



CR85-90

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

JAN 14 1986
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Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WG-21-85 was duly approved and adopted by this Department on September 25, 1985. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 7th day of January, 1986.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

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4-1-86

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING AND CREATING RULES

IN THE MATTER of repealing s. NR 128.13(2)(b)3.;
renumbering ss. NR 128.05(8), 128.14(4) and
128.15(1); amending ss. NR 128.05(2) (intro.) and
(4)(q), 128.06(2), 128.08(1) and (2)(a) and (d),
128.09(2)(a)2. and 3. and (b), 128.11 (intro) and
(9), 128.13(2)(b)1. and 2., (f) and (g),
128.14(1), (3), (6)(a)1.b. and (7)(b) and
128.20(5); repealing and recreating
ss. NR 128.12(8)(a) and (b) and 128.13(2)(a) and
(e)2.a.; and creating ss. NR 128.03(5m), (7m),
(8m) and (16m), 128.05(4)(v) and (w), (5)(r) to
(v), (6)(g) and (8)(a) to (i), 128.08(3)(f),
128.10(2)(c)4., 128.12(14), 128.14(4)(b) to (d)
and 128.15(2)(a) to (c) of the Wisconsin
Administrative Code pertaining to state grant
assistance to municipalities for wastewater
treatment projects under the point source water
pollution abatement grant program and renumbering
ss. NR 128.39(6) and 128.43; amending
ss. NR 128.39(4)(b) and (5)(a), 128.41(2)(a) and
(3)(a) and 128.42(1) and (2)(b); and creating
ss. NR 128.39(6) and (7)(a) to (i) and 128.43(2)
of the Wisconsin Administrative Code pertaining
to state financial assistance for the elimination
of combined sewer overflow and repealing
ss. NR 128.62(3) and 128.65(3)(c); renumbering
ss. NR 128.62(4) and (5) and 128.65(3)(d);
amending ss. NR 128.62 (intro) and (2)(a) and (b),
128.65(1)(b) and 128.67(3); and repealing and
recreating s. NR 128.65(2)(a) and (b) of the
Wisconsin Administrative Code pertaining to a
financial assistance program for facilities
planning and engineering design of point source
pollution abatement facilities.

WG-21-85

Analysis Prepared by Department of Natural Resources

Chapter NR 128, Wis. Adm. Code contains provisions for the administration of three grants programs. Subchapter I is for state grant assistance to municipalities for wastewater treatment projects under the point source water pollution abatement grant program, commonly called the Wisconsin Fund. Subchapter II, the CSO Program, is for state financial assistance for the elimination of combined sewer overflow. The federal Advance of Allowance, Subchapter III, is a financial assistance program for facilities planning and engineering design of point source pollution abatement facilities for small communities under 3,500 population.

Rules for Subchapters I and II were promulgated under ss. 144.24 and 144.242, Stats., respectively and contain provisions required by both state statute and the rules and regulations of the Federal Water Pollution Control Act P.L. 92-2500, as amended.

The rules for Subchapter III were promulgated to meet the requirements of the federal Municipal Wastewater Treatment Construction Grant Amendments of 1981.

Due to the similarity of the requirements, provisions contained in Subchapter I are not repeated in Subchapters II and III, only cited.

When the U.S. Environmental Protection Agency issued final rules in February 1984 for the 1981 Amendments, the Department of Natural Resources took the opportunity to not only recommend revisions to the rules that reflect the federal program, but to recommend changes in areas needing clarification because they have been difficult for the Department to administer and for grantees to follow.

Following is a summary of changes:

Sections 1, 2, 3, 4, 45 and 46 are definitions of terms used within the code. Section 47 repeals a definition created in Section 2. This is consistent with the present format where provisions are contained in Subchapter I and cited in Subchapters II and III.

Section 5 clarifies eligibility for funding of projects.

Additional costs eligible for funding are included in Sections 6, 7, and 35. They include training of operating personnel, mitigation of impacts resulting from construction and necessary safety equipment.

