

Chapter NR 162

CLEAN WATER FUND

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Subchapter II

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Note: Chapter NR 162 as it existed on June 30, 1996, was repealed and a new chapter NR 162 was created, Register, June, 1996, No. 486, eff. 7-1-96.

Subchapter I – General

NR 162.01 Purpose. (1) The purpose of this chapter is to establish rules under ss. 144.241 and 144.2415, Stats., for the implementation and administration of a financial assistance program for the planning, engineering design and construction of treatment works.

(2) All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.02 Applicability and cross referencing. This chapter applies to all applicants and recipients of funding for the planning, design and construction of treatment works made pursuant to ss. 144.241 and 144.2415, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 144.241 and 144.2415, Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.03 Definitions. In this chapter:

(1) “Allocable costs” means costs of items that can be assigned to at least one of the objectives within the scope of a project.

(2) “Applicant” means any municipality that applies for financial assistance under ss. 144.241 and 144.2415, Stats.

(3) “Approval” means the written approval of the department.

(4) “Assistance agreement end date” means the first day of the thirteenth month after substantial completion of the project.

(5) “Biennial finance plan” means the proposed plan described in s. 144.2415 (3), Stats.

(6) “Breach of contract” means the failure of the municipality to comply with:

(a) The terms and conditions of the financial assistance agreement or financial hardship assistance agreement; or

(b) The terms and conditions of the municipal resolution authorizing the issuance and sale of bonds or notes to the clean water fund.

(7) “Capital cost loan” means a loan to a municipality to finance its payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats.

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

(9) “Clean water fund” means the program established under ss. 25.43, 144.241 and 144.2415, Stats., for the purpose of provid-

ing financial assistance to municipalities for the planning, engineering design and construction of treatment works, and for projects for the treatment of nonpoint source pollution and urban stormwater runoff.

(10) “Compliance maintenance” means the program established and regulated under ch. NR 208, to prevent a permittee under ch. 147, Stats., from exceeding effluent limitations contained in a permit issued under ch. 147, Stats.

(11) “Compliance maintenance project” means a project that the department determines, under ch. NR 208, is necessary to prevent a municipality from exceeding an effluent limitation contained in a permit issued under ch. 147, Stats.

(12) “Connection lateral” means a sewer service line which connects a residence, commercial establishment, institutional or industrial user to a sewage collection system or individual wastewater system.

Note: This definition includes house service pipes and public lateral sewers regardless of ownership or whether located in the public right-of-way or on private property and which connect to the “Y” fitting of a public sanitary sewer main.

(13) “Construction” means any of the following activities:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works;

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

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

(d) Erecting, building, altering, remodeling, improving or extending a wastewater treatment work, or purchasing a package wastewater treatment system;

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

(14) “Contingency” means an amount in excess of the estimated project costs that are provided to fund cost overruns and amendments for a project.

(15) “Contractor” means a person or firm that agrees to furnish materials or perform services at a specified price for a project funded by the clean water fund.

(16) “Coverage” means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

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

(18) “Design flow” means the flow specified in a WPDES permit or approved facilities plan.

(19) “Effluent limitation” has the meaning designated in s. 147.015 (6), Stats.

(20) “Enforceable requirements of the act” means those conditions or limitations included in permits issued under s. 147.02, Stats., which, if violated, could result in the initiation of legal

action under s. 147.29, Stats., or those provisions of s. 144.025 (2) (r), Stats., which, if violated, could result in the issuance of department orders under s. 144.025 (2) (s), Stats. If a permit under ch. 147, Stats., has not been issued, this term shall include any requirement which, in the department's judgment, would be included in the permit when issued. Where no permit under ch. 147, Stats., applies, this term shall include any requirement which the department determines is necessary to comply with the provisions of ch. 147, Stats., and the federal water pollution control act, as amended.

(21) "Financial assistance" means loans, refinancing, guarantees, purchase of insurance, credit enhancement or grant funds provided to a municipality under ss. 144.241 and 144.2415, Stats.

(22) "Financial hardship assistance" means financial assistance authorized under s. 144.241 (13), Stats.

(23) "Force account work" means the work a municipality performs using its own employees or equipment for construction, construction-related activities, repairs or improvements to a treatment works. The term includes any activity listed in sub. (13) if the work is performed by a municipality with its own employees or equipment.

(24) "High groundwater" means zones of soil saturation which include: perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated.

(25) "Individual system" means a publicly owned wastewater treatment works which is operated and maintained by a municipality and serves one or more residences.

(26) "Industrial user" has the meaning specified in s. 144.241(1)(c), Stats.

(27) "Inflow" means water other than wastewater that enters a sewage system.

Note: This definition includes water entering the sewage system from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters or other drainage.

(28) "Initiation of construction" means:

(a) For step 2 activities, the approval of a facility plan and other wastewater management decision documents.

(b) For step 3 activities, execution of the construction contract.

(29) "Interceptor sewer" means a sewer and associated pump stations whose primary purpose is to transport wastewaters from collector sewers to a treatment facility, or which is designed for one or more of the following purposes:

(a) To intercept wastewater from a final point in a sewage collection system and convey the wastes to a sewage treatment plant or to another interceptor.

