 281.58 and 281.59, Stats.

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

**(3) REQUEST FOR VARIANCE.** An applicant shall submit a request for a variance 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 CFWP project number.

(b) The section of this chapter from which the applicant seeks a variance and a statement explaining why the variance is necessary.

(c) An adequate description of the variance desired, and the facts that the recipient believes warrant the department's approving the variance.

(d) A statement as to whether the recipient has previously requested the same or a similar variance, and if so, the circumstances of the previous request.

**NR 162.20 Administrative fees.** An administrative fee, if one is imposed, shall be included in the biennial finance plan established under s. 281.59 (3), Stats., which is approved by the building commission under s. 13.48, Stats.

### **SUBCHAPTER III — STORM WATER PROJECTS**

**NR 162.21 Applicability.** This subchapter applies to applicants for and recipients of financial assistance for urban nonpoint source water pollution abatement or storm water runoff BMPs. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving a financial assistance agreement under the CFWP for urban runoff and storm water BMP projects. In addition to the sections of this subchapter, all of the following sections in subchs. I, II, and V apply to projects receiving a financial assistance agreement from the CFWP for urban runoff and storm water BMP projects: ss. NR 162.001, 162.003, 162.01, 162.02, 162.055, 162.49 (3), and 162.50 to 162.52.

**NR 162.22 Project eligibility. (1)** A municipality may receive financial assistance under this subchapter for a publicly owned project necessary to control storm water runoff pollution in order to achieve water quality standards, including publicly-owned storm water management projects on public or private land that are required by any of the following:

(a) A WPDES storm water permit issued under subch. I of ch. NR 216.

(b) A performance standard delineated under ch. NR 151.

(c) A storm water management plan or other applicable plan approved by the department for purposes of managing runoff.

(2) A project that is eligible under sub. (1) may consist of individual BMPs on private land that treat runoff and serve one or more private properties if the municipality:

(a) Owns each individual BMP.

(b) Is responsible for the proper installation, operation, and maintenance of each individual BMP.

(c) Has unlimited access to each individual BMP at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation, and replacement of the BMP.

(d) Establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual BMPs and for monitoring the impact of the BMPs on the groundwater where required by the department.

(e) Complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

(3) The access required under sub. (2) shall be established through easements, ordinance, or covenants running with the land.

(4) The department may require that the program established under sub. (2) (d) includes periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

**NR 162.23 Cost eligibility. (1) ELIGIBLE COSTS.** (a) *Eligible at a subsidized rate.* Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include expenses incurred by the municipality for any of the following items and activities when specific to the scope of a scored project, or when approved by the department as necessary or reasonable for the efficient operation or integrity of the storm water treatment works or BMP:

1. 'Abandonment.' Abandonment of storm water treatment works or BMPs if approved in the plans and specifications of a scored project or by department staff, including activities such as demolition, re-landscaping, and removal and disposal of municipal waste or other debris.

2. 'Access roads.' Construction of roadways necessary to provide appropriate access to urban runoff facilities or BMPs.

3. 'Acquisition of facilities.' Costs associated with acquiring facilities of an existing storm water treatment works or BMP if the municipality will own, operate, and maintain the facilities throughout the term of the financial assistance agreement.

4. 'Administrative costs of a commission.' Administrative, legal, and other costs incurred by a commission solely for the scored project if identifiable in a contract or agreement between the member municipalities.

5. 'Compliance with state and federal requirements.' Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

**Note:** State and federal requirements may include any of the following: Americans with Disabilities Act design and construction; green project reserve documentation; Davis-Bacon and related acts administration or other activities associated with wage rate requirements; DBE solicitation and documentation; activities associated with the use of American-made products; environmental review of project sites and other activities related to ch. NR 150 compliance, including costs of public notices and hearings; historical, architectural, archaeological, and cultural resources work identified during planning, design, or construction of the project and incurred prior to project closeout; signage requirements, including on a website or at a project site; or audit activities related to the federal single audit act portion of the municipality's annual audit report until the project is complete.

6. 'Construction activities.' Activities defined in s. NR 162.003 (16) and included in construction contracts or performed as force account work, including any of the following:

a. Replacing, repairing, or rehabilitating a storm water treatment works or BMP if identified in the plans and specifications as cost-effective and necessary.

b. Restoring streets and rights-of-way and repairing damage to items such as pavement, sidewalks, and water mains necessary as a result of construction of the scored project.

c. Punch list item activities.

d. Acquiring, consuming, or expending materials.

e. Obtaining products that comply with federal requirements to use American-made products in CWWP projects.

f. Other capital costs incurred solely for purposes of the scored project.

7. 'Demolition.' Demolishing existing structures if the demolition is part of a scored project and any of the following apply:

a. The existing structure is part of the storm water treatment works.

b. The existing structure is part of a BMP project.

c. The demolition is necessary for site preparation.

d. The demolition is included in abandonment procedures as approved in the plans and specifications of the scored project or otherwise approved by department staff.

e. The demolition entails removal of equipment or materials, or both, from inside an existing building or other structure that is part of the treatment works being modified or repurposed as part of the scored project.

8. 'Discharge monitoring.' The cost of equipment owned or to be owned by the municipality for illicit discharge monitoring of a storm water treatment works or BMP.

9. 'Easements and rights-of-way.' Acquisition of easements and rights-of-way, including purchase cost, and administrative and legal expenses.

10. 'Equipment.' Equipment, the costs of which the department may prorate if the municipality intends to use these items for multiple purposes rather than solely for the storm water treatment works or BMP. Eligible equipment includes any of the following:

a. Mobile equipment, such as portable stand-by generators, portable emergency pumps, and grounds and maintenance equipment for mowing and snow removal, for the storm water treatment works or BMP.

b. Spare parts, if included in the plans and specifications or otherwise approved by the department.

c. Machinery for manufacturing or repairing necessary tools or equipment for the storm water treatment works or BMP.

d. Computers, tablets, and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the storm water treatment works or BMP. Equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, communications, geographic information, and supervisory control and data acquisition are included under this subdivision paragraph.

11. 'Fees.' Fees paid by the municipality for any of the following:

a. Permits obtained for construction, including building, electrical, and plumbing permits, construction site storm water permits, and railroad crossing permits.

b. Legal fees of an attorney that is not an on-staff municipal attorney, including costs of legal reviews of architectural, engineering, or construction contracts, user charge systems and sewer use ordinances, management plans, intermunicipal agreements, and legal work necessary for securing eligible permits.

c. Service fees paid to a state or federal agency, except administrative fees paid annually along with principal and interest payments on a CWFP loan.

12. 'Groundwater monitoring.' Installing groundwater monitoring equipment or facilities.

13. 'Insurance.' Purchasing insurance necessary during construction of the scored project, including property, liability, builder's risk, and construction insurance.

14. 'Interim debt.' Costs associated with interim debt for the scored project as delineated in s. NR 162.04 (3).

15. 'Land Acquisition.' Acquiring land, including purchase cost and administrative and legal expenses if any of the following applies:

a. The land is property on which the storm water treatment works or BMP will be located, including urban corridors needed to support integrated systems of a storm water treatment works or BMP for urban runoff.

b. The land is the property on which individual systems are or will be located if the systems are publicly-owned and maintained.

16. 'Management plans.' Developing a detailed management plan for a scored project.

17. 'Municipal staff, equipment, and materials.' Municipal expenses incurred solely for the scored project and documented by the municipality as force account work, including any of the following:

a. Salary and benefits of municipal employees, except elected officials or on-staff attorneys, for time spent working directly on the scored project.

- b. Expendable material costs incurred by the municipality.
- c. Estimated costs incurred using equipment owned by the municipality.

18. 'Pretreatment or toxicity reduction.' Developing a municipal pretreatment or toxicity reduction program and constructing facilities to be used by the storm water treatment works or BMP in the program, including monitoring equipment.

19. 'Professional services.' Engineering, architectural, legal, and other professional services and fees, including any of the following:

- a. Conducting value engineering studies or analyses during the design phase.
- b. Conducting system evaluations and studies.
- c. Developing facilities plans and engineering reports.
- d. Preparing and submitting plans and specifications.
- e. Preparing, printing, and distributing bidding documents.
- f. Gathering documents and information for, and completing, the CWFPA financial assistance application, and other forms required for financial assistance.
- g. Developing or revising an operations and maintenance manual.
- h. Advertising for and conducting bid lettings.
- i. Analyzing bids, preparing award recommendations, and preparing contracts.
- j. Providing construction management, observation, and inspection.
- k. Preparing for and facilitating public education and participation opportunities.
- L. Travel, indirect costs, and labor included in contracts for services related to the scored project.
- m. Preparing a user charge system or an ordinance related to storm water management.
- n. Preparing environmental assessment reports and evaluations.
- o. Conducting archaeological surveys and gathering historical site information.
- p. Providing municipal advisor or bond counsel services related to loan closing or the issuance of bonds.
- q. Producing record drawings.
- r. Updating or upgrading storm water treatment works maps of the areas impacted by the scored project.
- s. Monitoring use of American-made products.
- t. Providing administration of activities related to Davis-Bacon and related acts or other wage requirements.
- u. Conducting research or energy audits for incorporation of energy and water efficiency and conservation into the planning and design of a project.