Additional ineligible costs are defined in Sections 8 and 36, including lawnmowers, snowblowers, additional insurance, office furnishings, routine maintenance and instream improvements.

Sections 9, 11, 38 and 39 indicate costs that may be eligible, but must be approved prior to funding.

Section 11m changes the date upon which eligibility for interceptor sewers is calculated to that mandated by 1985 Wisconsin Act 29.

Clarification of eligible projects to include publicly owned treatment works and the costs for individual systems is contained in Sections 12, 13, 14 and 15.

Section 16 clarifies requirements the grantee must meet prior to receiving an allocation. Sections 17, 18 and 40, pertaining to the Step 3 application, clarify the requirements the grantee must meet prior to receiving a grant award.

User charge and sewer use ordinance provisions are in Sections 19, 22, 23, 25, 26 and 34. These revisions are intended for clarification only. Section 24 repeals a provision for attributing operation and maintenance costs that is extremely difficult for the grantee to implement and the Department to track.

Sections 20, 21 and 39 are additional grant conditions to be applied to grants. The revisions are intended to allow the grantee more flexibility in managing the grant and in insuring that proper erosion control measures are taken during construction.

Section 27 expands the procurement of contracts to include all professional services and provides the mechanism for requesting confidentiality for certain documents. Section 28 clarifies the grantees' responsibility for the project, Sections 29 and 30 clarify the requirements for utilizing small and minority owned businesses, Section 31 requires only "1 brand name" be included in the specifications and Section 32 clarifies the requirements if work is done by force account. Sections 42 and 43 reflect the same changes for Subchapter II.

Criteria used by the Department in carrying out subagreement reviews are contained in Sections 33 and 44, including a provision for performing bottom-line reviews for reasonableness.

Section 49 clarifies the fact that allowable project costs are the basis for determining the advance of allowance amount.

Section 50 clarifies the adjustment process for an advance of allowance. This clarification negates the need for the paragraph repealed in Section 51.

Section 53 is a correction to the existing rule. The word should have been agreement, not application.

Due to these proposed revisions, previous revisions and statutory changes, a number of the cites in the code need correction. Section 54 corrects this. Also because of these proposed revisions, some renumbering of paragraphs was necessary for consistency. These are shown in Sections 10, 37, 48 and 52.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 144.24, 144.242 and 227.014(2)(a), Stats., the State of Wisconsin Natural Resources Board hereby repeals, renumbers, amends, repeals and recreates and creates rules interpreting ss. 144.24 and 144.242, Stats. as follows:

SECTION 1. NR 128.03(5m) is created to read:

NR 128.03(5m) "Construction contract claim" means a written demand or assertion by one of the contracting parties to a construction contract that has not been readily resolved by the contracting parties as evidenced by a record of unsuccessful negotiations. (Readily negotiated and agreed upon change orders or contract modifications are not part of this definition.)

SECTION 2. NR 128.03(7m) is created to read:

NR 128.03(7m) "Enforceable requirements of the act" means those conditions or limitations of s. 147.02, Stats., permits which, if violated, could result in the initiation of a civil or criminal action under s. 147.29, Stats., or those provisions of s. 144.025(2)(r), Stats., which, if violated could result in department orders under s. 144.025(2)(s), Stats. If a permit

has not been issued, the term shall include any requirement which, in the department's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the department determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

SECTION 3. NR 128.03(8m) is created to read:

NR 128.03(8m) "Force account work" means the use of the grantee's own employees or equipment for construction, construction-related activities (including architectural or engineering services), or repair or improvement to a facility.

SECTION 4. NR 128.03(16m) is created to read:

NR 128.03(16m) "Project performance standards" means the planned and designed performance and operations requirements applicable to a project including the enforceable requirements of the act, including the quantity of excessive infiltration and inflow proposed to be eliminated.

