

CR 91-53

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STATE OF WISCONSIN)
DEPARTMENT OF ADMINISTRATION) ss.

I, Secretary of the Department of Administration and custodian of the official records, certify that the annexed rules relating to administration of the Clean Water Fund, were duly approved and adopted by this Department on August 16, 1991.

I further certify that this copy has been compared by me with the original on file in this Department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Administration at 101 South Webster Street, in the City of Madison this 16th day of August, 1991.


James R. Klauser, Secretary
Department of Administration

ORDER OF THE
DEPARTMENT OF ADMINISTRATION
CREATING RULES

Relating to administration of the Clean Water Fund.

To create Chapter Adm 35 of the Wisconsin Administrative Code.

Analysis prepared by the Department of Administration:

This rule implements the statutory directive to the Department of Administration to administer the Clean Water Fund program, which provides financial assistance to municipalities for certain pollution abatement project costs. Under this rule, the Department must certify that a municipality meets the conditions of receiving financial assistance from the Clean Water Fund before a project loan is made. The Department must consider such factors as the type and amount of dedicated source of revenue a municipality has available to repay a project loan; the municipality's debt service costs; certain demographic information; revenues available to the municipality; a municipality's other obligations and its credit rating.

The rule provides that the Department must determine whether a municipality has the financial capacity to assure sufficient sources of revenue to operate and maintain the pollution abatement project during its useful life and to pay the debt service on its Clean Water Fund Loan. The Department will not issue a certification unless a municipality establishes either an irrevocable pledge of ad valorem taxes (for a general obligation), or a pledge of net revenues available to the water utility, a pledge of special assessments, municipal payments or other similar income (for a revenue obligation) for repayment of the project loan.

The rule also sets forth the Department's authority to intercept any state aid due the municipality whenever a municipality is unable to make a Clean Water Fund repayment. In addition, the rule sets forth the procedure for disbursement of project loans by the Department to a municipality, and for establishing the market rate used to calculate the applicable interest rate for each project loan.

Finally, the rule provides measures of accountability which a municipality must ensure, for the project loan. For example, the municipality must use generally accepted governmental accounting principles when maintaining project loan accounts; must provide recent audited financial statements at least annually during the term of the loan; and must take no action which would reduce the amount available from the dedicated source of revenues established for repayment of the project loan.

Pursuant to the authority vested in the Department of Administration by ss. 16.004(1), 144.241, 144.2415 and 227.11, Stats., the Department of Administration hereby adopts rules interpreting ss. 144.241(7), 144.2415(14), Stats., the Clean Water Fund as follows:


SECTION 1: Chapter Adm 35 is created to read:

(as stated in the material attached hereto)

The rule contained herein shall take effect as provided in s. 227.22(2)(intro), Stats.

The proposed rules will have no significant impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Dated: 8-16-91


James R. Klauser, Secretary
Department of Administration

SECTION 1: Chapter Adm 35 is created to read:

CHAPTER ADM 35

CLEAN WATER FUND

Adm 35.01 PURPOSE. The purpose of this chapter is to establish rules under s. 144.2415, Stats., for the administration of a program to provide financial assistance to municipalities for certain costs incurred in abatement of pollution of the waters of the state.

Adm 35.02 DEFINITIONS. In this chapter, the following terms shall have the respective meanings:

(1) "Clean water fund" means the fund established under s. 25.43, Stats., for the purpose of providing financial assistance to municipalities for certain costs incurred in abatement of pollution of waters of the state.

(2) "Department" means the department of administration.

(3) "Financial assistance" means a project loan or a grant to a municipality.

(4) "Market interest rate" means interest at the effective rate, as determined by the department, for revenue obligations issued by the state to fund a project loan or a portion of a project loan.

(5) "Municipality" has the meaning set forth in s. 144.2415(1)(c), Stats.

(6) "Project" means planning, design, or construction of a water pollution abatement project.

(7) "Project loan" means a loan to a municipality of money in the clean water fund to pay for costs of a project. "Project loan" includes a capital cost loan under ss. 144.241(1)(a) and 144.2415(9)(a), Stats., a project loan that constitutes financial hardship assistance under s. 144.241(13), Stats., a project loan for a transition project under s. 144.2415 (13), Stats., and other project loans.

Adm 35.03 CERTIFICATION. (1) In this section, "Certification" means a determination by the department that a municipality meets the conditions of receiving financial assistance under s. 144.2415(9)(am) and (b).

(2) A notice of financial assistance commitment shall not be issued if the department determines that the municipality is unlikely to be able to repay the project loan. The department may take into consideration the following factors when determining whether to provide certification:

(a) The type and amount of the dedicated source of revenue available to repay the project loan.