20. 'Project site.' Construction-related work activities at the project site of a scored project, including any of the following:

- a. Landscaping areas impacted by construction of the scored project.

b. Relocating sanitary sewers or watermains if necessary for construction and replacing mains with the same size or required minimum size pipe if breakage from construction occurs.

c. Erecting project and storm water treatment works or BMP identification signs.

d. Preparing a site for construction, including surveying, staking, and grading.

e. Restoring the construction site to original condition or upgrading the site to meet state and local requirements.

f. Removing, relocating, or replacing utilities, providing temporary utilities, installing new utility equipment, or upgrading utilities, if the recipient is legally obligated to pay these costs.

21. 'Safety.' Purchasing and installing safety equipment to be used in the operation and maintenance of the storm water treatment works or BMP.

22. 'Storm sewers that lead to treatment.' Evaluation, new installation, replacement, and lining and other rehabilitation of storm water conveyance that leads to treatment.

23. 'Security.' Purchasing and installing security equipment for the treatment works or BMP, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.

24. 'Special assessment fees.' Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments as part of repayment of its CWFPP loan.

25. 'Startup.' Startup expenses for a storm water treatment works or BMP incurred solely because of the scored project, including costs for any of the following:

a. Preparing a startup curriculum and training materials.

b. Initial training of operating personnel related to the scored project.

c. Implementing a maintenance management system.

d. Purchasing the first fuel fill-up for new equipment, such as generators.

26. 'Storm sewers and other conveyance.' Storm water conveyance that carries storm water runoff to an eligible treatment device or facility.

27. 'Street restoration.' Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and sanitary sewers necessary as a result of construction of the scored project. Eligibility of costs may be prorated based on participation by one or more other funding sources, or on the percent of the project attributable to CWFPP-eligible or project-specific activities.

**Note:** Other funding sources that tend to participate in the types of projects that involve street restoration include the department of transportation, the community development block grant program, and the U.S. department of agriculture rural development community programs. Proration of costs can be due to the other funding source covering a portion of costs that would otherwise be eligible for CWFPP funding or because some of the project costs are not eligible.

28. 'Watermains.' Relocating watermains if necessary for construction, and replacing watermains of the same size or required minimum size if breakage due to construction of a scored project occurs.

(b) *Eligible at market rate.* Costs eligible for market interest rate financing of a scored project include any of the following:

1. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5 percent of the total flow to a storm water treatment works or BMP.

2. The cost of any portion of a project to correct violations of effluent limitations contained in a permit issued under ch. 283, Stats., or violations of performance standards.

3. The cost for any portion of a project designed solely for flood control and not required to meet WPDES storm water permit requirements or performance standards.

4. The cost for any portion of a storm water project that exclusively serves development not in existence as of the date of the application. These costs are eligible for funding only if the project furthers the local comprehensive planning goals identified in s. 1.13 (2), Stats., and, beginning January 1, 2010, is consistent with a comprehensive plan prepared pursuant to s. 66.1001, Stats.

5. The amount of project costs determined appropriate for a sanction under s. NR 162.08 (4) (b) for noncompliance with DBE good faith effort requirements established in s. NR 162.08 (4) (a).

(c) *Market rate cost calculation.*

1. The amount of the costs described in par. (b) 1. to 4. is determined using a parallel cost percentage that is calculated as follows:

a. Determine the total design capacity based on total flows and loadings.

b. Calculate a reduced capacity condition by subtracting the flows and loadings associated with par. (b) 1. to 4. from the total design capacity.

c. Estimate the eligible project costs associated with each of the conditions in this subd. 1. a. and b.

d. Divide the cost of the reduced capacity condition by the costs of the total design capacity.

$$PC = RC/DC$$

Where:

PC . . . is the parallel cost percentage expressed as a decimal.

RC . . . is the cost associated with the reduced capacity condition.

DC . . . is the cost associated with the total design capacity.

2. The amount of market rate project costs in par. (b) 1. to 4. is calculated as follows:

$$EM = (TP)(1-PC)$$

Where:

EM . . . is the amount of project costs eligible for market rate financing only.

TP . . . is the total project cost eligible for CWFP financing.

PC . . . is the parallel cost percentage expressed as a decimal.

3. If the department determines that the project includes other market rate costs as described in par. (b) 5., the amount of those costs shall be subtracted from the amount eligible for below-market rate financing and added to the amount of market rate costs calculated in subd. 2.

**Note:** All questions relating to cost eligibility or allocation shall be resolved prior to the execution of the financial assistance agreement in accordance with s. NR 162.15.

(2) **INELIGIBLE COSTS.** Costs for items and activities not directly associated with or not necessary for the construction or startup of a scored project are not eligible for financial assistance unless specifically approved by the department as necessary and reasonable for the efficient operation or integrity of the overall storm water treatment works or BMP. Ineligible items and activities include all of the following:

(a) *Allowances.* Any allowance or contingency amounts built into a bid contract for nonspecific or ineligible items or activities.

(b) *Basin planning.* Basin or areawide planning not related to the scored project.

(c) *BCPL ineligibles.* For a project receiving interest rate subsidy under subch. IV, project costs determined to be ineligible for loan assistance from the BCPL.

(d) *Bonus payments.* Bonus payments not legally required for completion of construction before a contractual completion date.

(e) *Buying capacity.* Purchase cost of buying capacity in an existing storm water treatment works or BMP that is not being expanded.

(f) *Conflict of interest.* Costs incurred in a contract that 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, award, or administration of a contract supported by the CWFP and any of the following conditions exist:

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

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

(g) *Engineering.* Engineering costs relating to ineligible construction costs when the ineligible construction and equipment costs are more than 10 percent of total construction and equipment costs.

(h) *Grant administration.* Any costs for administering or applying for funding from sources other than the CWFP, such as U.S. department of agriculture's rural development programs, a community development block grant program, federal state and tribal assistance grants, U.S. army corps of engineers, focus on energy, or other non-CWFP federal or state government loan or grant programs, or other types of financial assistance programs.

(i) *Hookup charges.* Hookup charges imposed by one municipality on another for hooking into a storm water treatment works or BMP, or transport system to such a facility, unless the charges are based on identifiable

capital improvement costs incurred by the municipality imposing the charge, and are included in an intermunicipal agreement meeting the requirements of s. NR 162.05 (4) (h).

(j) *Interim financing.* Interest or principal payments on interim debt paid by the municipality out of its internal funds rather than capitalized funds.

**Note:** The ineligibility of interest or principal payments in par. (j) is based on U.S. treasury reimbursement regulations 26 CFR 1.150–2.

(k) *Late fees.* Interest or late fees charged to a municipality for delayed payments related to the project.

(L) *Leases.* Costs related to leasing land.

(m) *Mismanagement and litigation.* Costs of claims against the recipient resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others, and costs resulting from litigation of contract disputes, liquidated damages, appeals, and other related disputes.

(n) *Negligence.* Costs incurred due to negligence or error of a party contracted by the municipality.

(o) *No construction.* All costs of a project if the municipality does not finance some construction costs through the CWFPP, unless another governmental agency or another program in the department is providing financing for the construction costs and the CWFPP receives acceptable documentation of the other agency's or other program's commitment.

(p) *Operations and maintenance.* Operations and maintenance expenses as defined in s. NR 162.003 (50) and (40), respectively.

(q) *Ordinary municipal operating expenses.* Ordinary operating expenses of a municipality, such as salaries and expenses of elected officials and on-staff attorneys, postage, utility bills, and annual financial audits.

(r) *Other funding.* Costs for which payment has been or will be received from another funding source, including costs for which funds from the U.S. department of agriculture's rural development program or a community development block grant program are committed, or costs covered by a focus on energy grant. If the municipality does not receive the funds expected from the other source, the department may consider the costs of the work that was to be funded through the other source to be eligible for CWFPP financial assistance unless the costs are considered ineligible under another paragraph in this subsection. This paragraph does not apply to a municipality receiving a loan from the BCPL for a scored project receiving interest subsidy under subch. IV.

(s) *Outside of scope.* Costs outside the scope of the scored project unless the department approves the costs as necessary to improve the overall integrity, operation, or functionality of the storm water treatment works or BMP.