SECTION 5. NR 128.05(2) (intro.) is amended to read:

NR 128.05(2) (intro.) ELIGIBLE PROJECTS. Projects for the construction of publicly owned treatment works and privately owned treatment works meeting the requirements of s. NR 128.08 are eligible for participation in the financial assistance program established by this subchapter if the project is necessary to correct noncompliance with the enforceable requirements of the act. Grant assistance may be awarded by the department for the following types of projects.

SECTION 6. NR 128.05(4)(q) is amended to read:

NR 128.05(4)(q) Start-up services for new treatment works; including the training of operating personnel and the preparation of curriculum and training material for operating personnel on the new equipment and/or processes funded under this program. Funding of routine, entry level or update operator training to meet state certification requirements under ch. NR 114 is the responsibility of the grantee;

SECTION 7. NR 128.05(4)(v) and (w) are created to read:

(v) Costs necessary to mitigate clearly demonstrated direct, adverse physical impacts resulting from building of the treatment works;

(w) The cost of necessary safety equipment, provided the equipment is required by applicable federal, state, local or industry safety standards.

SECTION 8. NR 128.05(5)(r) to (w) are created to read:

NR 128.05(5)(r) The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

(s) The cost of additional insurance for a specific project beyond that normally carried by the contractor;

(t) The cost of office furnishings including draperies, furniture and office equipment;

(u) Items of routine maintenance, including vehicles as authorized by s. NR 128.05(6)(g).

(v) The costs associated with instream improvements and modifications including but not limited to instream aeration, controlling and creating access points for maintenance purposes, dredging, channelization and erosion control not located directly at the discharge point or a direct result of construction activities.

SECTION 9. NR 128.05(6)(g) is created to read:

NR 128.05(6)(g) Mobile equipment including portable stand-by generators; large portable emergency pumps to provide "pump around" capability in the event of pump station failure or pipeline breaks; and sludge or septic tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point, including individual or on-site system to the treatment works or disposal site.

SECTION 10. NR 128.05(8) is renumbered 128.05(9):

SECTION 11. NR 128.05(8)(a) to (i) are created to read:

NR 128.05(8) CONSTRUCTION CONTRACT CLAIMS. Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible provided:

(a) The grantee issues a written notification to the department prior to incurring costs;

(b) The claim arises from work within the scope of the grant;

(c) The claim or assessment costs are not a result of mismanagement;

(d) The claim or assessment costs are not caused by the grantee's vicarious liability for the improper action of others;

(e) The grantee provides an acceptable record of negotiation;

(f) Any arbitration based settlement includes written findings of fact, allocation of award to each issue, conclusion of law, basis of award and rationale;

(g) The grantee provides a written record of negotiations;

(h) The department determines that an overriding state interest exists in the issues involved in the claim; and

(i) The department subsequently formally amends the cost into the grant.

SECTION 11m. NR 128.06(2) is amended to read:

NR 128.06(2) The fundable capacity for interceptor sewers shall be that capacity necessary to transport the projected flows ~~on June 30, 1986~~ expected to exist on the date the interceptor is estimated to become operational. ~~The fundable capacity shall~~ may not include capacity for transporting present and future flows from industrial users as defined in s. NR 128.03(10).

SECTION 12. NR 128.08(1) is amended to read:

NR 128.08 INDIVIDUAL SYSTEMS. (1) ELIGIBLE PARTICIPANTS. A municipality eligible for a grant under this subchapter, is eligible for a grant to

construct privately or publicly owned treatment works serving one or more principal residences or small commercial establishments if the requirements of s. NR 128.08 (2) are met.

SECTION 13. NR 128.08(2)(a) is amended to read:

NR 128.02(2)(a) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date; In the case of a privately owned system this shall be a principal residence;

SECTION 14. NR 128.08(2)(d) is amended to read:

NR 128.08(2)(d) Certify that if the treatment works is to be privately owned, public ownership of such works is not feasible and list the reasons in support of such certification;

SECTION 15. NR 128.08(3)(f) is created to read:

NR 128.08(3)(f) Any incremental cost increase in the sizing of treatment units and components due to flows from residences constructed or to be constructed after December 27, 1977 is not grant eligible.