(b) Debt service payments on the project loan, including but not limited to, amortization, actual or estimated interest rate and the anticipated disbursement schedule.

(c) Demographic information, including but not limited to, population, income, property values and employment.

(d) Services provided and costs incurred by the municipality.

(e) Revenues available to the municipality.

(f) Information that is included in financial statements of the municipality for the past 3 fiscal years or that would be required to be included if such statements were prepared in accordance with generally accepted accounting principles applicable to government units, and an auditor's opinion regarding the financial statements, including exceptions in such opinion or failure to provide such opinion.

(g) Any credit rating assigned to the municipality by a nationally recognized bond rating agency, whether or not such rating is published.

(h) Terms and conditions contained in any resolution or indenture of trust for obligations issued by the state to fund project loans.

(i) Any relevant financial information which may have an impact on a municipality's ability to repay the project loan.

(3)(a) The department may not issue a certification unless the municipality demonstrates to the satisfaction of the department that the municipality has the financial capacity to assure sufficient dedicated sources of revenue to operate and maintain the project for its useful life and to pay the debt service, including funding and maintaining any debt service reserve, on its project loan. The department may consider the effect of proposed financial hardship assistance or assistance provided by another entity in making a determination of financial capacity.

(b) The department may require an opinion of counsel or bond counsel, acceptable to the department, to the effect that the obligation of the municipality to repay the project loan is valid and enforceable and that interest on the project loan is excluded from gross income for federal income tax purposes.

(4)(a) The department may not issue a certification unless the municipality establishes one or more dedicated sources of revenue that the department deems sufficient for repayment of the project loan.

(b) In this subsection, "dedicated source of revenue" includes any of the following:

1. For a general obligation, an irrevocable pledge of ad valorem taxes.

2. For a revenue obligation, a pledge of net revenues available to the utility, including user fees, a pledge of special assessments, municipal payments, other income, or a combination thereof.

3. For a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats., a general obligation pledge of ad valorem taxes.

Adm 35.04 CREDIT AND SECURITY. (1) The municipality's obligation to repay a project loan may be in the form of a general obligation or a revenue obligation.

(2) The department may require the project loan to the municipality to be in any form which the department in its discretion determines will not, during the term of the project loan, substantially and adversely affect the municipality's ability to borrow for general operations and capital costs other than the project.

(3) In administration of its powers and duties under s. 144.2415(11)(b), the department shall deduct, as a first charge against state payments due the municipality, any amounts due to the clean water fund.

Adm 35.05 DISBURSEMENT OF PROJECT LOAN PROCEEDS. (1) Except as provided in this section, proceeds of a project loan shall be distributed by the department to the municipality upon presentation of a request for disbursement from the municipality and written certification from the department of natural resources that the municipality is in compliance with all applicable requirements of ch. NR 162 and the financial assistance agreement. The form and procedure of the request shall be specified in the financial assistance agreement.

(2) Except when the department determines that there will be no adverse impact on the clean water fund, disbursements shall be no greater than, nor earlier than, the amounts and dates mutually determined by the municipality and the department and stated in the financial assistance agreement.

(3) Disbursements may be suspended or withheld if the municipality has failed to comply with project objectives or any of the terms, conditions or reporting requirements of the financial assistance agreement. Disbursements may also be suspended or held upon the issuance of a stop-work order under s. NR 162.20. Disbursements shall resume upon correction of the violation or upon amendment of the financial assistance agreement.

Adm 35.06 INTEREST RATES. The department shall establish the market rate used to calculate the applicable rate under s. NR 162.07(4) for each project loan, taking into account the following factors:

(1) The market rate used to calculate the rate for a particular project loan or portion of a project loan shall be at the effective interest rate of the funds, as determined by the department, that are used to fund all or a portion of each project loan. When a current market rate cannot be determined from an actual bond sale, the department may estimate such market rate based on market comparables and market indices.

(2) The market rate shall be calculated for each obligation used to fund loans from the clean water fund. If an individual project receives disbursements derived from the proceeds of more than one obligation issued by the state, then the rate applicable to that project may be calculated according to the market rates of the corresponding sources of the disbursements made for that project.

(3) Notwithstanding (1) and (2) above, the rate for a project or a portion of a project that qualifies under s. 144.2415(13), Stats., shall be 2.5% per year.

Adm 35.07 ACCOUNTABILITY FOR PROJECT LOAN. (1) A municipality that receives a project loan shall:

(a) Maintain project accounts in accordance with generally accepted government accounting principles, including accurate, complete and current records of project costs, sources and uses of project funds, documentation as to the eligibility of project costs, records of refunds, rebates and other credits relating to the project and all payments that constitute the dedicated source of revenue.