(t) *Personal injury.* Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise.

(u) *Post-closeout.* Costs incurred after the project completion date of the scored project.

(v) *Special districts.* Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, and joint commissions.

(w) *Violation penalties.* Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

(x) *Watermains.* Watermain construction, replacement, or repair unless the watermain is needed to carry water to a part of the storm water treatment works or BMP or the watermain work is necessary as a direct result of work performed for a scored project, such as repairing or replacing a watermain damaged during construction of the scored project.

(y) *WPDES permit fees.* The cost of a WPDES permit unless it is a WPDES construction site permit specific to the project construction.

**NR 162.24 Application process. (1) NOTICE OF INTENT TO APPLY.** The notice of intent requirements described in s. NR 162.05 (1) are applicable to any urban runoff or storm water project for which a municipality is applying for financial assistance under this subchapter or for interest rate subsidy under subch. IV.

**(2) APPLICATION PROCEDURES.** A municipality shall apply for financial assistance in accordance with s. 281.58 (9), Stats. All applicants must submit the required information and documentation through the department's online application system.

**Note:** Directions regarding online submittal are available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/EIF.html>. An interest rate subsidy application is a different form and must be submitted in accordance with s. NR 162.40 (5) and (6).

**(3) CONTENTS OF APPLICATION.** The applicant shall submit a complete application, including each of the following items, if applicable to the project:

(a) Evidence of a department-approved plan applicable to the scored project.

(b) Construction plans and specifications submitted to the department in accordance with ch. NR 151 that are approvable under ch. 281, Stats. An applicant may be denied funding if the applicant does not provide appropriately complete plans and specifications to the department prior to or with the application. The applicant shall submit a copy of approvable plans and specifications with the application in addition to the plans and specifications submitted to the department for plan review under ch. NR 151.

(c) Completion of the required fields in and upload of required documentation to the department's online application system, including all of the following:

1. Provision of a clear, concise, and comprehensive project description, including any modifications to the project description provided in the online intent to apply system.

2. Estimated or actual construction costs.

3. Identification of known ineligible costs included within the total budget provided in the online application.

4. Information regarding assistance received or expected from another funding source.

**Note:** The project description may already be included in the online application as it should transfer over to the application system from the online intent to apply system. If that transfer of information is successful, the applicant must only provide information regarding any modifications to the project description that is already included in the application rather than providing an additional complete project description.

(d) Items or information for compliance with federal regulations identified by the department in the online application system as required for a complete application; these items may include any of the following:

1. Documentation of compliance with wage rate laws.
2. Completed federal forms.
3. Information regarding green project components, cost and effectiveness of the project, or procuring American-made products for use in the project.

(e) Copies of executed engineering contracts and any associated contract amendments for planning and design if funds are requested for planning and design.

(f) A copy of the executed engineering contract and any associated contract amendments for construction management if funds are requested for construction management and the contract is available at the time of application submittal.

(g) A copy of each executed non-engineering professional services contract related to the project and any associated amendments if funds are requested in the application project budget for services included in the contract and the contract or amendment is available at the time of application submittal.

(h) A proposed or an executed intermunicipal agreement for each municipality served by the project when 2 or more municipalities utilize shared or interconnected treatment works or a BMP. Prior to receiving financial assistance, the applicant shall ensure that each required intermunicipal agreement shall do each of the following that is applicable to the project:

1. Identify ownership for each individual portion of the storm water treatment works or BMP, including interceptors or other conveyance, lift stations, drainage systems, catch basins, constructed channels, specific practices or devices, and privately-owned storm water treatment works or BMPs.
2. Establish the term of the intermunicipal agreement, unless it is effective in perpetuity, subject to all of the following:
  - a. If the intermunicipal agreement is new or being negotiated specifically for the project for which financial assistance is being requested, the term shall be for at least the term of the financial assistance agreement.
  - b. If there is an existing intermunicipal agreement in place that meets the requirements of this section but expires during the loan term, the municipality shall renegotiate or extend the existing agreement prior to the end of its term and maintain the intermunicipal agreement throughout the term of the financial assistance agreement.

3. Require each municipality to adopt local regulations for construction sites and adopt a municipal storm water management plan for new development and redevelopment, consistent with the performance standards developed by the department under s. 281.33 (3), Stats.

4. Demonstrate the basis for generating revenue for operation, maintenance, and replacement costs based on actual use or another equitable method and state the parties that are responsible for paying these charges.

5. Indicate the method for generating revenue for capital costs and indicate who is responsible for payment.

6. Indicate that the owner of the regional facility shall accept the applicant's runoff and identify the boundary from which the applicant's discharge originates.

(i) Financial information required by DOA to be used in determining the affordability of the proposed project, the financial capability of the municipality, and the adequacy of the pledge of revenues to repay the obligation securing the proposed financial assistance.

(j) A copy of the existing user charge system and information regarding the proposed user charge system and a storm water management zoning ordinance, when required by the department.

(k) Any existing or proposed contracts with users of the storm water treatment works or BMP.

(L) Documentation applicable to U.S. internal revenue service tax information as indicated in the online application system.

(m) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds that meets the requirements established in U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(n) A copy of the debt instrument of any interim debt to be refinanced with CWFPA financial assistance.

(o) A completed design life worksheet if the applicant at the time of application requests a loan term that is greater than 20 years.

(4) APPLICATION SUBMITTAL DEADLINE AND APPLICATION ACCEPTANCE. Sections NR 162.05 (6) and (7) are applicable to storm water treatment works projects and BMPs.

**NR 162.25 Financial assistance requirements.** Before executing a financial assistance agreement for any project under this subchapter, the department shall determine that all of the applicable requirements of s. NR 162.24 are met, and that all of the following are satisfied:

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

(a) Certification for force account work as required by s. NR 162.08 (5).

(b) Legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project that meets the requirements under s. NR 162.055.

(c) Items related to bids for each prime contract, including all of the following:

1. The proposal of the successful bidder.

2. An engineer's evaluation of the bids, including bid tabulation, and recommendation.

3. If an applicant awards a construction or equipment contract to other than the lowest bidder, one of the following:

a. Written documentation of the reasons why the lowest bidder is considered nonresponsive or not responsible.

b. A legal opinion stating that the award to a contractor other than the lowest responsive, responsible bidder meets the requirements of municipal bidding law.

4. Solicitation and utilization information regarding DBEs.

5. Evidence of bid advertisement, which should include appropriate language regarding DBEs submitting bid proposals, American-made product requirements, and wage rates, when applicable.

6. A copy of the bid bond and the performance bond.

7. Evidence of award of the construction contract by the municipality, which may be a notice of award, a municipal resolution, or minutes from the municipal meeting at which the determination of award was made.

8. A complete copy of the executed construction contract with up-to-date copies of all addenda, attachments, appendices, appropriate Davis-Bacon or other wage rate information, and all other applicable documentation that makes the contract complete. If available, the contract submittal should be a copy of the conformed contract.

9. Documentation of the construction start date and expected substantial and final completion dates.

**Note:** A notice of award and a notice to proceed are preferred but not required for this documentation.

10. All negotiated pending change orders and all executed change orders.

(d) A request for disbursement and required supporting invoices, payoff statements, and other applicable documentation of expenditures, including a copy of the title or deed for land purchased for the project if the applicant is requesting financial assistance for land purchase costs, and complete copies of any contract change orders for which costs are included in the request for disbursement, along with a copy of the department construction management engineer's change order approval.

(e) Evidence that a bond counsel is drafting legal documents related to the authorization and issuance of bonds for action at a municipal meeting prior to the scheduled loan closing.

(f) Parallel cost percentage information.

(g) An executed intermunicipal agreement or multiple executed agreements described under s. NR 162.24 (3) (g), if 2 or more municipalities utilize shared or interconnected storm water treatment works or a BMP.

(h) Proof that applicable ordinances or other regulatory mechanisms have been adopted by the municipality as required under s. NR 216.07 (3) (a) to effectively prohibit non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions.

(i) A copy of the adopted user charge system and proof that the municipality adopted the user charge system.

(j) A copy of each executed construction management or other professional services contract associated with the project if funds are requested for services included in the contract.

(k) Documentation of compliance with federal requirements, when applicable, which may include federal or state forms, certification of compliance with Davis-Bacon wage rate requirements, certification of use of American-made products in the project, and the cost, effectiveness, energy efficiency, and water efficiency of the selected design.

(2) The department has done all of the following, if applicable to the scored project:

(a) Complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

(b) Reviewed and approved the plans and specifications.

(c) Reviewed and concurred with the parallel cost percentage provided by the applicant.

(d) Reviewed and concurred with the design life calculation for the scored project if the applicant is requesting a loan term greater than 20 years.