SECTION 16. NR 128.09(2)(a)2. and 3., and (b) are amended to read:

NR 128.09(2)(a)2. ~~Proof-of-acquisition-of-appropriate-land-and-easements~~
A statement assessing availability of the proposed site; and

3. ~~A-complete~~ An approvable step 3 grant application. An approvable step 3 grant application is an application meeting the requirements of s. NR 128.10(2)(c) or an application which, in the opinion of the department, can be completed by submitting minor additional information.

(b) The department may allocate funds to a municipality on lists compiled under sub. (1) ~~above~~ if the municipality has submitted a bid tabulation with a recommendation to the department for review and concurrence within 3 months of the department's notice given under par. (a) ~~above~~.

SECTION 17. NR 128.10(2)(c)4. is created to read:

NR 128.10(2)(c)4. Proof of acquisition of appropriate land and easements.

SECTION 18. NR 128.11 (intro.) is amended to read:

NR 128.11 LIMITATIONS ON AWARD. Before awarding initial grant assistance for any project for a treatment works through a grant or grant amendment the department shall determine that all of the applicable requirements of s. NR 128.10 (2) have been met and shall also determine that sufficient documentation has been submitted to show that the municipality has complied or will comply with the following:

SECTION 19. NR 128.11(9) is amended to read:

NR 128.11(9) USER CHARGES. That, for a step 3 project, an approvable plan and a schedule of implementation have been developed for a system of user charges to assure that each recipient of waste treatment services within the applicant's service area will pay its proportionate share of the costs of operation and maintenance of all waste treatment service provided by the applicant. The applicant must agree that such a system or systems will be adequately maintained for the design life of the funded treatment works.

SECTION 20. NR 128.12(8)(a) and (b) are repealed and recreated to read:

NR 128.12 (8) PROJECT CHANGES. (a) Changes in the project work that are consistent with the objectives of the project, within the scope of the grant agreement and which do not require review under ch. NR 110 will not require the execution of a formal grant amendment before the grantee's implementation of the change. However, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment and can be made only upon department review and acceptance of such cost increase as eligible, reasonable and necessary for the accomplishment of project objectives.

(b) The grantee shall receive prior approval or a formal grant amendment from the department before implementing changes which:

1. Alter the project performance standards;
2. Alter the type of wastewater treatment provided by the project;
3. Significantly delay or accelerate the project schedule; or
4. Substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

SECTION 21. NR 128.12(14) is created to read:

NR 128.12(14) EROSION CONTROL DURING CONSTRUCTION. The grantee shall comply with all rules and policies promulgated or developed pursuant to s. 144.266(1), Stats., and the conditions of s. NR 110.15(5)(n).

SECTION 22. NR 128.13(2)(a) is repealed and recreated to read:

NR 128.13(2)(a) Financial Management. Each grantee shall establish a financial management system that accounts for revenues generated and expenditures for operation and maintenance, including replacement, of the treatment system.

SECTION 23. NR 128.13(2)(b)1. and 2. are amended to read:

NR 128.13(2)(b)1. Maintain the proportional distribution of operation and maintenance costs among users and user classes as required herein; and

2. Generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation and maintenance (including replacement) of the treatment works; ~~and~~.