(b) To replace an existing wastewater treatment facility and transport the wastes to an adjoining sewage collection system or interceptor sewer for conveyance to a sewage treatment plant.

(c) To transport wastewater from one or more municipal sewage collection systems to another municipality or to a regional plant for treatment.

(d) To intercept an existing major discharge of raw or inadequately treated wastewater for transport to another interceptor or to a sewage treatment plant.

(30) "Interim financing" means a debt necessary to temporarily finance a project until permanent financing can be obtained from the clean water fund.

(31) "Interim financing costs" means the net interest, fees and charges associated with issuing interim financing. Examples include underwriter's discount, financial advisor fees, printing costs, bond rating charge, attorney's fees and trustees fees.

(32) "Maintenance" means the preservation of the functional integrity and efficiency of a wastewater treatment facility, including its equipment and structures. The term includes preventive

maintenance, correctional maintenance and replacement of equipment.

(33) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by the state to fund a project loan or a portion of a project loan under ss. 144.241 and 144.2415, Stats.

(34) "Minority business enterprise" or "MBE" means a minority-owned business, sole proprietorship, partnership, joint venture or corporation that fulfills both of the following requirements:

(a) Is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101(a)(20), and

(b) Is currently performing a useful business function.

(35) "Multi-tier project" means a project that can be assigned to more than one of the project tiers listed in s. NR 161.03 (1).

(36) "Municipality" means any city, town, village, county, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or any federally recognized tribal governing body.

(37) "New or changed limits" means an effluent limitation in a WPDES permit which was newly established or modified after May 17, 1988.

(38) "Nonlocal share of a project" means costs for a project or a portion of a project that receives funding under s. 144.2415(13), Stats., is eligible for financial assistance under 33 USC 1251 et seq. or s. 144.24 or 144.242, Stats., and did not receive financial assistance under 33 USC 1251 et seq. or s. 144.24 or 144.242, Stats., because there were insufficient funds.

(39) "Operation" means control of the unit processes and equipment which make up a treatment works. The term includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(40) "Parallel cost estimate" means a ratio developed by using as the numerator the cost of a project exclusive of costs added for those items under s. NR 162.07(1)(b)1., 2., 4. and 5., and as the denominator the cost of the project inclusive of those items.

(41) "Present value subsidy" means the sum of periodic subsidies for loans made to or projected to be made to municipalities during a fiscal year discounted at a rate of 7% per year to the first day of the biennium during which the loans are made.

(42) "Priority value" means the score assigned to a project by the department pursuant to ch. NR 161.

(43) "Progress payments" means:

(a) Payments for work in place.

(b) Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract when conditional or final acceptance is made by or for the recipient.

(c) Payments for undelivered specifically manufactured items or equipment, excluding off-the-shelf or catalog items, if provisions for the payments are included in the bid and contract documents, and

1. The equipment is so designated in the project specification;

2. The equipment to be specifically manufactured for the project could not be readily utilized or diverted to another job; and

3. A fabrication period of more than 6 months is anticipated.

(44) "Project" means any step 1, step 2 or step 3 activities under this chapter.

(45) "Project completion" means the point in time when substantial completion has been achieved.

(46) "Recipient" means any municipality or group of municipalities that has been awarded or received financial assistance under ss. 144.241 and 144.2415, Stats.

(47) "Replacement" means obtaining and installing mechanical, operating equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which the works were designed and constructed.

(48) "Residential user" means a structure or part of a structure, including a mobile home, 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 work. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

(49) "Sanitary sewer" means a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants and institutions.

(50) "7-day Q10" means the average 7 day low flow which occurs once in 10 years.

(51) "Sewage collection system" means the public sanitary sewer mains, and associated pump stations, including service connection "Y" fittings, which are primarily installed to receive wastewater directly from connection laterals. Pumping units and pressurized lines from the pumping units to the public sanitary sewer main may be included as part of a sewage collection system when they are cost-effective and owned and maintained by the applicant municipality. Holding tanks and septic tanks which serve one or more residences and their sewer lines to a public sanitary sewer main may also be included as part of a sewage collection system when they are cost-effective and owned and maintained by the applicant municipality.

(52) "Sewage treatment plant" means treatment works as defined in sub. (61), exclusive of interceptor sewers and sewage collection systems.

(53) "Sewer service area" means that area served or for which an agreement has been reached for future service to be served by a treatment works; or for which capacity is provided to allow disposal of septic tank or holding tank wastes.

(54) "Step 1" means the preparation of plans, studies and related information for a determination of the wastewater management needs of a municipality, community or area in accordance with the requirements of ss. NR 110.08 and 110.09.

(55) "Step 2" means the preparation of engineering plans and specifications for the construction of a proposed treatment works project in accordance with the requirements of chs. NR 108 and 110.

(56) "Step 3" means any construction activity identified in sub. (13)(d), and any inspection or supervision of those activities when the activity being inspected or supervised is in accordance with an approved facility plan and engineering plans and specifications.

(57) "Subscribing community" means a municipality which discharges or plans to discharge its wastewater or a part of its wastewater to another municipality for treatment and disposal.