(3) The scored project has met the priority requirements of subch. V.

(4) The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the storm water treatment works or BMP throughout the applicant's jurisdiction.

(5) DOA finds that the municipality is likely to be able to meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

(6) The applicant has received or applied for permits required by the department for the scored project, including those under chs. 30 and 283, Stats.

(7) The applicant agrees to do all of the following:

(a) Adopt local ordinances for construction site erosion and sediment control and post-construction storm water management as required under s. NR 216.07 (4) and (5).

(b) Adopt a municipal storm water management plan for new development and redevelopment, consistent with performance standards delineated in ch. NR 151 developed by the department under s. 281.33 (3), Stats.

(c) Adopt a storm water management zoning ordinance for new development and redevelopment, when required by the department.

**NR 162.26 Requirements for a user charge system.** (1) GENERAL. Any user charge system and applicable ordinances adopted by a recipient under s. NR 216.07 (3) (a) shall be maintained for the useful life of a storm water treatment works or BMP. The applicant shall submit user charge information, if applicable as

described in sub. (2), to the department and shall certify to the department that the user charge system meets all of the applicable requirements in this section.

(2) APPLICABILITY. (a) A user charge system is required under this chapter for any storm water project for which the applicant is securing the loan with a pledge of utility revenues.

(b) A user charge system is required of the applicant for any storm water project that requires an intermunicipal agreement under s. NR 162.24 (3) (h).

(3) USER CHARGE SYSTEM REQUIREMENTS. Any user charge system under this section shall do all of the following:

(a) Require that each user or user class pays its proportionate share of operation and maintenance costs, including replacement costs, of the storm water treatment works or BMP within the recipient's service area.

(b) Provide that the costs of operation and maintenance for all flow not directly attributable to users be distributed proportionally among all users of the recipient's storm water treatment works or BMP.

(c) Require that the charges for users or user classes generate sufficient revenue to pay costs identified in par. (e) 2. and 3.

(d) Require that the recipient establish an equipment replacement fund, maintain the equipment replacement fund as a separate fund of the municipality, and make deposits to this fund on an annual basis or maintain a balance acceptable to the department. This fund is to be used for the costs of replacing equipment related to the storm water treatment works or BMP, or conducting maintenance of a runoff treatment works or BMP. The municipality may also use the equipment replacement fund for unexpected unbudgeted costs incurred for continuing effective operations of the treatment works or BMP. The municipality shall periodically make appropriate adjustments to the equipment replacement fund deposit schedule or balance, including adjustments needed to bring the fund balance back up following an expenditure from the fund.

(e) Establish a financial management system that accounts for all of the following:

1. Revenues generated.

2. Costs of operations and maintenance of the storm water treatment works or BMP, including an appropriate amount of money to be deposited annually into the equipment replacement fund.

3. Debt service costs, including debt service reserves, and debt coverage requirements, if applicable. In this subdivision, "debt coverage" means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

(f) Require the review, at least once every 2 years, of the runoff contribution of users and user classes, the total costs of operations and maintenance of the storm water treatment works or BMP, and the user charge system.

(g) Provide that each user is notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to service provided by the storm water treatment works or BMP.

(h) Be based on actual or estimated use except as provided for under s. 281.58 (14) (b) 7., Stats.

**(4) MUNICIPAL RESPONSIBILITIES.** The municipality shall do all of the following:

(a) Incorporate the user charge system, if applicable, in one or more municipal ordinances or other legislative enactments, and make reference to the user charge system or systems in intermunicipal agreements if the project serves more than one municipality.

(b) Terminate any term or condition of any pre-existing agreement or contract between the recipient and a user that is inconsistent with the requirements of this section.

(c) Maintain records to document compliance with this section.

(d) For a runoff treatment works or BMP, demonstrate adequate legal authority established by statute, ordinance, or series of contracts to meet the provisions of s. NR 216.07 (6).

**(5) DEPARTMENT REVIEW.** The department may annually review a recipient's user charge system to ensure that it continues to meet the requirements of this section.

**NR 162.27 Procurement.** Procurement requirements included in s. NR 162.08 are applicable to storm water projects.

**NR 162.28 Reimbursement and refinancing.** Section NR 162.09 is applicable to storm water projects.

**NR 162.29 Loan interest rate.** Section NR 162.10 is applicable to storm water projects.

**NR 162.30 Financial assistance agreement conditions. (1)** Each financial assistance agreement shall require the recipient to do all of the following:

(a) Maintain a system of user charges in accordance with s. NR 162.26, if applicable as described in s. NR 162.26 (2), and maintain ordinances and other legal authorities in accordance with ch. NR 216, for the useful life of the treatment works or BMP.

(b) Comply with all pertinent requirements of federal, state, and local environmental laws and regulations.

(c) For financial assistance provided directly from a federal capitalization grant, comply with the requirements contained in 33 USC 1251 to 1274 and 33 USC 1381 to 1387, if required by the terms of the capitalization grant.

(d) Comply with all state and local laws regarding procurement and public contracts.

(e) Provide department representatives access to the scored project, including all construction activities, whenever the project is in preparation or progress. For purposes of providing access, the recipient shall do all of the following:

1. The recipient shall in each of its contracts for the project include a provision that requires the recipient and its contractors to allow the department access to records of contractors and subcontractors pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions.

2. The recipient shall allow DOA or its agent access to records for audits.

(f) Expediently initiate and complete the project in accordance with the financial assistance agreement and application, including construction of and payments for the portions ineligible for CWFPP financial assistance and any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

(g) Promptly notify the department of changes to the project, including notifying a department plan reviewer and the department construction management engineer when plans and specifications are being revised.

(h) Promptly submit to the department a copy of any prime professional services or construction contract or modification to a contract and any revisions to plans and specifications.

(i) 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 make the final principal payment no later than 20 years after the date of the financial assistance agreement unless the financial assistance agreement term is greater than 20 years but not more than 30 years. If the loan term is greater than 20 years, the municipality shall make the final principal payment no later than 30 years after the date of the financial assistance agreement.

(j) Comply with all applicable construction site performance standards and technical standards established in ch. NR 151 for controlling runoff pollution.

**Note:** Storm water technical standards, models, and BMPs are available online at <https://dnr.wisconsin.gov/topic/Stormwater/standards/>. Use the standards to plan, design, install, and maintain erosion and sediment control and storm water management practices, to comply with ch. NR 151. This information on the web is also available in paper form and may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

(k) Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

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

(m) Maintain all required intermunicipal agreements throughout the term of the financial assistance agreement as described in s. NR 162.24 (3) (h) 2.

(n) Comply with all applicable provisions of any outstanding CWFPP and safe drinking water loan program financial assistance agreements and CWFPP interest rate subsidy agreements.

(2) The financial assistance agreement is effective when all parties to the financial assistance agreement have signed it.

**NR 162.31 Financial management.** The requirements for financial management established in s. NR 162.12 are applicable to storm water treatment works and BMP projects.

**NR 162.32 Financial assistance disbursements.** Section NR 162.13 regarding requests for disbursement of financial assistance is applicable to storm water treatment works and BMP projects.

**NR 162.33 Amendments to a financial assistance agreement.** Section NR 162.14 regarding amending financial assistance agreements is applicable to storm water treatment works and BMP projects.

**NR 162.34 Disputes.** Section NR 162.15 regarding disputes is applicable to storm water treatment works and BMP projects.

**NR 162.35 Records and record retention.** Section NR 162.16 regarding records and their retention is applicable to storm water treatment works and BMP projects.

**NR 162.36 Breach of contract, noncompliance, variances, and administrative fees.** Sections NR 162.17, 162.18, 162.19, and 162.20 are applicable to storm water treatment works and BMP projects.

#### **SUBCHAPTER IV — INTEREST RATE SUBSIDIES FOR SMALL LOANS**

**NR 162.37 Applicability.** This subchapter applies to any applicant for and recipient of interest rate subsidy provided under ss. 281.58 and 281.59, Stats., for reducing interest costs on a loan made to the recipient by the BCPL for engineering and construction of treatment works and BMPs with total estimated project costs, after awarding all contracts, of \$2,000,000 or less. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving interest rate subsidy under ss. 281.58 and 281.59, Stats. The following sections in subchs. I, II, III, and V apply to projects receiving an interest rate subsidy under this subchapter: ss. NR 162.001 to 162.003, 162.01, 162.02, 162.04 (1) (a) and (2), 162.08 (1) to (3) and (5) to (7), 162.10 (1) (a) and (2), 162.15, 162.19, 162.20, and 162.49 to 162.52. The department will continue to accept applications for funding under this subchapter unless availability of funds for interest rate subsidies becomes a limiting factor for the department's ability to continue this portion of the CWFP.

