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Chapter NR 162

CLEAN WATER FUND PROGRAM

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Note: Chapter NR 162 as it existed on June 30, 1996, was repealed and a new chapter NR 162 was created, Register, June, 1996, No. 486, eff. 7–1–96. Chapter NR 162 as it existed on February 28, 2001, was repealed and a new chapter NR 162 was created, Register, February, 2001, No. 542, eff. 3–1–01. Chapter NR 162 as it existed on November 30, 2003, was repealed and a new chapter NR 162 was created, Register November 2003 No. 575, eff. 12–1–03.

Subchapter I — General

NR 162.001 Purpose. The purposes of this chapter are all of the following:

(1) Establish rules under ss. 281.58 and 281.59, Stats., for the implementation and administration of a financial assistance program for the planning, design and construction of treatment works and structural urban BMPs.

(2) Establish a priority system for the distribution of clean water fund program financial assistance as provided in s. 281.58, Stats.

(3) Establish rules under s. 281.58 (13), Stats., for the implementation and administration of hardship financial assistance.

(4) Establish rules under s. 281.58 (6) (b) 8., Stats., for the implementation and administration of interest rate subsidies for small loans issued by the board of commissioners of public lands for the planning, design and construction of treatment works projects with total estimated costs of $1,000,000 or less.

Note: All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707–7921. The forms are also available on the Department of Natural Resources website.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.002 Applicability. This chapter applies to all applicants for and recipients of financial assistance for the planning, design and construction of treatment works and structural urban BMPs made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.58 and 281.59, Stats.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.003 Definitions. In this chapter:

(1) "Amendment" means a formal, written change to an existing financial assistance agreement, executed by all parties to the original agreement.

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

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

(4) "Breach of contract" means the failure of the municipality to comply with any of the following:

(a) The terms and conditions of the financial assistance agreement or interest rate subsidy agreement.

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

(5) "Census block" means the smallest entity for which the U.S. census bureau collects and tabulates decennial census information.

(6) "Census designated place" means a statistical entity defined for each decennial census according to U.S. census bureau guidelines for the purpose of presenting census data for a concentration of population, housing and commercial structures that is locally identifiable by name, but is not within an incorporated place.

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

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(8) "Clean water fund program" means the program established under ss. 25.43, 281.58 and 281.59, Stats., for the purpose of providing financial assistance to municipalities for the planning, design and construction of treatment works and structural urban BMPs.

(9) "Commercial facility" means any facility that is used for retail stores, restaurants, office buildings, laundries and other private business and service establishments or similar enterprises.

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

(11) "Construction" means any of the following:

(a) Erecting, building, altering, remodeling, improving or extending a treatment works or structural urban BMP.

(b) Purchasing a package wastewater treatment system.

(c) Remediation of illicit discharges to a portion of a municipal storm water conveyance system draining to an urban runoff project.

(12) "Debt" means a liability for a project, including general obligation bonds, revenue bonds, promissory notes and special assessment bonds.

(13) "Department" means the department of natural resources.

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

(15) "Dilution ratio" means the quotient obtained by dividing the 7–day Q10, which is the average 7–day flow that occurs once in 10 years, of the surface waters receiving the wastewater discharge, in cubic feet per second (cfs), by the design flow of the wastewater treatment works, in million gallons per day (mgd).

$$\text{Dilution ratio} = \frac{\text{7–day Q10 of receiving water in cfs}}{\text{design flow in mgd x 1.55 cfs per mgd}}$$

(16) "Effluent limitation" has the meaning given in s. 283.01 (6), Stats.

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

(17) "Financial assistance" means loan funds, refinancing, interest rate subsidies, guarantees, purchase of insurance, credit enhancement or grant funds provided to a municipality under ss. 281.58 and 281.59, Stats.

(18) "Financial assistance agreement" means a written agreement between a municipality, the department and the department of administration that contains the terms and conditions of financial assistance provided to the municipality under subch. II or IV.