SECTION 24. NR 128.13(2)(b)3. is repealed:

SECTION 25. NR 128.13(2)(e)2.a. is repealed and recreated to read:

NR 128.13(2)(e)2.a. ~~Flow-volume-of-the-users;~~ Actual or estimated wastewater discharge of the users;

SECTION 26. NR 128.13(2)(f) and (g) are amended to read:

NR 128.13(2)(f) Adoption of system. The user charge system ~~must~~ shall be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works or part of a regional system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with this section. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing waste to the system. The municipality shall inform the public of the financial impact of the user charge system on them and shall consult with the public prior to adoption of the system. Prior to adoption of the system, the municipality shall notify the department in writing how the public was informed of the financial impact of the user charge system and how the public was consulted. Consultation ~~must~~ shall include at least one, but ~~can~~ may include several, of the following activities with affected individuals and groups:

1. Public meetings
2. Public hearings
3. Review groups
4. Advisory groups
5. Ad hoc committees
6. Task forces
7. Workshops
8. Seminars
9. ~~Informal personal communications~~

(g) Notification. Each user charge system ~~must~~ shall provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate and ~~that portion of the user charges which are~~ charge attributable to wastewater treatment services.

SECTION 27. NR 128.14(1) is amended to read:

NR 128.14 PROCUREMENT. (1) APPLICABILITY. Procurement of ~~architectural engineering professional~~ services and construction contracts by grantees under all steps of grants for construction of treatment works shall be in accordance with state and local law and are subject to review for eligibility, allowability, allocability and reasonableness. The department, on request, in conducting such reviews will hold confidential in accordance with s. NR 2.195(2)(b)5.:

(a) Professional services' indirect cost breakdowns.

(b) Professional services' audit reports and associated work papers and audit resolution correspondence.

SECTION 28. NR 128.14(3) is amended to read:

NR 128.14(3) GRANTEE RESPONSIBILITY. The grantee is responsible for the administration and successful completion of the project for which state grant assistance is awarded in accordance with sound business judgment and good administrative practice under state and local laws. Review or approval of facilities plans, design drawings and specifications or other documents by or for the department is for administrative purposes only and does not relieve the grantee of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works described in the grant agreement as required under law, regulations, permits, and good management practices. The department is not responsible for increased costs resulting from defects in the approved plans, design drawings and specifications or other subagreement document.

SECTION 29. NR 128.14(4) is renumbered NR 128.14(4)(a) and amended to read:

NR 128.14(4) UTILIZATION OF SMALL AND MINORITY OWNED BUSINESSES. (a) The department shall monitor the utilization of small and minority owned businesses by all grantees. Efforts shall be made by grantees to utilize small business and minority-owned business ~~sources-of-supplies-and-services. Such efforts should~~ to allow these sources the maximum feasible opportunity to compete for subagreements and contracts to be performed utilizing state grant funds. Small and minority owned businesses should be utilized to the extent possible as sources of supplies and services. Inadequate performance by grantees may subject grantees to the provisions of s. NR 128.24.

SECTION 30. NR 128.14(4)(b) to (d) are created to read:

NR 128.14(4)(b) Grantees are responsible for implementation of the requirements of par. (a) and shall:

1. Inform potential construction contractors of the requirements of pars. (c) and (d).

2. Make information on small and minority owned businesses available to potential contractors.

3. Review bid documents submitted by potential contractors to verify small and minority owned business participation in accordance with pars. (c) and (d).

4. Monitor small and minority owned business participation throughout the length of the construction and take such steps as are necessary to insure contractor compliance with small business and minority business utilization commitments.

5. Make reports available, upon request of the department, on small business and minority business utilization commitments, as well as actual small business and minority business utilization.

(c) If at least 5% participation is not achieved by small businesses for any construction contract, the contractor shall contact a minimum of 5 small businesses to promote the utilization of small businesses. Documentation of these contacts shall be submitted to the department with the bid documents.