(58) "Subsidy" means the amounts provided by the clean water fund to projects receiving financial assistance under ss. 144.241 and 144.2415, Stats., for the following purposes:

- (a) To reduce the interest rate of clean water fund loans from market rate to a subsidized rate.
- (b) To reduce the interest rate of eligible loans or portions of loans made by the board of public lands trust to a tier rate.
- (c) To provide financial hardship assistance, including grants.
- (d) To provide financial assistance for additional eligible project costs.

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

(60) "Transition project" means a treatment works project that is eligible for financial assistance under s. 144.241 (7) (b),

Stats., and which meets the requirements of s. 144.2415 (13), Stats.

(61) "Treatment works" means any devices and systems for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes used to meet applicable effluent limitations or necessary to recycle or reuse water at the most economical cost over the useful life of the works. These systems may include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping equipment and stations, power and other equipment and their appurtenances; extensions, improvements, 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 on which the components of the treatment process are located, except for sewers and individual systems, or is used for ultimate disposal of residues resulting from treatment, including land for composting sludge, temporary storage of the compost and land used for the storage of treated wastewater in land treatment systems before land application; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined stormwater and sanitary sewer systems.

(62) "Unsewered municipality" means a municipality which is wholly or partially unsewered.

(63) "User charge" means a charge levied on users of a treatment works for the user's proportional share of the cost of operation, maintenance and replacement of the works.

(64) "Violator" means a person or municipality which cannot receive approval of an application for sanitary sewers under s. NR 110.05 (3), or is not in substantial compliance with the terms, conditions, requirements and schedules of compliance of an applicable ch. 147, Stats., discharge permit, for a reason that the department determines is or has been within the control of the person or municipality.

(65) "Waste load allocation" has the meaning designated in s. NR 121.03 (17).

(66) "Women business enterprise" means a woman-owned business as an independent business concern which is at least 51% owned by a woman or women who also control and operate it. Determination of whether a business is at least 51% owned by a woman or women shall be made without regard to marital property laws.

(67) "WPDES permit" means a Wisconsin pollution discharge elimination system permit issued under ch. 147, Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.04 Types of financial assistance available.

The department and the department of administration may, subject to applicable requirements of ss. 144.241 and 144.2415, Stats., and ch. Adm 35, provide the following types of financial assistance to eligible applicants:

(1) Purchase or refinance the debt obligation of a municipality if the debt was incurred to finance the cost of constructing an eligible treatment works project located in the state and the project was substantially completed within the previous 5 years.

(2) Guarantee, or purchase insurance for, municipal obligations for the construction of treatment works if the guarantee or insurance would improve credit market access or reduce interest rates.

(3) Make loans at or below the market rate.

(4) Provide financial hardship assistance to eligible applicants.

(5) Provide interest rate subsidies pursuant to ch. NR 165.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.05 Annual funding policy and funding list.

(1) FUNDING POLICY. Each year, the department shall prepare an

annual funding policy for the fiscal year. The funding policy shall be subject to public hearing.

(2) **FUNDING LIST.** The department shall prepare a funding list when the legislature authorizes present value below the percentage specified in s. 144.241(9m), Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.06 Project eligibility. (1) ELIGIBLE PROJECTS. A municipality may receive financial assistance under this chapter for a project which is:

- (a) A compliance maintenance project.
- (b) Necessary to achieve substantial compliance with an enforceable requirement which was new or changed after May 17, 1988.
- (c) Necessary for the replacement or major rehabilitation of an existing sewer collection system and is necessary to maintain the total integrity and performance of the treatment works serving the community.
- (d) Necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered areas within a municipality. Financial assistance may be provided at a subsidized rate only if the department determines that:
 1. At least two-thirds of the initial flow for collection system, interceptor and individual system projects will be for wastewater originating from residences in existence on October 17, 1972;
 2. There is a facility plan or other planning document for the project approved by the department; and
 3. The unsewered municipality has executed an agreement under s. 66.30, Stats., with another municipality to receive, treat and dispose of wastewater if the unsewered municipality will be disposing of wastewater in the treatment works of another municipality.

(2) **INDIVIDUAL SYSTEMS.** (a) A project which is eligible under sub. (1) may consist of individual systems serving one or more residences if the municipality will:

1. Own each individual system;
2. Be responsible for the proper installation, operation and maintenance of each individual system;
3. Have 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. Establish a comprehensive program for the regulation, inspection, operation and maintenance of individual systems and for monitoring the impact of the systems on the groundwater;
5. Comply with all other applicable requirements, limitations and conditions for projects funded under this chapter.

(b) The access required in par. (a)3. shall be evidenced by easements or covenants running with the land. 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) The department may grant a variance to allow the individual system to be privately owned if the municipality can show that public ownership of the system is not feasible and that private ownership will not adversely affect the tax status of the clean water fund.

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

(a) Projects of a municipality that has failed to substantially comply with any of the conditions or requirements of the clean water fund program or a financial assistance agreement, or the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works.

(b) Connection laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(c) Hook up charges imposed by one municipality on another for hooking into a treatment plant or transport system to a treatment plant.

(d) Public sanitary sewer mains, individual systems and interceptors which exclusively serve development not in existence as of the date of the application.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.07 Cost eligibility. (1) ELIGIBLE COSTS. (a) Allocable project costs which are reasonable and necessary are eligible for financial assistance. Eligible costs include, but are not limited to, any of the following.