**NR 162.38 Project eligibility. (1) ELIGIBLE PROJECTS.** An eligible applicant may receive financial assistance under this subchapter for a publicly owned project with total estimated project costs of \$2,000,000 or less that meets any of the following criteria and has not been substantially complete for 3 years or longer:

(a) *Traditional wastewater treatment plant and collection system projects.* A municipality may receive financial assistance under this subchapter for a publicly-owned wastewater treatment works scored project that meets any of the following criteria:

1. The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. All of the following types of projects are included under this paragraph:

a. Projects for which construction will completely take place inside the fence or on site of a wastewater treatment plant, such as projects to build or modify headworks, clarifiers, aeration basins, stabilization ponds, sludge processing equipment, sludge storage facilities, or on-site administrative buildings, and projects to build or modify facilities for the receiving, storage, or treatment of septage, as defined in s. 281.58 (1) (cv), Stats. The department may determine that a lift station pumping all of the wastewater flow directly to the wastewater treatment plant with no other influent pump at the plant site is part of a project that takes place inside the fence. The department may also determine that other facilities, such as a septage receiving station that conveys the septage directly into the wastewater treatment plant, are considered part of the work inside the fence.

b. Projects for which construction takes place outside of the fence of the wastewater treatment plant that are necessary to maintain the integrity and performance of wastewater treatment works facilities serving the municipality, including sanitary sewer replacement or rehabilitation, sanitary sewer lining, publicly-owned lateral lining, lift station or headworks upgrades, and construction of new interceptors, lift stations, pretreatment facilities, septage receiving stations, and other treatment works facilities outside of the fence of the wastewater treatment plant.

2. The project 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.

3. The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality. All of the following types of projects are included under this subdivision:

a. Projects for construction of a new wastewater treatment plant or upgrade of an existing plant to accept and treat wastewater from a previously unsewered area, such as projects to build or add capacity to clarifiers, aeration basins, stabilization ponds, or sludge facilities.

b. Sewage collection system projects to install sewer pipes where there were none and interceptors to carry wastewater to a new or existing wastewater treatment plant.

**Note:** Traditional wastewater treatment plant and collection system projects are those that use common infrastructure and processes to collect and treat wastewater, including pipes to collect wastewater from homes and businesses and carry the water to a treatment plant that uses techniques and equipment to filter and settle out solids, aerate the water to encourage natural processes of growth of bacteria and other organisms to consume much of the waste, disinfect the processed water, and process the sludge removed from the wastewater. Traditional projects tend to collect and treat point-source pollution only, unless storm sewers contribute to the flow of water to the wastewater treatment plant or the system has infiltration or inflow problems. The purpose of some traditional projects is to fix these types of excess flow issues. Traditional wastewater treatment is discussed in the Primer for Municipal Wastewater Treatment Systems, Publication EPA 832-R-04-001, dated September 2004, available on the U.S. environmental protection agency's website at: <https://www.epa.gov/sites/default/files/2015-09/documents/primer.pdf>.

(b) *Individual wastewater treatment systems.* 1. A project that is eligible under sub. (1) may consist of individual systems that serve one or more properties for the purpose of treating sanitary waste if all of the following apply:

- a. The municipality owns each individual system.
- b. The municipality is responsible for the proper installation, operation, and maintenance of each individual system.
- c. The municipality has 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.
- d. The municipality establishes 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.
- e. The municipality complies with all other applicable requirements, limitations, and conditions for projects funded under this subchapter.

2. The access required under subd. 1. c. shall be established through easements, covenants running with the land, or ordinance. The department may require that the program established under subd. 1. d. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(c) *Storm water projects.* 1. A municipality may receive interest rate subsidy under this subchapter for a publicly owned project necessary to control storm water runoff pollution in order to achieve water quality standards, including publicly-owned storm water management projects on public or private land that are required by any of the following:

- a. A WPDES storm water permit issued under subch. I of ch. NR 216.
  - b. A performance standard delineated in ch. NR 151.
  - c. A storm water management plan or other applicable plan approved by the department for purposes of managing runoff.
2. A project that is eligible under par. (a) may consist of individual BMPs on private land that treat runoff and serve one or more private properties if all of the following apply:
- a. The municipality owns each individual BMP.

b. The municipality is responsible for the proper installation, operation, and maintenance of each individual BMP.

c. The municipality has unlimited access to each individual BMP at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation, and replacement of the BMP.

d. The municipality establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual BMPs, and for monitoring the impact of the BMPs on the groundwater where required by the department.

e. The municipality complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

3. The access required under subd. 2. c. shall be established through easements, ordinance, or covenants running with the land.

4. The department may require that the program established under subd. 2. d. includes periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(2) INELIGIBLE PROJECTS. The department may determine that an entire project or a portion of a project is ineligible for CWFPP interest rate subsidy. If the department determines that a portion of a project is ineligible, it shall specifically identify the ineligible portion and the associated costs, or prorate the amount of interest rate subsidy to be provided to reflect the appropriate proportion of eligible to ineligible project costs, or both, in the interest rate subsidy agreement. All of the following projects or portions of projects are not eligible to receive financial assistance under this subchapter:

(a) Projects that are found ineligible for financing by the BCPL.

(b) Projects of a municipality that is failing to substantially comply with applicable conditions or requirements of s. 281.58 or 281.59, Stats., ch. Adm 35, this chapter, an existing financial assistance agreement with the CWFPP or Wisconsin's safe drinking water loan program under s. 281.61, Stats., or an interest rate subsidy agreement, or with the terms of a federal or state grant used to pay the costs to plan, design, or construct a treatment works or BMP.

(c) As specified in s. 281.58 (8) (a) 2., Stats., privately-owned connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(d) Public sanitary sewer mains, interceptors, and individual systems that exclusively serve development not in existence as of the date the department receives an interest rate subsidy application submitted by a municipality under this subchapter.

(e) Any project from which no construction costs are to be funded through the CWFPP, unless another governmental agency is providing financing for the construction costs and the department receives acceptable documentation of the other agency's commitment, as determined by the department, except if purchasing existing treatment works is the general scope of the project.

(f) Dams, pipes, conveyance systems, and BMPs, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(g) Any project in an unsewered municipality that will be disposing of wastewater in the treatment works of another municipality and has not executed an intermunicipal agreement under s. 66.0301, Stats., with the other municipality to receive, treat, and dispose of the wastewater.

(h) Projects that have been substantially complete for 3 years or longer.

(i) Any project that includes 2 or more municipalities that utilize shared or interconnected treatment works or a BMP, unless the municipalities served by the project execute an intermunicipal agreement that meets the requirements described in s. NR 162.05 (4) (h) for a wastewater project or s. NR 162.24 (3) (h) for a storm water project. This paragraph does not apply to a metropolitan sewerage district in which all municipalities being served have been annexed into the sewerage district or to a situation in which the intermunicipal exception under s. NR 162.05 (5) has been met.

**NR 162.39 Cost eligibility. (1) ELIGIBLE COSTS.** Project costs described in ss. NR 162.04 (1) (a) and 162.23 (1) (a) are eligible for interest rate subsidy.

**(2) INELIGIBLE COSTS.** Project costs described in ss. NR 162.04 (1) (b) and (2) and 162.23 (1) (b) and (2) are not eligible for interest rate subsidy.

**NR 162.40 Application process. (1) NOTICE OF INTENT TO APPLY SUBMITTAL.** A municipality that intends to apply for an interest rate subsidy shall submit to the department a notice of its intent to apply in accordance with s. NR 162.05 (1).

**Note:** Instructions regarding the online intent to apply system are available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html).

**(2) NOTICE OF INTENT TO APPLY DEADLINE.** The department may set a notice of intent to apply submittal deadline by publishing the deadline date in the annual intended use plan.

**(3) FACILITIES PLAN.** A municipality requesting interest rate subsidy for a wastewater or storm water project shall submit a facilities plan or other applicable plan to the department for approval. The municipality shall receive approval of the facilities plan or other applicable plan prior to submitting an application for financial assistance.

**(4) APPLICATION PROCEDURES.** A municipality shall apply for an interest rate subsidy in accordance with s. 281.58 (9) (a) to (c), Stats., in the form required by the department.

**Note:** An application form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

**(5) CONTENTS OF APPLICATION.** The applicant shall submit a complete interest rate subsidy application. A complete application includes the following items:

(a) Evidence of an approved facility plan or other department-approved plan.

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 or ch. NR 151 that are approvable under ch. 281, Stats. An applicant may be denied funding if the applicant does not provide appropriately complete plans and specifications to the department prior to or with the application. The applicant shall submit a copy of approvable plans and specifications with the application in addition to the plans and specifications submitted to the department for plan review under chs. NR 108 and 110 or ch. NR 151.

