

## Chapter NR 125

WATER POLLUTION PREVENTION AND  
ABATEMENT GRANTS

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**History:** Chapter NR 125 as it existed on August 31, 1973 was repealed and a new chapter NR 125 was created, Register, August, 1973, effective September 1, 1973.

## PREAMBLE

State financial assistance for construction of pollution prevention and abatement facilities is a public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters. The state program of assistance to municipalities and school districts for financing such facilities is established to meet the state's water quality standards.

**NR 125.01 Purpose.** The purpose of this chapter is to establish rules for administration of water pollution prevention and abatement grants under section 144.21, Wis. Stats.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.02 Definitions.** For the purpose of these rules:

(1) **DEPARTMENT.** Department means the department of natural resources.

(2) **ESTIMATED REASONABLE COSTS.** Estimated reasonable costs of preliminary planning to determine the economic and engineering feasibility of pollution prevention and abatement facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of pollution prevention and abatement facilities; the erection, building, acquisition, alteration, remodeling, improvement or extension of pollution prevention and abatement facilities and the inspection and supervision of the construction of pollution prevention and abatement facilities.

(3) **INTERCEPTING SEWER.** Intercepting sewer means a sewer constructed within the municipality to:

(a) Receive the dry weather flow of untreated or inadequately treated sewage or liquid wastes from one or more existing sanitary sewer system terminals other than from a dwelling or building that presently discharges or formerly discharged flow directly into any waters of the state, and convey the flow to a treatment works, or

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

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(4) **MUNICIPALITY.** A municipality is defined as any city, town, village, county, county utility district, town sanitary district or metropolitan sewerage district.

(5) **POLLUTION PREVENTION AND ABATEMENT FACILITY.** Pollution prevention and abatement facility means the various devices used in the treatment of sewage or industrial wastes of liquid nature, including the necessary intercepting sewers, outfall sewers, pumping, power and other equipment and their appurtenances and any extensions, improvements, remodeling, additions and alterations thereof; and projects specified in NR 125.03 (2).

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.03 Eligibility for state grant.** (1) State grants may be made for pollution prevention and abatement facilities, including the following types of projects which are eligible for construction grants under U. S. Public Law 84-660 as amended:

(a) Any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, 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.

(b) In addition, 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.

(2) Regardless of eligibility for federal construction grants under U. S. Public Law 84-660 as amended, the following projects are also eligible for state grants:

(a) Projects involving a municipality's sanitary sewer collection system constructed to eliminate pollution from private waste disposal systems in developed areas in existence prior to enactment of Chapter 353, Laws of 1969 (January 17, 1970).

(b) Projects involving combined sewer separation programs in public easements or right-of-way.

(c) Projects involving costs of construction of permanent waste treatment facilities installed under federal demonstration grants made to municipalities.

(d) Projects of school districts located outside the corporate limits of a city or village with an operating municipal sewage system.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.04 Allowable costs.** (1) **CONSTRUCTION COSTS.** The construction costs incurred under contracts and actual cost of purchased equipment and materials or costs incurred under force account procedures consistent with the provisions of section 62.15, Wis. Stats.

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(2) **ENGINEERING, ARCHITECTURAL, INSPECTION, AND OTHER FEES FOR TECHNICAL SERVICES.** Where the design is prepared by regularly employed engineers of a municipality, actual costs not exceeding that considered to be a reasonable cost if the work was performed privately on a fee basis, are allowable. In the event the municipality, as a regular practice, charges off design costs on a percentage basis when such work is performed by their regular forces, such costs are allowable for participation if reasonable in comparison with work performed privately on a fee basis.

(3) **LEGAL COSTS.** This item will include fees and expenses for legal services rendered in connection with the project. Reasonable costs involved in the development of the information necessary for the bond issue including preparation of the prospectus, the bond advertising, the printing of the bonds and other costs of a similar nature are properly included. When the bond counsel and attorney fees cover all the steps from the drafting of the bond resolution through the final sale of the bonds, no additional financing costs would be allowed. A reasonable amount of the time of the municipal attorney may be included when pertinent. Costs of legal services rendered in connection with ineligible parts of the project, such as acquisition of site, are not allowable.

(4) **ADMINISTRATIVE COSTS.** This item will include only those additional identifiable administrative costs incurred specifically by reason of construction of the project such as provision of extra office space, telephone service, and extra personnel, including accountants, bookkeepers and clerks, or the actual time of such personnel already in the employ of the project owner, provided time records on such employees specifically show actual hours spent in project connected duties.