1. Costs of salaries, benefits and expendable material the recipient incurs for the project.
2. Planning work directly related to the treatment works.
3. Sewer system evaluation and rehabilitation.
4. Costs of complying with ch. NR 150 including costs of public notices and hearings.
5. Preparation of construction drawings, specifications, estimates and construction contract documents.
6. Landscaping.
7. Removal, relocation, replacement or temporary provision of utilities, for which the recipient is legally obligated to pay.
8. Materials acquired, consumed or expended specifically for the project.
9. An inventory of laboratory chemicals and supplies.
10. Development and preparation of an operation and maintenance manual.
11. Costs for the development of water conservation plans, user charge system plans and sewer use ordinances under s. NR 162.11 (1).
12. Project identification signs.
13. 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 or processes funded under this chapter. The cost of routine and entry level training and training for operators to meet state certification requirements under ch. NR 114 is not an eligible cost.
14. A plan of operation.
15. Development of a municipal pretreatment or toxicity reduction program and construction of facilities to be used by the municipal treatment works in the programs, including monitoring equipment.
16. Costs necessary to mitigate demonstrated direct, adverse physical impacts resulting from construction of the treatment works.
17. The cost of safety equipment.
18. On-site inspection during construction and to complete punch list items.
19. Acquisition of land that will be used for storage of treated wastewater in land treatment systems before land application.
20. Acquisition of land that will be used for composting or temporary storage of compost residues which result from wastewater treatment if the department has approved a program for use of the compost.
21. Acquisition of land on which the treatment plant, biosolids facility or lift stations will be located.
22. The cost of equipment used for sampling and analysis of industrial discharges to municipal treatment works that is owned by the municipality.
23. Costs for value engineering studies or analyses performed during step 2.

24. Professional, consultant and engineering services.
25. Ordinary operating expenses that were incurred solely because of the project.
26. Costs associated with financial audits.
27. Interim financing costs.
28. Costs of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.
29. Issuance costs.
30. Indirect costs.
- (b) Costs eligible for market rate financing include, but are not limited to:

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 projected completion date.

2. Planning, design and construction costs related to public sanitary sewer mains, interceptors and individual systems in unsewered municipalities for projects which the department determines that less than two-thirds of the initial flow will be from wastewater originating from residences constructed prior to October 17, 1972.

3. The cost of reserve capacity for projects necessary to treat projected flows beyond 10 years from the project completion date.

4. The cost of capacity for present and future flows from industrial users.

5. The costs of any portion of a project to correct violations of effluent limitations contained in a permit issued under ch. 147, Stats.

6. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5% of the total flow to the treatment plant.

7. Costs associated with capital cost projects.

(c) Total estimated market rate costs shall be based on:

1. The parallel cost estimates contained in the facility plan.
2. The total design capacity determined with ss. NR 110.09 (2) (j) and 110.10 (2). This estimate may be revised, if necessary, at the time the financial assistance application is submitted, based on the final approved engineering design.

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 162.19.

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

- (a) Basin or areawide planning not related to the project;
- (b) Bonus payments not legally required for completion of construction before a contractual completion date;
- (c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation or otherwise;
- (d) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws;
- (e) Costs outside the scope of the approved project;
- (f) Ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or city attorney;
- (g) Site acquisition expenses, other than administrative and legal costs, for rights-of-way and easements;
- (h) Costs for which payment has been or will be received under another federal or state program;
- (i) Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others;

(j) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, awarding or administration of a contract supported by the clean water fund and:

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

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

(m) Project costs incurred after the assistance agreement end date.

(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS IN REFINANCING PROJECTS. (a) *Net costs.* Interim financing costs will be offset with any interest earnings from the investment of the proceeds from the interim financing.

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

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

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

1. The closing date of the clean water fund loan; or
2. One year following substantial completion of construction; or

3. September 30th in the year after the project's listing on the clean water fund funding list.

(4) COST PRORATION. If the term of the interim financing exceeds the limit in sub. (3), the interim financing costs will be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the interim financing is not exclusively for the clean water fund treatment works project, then costs will be prorated according to the proportion of the total debt that is for the department approved treatment works project.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.08 Notice of intent to apply. (1) A municipality shall submit to the department a notice of its intent to apply for funding. The notice shall be filed with the department by December 31, if funding will be requested within the following 2 fiscal years. The notice shall be submitted on a form provided by the department. The notice will be valid for 2 calendar years.

(2) The department may waive this requirement upon the written request of a municipality pursuant to s. 144.241 (8m)(c), Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.09 Application. (1) **DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT.** An applicant shall sign the assistance agreement within 8 months after the date the department determines the application is acceptable. An applicant should time its submittal of the application accordingly. If an assistance agreement is not signed within 8 months of the department's determination of acceptance, the applicant's project will lose its allocated subsidy. A municipality may not submit more than one application for a project in any 12 month period, except for an application for additional costs for the approved project.

(2) **PROCEDURES.** (a) Municipalities shall apply in accordance with s. 144.241 (9), Stats., on forms provided by the department.

(b) Applicants shall apply for step 1 and 2 financial assistance at the time they apply for step 3 financial assistance.