(c) A completed interest subsidy application form, including estimated or actual construction costs and replacement fund information.

(d) A proposed or an executed intermunicipal agreement in accordance with s. NR 162.05 (4) (h) for a wastewater project or s. NR 162.24 (3) (h) for a storm water project when 2 or more municipalities utilize shared or interconnected treatment works or a BMP.

**(6) APPLICATION SUBMITTAL DEADLINE.** In fiscal years for which the department sets an application submittal deadline for all or a specific type of funding, the applicant shall submit the items and information required under sub. (5) by the application submittal deadline in order to be considered eligible to obtain financial assistance from funds available during the funding cycle for which the deadline is set. The department may set application submittal deadlines in the intended use plan.

**(7) APPLICATION ACCEPTANCE.** The department shall accept an interest rate subsidy application as complete after all of the following occur:

(a) The department determines that it received all the applicable items and information required under sub. (5) for the scored project.

(b) The project is placed on the CWFPP funding list.

**(8) DEADLINE FOR SIGNING INTEREST RATE SUBSIDY AGREEMENT.** The department shall set in the CWFPP annual intended use plan a deadline for signing an interest rate subsidy agreement. An applicant shall sign an interest rate subsidy agreement within the timeframe set by the department. An applicant shall time its submittal of the application accordingly. If an interest rate subsidy agreement is not signed within the established timeframe, the applicant's project shall lose its allocated subsidy.

**NR 162.41 Interest rate subsidy requirements.** Before awarding interest rate subsidy for any project, the department shall determine that all of the applicable requirements of s. NR 162.40 are met, and that all of the following are satisfied:

**(1)** The department received all of the following information pertaining to the applicant's BCPL loan:

(a) A copy of the loan application.

(b) A copy of the application review letter from the attorney general's office.

(c) A signed copy of the certificate of indebtedness.

(2) The project has met the priority requirements of subch. V.

(3) If requested by the department, the municipality submitted copies of executed engineering contracts for planning, design, and construction.

(4) If requested by the department, the municipality submitted information related to bids and construction contracts.

(5) The department determined the parallel cost percentage, provided plans and specifications approval to the municipality, and complied with the Wisconsin environmental policy act requirements under the procedures in ch. NR 150 for the scored project.

(6) The applicant has the legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of the treatment work or BMP throughout the applicant's jurisdiction.

(7) DOA determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

(8) If requested by the department, the municipality submitted additional financial information required by DOA.

(9) The applicant received, or applied for, any state permits required by the department, including those under chs. 30 and 283, Stats.

(10) If requested by the department, the municipality submitted information regarding its user charge system and sewer use or storm water utility ordinance in addition to that required under s. NR 162.40 (3) (c).

(11) If requested by the department, the municipality submitted other documentation or certifications in support of the application.

**NR 162.42 Procurement.** (1) **APPLICABILITY.** Procurement of professional services and construction contracts by recipients under this subchapter shall be in accordance with the requirements of s. NR 162.08 (1) to (3) and (5) to (7).

**Note:** Once an interest rate subsidy agreement is executed by the municipality and the CWFP, no further amendments to professional services contracts or change orders for construction contracts can be considered for subsidy.

(2) **UTILIZATION OF MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES.** Applicants are encouraged to provide DBEs, including MBEs and WBEs, the maximum feasible opportunity to compete for contracts and subcontracts and to utilize DBEs, including MBEs and WBEs, for their projects. Recipients shall provide documentation of any MBE or WBE utilization to the department.

**Note:** The Wisconsin department of transportation unified certification program's list of certified DBEs is available online at <https://wisconsin.dot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>. Applicants are encouraged to use this list when soliciting DBEs for participation in the project.

**NR 162.43 Determination of interest rate subsidy. (1) GENERAL.** Interest rate subsidies shall be set in accordance with s. 281.58 (8) (j) and (12) (a), Stats., and this section. Subsidies are not available for interest payments that were due to the BCPL prior to the execution of an interest rate subsidy agreement with the department.

**(2) PROJECT COST CATEGORIES.** (a) The department shall classify eligible costs of projects and portions of projects according to s. NR 162.10 (1) (a) and (c).

(b) Costs described in ss. NR 162.04 (1) (b), 162.22, and 162.23 (1) (a) and (b) are not eligible for interest rate subsidy.

**(3) PROJECT INTEREST RATE CALCULATION.** The department shall calculate the project interest rate according to s. NR 162.10 (2).

**Note:** Section NR 162.10 (1) (b) does not apply to projects subsidized under this subchapter.

**(4) CALCULATION OF INTEREST RATE SUBSIDY.** (a) Only that portion of the recipient's BCPL loan that is used for a scored project is eligible for interest rate subsidy.

(b) The maximum amount of project costs eligible for interest rate subsidy is the total eligible costs of the scored project multiplied by the parallel cost percentage as determined under the applicable requirements of s. NR 162.04 (1) (c).

(c) The interest rate subsidy shall be based on the market interest rate in effect at the time the interest rate subsidy agreement is executed.

(d) The department shall calculate the interest rate subsidy as follows:

1.  $\text{Loan ratio} = \text{Eligible principal} / \text{Loan principal}$

Where:

Loan ratio . . . is the percentage of the BCPL loan principal that is eligible for interest rate subsidy.

Eligible principal . . . is the lesser of the BCPL loan amount eligible for interest rate subsidy under par. (a) or the CWFPP project costs eligible for subsidy under par. (b).

Loan principal . . . is the original total BCPL loan amount.

2.  $\text{Interest ratio} = (\text{Interest rate} - \text{Project rate}) \div \text{Interest rate}$

Where:

Interest ratio . . . is the interest rate subsidy as a percentage applicable interest rate, before adjusting for the eligible share of BCPL loan principal.

Interest rate . . . is the lesser of the market interest rate or the interest rate on the BCPL loan.

Project rate . . . is the project interest rate calculated under s. NR 162.10 (2) (b).

3.  $\text{Subsidy ratio} = \text{Interest ratio} * \text{Loan ratio}$ .

4.  $\text{Annual interest rate subsidy} = \text{Interest charged on BCPL loan} * \text{Subsidy ratio}$ .

Where:

Annual interest rate subsidy . . . is the dollar amount of the subsidy provided to the municipal recipient in a given year, based on the interest amount billed to the municipality that year for the BCPL loan.

Interest charged on BCPL loan . . . is the amount of interest charged by the BCPL for the applicable loan in a given year.

Subsidy ratio . . . is the subsidy ratio calculated in subd. 3., which is the percentage to be applied to interest charged on a BCPL loan in a given year to calculate the appropriate amount of interest rate subsidy to provide the municipality in that year. The subsidy ratio shall not be less than zero percent or greater than 100 percent.

**Note:** DOA annually calculates the interest rate subsidy amount for each CWFPP interest rate subsidy agreement still in effect. The amount provided to the municipality in a given year is based on information supplied by the BCPL regarding the amount of interest charged during that year on each outstanding BCPL loan associated with a CWFPP interest rate subsidy agreement. The BCPL determines the type of municipal obligation that is required for the repayment of its loan.

**NR 162.44 Interest rate subsidy agreement conditions. (1) COMPLY WITH LAWS.** The interest rate subsidy agreement shall require the recipient and the treatment works or BMP to comply with all pertinent requirements of federal, state, and local laws and regulations and outstanding CWFPP and safe drinking water loan program financial assistance agreements.

**(2) RECIPIENT REQUIREMENTS.** The interest rate subsidy agreement shall require the recipient to do all of the following:

(a) *Access.* Provide department representatives access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow department representatives access to records of contractors and subcontractors that are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions. The recipient shall also allow DOA access to records for audits.

(b) *Operations and maintenance.* Develop and adopt a program of system-wide operations and maintenance of the treatment works, including the training of personnel.

(c) *Erosion and sediment control.* Comply with all applicable construction site performance standards and technical standards established in ch. NR 151 for controlling runoff pollution.

**Note:** Storm water technical standards, models, and BMPs are available online at <http://dnr.wi.gov/topic/stormwater/standards/>. Use the standards to plan, design, install, and maintain erosion and sediment control, and storm water management practices, to comply with ch. NR 151. This information on the web is also available in paper form and may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

(d) *Construction inspection.* Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(e) *Substantial completion.* Notify the department of the substantial completion of the project.

(f) *Minority business enterprise and women business enterprise utilization reporting requirements.*

Document all utilization of MBEs and WBEs on the project.

(3) **EFFECTIVE DATE.** The interest rate subsidy agreement is not effective until executed by all parties to the agreement.