(19) "Force account work" means the project work a municipality performs using its own employees or equipment for planning, design, construction, construction–related activities, inspection, repairs or improvements to a treatment works or structural urban BMP.

(20) "Governmental facility" means any public facility, including a facility used for legislative, judicial, administrative and regulatory activities of federal, state and local governments.

(21) "Groundwater" has the meaning given in s. 160.01 (4), Stats.

(22) "Hardship financial assistance" means financial assistance authorized under s. 281.58 (13), Stats.

(23) "Hardship financial assistance funding list" means a list established each fiscal year that ranks in environmental priority order, based on the priority list established under s. 281.58 (8e), Stats., projects eligible for hardship financial assistance under s. 281.58 (13) (b), Stats.

(24) "Hardship fundable range" means those projects on the hardship financial assistance funding list that are projected to utilize all available hardship present value subsidy for each fiscal year.

(25) "Hardship present value subsidy" or "hardship PV" means the present value subsidy provided to municipalities to reduce loan interest rates below those interest rates in s. NR 162.11 (1) (a) and (b), including 0% interest loans, and to provide grants.

(26) "Hardship subsidy" means the amount of subsidy provided by the clean water fund program under s. 281.58 (13), Stats., to reduce the interest rate of a clean water fund program loan to a rate below any interest rate specified in s. NR 162.11, and to provide grants.

(27) "Illicit discharge" has the meaning given in s. NR 216.002 (11).

(28) "Industrial facility" means any nongovernmental or nonresidential facility that is used for activities such as agriculture, forestry, fishing, mining, manufacturing, transportation, communications or providing services including electric, gas and sanitary services.

(29) "Industrial user" has the meaning given in s. 281.58 (1) (c), Stats.

(30) "Infiltration" has the meaning given in s. NR 110.03 (16).

(31) "Inflow" has the meaning given in s. NR 110.03 (17).

(32) "Institutional facility" means any facility that is used for social, charitable, religious and educational activities such as schools, churches, hospitals, nursing homes, penal institutions and similar uses.

(33) "Interest rate subsidy" means the subsidy, expressed in percentage points, provided by the clean water fund program under ss. 281.58 and 281.59, Stats., to reduce the interest cost of loans provided to municipalities by the board of commissioners of public lands under ch. 24, Stats.

(34) "Interest rate subsidy agreement" means a written agreement between a municipality, the department and the department of administration that contains the terms and conditions of financial assistance provided to the municipality under subch. V.

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

(36) "Interim financing costs" means the net interest, fees and charges associated with issuing interim financing, such as underwriter discounts, attorney fees, financial advisor fees, printing costs, bond rating charges and trustees fees.

(37) "Lateral" means a privately owned sewer service line that connects a residence, commercial establishment, institutional facility or industrial user to a municipal sewage collection system or individual system.

(38) "Maintenance" means the preservation of the functional integrity and efficiency of a treatment works or structural urban BMP, such as its equipment and structures, including preventive maintenance, correctional maintenance and replacement of equipment.

(39) "Market interest rate" has the meaning given in s. 281.59 (1) (b), Stats.

(40) "Median household income" has the meaning given in s. 281.58 (1) (cm), Stats.

(41) "Minority business enterprise" or "MBE" means a business, sole proprietorship, partnership, joint venture or corporation that 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).

(42) "Municipal WPDES storm water discharge permit" means any permit issued to a municipality by the department

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under s. 283.33 (2), Stats., for the purpose of controlling storm water discharges from a municipal separate storm sewer system owned or operated by a municipality.

(43) "Municipality" has the meaning given in s. 281.59 (1) (c), Stats.

Note: Under s. 281.59 (1) (c), Stats., "municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or any federally recognized tribal governing body.

(44) "Municipal storm water conveyance system" means a system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, that is all of the following:

(a) Owned or operated by a municipality.

(b) Designed or used for collecting or conveying storm water.