(3) **CONTENTS OF APPLICATION.** The applicant shall submit with the application:

(a) An approved facility plan or other evidence of department approval;

(b) Copies of any executed contracts for performance of any portion of steps 1 and 2 of the project, and a proposed or executed copy of a step 3 contract;

(c) A copy of biddable construction drawings and specifications which are approvable by the department;

(d) Financial information required by the department of administration necessary to determine 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 clean water fund loan;

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

(f) A schedule for or evidence of compliance with ss. NR 162.10(6) and 162.15(1)(L);

(g) Information on the proposed user charge system and sewer use ordinance on a form provided by the department;

(h) A proposed or an executed intermunicipal agreement, if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality. The intermunicipal agreement shall:

1. Identify ownership for each individual portion of the treatment works, such as interceptor, collection systems, lift stations and privately owned treatment works;

2. Establish the term of contract;

3. Demonstrate the basis for generating revenue for operation, maintenance and replacement costs based on actual use and state who will be responsible for paying for these charges;

4. Indicate the method for generating revenue for capital costs and indicate who will be responsible for payment;

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

6. Require each entity to adopt a user charge and sewer use ordinance which is consistent with the requirements of s. NR 162.11.

(4) INTERMUNICIPAL EXCEPTION. The department may waive the requirement of an executed intermunicipal agreement if an order under s. 144.07 (1), Stats., has been issued or if the department has obtained executed intermunicipal agreements for subscribers whose design flows, design BOD capacities, design suspended solids capacities and annual debt payments total at least 90% of the total for the regional treatment works.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.10 Financial assistance requirements.

Before awarding financial assistance for any project, the department shall determine that all of the applicable requirements of s. NR 162.09 have been met and that:

(1) The department has approved the plans and specifications for the project, and complied with the Wisconsin environmental policy act requirements.

(2) The project is entitled to priority in accordance with chs. NR 160 and 161, as applicable.

(3) The applicant has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works throughout the applicant's jurisdiction.

(4) The department of administration has determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 144.2415, Stats.

(5) The applicant has, or has applied for, any permit required by ch. 147, Stats.

(6) The applicant has made satisfactory provision to assure the efficient operation and maintenance of the treatment works, in accordance with s. NR 162.15(1)(L).

(7) The applicant has adopted and implemented a user charge system and sewer use ordinance in compliance with s. NR 162.11.

(8) The applicant has submitted an approvable plan and schedule for implementing the flow reduction measures deemed to be cost-effective in accordance with s. NR 110.09 (2) (k).

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.11 Requirements for a user charge system and sewer use ordinance.

Any user charge system and sewer use ordinance adopted by a recipient shall be maintained in accordance with the provisions of s. 144.241 (14) (b) 7., Stats., and this section, for the design life of the treatment works. The applicant shall submit user charge information on a form prescribed by the department.

(1) Any user charge system shall:

(a) Require that each user or user class pays its proportionate share of the operation and maintenance costs, including replacement costs, of 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 treatment works.

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

Note: A recipient who received a federal or state wastewater treatment grant under s. 144.24, Stats., or under 33 USC 1251 to 1376 should have established and be implementing a replacement fund according to s. NR 128.13 (2) (c) or 40 CFR Part 35. The requirement for a replacement fund under s. NR 128.13 (2) (c) or 40 CFR Part 35 is not superseded by this chapter and remains in effect for the design life of the facility which was funded with federal or state grant assistance under 33 USC 1251 to 1376 or s. 144.24, Stats.

(d) Establish a financial management system that accounts for:

1. Revenues generated,

2. Costs of operation and maintenance of the treatment system, including replacement of equipment, and

3. Debt service costs, including debt service reserves, and coverage requirements.

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

(f) Require that each user which discharges any toxic pollutants or high strength wastes pay for any increased costs associated with the discharge.

(g) Provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to wastewater treatment service.

(h) Be based on actual or estimated use.

(2) A recipient 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, subject to the approval of the department.

(3) The municipality shall incorporate the user charge system in one or more municipal ordinances or other legislative enactments.

(4) The recipient shall terminate any term or condition of any pre-existing agreement or contract between the recipient and user which is inconsistent with the requirements of this section.

(5) (a) The recipient shall maintain records as are necessary to document compliance with this section.

(b) The department may review, no more often than annually, a recipient's user charge system to assure that it continues to meet the requirements of this section.

(6) Each applicant for financial assistance shall enact and enforce a sewer use ordinance that:

(a) Prohibits any new connections from sources which include substantial inflow into the sanitary sewer system.

(b) Requires that new sewers and connections to the sewer system be properly designed and constructed.

(c) Requires that wastewater introduced into the treatment works not endanger public safety or the environment, not jeopardize the physical integrity of the treatment works, not cause substantial upset to the treatment process and not cause a violation of effluent or water quality limitations.

(d) Defines normal domestic strength of the wastewater.

(e) Controls and monitors industrial discharges by requiring control manholes, pretreatment, and grease, oil and sand interceptors.

(f) Provides a methodology for establishing sewer use rates that complies with sub. (1).

(g) Defines violations and penalties for violators.

(7) The department may waive the requirements of s. NR 162.11 for an applicant owning a regional treatment works if the department has given final approval to user charge systems and sewer use ordinances for subscribers whose design flows, design BOD capacities, design suspended solids capacities and annual debt payments total at least 90% of the total for the regional treatment work.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.12 Procurement. (1) **APPLICABILITY.** Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law. No contract may be awarded to any person or organization which does not operate in conformance with state and federal civil rights, equal opportunity and affirmative action laws.