(5) **LAND COSTS.** Certain of the direct costs for land acquired after October 17, 1972 necessary for the construction of a treatment works if approved by the United States environmental protection agency in the grant agreement or a grant amendment, except as otherwise provided in 125.05 (3).

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

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

(1) **COSTS INCURRED PRIOR TO FIRST APPROPRIATION.** Any costs incurred or covered by contracts let prior to August 1, 1966, the date on which the first appropriation for grants for construction of projects under the Water Resources Act became available. Where performance of services under an agreement entered into prior to August 1, 1966, is conditioned on a proceed order or contingency which occurred on or after that date, eligibility of such costs must be determined in the light of the specific provisions of each case. Any questions which arise in making such determinations should be submitted to the department for advice and guidance.

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

(3) **COST OF SITE.** Cost of treatment plant sites, pumping station sites, land acquired in fee for sewers, sanitary landfills, sludge storage areas, and easements or any estate or interest therein, and any cost associated with acquisition thereof.

(4) **REBATES, REFUNDS, TAX EXEMPTIONS.** Only the actual net cost to the applicant of materials or services is allowable. Where a rebate or refund is received from a firm or individual from whom the material, equipment or services were purchased, only the net cost may be allowed. Similarly, applicants exempt from the payment of sales taxes and excise taxes may not include the amount of such taxes as allowable cost even though such taxes may have been paid.

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

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

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

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

(9) **COSTS IN EXCESS OF BID PRICE.** When an alternate bid is rejected and later reinstated in the contract by an agreement between the contractor and the applicant, its eligible cost may not exceed the original bid price.

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

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

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.06 Applications.** Municipalities and school districts shall submit applications in accordance with instructions and on forms supplied by the department.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.07 Accompanying documents.** The following documents shall accompany each application:

(1) A certified copy of authorization by the applicant's governing body for the filing of the application.

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

(3) Current engineering reports.

(4) Contracts or agreements applicable to engineering and other technical services, legal services and administrative services and

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other information concerning the basis upon which fee or costs for such services were determined.

(5) An itemized estimate of construction costs.

(6) If the site has been acquired, the legal description of site, and description of the precise interest in site which has been acquired.

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

(8) A planning agency evaluation and comment on conformance of the project with the comprehensive plan developed or in process of development for the metropolitan or regional area in which it is located.

(9) For all projects commencing construction after April 29, 1972 to meet the requirements of the Wisconsin Environmental Policy Act, an environmental assessment covering the following items:

(a) The probable impact of the proposed project on the environment.

(b) Any probable adverse environmental effects which cannot be avoided.

(c) Alternatives to proposed action.

(d) Relations between local short-term uses of the environment and maintenance and enhancement of long-term productivity.

(e) Irreversible or irremediable commitment of resources involved in the proposed project.

(f) Evidence of public participation in evaluation of project.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.08 Departmental processing of applications.** The department will take the following actions:

(1) Upon receipt of an application, the department will assign a project number in order of receipt. The numbers shall be assigned in chronological order starting with No. 1. The project number will be used on all documents and correspondence relating to the project.

(2) The department will review the application and accompanying supporting documents in sufficient detail to assure completeness and that the proposed project conforms to the state water pollution control plan and that it will most economically meet standards established by the department regarding type of installation, method of treatment, standards of construction, etc. Any applications which are incomplete or which are not in compliance with the department's requirements may be returned to the applicant for correction.

(3) On the first work day of January, April, July and October, an evaluation for certification for priority will be made on all applications submitted in the preceding quarter. All pending applications will be reconsidered along with the new applications at these quarterly intervals. New applications and revised applications will be received at any time prior to certification.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

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**NR 125.09 Priority designation.** (1) **POINT RATING SYSTEM.** In ranking projects for priority for grants, the following factors will be considered:

(a) *Pollution control needs and health hazards of existing conditions affecting water uses:*

<i>Uses Affected</i>	<i>Points</i>
Public or other domestic supply*	70
Recreation	65
Fishing, wildlife & stock watering	60
Industrial water supply	55
Other	50

\* This includes water supplies for food processing, pharmaceutical and such other industries from which the product will be used for human consumption and private water supplies in areas of adverse soil conditions.