(d) Municipalities having an established minority business goal as of January 1, 1985, shall achieve that goal through utilization of minority owned businesses which are certified under s. 560.036(2), Stats., or be determined in compliance with the requirements of this paragraph. Those municipalities

without a minority business goal as of January 1, 1985 shall achieve the level of participation specified in s. 16.75(3m)(b), Stats. by minority owned businesses which meet the requirement of s. 16.75(3m)(c)5., Stats., for any construction contract or be determined in compliance with the requirements of this paragraph. The 5% bid preference stated in s. 16.75(3m)(b), Stats., does not apply to any project funded under this subchapter. The grantee in awarding prime contracts, and the primary contractor, in awarding subcontracts, shall demonstrate good faith efforts as defined in subpars. a. to d. to promote the utilization of minority owned businesses. Documentation of the following good faith efforts shall be submitted to the department with the bid documents:

a. The grantee and contractor shall include minority owned businesses certified under s. 560.036(2), Stats., on solicitation lists.

b. The grantee and contractor shall assure that certified minority owned businesses are solicited whenever they are potential sources. A minimum of 5 contacts is necessary.

c. The grantee and contractor shall use the assistance of the department of development's office of minority business enterprise as appropriate.

d. If a subcontractor awards subcontracts, the conditions of this paragraph shall apply to the subcontractor.

2. Any change in the minority business percentage of participation by grantees as required in subd. 1. shall require written approval from the department prior to the start of construction on any portion of the project previously identified as being awarded to a certified minority owned business of any project funded under this subchapter.

SECTION 31. NR 128.14(6)(a)1.b. is amended to read:

NR 128.14(6)(a)1.b. At least 2 ~~one brand names name or trade names-of comparable-quality-or-utility-are~~ name is listed and are is followed by the words "or equal".

SECTION 32. NR 128.14(7)(b) is amended to read:

NR 128.14(7)(b) The department's approval shall be based on the grantee's certification ~~that he possesses~~ and demonstration of the necessary competence required to accomplish such work ~~and that the work can be accomplished more economically by the use of the force account method; or emergency circumstances so dictate.~~

SECTION 33. NR 128.15 is renumbered 128.15(1) and 128.15(2)(a) to (c) are created to read:

NR 128.15(2)(a) The department shall review architectural or engineering service subagreements and amendments for the eligibility, allocability and reasonableness of costs.

(b) For step 2 and step 3 projects, reasonableness reviews shall, at a minimum, consist of a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. Consideration shall be given to completeness of scope of work, the grantee's procurement and negotiation process associated with the costs, any conditions unique to the project and all other factors impacting costs.

(c) The department is not precluded from performing other reviews of architectural or engineering costs for eligibility, allocability and reasonableness, or from disallowing architectural or engineering costs based on such reviews.

SECTION 34. NR 128.20(5) is amended to read:

NR 128.20(5) SEWER USE ORDINANCE. Each applicant for grant assistance for a step 2 or step 3 project shall demonstrate to the satisfaction of the department that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the treatment works project before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed. It shall require that wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

SECTION 35. NR 128.39(4)(b) is amended to read:

NR 128.39(4)(b) Those costs identified in s. NR 128.05(4)(c), (d), (j), (k), (l), (n), (p), (q), (r), (v), (w) and (7)

SECTION 36. NR 128.39(5)(a) is amended to read:

NR 128.39(5)(a) Those costs identified in s. NR 128.05(5)(b) to (i) and, (q), and (r) to (w).

SECTION 37. NR 128.39(6) is renumbered 128.39(8):

SECTION 38. NR 128.39(6) is created to read:

NR 128.39(6) COSTS ELIGIBLE IF APPROVED. Certain direct costs are sometimes necessary for the construction of a treatment works. Those costs identified in s. NR 128.05(6)(g) are eligible if reasonable and if the department approves them in the grant agreement or a grant amendment.

SECTION 39. NR 128.39(7)(a) to (i) are created to read:

NR 128.39(7) CONSTRUCTION CONTRACT CLAIMS. Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible provided:

(a) The grantee issues a written notification to the department prior to incurring costs;

(b) The claim arises from work within the scope of the grant;

(c) The claim or assessment costs are not a result of mismanagement;

(d) The claim or assessment costs are not caused by the grantee's vicarious liability for the improper action of others;

- (e) The grantee provides an acceptable record of negotiation;
- (f) Any arbitration based settlement includes written findings of fact, allocation of award to each issue, conclusion of law, basis of award and rationale;
- (g) The grantee provides a written record of negotiations;
- (h) The department determines that an overriding state interest exists in the issues involved in the claim; and
- (i) The department subsequently formally amends the cost into the grant.