Note: See ss. 60.47, 60.77 (6) (a), 61.54, 61.55, 62.15 and 66.29, Stats.

(2) **PROFITS.** Only fair and reasonable profits may be earned by contractors under financial assistance agreements. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

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

(4) **UTILIZATION OF MINORITY- AND WOMEN-OWNED BUSINESSES.** In order to provide minority- and women-owned businesses with an opportunity to compete for work related to the project:

(a) Recipients of financial assistance, contractors and subcontractors shall use minority- and women-owned businesses to the extent possible.

(b) Recipients, contractors and subcontractors shall make good faith efforts to provide minority- and women-owned businesses the maximum feasible opportunity to compete for contracts and subcontracts. Good faith efforts include but are not limited to:

1. Soliciting bids from qualified, minority-owned businesses certified by the department of development and qualified women-owned businesses whenever contracts and subcontracts are awarded.

2. Providing to minority- and women-owned businesses, upon request, a list of individuals and firms in possession of plans, specifications and other information relevant to the project.

3. Breaking down work into smaller projects to maximize the opportunity of minority- and women-owned businesses to compete for contracts and subcontracts.

4. Establishing work schedules which will enable minority- and women-owned businesses to compete for contracts and subcontracts.

5. Using the assistance of the department as appropriate.

(c) The recipient shall document the efforts made to provide minority- and women-owned businesses with the opportunity to compete for contracts and subcontracts.

(d) If requested, a recipient shall explain to a minority- or women-owned business which bid but did not receive a contract, why the contract was not awarded to it.

(e) Failure to comply with pars. (b) to (d) shall result in 8% of the project costs eligible for subsidy being financed at market rate interest. This paragraph does not apply to any recipient which awards contracts to minority- or women-owned businesses or both in an amount equal to or greater than 8% of the total project cost or to any recipient who makes good faith efforts in accordance with pars. (b) to (d).

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

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

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

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

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

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

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

(7) **CONSTRUCTION CONTRACTS AND SUBCONTRACTS.** (a) **Applicability.** This subsection applies to construction contracts or subcontracts awarded by recipients for any step 3 activity.

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

(c) **Contract change orders.** 1. The recipient shall secure a fair and reasonable price for the required work.

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.13 Reimbursements and refinancing.

(1) **REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS.** The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable federal internal revenue service reimbursement regulations.

(2) **REFINANCING OF INTERIM FINANCING.** The department may refinance the eligible portion of the municipality's interim financing subject to the limits established in s. NR 162.07(3).

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.14 Loan interest rate. Interest rates for projects shall be set in accordance with s. 144.241(12), Stats., and this section.

(1) **PROJECT COST TIERS.** Costs of projects or portions of projects shall be classified according to the following tier system:

(a) Tier 1 costs are costs of compliance maintenance or new or changed limit projects in s. NR 162.06 (1)(a), (b) and (c).

(b) Tier 2 costs are costs of unsewered projects, including individual systems, that satisfy the criteria in s. NR 162.06(1)(d) and (2).

(c) Tier 3 costs are costs of unsewered projects listed in s. NR 162.07(1)(b), violator projects, future growth and reserve capacity, industrial capacity and capital cost projects.

(2) **TIER INTEREST RATES.** The following interest rates are established for each tier:

(a) The interest rate for Tier 1 costs is 55% of the market rate.

(b) The interest rate for Tier 2 costs is 70% of the market rate.

(c) The interest rate for Tier 3 costs is the market rate.

(3) **PROJECT INTEREST RATE.** (a) If all of the eligible costs of a project are classified under one of the tiers, the interest rate shall be the rate established in sub. (2) for that tier. If a project contains eligible costs from one or more of the tiers, a composite rate shall be computed for the project in accordance with par. (b)3. Project costs shall be based on the final approved engineering design.

(b) The following methods, in the order listed, shall be used to estimate the total eligible costs associated with each tier:

1. Each eligible cost which can be allocated, based on its purpose, exclusively to any one of the tiers, shall be so allocated.

2. Each eligible cost which cannot be allocated to a particular tier, shall be divided among the tiers based on the portion of the design flow of the project that is attributable to each tier.

3. The composite interest rate shall be computed as follows:

$$RC = (RT_1)(TP_1) + (RT_2)(TP_2) + (RT_3)(TP_3)$$

Where:

RC is the composite interest rate for the project.

RT₁ is the tier 1 interest rate.

RT₂ is the tier 2 interest rate.

RT₃ is the tier 3 interest rate.

TP₁ is the percentage of the project being financed by the clean water fund that is eligible for the tier 1 rate under s. NR 162.06(1)(a), (b) and (c).

TP₂ is the percentage of the project being financed by the clean water fund that is eligible for the tier 2 rate under s. NR 162.06 (1) (d) and s. NR 162.06(2).

TP₃ is the percentage of the project being financed by the clean water fund that is eligible for the tier 3 rate under s. NR 162.07 (1) (b).