(b) *Financial capacity.* Measures of municipal capacity to finance projects are to be found in the variables of project cost per capita, median income, and the relationship of borrowing capacity to equalized value. A combined maximum of 30 points is assigned to these three measures of financial capacity and will be computed in accordance with the following table:

Points Applicable to Each Column	Median Income % of State Average*	Project Cost \$ Per Capita	Current Indebtedness Indebtedness Limit × 100 %
1	Over 195 %	\$ 1- 40	Less than 10 %
2	181-195	41- 80	10 % to less than 20 %
3	166-180	81- 120	20 % to less than 30 %
4	151-165	121- 160	30 % to less than 40 %
5	136-150	161- 200	40 % to less than 50 %
6	121-135	201- 240	50 % to less than 60 %
7	106-120	241- 280	60 % to less than 70 %
8	91-105	281- 320	70 % to less than 80 %
9	76- 90	321- 360	80 % to less than 90 %
10	60- 75	Over \$360	90 % to less than 100 %

\* Based on most recent county or standard metropolitan statistical area figure.

(2) **CERTIFICATION FOR PRIORITY.** Projects shall be certified for priority for grants in descending order of the sum of the points for pollution control need and financial capacity (maximum possible: 100) with first consideration given to applicants who have indicated a readiness to proceed through having final engineering plans and specifications approved or submitted for approval.

Note: Section NR 125.09 applies only to projects eligible for state assistance and not receiving federal aid under U. S. Public Law 84-660 as amended.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.10 Offer and acceptance.** (1) **PURPOSE.** The purpose of this section is to specify procedures which the department will follow in making a grant offer and conditions of acceptance.

(2) **ASSURANCES.** No grant shall be made for any project unless such project is in conformity with the state water pollution control program and has been certified by the department as entitled to priority over other eligible projects.

(3) **PROJECTS ENTITLED TO STATE GRANT.** The department will extend a grant offer with respect to eligible projects on which construc-

tion was started after August 1, 1966 in accordance with plans and specifications reviewed and approved by the department prior to commencement of construction, or for which approvable as-built plans are submitted after completion of construction and evidence satisfactory to the department is furnished that construction was in accordance with state standards.

(4) **NOTIFICATION TO APPLICANT.** The department will prepare a letter to the applicant informing the applicant of grant consideration. At this time the department will request an itemized construction cost breakdown based on actual bid prices.

(5) **AMOUNT OF GRANT OFFER.** (a) For projects receiving no federal aid, the total state grant offer shall amount to 25% of the eligible costs, based on actual lowest qualified bid prices obtained through competitive bidding procedures or an agreed price in the event of force account procedures.

(b) For projects receiving federal aid, the state grant offer shall amount to 25% or less to provide combined state and federal assistance not in excess of 80% of the cost of the project, except as provided in subsection (c).

(c) For projects receiving federal aid, the state grant offer shall amount to 25% or less to provide a combined state and federal assistance not in excess of 90% of the cost of the part of the project consisting of advanced or tertiary treatment components required to comply with state or federal orders, permit conditions, water quality standards or effluent standards. Such components include, but are not limited to, facilities designed to achieve nutrient removal, polishing, retention, land disposal, or detoxification of effluent. Subsection NR 125.10 (5) (c) shall apply only to projects receiving state grant offers after the effective date of these rules.

(6) **GRANT OFFER.** All grant offers shall be made on forms prepared by the department and signed by the administrator of the division of environmental protection and will set forth the terms and conditions of the offer.

(7) **ACCEPTANCE OF GRANT OFFER.** If the recipient of a grant offer agrees to the terms and conditions thereof, acceptance shall be indicated by signature of the authorized representative of the applicant in the designated place on all copies of the Offer and Acceptance Form. Two signed copies of the form shall be returned to the department with a certified copy of a resolution authorizing the representative to sign the acceptance.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.11 Payment procedure.** (1) Agreements entered into prior to July 1, 1969 with municipalities whose projects were completed prior to the effective date of the amendments to the statutes will continue to receive payments in accordance with existing agreements until the terms of the agreement are satisfied.

(2) For all other projects under construction or upon which construction was commenced after July 1, 1969, the department will enter into agreements to make payments under section 144.21 (6) (b) or (c), Wis. Stats.

(3) Partial payments will be made after inspection at the 25, 50 and 75% stages of completion of the project. Final payment will be made after final inspection and audit and evidence of satisfactory operation and maintenance. Total state payment will be based on the final audited eligible cost.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

**NR 125.12 Severability.** Should any section, paragraph, phrase, sentence, or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.