(b) Provide, if available, the most recent audited financial statements at the time of application and at least annually during the term of the financial assistance agreement.

(c) Take no action which would reduce the amount available from the dedicated source of revenue established for repayment of the project in accordance with s. 144.241(14)(b)1, Stats.

(2) The department may require or perform financial audits prior to, during or at the end of the term of the project loan.

(3) A municipality that receives financial assistance provided in whole or in part from the federal capitalization grant described in the Federal Water Quality Act of 1987, 33 USC ss. 1381 to 1387, shall comply with the Federal Single Audit Act, 31 USC ss. 7501 to 7507, and OMB circular A 128. A municipality that receives financial assistance from other sources may, at its option, commission a single audit in accordance with the Federal Single Audit Act, OMB circular A 128 and the state's single audit guidelines. All reasonable, allocable costs of single audits are eligible costs to the extent provided in s. NR 162.05.

(4) The department may rely on a commissioned audit unless it finds that the audit was not performed in accordance with state or federal auditing standards. The department may perform, or commission others to perform an additional audit or audits to supplement work done in a single audit, to the extent it deems necessary.

Adm 35.08 FINANCIAL ASSISTANCE AGREEMENT AMENDMENTS. The written certification to the department of natural resources from the department is required for any amendment to a financial assistance agreement which will have a financial impact greater than that provided for in the financial assistance agreement or which will affect the security of the loan, as determined by the department. A financial assistance agreement does not include the evidence of indebtedness. The evidence of indebtedness may not be amended without the prior written approval of the department.

Adm 35.09 VARIANCES. The department may approve a variance from requirements of this chapter when the department determines that the variance is essential to provide financial assistance within the scope and intent of the program, or that the variance is in the best interest of the state. In approving a variance, the department may take into account such factors as good cause, circumstances beyond the control of the recipient or the department and financial hardship. A request by a municipality for a variance shall include a description of the nature of the variance and the circumstances leading to the request.

FISCAL ESTIMATE

DQA-2048 (R11/90)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

Subject

Clean Water Fund Rules Adm 35

Fiscal Effect

State: No State Fiscal Effect

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

- Increase Existing Appropriation Increase Existing Revenue
 Decrease Existing Appropriation Decrease Existing Revenue
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others San & Lake distri.
 School Districts VTAE Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The Clean Water Fund rules direct administrative aspects of the Clean Water Fund, created by 1989 Act 366. The rules provide for analytical and procedural methods which the Department will employ in processing and approving Clean Water Fund loans and loan applications. The rules will have no direct fiscal effect other than those described in the attached summary, which was prepared for Act 366.

Long-Range Fiscal Implications

Reduced costs of borrowing for local units of government through Act 366. No direct impact through rules.

Agency/Prepared by: (Name & Phone No.)

DQA Mark Saunders 266-1741

Authorized Signature/Telephone No.

Date

4-2-91

FISCAL ESTIMATE WORKSHEET

1991 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R11/90) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. ADM 35	Amendment No.
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Subject: Clean Water Fund Rules

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

See attached summary

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency Prepared by: (Name & Phone No.)
 DOA Mark Saunders 266-1741

Authorized Signature/Telephone No.

 266-1741

Date
 April 8, 1991

FISCAL NOTE ATTACHMENT**CLEAN WATER FUND PROGRAM
SPECIAL SESSION AB 25
SUBSTITUTE AMENDMENT****ASSUMPTIONS OF THE FISCAL EFFECT****Local Assistance**

The current Clean Water Fund program is a state revolving loan fund program created in May 1988 to provide loans to municipalities for wastewater treatment projects. The Clean Water Fund program was created in response to the 1987 Federal Clean Water Act whereby the federal government would provide states with capitalization grants over a six-year period to establish state revolving loan funds for wastewater treatment project funding.

Under the existing program, \$243 million in general obligation bonds has been authorized to be loaned directly to municipalities. In addition, approximately \$34 million during this biennium and \$150 million from 1991-93 to 1993-95 is anticipated to be available from the federal government for the program. Using the general obligation bond revenues and federal capitalization grant to provide loans directly to municipalities is known as a "direct" loan program.

Substitute amendment to Special Session Bill AB 25 proposes to change the Clean Water Fund program from a direct loan program to a "leveraged" loan program. The leveraged loan program uses the general obligation bond proceeds and the federal grant to leverage additional funds, in this situation, revenue bond proceeds.

Under a leveraged program, the general obligation bond revenues and the federal capitalization grant are placed in a reserve fund. The funds are not spent, but serve to provide security for the revenue bonds, and the revenue bond proceeds provide the funding source for the loans made to municipalities. The investment earnings on the reserve fund provide the funding to "buydown" the interest rates on municipal loans to below market rate. Buying down the municipal loan interest rates represent the state cost or subsidy for the Clean Water Fund program.