Note: Except as provided in s. 144.2415 (13), Stats., the interest rate shall be based on the market rate and tier rates in effect at the time the financial assistance agreement is executed. This also applies to notices of financial assistance commitment that were converted to financial assistance agreements.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.15 Financial assistance agreement conditions. (1) Each financial assistance agreement shall bind the recipient to the following conditions:

(a) The recipient shall agree to maintain a system of user charges and a sewer use ordinance in accordance with s. NR 162.11 for the design life of the treatment works.

(b) The treatment works shall 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, the recipient shall agree to comply with the requirements contained in 33 USC 1251 to 1266 and 33 USC 1381 to 1387, if required by the terms of the capitalization grant.

(d) The recipient shall pay the costs of treatment works construction which are ineligible for financial assistance under this chapter.

(e) The recipient shall provide timely sewerage service to all users within the delineated service area except in areas where annexation is refused, pursuant to s. 144.07 (1m), Stats.

(f) The recipient shall comply with all state and local laws regarding procurement and public contracts.

(g) The recipient shall provide department representatives access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow the department access to records of the contractor and subcontractor which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(h) The recipient shall expeditiously initiate and complete the project in accordance with the assistance agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the assistance agreement.

(i) The recipient shall promptly notify the department of changes to the project.

(j) The recipient shall promptly submit to the department a copy of any prime contract or modification of it and of revisions to plans and specifications.

(k) The recipient shall begin repayment of principal no later than 12 months after the expected substantial completion date of the project and shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(L) The recipient shall provide the department with a plan of operation for the wastewater treatment facilities. The plan of operation shall include necessary actions and an implementation schedule to assure the timely start-up and efficient operation of the facilities for the following:

1. A summary of implementation dates in chronological order;
2. Staffing and training;
3. Records, reports and laboratory control;
4. Process control and start-up procedures;
5. Safety procedures;
6. Sludge management;
7. An emergency operating plan;
8. Maintenance management;
9. An operation budget.

(m) 1. The recipient shall submit an operations and maintenance manual to the department. For projects or facilities which have an approved operation and maintenance manual, this requirement may be met by the submission of an addendum to the original manual. For projects in unsewered communities, this requirement may be met by the submission of information stating the date the operations and maintenance manual will be completed and certified to the department.

2. The project engineer and the authorized representative of the recipient shall certify that the operation and maintenance manual meets or exceeds the requirements of this chapter. The operations and maintenance manual shall address the following areas:

- 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; and
- j. Manufacturer's information.

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

Note: Copies of the WDNR publication WR-222, Wisconsin Construction Site Best Management Practice Handbook, November 1993 revision, are available for inspection in the offices of the department of natural resources, secretary of state and revisor of statutes, Madison, Wisconsin.

(o) The recipient shall provide and maintain adequate construction inspection for conformance with the approved plans and specifications.

(p) The recipient shall accept septage from septic tanks or holding tanks within the recipient's service area to the treatment facility, subject to s. 144.08, Stats. The recipient may regulate the time, rate, location and quantity of the discharges.

(q) The recipient shall notify the department of the substantial completion of the project.

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.16 Financial management. The recipient shall:

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

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

(3) Comply with any U.S treasury requirements for maintaining the tax-exempt status of the bonds sold to the clean water fund.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.17 Financial assistance disbursements.

(1) **REQUESTS FOR DISBURSEMENT.** The recipient shall submit to the department requests for disbursements for eligible costs, including progress payments to contractors in the form specified by the department.

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

(3) **WITHHOLDING OF FUNDS.** It is department policy that full and prompt disbursement be made to the recipient for properly documented eligible project costs. The department may direct the department of administration to withhold financial assistance disbursements where the department determines in writing that a recipient has failed to comply with project objectives, or the terms, conditions or reporting requirements of the financial assistance agreement.

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

(b) Prior to the final disbursement, the department shall complete a final inspection of the project and certify in writing to the department of administration the recipient's compliance with all

applicable requirements of this chapter and the financial assistance agreement.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.18 Amendments to financial assistance agreement. (1) The recipient shall obtain an amendment to the financial assistance agreement before:

(a) Altering the type of wastewater treatment; or

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

(2) Changes in the project that are consistent with the objectives of the project, within the scope of the financial assistance agreement and which do not require review under ch. NR 110 will not require the execution of an amendment before the recipient implements the change.

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

(b) Assistance agreement amendments which increase the amount of financial assistance shall be subject to the availability of bonding authority or present value subsidy as determined in s. 144.241, Stats.

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

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.19 Disputes. (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this chapter, ch. NR 163 or 165 prior to the execution of a financial assistance agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the recipient personally or by mail.

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.20 Records and record retention.

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

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

(3) **RECORD RETENTION.** The recipient and contractors of recipients shall preserve and make their records available to the department until expiration of 3 years from the date of project completion.

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

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

(4) **FEDERAL SINGLE AUDIT.** Recipients of financial assistance provided directly from the federal capitalization grant shall comply with the Federal Single Audit Act and OMB circular A-128 and ch. Adm 35.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.21 Breach of contract. (1) Upon breach of contract by the recipient, the department may:

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

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

(c) Increase the loan portion of a hardship assistance agreement by an amount equal to the grant portion.