SECTION 40. NR 128.41(2)(a) is amended to read:

NR 128.41(2)(a) The information and materials identified in s. NR 128.10(2)(a)1.d. and 2., (b)7. and (c)2. 3 and 4;

SECTION 41. NR 128.41(3)(a) is amended to read:

NR 128.41(3)(a) Each combined sewer overflow abatement project grant shall be subject to the provisions of s. NR 128.12(1), (4), (5), (6), (7), (8)(a) and (b), (10) and (12) and (14).

SECTION 42. NR 128.42(1) is amended to read:

NR 128.42(1) APPLICABILITY. Procurement of ~~architectural-or-engineering~~ professional services and construction contracts by grantees for construction of a combined sewer overflow abatement project shall be in accordance with state and local law and, the provisions of s. NR 128.14(2), (3), (4), (5), (6) and, (8) and are subject to review for eligibility, allowability, allocability and reasonableness. The department, on request, in conducting such reviews will hold confidential in accordance with s. NR 2.195(5)(b)5.:

(a) Professional services' indirect cost breakdowns.

(b) Professional services' audit reports and associated work papers and audit resolution correspondence.

SECTION 43. NR 128.42(2)(b) is amended to read:

NR 128.42(2)(b) The department's approval shall be based on the grantee's certification ~~that-the-grantee-possesses~~ and demonstration of the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method, or emergency circumstances so dictate.

SECTION 44. NR 128.43 is renumbered 128.43(intro.)(1) and 128.43(2) is created to read:

NR 128.43(2) The provisions of s. NR 128.15(2) shall apply to the review of subagreements and amendments for architectural or engineering services.

SECTION 45. NR 128.62(intro) is amended to read:

NR 128.62 DEFINITIONS. For the purposes of this subchapter the definitions in s. NR 128.03(2), (3), (5), (7), (7m), (9) and (24) shall apply and in addition:

SECTION 46. NR 128.62(2)(a) and (b) are amended to read:

NR 128.62 (2) "Building cost" means: the cost of erecting, building, acquiring, altering, remodeling, improving or extending of treatment works.

(a) For step 1 advance of allowance the amount indicated in the U.S. environmental protection agency needs survey as required by s. 516(b) of the federal water pollution control act, as amended (33 U.S.C. 1375(b)) or an amount submitted by the small community; with a breakdown of the cost estimate.

(b) For step 2 advance of allowance the amount indicated in the facilities plan; or an up-to-date cost breakdown; or

SECTION 47. NR 128.62(3) is repealed:

SECTION 48. NR 128.62(4) and (5) are renumbered NR 128.62(3) and (4), respectively:

SECTION 49. NR 128.65(1)(b) is amended to read:

NR 128.65(1)(b) The amount of the advance of allowance will be determined using the percentage of total allowable project costs as established in 40 CFR part 35, subpart I, appendix B, as amended, and may not exceed the federal share of the estimated allowance.

SECTION 50. NR 128.65(2)(a) and (b) are repealed and recreated to read:

NR 128.65(2)(a) If the actual building costs are more than the estimated building costs used for the step 1 and step 2 advance of allowance, an additional allowance may be made.

(b) If the actual building costs are less than the estimated building costs used for the step 1 and step 2 advance of allowance, the small community shall repay the excess advance of allowance.

SECTION 51. NR 128.65(3)(c) is repealed:

SECTION 52. NR 128.65(3)(d) is renumbered NR 128.65(3)(c):

SECTION 53. NR 128.67(3) is amended to read:

NR 128.67(3) The small community agrees to complete the project in accordance with the advance of allowance ~~application~~ agreement.