(4) **DEBT SERVICE AND EQUIPMENT REPLACEMENT FUND.** If required under s. 281.58 (14) (b) 7., Stats., the recipient shall adopt and maintain a user charge system that generates sufficient revenue to cover the cost of debt service and equipment replacement.

**NR 162.45 Financial management.** The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department or required by the federal government.

(2) Maintain a financial management system that meets the requirements, terms, and conditions of the interest rate subsidy agreement.

(3) Comply with any requirements of the BCPL.

**NR 162.46 Interest rate subsidy disbursements and project closeout.** (1) **GENERAL.** After execution of the interest rate subsidy agreement, DOA may provide interest rate subsidy for the eligible portion of project costs incurred within the scope of a scored project. The department shall determine compliance with the terms and conditions of the interest rate subsidy agreement before interest rate subsidy payments are made.

(2) **APPLICATION OF SUBSIDY PAYMENTS.** Subsidy payments shall be applied to the interest due on the BCPL loan.

(3) **AMENDMENTS AND CHANGE ORDERS.** (a) The eligible costs established in the interest rate subsidy agreement that were used to calculate the subsidy payment may not be increased by amendment or change order.

(b) An executed interest rate subsidy agreement may be amended only if the department or DOA determines that an amendment is needed to correct an error or errors in the agreement.

(4) **PROJECT CLOSEOUT.** All of the following project closeout procedures shall be completed as soon as is practicable after the final completion of project construction:

(a) *Final inspection.* The recipient shall notify the department of the final completion of the project. The department may complete a final inspection of the project.

(b) *Documentation of minority business enterprise and women business enterprise utilization.* The recipient shall document and submit information regarding utilization of MBEs and WBEs in the form required by the department.

**Note:** An MBE/WBE utilization form is available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html> or from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

(c) *Operations and maintenance.* The municipality shall submit to the department evidence that its operations and maintenance manual has been updated as required by the department.

(d) *Department confirmation of recipient's compliance.* The department shall inform DOA of the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

(e) *Closeout of completed projects.* If the recipient does not provide the required documents for project closeout of a completed project to the department for any CWWFP interest rate subsidy agreement or other financial assistance from the environmental improvement fund and applies for funding from the environmental improvement fund for another project, the department may deny financial assistance for the new project until the previous project is closed out according to requirements in this chapter.

**NR 162.47 Breach of contract and noncompliance.** The department may rescind an interest rate subsidy agreement or seek any other appropriate administrative remedy upon breach of contract by the recipient or if the recipient fails to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter.

**NR 162.48 Termination.** The department shall terminate the interest rate subsidy agreement if the recipient terminates its loan agreement with the BCPL or prepays all of the principal of the loan prior to the end of the term of the financial assistance agreement. No subsidy payment may be made for a year in which the loan is paid off early or the interest rate subsidy agreement is terminated early.

## SUBCHAPTER V — PRIORITY SCORING AND RANKING SYSTEM

**NR 162.49 Project scoring system.** Projects shall be scored under one of the following three categories: sewage collection systems, wastewater treatment plants, or storm water projects.

(1) **COLLECTION SYSTEM PROJECTS.** The following factors, when applied to sewage collection system projects in accordance with s. NR 162.50, shall determine the priority scoring for clean water fund program financial assistance pursuant to s. 281.58, Stats.:

(a) *Project type score.* The following points shall be awarded to each sewage collection system project:

1. Fifty points for a project that the department determines is necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats., including eligible projects identified under s. NR 162.03 (1) (a) 2.

2. Twenty-five points for a project that installs sewers in a previously unsewered area, including eligible projects identified under s. NR 162.03 (1) (d) 2.

3. Five points for a project to improve a sewage collection system that contributes to violations of a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., related to a performance standard, including eligible projects or costs identified under s. NR 162.03 (1) (c).

(b) *Human health score.* A sewage collection system project may be awarded points for human health only if the project is necessary to eliminate a health hazard, subject to all of the following:

1. ‘Replacing failing septic systems.’ A project that reduces the percentage of failing private systems shall be awarded the following points:

a. Thirty points if 70 percent or more of the systems included in the project are failing systems.

b. Twenty-five points if 50 percent to less than 70 percent of the systems included in the project are failing systems.

c. Twenty points if 30 percent to less than 50 percent of the systems included in the project are failing systems.

d. Fifteen points if 15 percent to less than 30 percent of the systems included in the project are failing systems.

e. Ten points if 5 percent to less than 15 percent of the systems included in the project are failing systems.

f. Five points if less than 5 percent but greater than 0 percent of the systems included in the project are failing systems.

**Note:** Failing septic systems include those with surface water ponding, discharge of sewage to the ground, or high groundwater or crevassed bedrock.

2. ‘Elimination or prevention of bypasses and overflows.’ A project that reduces or prevents bypasses and overflows that have occurred within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information shall be awarded 15 points. If the most recent bypass or overflow occurred more than 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information, the department shall award 15 points under this subdivision only if the project is part of a larger phased collection system improvement plan required by a court-stipulated action, a consent order, a compliance schedule in a permit, or another type of legal document.

3. ‘Collection-system related backups.’ A project that is necessary to reduce the number of basement backups related to the sewage collection system from the number of backups that have occurred within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information shall be awarded the following points:

a. Fifteen points if the project is necessary to eliminate documented basement backups at 50 or more different municipal addresses.

b. Ten points if the project is necessary to eliminate documented basement backups at 15 to 49 different municipal addresses.

c. Five points if the project is necessary to eliminate documented basement backups at 1 to 14 different municipal addresses.

4. ‘ New collection system and new wastewater treatment plant.’ A project eligible under s. NR 162.03 (1) (d), in which one municipality is constructing both a new wastewater treatment plant and a new collection system to serve only one new sewer service area that includes customers within the applicant’s municipal boundaries, shall be awarded 10 points.

(c) *Regionalization score.* This section does not apply to sanitary sewer extensions within a municipality’s sewer service area. Sewage collection system projects that result in increased regionalization of wastewater treatment and a reduction in the number of locations at which effluent from wastewater treatment plants or individual septic systems is discharged into waters of the state shall be awarded the following points:

1. Fifty points if the recipient’s project results in elimination of individual septic systems and the recipient becomes a new subscribing municipality to another municipality’s wastewater treatment plant.

2. One hundred points for either of the following situations:

a. The recipient will abandon its existing treatment facility and construct new infrastructure to convey its wastewater to a new treatment facility being constructed to accommodate 2 or more municipalities.

b. The recipient will abandon its own existing treatment facility and construct new infrastructure to convey its wastewater to an existing treatment facility owned by another municipality.

(2) **WASTEWATER TREATMENT PLANT PROJECTS.** The following factors, when applied to wastewater treatment plant projects in accordance with s. NR 162.50, shall determine the priority scoring for CWFP financial assistance under s. 281.58, Stats.:

(a) *Project type score.* The following points shall be awarded to each wastewater treatment plant project:

1. Fifty points to a project meeting the criteria of s. NR 162.03 (1) (a) 1., necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats.

2. Fifty points to a project eligible under s. NR 162.03 (1) (b), required to meet new or changed WPDES permit limits.

3. Five points to a project meeting the criteria under s. NR 162.03 (1) (c), necessary to correct violations of an effluent limit contained in a permit issued under ch. 283, Stats.

(b) *Human health criteria.* Projects that directly affect human health shall be awarded points based on the following criteria:

1. Ten points if the project is necessary to prevent bypasses and overflows at a wastewater treatment plant that has had at least one occurrence of bypass or overflow, as defined in s. NR 210.21, within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information.

2. Five points if the project is necessary to eliminate documented system-related backups that occurred within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information

caused by conditions at the wastewater treatment plant but not including backups caused by problems in the sewage collection system or backups due to excessive infiltration and inflow.

3. Ten points if the wastewater treatment works discharges to groundwater.

4. Ten points if the wastewater treatment works has a groundwater discharge and an effluent limit for total nitrogen.

5. Five points if the wastewater treatment works has a groundwater discharge and an effluent limit for any compounds other than nitrogen, such as a limit for chlorides. The maximum number of points under this subdivision is 5.

**Note:** Example – If a treatment works has a groundwater discharge and an effluent limit for chlorides and an effluent limit for phosphorus, the department shall award only 5 points in this subdivision, even though there are 2 compounds for which the permit includes effluent limits.

6. Five points if the wastewater treatment works' permit requires annual disinfection prior to discharge.

7. Three points if the wastewater treatment works' permit requires disinfection but on a less than annual basis prior to discharge.