State costs are increased with the bill because additional general obligation bond authorization of \$60.8 million is needed in addition to the \$243 million in general obligation bond authorization currently in statute. Most of the total amount of general obligation bond authorization of \$304.2 million will be placed in the Clean Water Fund reserve fund and a portion of the \$304 million may be used for financial hardship assistance grants and direct loans to non-investment grade municipalities. The additional \$60.8 million in general obligation bond authorization will increase general purpose revenue (GPR) debt service costs for the state. The increase in GPR debt service costs for the 1989-91 biennium is estimated to be \$2,870,000. In future biennia, the increased GPR debt service costs to the Clean Water Fund program are estimated to be \$5,741,000 on an annual basis.

The proposed reserve fund will secure approximately \$729.3 million in revenue bonds. The revenue bonds will provide \$462.3 million in municipal wastewater treatment project loans and approximately \$120 million in capital cost recovery loans. The \$729.3 million figure for revenue bonds includes a 25% contingency.

The bill assumes that the revenue bond market interest rate will be 7.5%. The bill proposes that the \$462.3 million in municipal wastewater treatment loans would be made as follows:

1. \$352,955,000 for transition period project. Under the proposal, these projects would receive a 2.5% loan interest rate.
2. \$72,873,000 for tier 1 projects (compliance maintenance projects and new and changed permit limit projects). Under the proposal, these projects would pay 55% of the market interest rate on their loans (or 4.125% loan interest rates if the revenue bond market interest rate is 7.5%).
3. \$9,406,000 for tier 2 projects (unsewered projects). Under the proposal, these projects would pay 70% of the market interest rate on their loans (or 5.25% loan interest rates if the revenue bond market interest rate is 7.5%).
4. \$27,107,000 for tier 3 projects (excess reserve capacity and industrial capacity). Under the proposal, these projects would pay the market interest rate on their loans.

The state cost to provide the subsidy for the municipal wastewater treatment project loans at the proposed interest rates would be \$250,382,000 over the life of the loans. The present value for this amount of subsidy is \$143,443,000. In addition, the state cost to provide subsidy for the proposed 10% contingency fund for unexpected project costs would require a present value cost of \$14,344,300. Further state costs to provide subsidy for the financial hardship assistance component of the program would require a present value cost of \$21,516,450. The total present value subsidy proposed under the bill is \$179,303,750.

The proposed capital cost recovery loans of \$120 million would be made to municipalities at the state market interest rate and would not be subsidized. Therefore, the capital cost recovery loans would not represent a net debt service cost to the state.

Municipal costs for wastewater treatment projects under the Clean Water Fund program are decreased. Current Law provides for a transition loan interest rate of 3.5%. The substitute amendment to Special Session Bill AB 25 lowers the transition loan interest rate to 2.5%. Given the large number of municipalities which may be in the program and the variety of their individual project costs it is difficult to estimate the individual municipal savings resulting from this interest rate change. The average decrease in interest costs for all transition loans to municipalities will be approximately \$2,187,000 each year of the 20 year life of the loans.

Program Operations

There are three parts of the Clean Water Fund program operations costs which will change in relation to current law:

1. Department of Administration Program Operation Costs

The bill proposes that 5.0 SEG, permanent FTE positions be created in the Department of Administration. The positions would be responsible for financial management activities of the Clean Water Fund program. The 5.0 positions are based on legal, financial, accounting and administrative needs. The costs associated with the 5.0 new positions are:

1989-90

Computer Hardware	\$ 35,000
Computer Software	<u>30,200</u>
Total:	\$ 65,200

1990-91

Salary	\$148,300
Fringe	43,300
Supplies and Services	15,300
Permanent Property	<u>4,200</u>
Total:	\$211,100

*With 4
excluding 1/4 acc
141,700
41,100
12,300
4,200

199,300*

2. \$100,000 GPR is added to the GPR loan supplement provided to the Department of Natural Resources for the Clean Water Fund program in Act 31. The \$100,000 would be repaid along with the present GPR loan supplement. The \$100,000 is needed to cover current projected costs (unchanged from Act 31) as a result of the elimination of loan service fees during this biennium.

3. The bill proposes several changes to the SEG and SEG-F appropriations. Appropriation 20.370(2)(mx) positions are increased by 7.5 FTE and the appropriation 20.370(2)(mx) positions are decreased by 7.5 FTE in anticipation of receiving federal funds. Because of the uncertainty of when the federal funds can be used, based on when project commitments are made by the state, the bill also requests authority for the Department of Natural Resources to deficit spend in their federal Clean Water Fund program appropriations if the federal funds are not available by the end of the 1989-90 fiscal year.