SECTION 54. CROSS-REFERENCE CHANGES. In the sections of the code listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

Column A	Column B	Column C
128.09(3)(b)1.	20.370(4)(b)	20.370(4)(dc)
128.10(2)(c)3.	128.12(10)	128.12(9)
128.12(8)(c)	128.18	128.22
128.12(9)(d)	110.05(2)	110.05(3)(c)
128.12(9)(d)	128.24(8)	128.24(1)(g)
128.12(11)	128.18(4)	128.18(5)
128.13	144.24(8)(a)3.	144.24(8)(c)
12.18(1)	128.24(2) and (3)	128.12(9)(c), (10)(a), (11) and (12)

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on September 25, 1985 and December 18, 1985.

The rules contained herein shall take effect as provided in s. 227.026(1)(intro.), Stats.

Dated at Madison, Wisconsin

January 2, 1986.
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By *Carroll D. Besaony*
Carroll D. Besaony, Secretary

(SEAL)

3407U
12/10/85



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

January 7, 1986

IN REPLY REFER TO: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
Suite 904
30 W. Mifflin Street

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JAN 14 1986

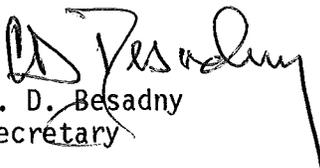
Revisor of Statutes
Bureau

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WG-21-85. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Energy and Environmental Resources pursuant to s. 227.018, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.

7555H



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

RECEIVED

FEB 12 1986
4:10 pm
Division of Statutes
Bureau

STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of page 5 of Natural Resources Board Order No. WG-21-85 was duly approved and adopted by this Department on September 25, 1985. I further certify that said copy is the form approved by the legislative review committees pursuant to s. 227.018, Stats., and that said copy has been compared by me with the corrected original on file in this Department and that the same is a true copy thereof, and of the whole of such corrected original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 10th day of February, 1986.

SEAL

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(u) Items of routine maintenance, including vehicles except as authorized by s. NR 128.05(6)(g).

(v) The costs associated with instream improvements and modifications including but not limited to instream aeration, controlling and creating access points for maintenance purposes, dredging, channelization and erosion control not located directly at the discharge point or a direct result of construction activities.

SECTION 9. NR 128.05(6)(g) is created to read:

NR 128.05(6)(g) Mobile equipment including portable stand-by generators; large portable emergency pumps to provide "pump around" capability in the event of pump station failure or pipeline breaks; and sludge or septic tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point, including individual or on-site system to the treatment works or disposal site.

SECTION 10. NR 128.05(8) is renumbered 128.05(9):

SECTION 11. NR 128.05(8)(a) to (i) are created to read:

NR 128.05(8) CONSTRUCTION CONTRACT CLAIMS. Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible provided:

- (a) The grantee issues a written notification to the department prior to incurring costs;
- (b) The claim arises from work within the scope of the grant;
- (c) The claim or assessment costs are not a result of mismanagement;
- (d) The claim or assessment costs are not caused by the grantee's vicarious liability for the improper action of others;
- (e) The grantee provides an acceptable record of negotiation;
- (f) Any arbitration based settlement includes written findings of fact, allocation of award to each issue, conclusion of law, basis of award and rationale;
- (g) The grantee provides a written record of negotiations;
- (h) The department determines that an overriding state interest exists in the issues involved in the claim; and
- (i) The department subsequently formally amends the cost into the grant.

SECTION 11m. NR 128.06(2) is amended to read:

NR 128.06(2) The fundable capacity for interceptor sewers shall be that capacity necessary to transport the projected flows ~~on June 30, 1985~~ expected to exist on the date the interceptor is estimated to become operational.

The fundable capacity shall ~~may~~ not include capacity for transporting present and future flows from industrial users as defined in s. NR 128.03(10).

SECTION 12. NR 128.08(1) is amended to read:

NR 128.08 INDIVIDUAL SYSTEMS. (1) ELIGIBLE PARTICIPANTS. A municipality eligible for a grant under this subchapter, is eligible for a grant to