(d) Immediately terminate the 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) The department of administration'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: The department of administration may under s. 144.2415(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.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.22 Noncompliance. Upon failure of the recipient to comply with ss. 144.241 and 144.2415, Stats., or with provisions of this chapter or ch. NR 163 or 165, the department may:

(1) Refuse to enter into a financial assistance agreement.

(2) Seek penalties as provided in s. 281.98, Stats.

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; **correction in (2) made under s. 13.93 (2m) (b) 7., Stats.**

NR 162.23 Variances. (1) **GENERAL.** The department may approve a variance from a requirement of this chapter or ch. NR 163 or 165 when it determines that a variance is essential to effect necessary financial assistance actions or department objectives where special circumstances make a variance in the best interest of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient and financial hardship.

(2) **APPLICABILITY.** A recipient may request a variance from any nonstatutory requirement of this chapter, ch. NR 163 or 165.

(3) **REQUEST FOR VARIANCE.** A request for a variance shall be submitted in writing to the department, as far in advance as the situation will permit. Each request for a variance shall contain the following:

(a) The name of the applicant or the financial assistance agreement number and the dollar value;

(b) The section of this chapter, ch. NR 163 or 165 from which a variance is sought and a statement explaining why the variance is necessary;

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

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.24 Administrative fees. (1) An administrative fee, if one is imposed, shall be included in the biennial finance

plan approved by the building commission under s. 13.48, Stats. The administrative fee shall be placed in a separate administrative account.

(2) Assistance provided for financial hardship under ch. NR 163 is not subject to an administrative fee.

(3) Assistance provided for transition projects under subch. II is not subject to an administrative fee.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

Subchapter II

Transition Projects and Capital Cost Loans

NR 162.25 Transition projects. (1) **APPLICABILITY.** This section applies to financial assistance agreements issued pursuant to s. 144.2415 (13), Stats.

(2) **ELIGIBILITY.** (a) To become eligible for financial assistance under this section, a municipality shall comply with the submission date, approvability and other requirements contained in s. 144.2415 (13), Stats., and shall meet the requirements for submittal of an intent to apply notice, plans and specifications and a grant application in accordance with s. NR 128.09 (1) (a) and (b).

(b) Funding shall be allocated to transition projects in accordance with s. 144.2415 (13), Stats., using the priority list as established under s. 144.24 (6) (a), Stats.

(c) Step 2 costs approved through an advance commitment for reimbursement may be awarded with the step 3 loan subject to s. 144.24 (9m) (a), Stats. These costs shall be added to the step 3 application costs for the purpose of determining the fundable range on the intent to apply list.

(d) The application requirements of s. NR 162.09 shall be met in order to receive a loan.

(e) Transition projects shall comply with all other applicable limitations and conditions as required under this chapter.

(f) Additional step 1 planning work necessary for step 3 projects is not eligible for financial assistance under this section.

(g) Eligible costs shall be determined in accordance with s. 144.24, Stats., and ch. NR 128 where applicable.

(h) Financial assistance for projects which receive funding under 33 USC 1251 et seq., or s. 144.24, Stats., may include the nonlocal share of a project.

(i) Eligible costs shall be determined in accordance with s. 144.24, Stats.

(3) **REFINANCING.** (a) Refinancing may be provided for step 3 projects and associated step 2 costs only if sufficient funds are not available in any fiscal year to give notices of financial assistance commitment to all recipients.

(b) Eligible costs shall be determined in accordance with s. 144.24, Stats., and ch. NR 162 where applicable.

(c) Refinancing may not be provided for the local share of project costs for projects which received financial assistance under 33 USC 1251 et seq., or s. 144.24, Stats.

(4) **LIMITATIONS.** (a) The eligibility of specific costs for projects funded under this section is subject to the requirements of s. 144.241(8), Stats.

(b) A municipality which rejects a ready to allocate notice or grant award for a project issued under s. 144.24, Stats., or 33 USC 1251 et seq. as amended, may not receive a loan for that project under the provisions of s. 144.2415 (13), Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 162.26 Capital cost loans. (1) **APPLICABILITY.** This section applies to capital cost loans.

(2) **APPLICATION REQUIREMENTS.** (a) **Deadline.** Applications for funding under this section shall be submitted by March 31 of the fiscal year that funding is requested.

(b) **Contents.** The applicant shall submit a certification that the municipality possesses the ability to repay the financial assist-

ance. This certification shall be supported by documentation of the applicant's financial capability, including calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage and financial reserves.

(3) ELIGIBLE COSTS. Only those costs to finance a municipality's payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats., shall be eligible for financial assistance under this section.

(4) FINANCIAL ASSISTANCE CONDITIONS. Each financial assistance agreement shall conform to the requirements contained in s. NR 162.10 (3) and ch. Adm 35.

(5) FINANCIAL ASSISTANCE REQUIREMENTS. Each financial assistance agreement shall bind the recipient to the following conditions:

(a) The recipient shall comply with all applicable requirements of the state's clean water fund revenue bond issuance. Compliance with these requirements shall be a condition of the financial assistance agreement.

(b) The recipient shall comply with any other terms, conditions or restrictions contained in the financial assistance agreement.

(6) REFINANCING PROHIBITION. The department may not refinance a capital cost loan which is issued under ss. 144.241 and 144.2415, Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.