(c) *Water quality criteria.* The department shall award points for water quality parameters, based on the facility's WPDES permit limits. The department shall use surface water effluent limits in the current WPDES permit when determining the appropriate points to assign in the water quality criteria category as follows:

1. For BOD limits, the department shall assign points as follows:

a. Sixteen points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is less than 10 mg/l.

b. Twelve points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 10 or more mg/l but less than 15 mg/l.

c. Eight points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 15 or more mg/l but less than 20 mg/l.

d. Five points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 20 or more mg/l but less than 30 mg/l.

e. Two points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 30 or more mg/l.

2. For CBOD limits, the department shall assign points as follows:

a. Sixteen points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is less than 10 mg/l.

b. Twelve points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 10 or more mg/l but less than 15 mg/l.

c. Eight points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 15 or more mg/l but less than 20 mg/l.

- d. Five points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 20 or more mg/l but less than 25 mg/l.
  - e. Two points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 25 or more mg/l.
3. For TSS limits, the department shall assign points as follows:
    - a. Sixteen points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is less than 10 mg/l.
    - b. Twelve points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 10 or more mg/l but less than 15 mg/l.
    - c. Eight points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 15 or more mg/l but less than 20 mg/l.
    - d. Five points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 20 or more mg/l but less than 30 mg/l.
    - e. Two points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 30 or more mg/l.
4. For DO limits, the department shall assign points as follows:
    - a. Three points if the monthly permit limit for DO is greater than 6.99 mg/l.
    - b. One point if the monthly permit limit for DO is 4 or more mg/l but less than or equal to 6.99 mg/l.
5. For ammonia limits, the department shall assign the highest of the points for either chronic or acute as follows:
    - a. Five points if the monthly permit limit is for acute ammonia.
    - b. Fifteen points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is less than 5 mg/l.
    - c. Ten points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is 5 or more mg/l but less than 10 mg/l.
    - d. Six points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is 10 or more mg/l but less than 15 mg/l.
    - e. Two points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is 15 or more mg/l.
6. For phosphorus limits, the department shall assign points as follows:
    - a. Twenty points if the monthly permit limit for phosphorus is less than 0.2 mg/l.
    - b. Fifteen points if the monthly permit limit for phosphorus is 0.2 or more mg/l but less than 0.4 mg/l.
    - c. Ten points if the monthly permit limit for phosphorus is 0.4 or more mg/l but less than 0.6 mg/l.
    - d. Five points if the monthly permit limit for phosphorus is 0.6 or more mg/l but less than 0.9 mg/l.

e. Two points if the monthly permit limit for phosphorus is 0.9 or more mg/l but less than 2.5 mg/l.

f. One point if the monthly permit limit for phosphorus is 2.5 or more mg/l.

7. The department shall assign points as follows if the WPDES permit includes a limit for the specific element:

a. One point if the permit includes a chloride limit.

b. One point if the permit includes a copper limit.

c. One point if the permit includes a nickel limit.

d. One point if the permit includes a zinc limit.

e. One point if the permit includes a mercury limit.

f. One point if the permit includes a cadmium limit.

g. One point if the permit includes an arsenic limit.

(d) *Regionalization score*. This section does not apply to sanitary sewer extensions within the municipality's sewer service area. Treatment works projects that result in new or expanded regionalization of wastewater treatment shall be awarded the following points:

1. Fifty points if the project results in the recipient's full or partial ownership of a new treatment facility being constructed to treat wastewater conveyed from 2 or more municipalities. This excludes a situation in which the owner or owners of an existing regional treatment facility will abandon the existing treatment facility and construct a new treatment facility with no new subscribers.

2. Fifty points if the recipient is upgrading its existing treatment facility to accept and treat increased flows or loadings, or both, conveyed to the plant by one or more new subscribing municipalities, and the increase in flows or loadings is expected to be more than 10 percent of the pre-project design flows or loadings.

(3) **STORM WATER MANAGEMENT PROJECTS**. The following factors, when applied to storm water projects in accordance with s. NR 162.50, shall determine the priority scoring for CWFPP financial assistance pursuant to s. 281.58, Stats.

(a) *Project type score*. The following points shall be awarded to each storm water project:

1. Fifty points shall be awarded to a project if the municipality has a municipal storm water discharge permit under subch. I of ch. NR 216.

2. Twenty-five points shall be awarded to a storm water project in a non-permitted municipality.

3. Five points shall be awarded for a project for construction or replacement of runoff treatment works that violate a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., for violation of a performance standard. This includes eligible projects or costs identified under s. NR 162.22 (1) and (2).

(b) *Human health score*. Ten points shall be awarded to a storm water project that includes pretreatment of contaminants before discharging to groundwater through an infiltration system.

(c) *Water quality score.* Storm water projects may be awarded water quality points based on data from the use of models as approved by the department as follows:

1. Connected drainage areas associated with storm water projects shall be awarded the following points:

a. Ten points for projects for which the overall percentage of the drainage area connected to high density impervious surfaces, such as commercial strip malls, commercial downtowns, or shopping centers, is greater than 80 percent.

b. Five points for projects for which the overall percentage of the drainage area connected to medium density impervious surfaces, such as schools, high density residential, mobile homes, freeways, multifamily housing, light industrial, hospitals, or office parks, is 40 percent to 79 percent impervious.

c. One point for projects for which the overall percentage of the drainage area connected to low density impervious surfaces, such as open spaces, suburban areas, parks, cemeteries, and low or medium density residential areas, is less than 40 percent impervious.

2. Storm water projects that provide TSS removal shall be awarded the following points:

a. Ten points for 80 percent or more TSS removal.

b. Five points for 60 percent to less than 80 percent TSS removal.

c. One point for 40 percent to less than 60 percent TSS removal.

3. Storm water projects that include the following features shall be awarded the following points:

a. Three points for greater than 55 percent phosphorus removal.

b. Three points for mechanical nutrient removal technology or other green technology.

c. Three points for infiltration.

(4) **POPULATION.** The department shall add a population score to projects that have the same score as other projects within their project category. The population score is one minus the logarithm to the base 10 of the residential population of the municipality served by the project, divided by 10.

$$\text{Population score} = 1 - \frac{\log_{10} \text{residential population}}{10}$$

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(5) **INTENDED USE PLAN.** The department may include additional or modify existing scoring criteria in the annual CWFP intended use plan.

**Note:** The intended use plan is required of the department by the U.S. environmental protection agency as part of the application package for the federal capitalization grant for the CWFP.

**NR 162.50 Project priority score.** (1) A project priority score shall be assigned to each project for which a completed priority evaluation and ranking form is submitted under s. NR 162.51. The project priority score is

based on the additive of each criterion within the project category for the project. Each project shall be scored under only one of s. NR 162.49 (1), (2), or (3).

(2) The municipality shall submit documentation as determined by the department to support the points claimed in the priority evaluation and ranking form. If documentation to support points that may be awarded for a particular factor is not submitted at the time of submittal of the priority evaluation and ranking form, zero points shall be awarded for that particular factor.

**NR 162.51 Procedure for determination and reevaluation of project priority score.** (1) A municipality intending to apply for clean water fund program assistance for a project shall submit to the department a priority evaluation and ranking form, including supporting documentation, through the department's online intent to apply and priority evaluation and ranking form system by a deadline established by the department.

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

**Note:** Email notification by the department of the availability of project priority scores on the web meets this requirement.

(3) The department may review and, if necessary under the requirements of this chapter, recalculate priority scores to ensure accuracy and timeliness of information. This includes reviewing a priority score when an applicant determines it will not construct the full scope of the project described in an intent to apply submittal or described through the points requested with the priority evaluation and ranking form information originally submitted for the project for the applicable state fiscal year. If the department finds an error made by the applicant or the department in a priority evaluation and ranking form, the department may revise the project priority score to correct the error at any time during which the priority evaluation and ranking form is valid. The department shall notify an applicant in writing if the department changes the priority score of any of the applicant's projects.

(4) If the applicant objects to the department's determination of the priority score in sub. (2) or (3), the applicant may request a reevaluation of the priority score with its application submittal for the state fiscal year for which the priority evaluation and ranking form is valid. The reevaluation request shall state the specifics of the objection. The applicant shall submit any new information that supports the objection and shall provide the priority score the applicant believes should be awarded the project based on this new information. When reevaluating the project priority score, the department shall consider new information only if the new information did not exist at the time of the original submittal.

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

(6) If the scope of a project changes after the department notifies the applicant of the reevaluation results, the department may recalculate the priority score based on the revised scope of the project.

**NR 162.52 Project ranking system.** (1) The department shall maintain a project priority list that ranks 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.

(2) If 2 or more projects have the same whole number priority score, the project serving the smaller population, as based on the population factor score, shall be considered to have the higher priority.

(3) The department shall prepare a project priority list and shall use it for prioritizing clean water fund program financial assistance to eligible projects.

**SECTION 2. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 3. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

For Preston Cole, Secretary