(c) Not a combined sewer conveying both sanitary wastewater and urban runoff.

(d) Not part of a publicly owned treatment works or structural urban BMP that provides secondary or more stringent treatment.

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

(46) "Nonpoint source" has the meaning given in s. 281.65 (2) (b), Stats.

Note: Under s. 281.65 (2), Stats., "nonpoint source" means a land management activity that contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source under s. 283.01 (12), Stats.

(47) "Operation" means control of the unit processes and equipment that make up a treatment works or structural urban BMP, including financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(48) "Parallel cost percentage" means the proportion of project costs eligible for below–market rate financing relative to the total project cost eligible for clean water fund program financing as established in s. NR 162.04 (1).

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

(49) "Performance standards" means nonagricultural performance standards established by the department in ch. NR 151, pursuant to s. 281.16 (2), Stats.

(50) "Planning and design" means any of the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works or structural urban BMP.

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

(c) Identifying illicit discharges to a portion of a municipal storm water conveyance system draining to an urban runoff project or to a wastewater treatment works.

(d) Preparing surveys, designs, plans, working drawings or specifications.

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

(51) "Present value subsidy" or "PV" 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.

(52) "Prior debt service" means the principal and interest of debt incurred for a previous capital project that is related to the treatment works or structural urban BMP and is documented as incurred in the past.

(53) "Priority score" means the numerical value, determined by the department, that is assigned to each project in accordance with s. NR 162.31.

(54) "Project" means any of the following:

(a) An activity that is described by a municipality on a notice of intent to apply form as the project description and is assigned a clean water fund program project number by the department.

(b) An activity proposed by a municipality through submittal of plans to the department pursuant to s. 281.41, Stats., which then is assigned a project number by the department.

(55) "Project closeout" means the procedures described in s. NR 162.14 (4) for projects funded under subchs. II and IV, and in s. NR 162.70 (4) for projects funded under subch. V.

(56) "Project commitment present value subsidy" or "project commitment PV" means the present value subsidy provided to municipalities to reduce loan interest rates from the market interest rate to the interest rates in s. NR 162.11 (1) (a), (b) and (c).

(57) "Project completion date" means the earliest date on which all of the following apply:

(a) The project construction is completed.

(b) The department or its agents have certified that the project was constructed according to department–approved plans and specifications.

(c) The department or its agents have certified that the facilities are operating according to design.

(d) The department and the recipient have completed all necessary project closeout procedures.

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

(58) "Proportional share" means that the costs of the operation and maintenance of the treatment works or structural urban BMP is shared equitably and proportionately among the users through a user charge system.

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

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

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

(62) "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 works or structural urban BMP. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

(63) "Sewage collection system" means the public sanitary sewer mains, and associated pump stations, including service connection fittings to the lateral.

(64) "Sewer" means either a sewage collection system or a municipal storm water conveyance system.

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

(66) "Structural urban best management practice" or "structural urban BMP" means a practice that is determined to be an effective means of preventing or reducing pollutants generated from nonpoint sources of urban runoff, including land acquisition, storm sewer rerouting and the removal of structures.

(67) "Subscribing municipality" means a municipality that discharges or plans to discharge all or part of its wastewater or urban runoff to another municipality for treatment and disposal.

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(68) "Subsidy" means the amount provided by the clean water fund program to projects receiving financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

(a) To reduce the interest rate of clean water fund program loans from market interest rate to a lower subsidized rate.

(b) To reduce the interest payments on eligible loans or portions of loans made by the board of commissioners of public lands.

(c) To provide hardship financial assistance, including grants.

(d) To provide financial assistance for additional eligible project costs.

(69) "Substantial completion" means the point in time when project construction has been completed and the associated treatment process operation has been initiated or is capable of being put into operation.

(70) "Total annual charges" means the annual treatment works or structural urban BMP costs, including operation, maintenance and replacement costs, clean water fund program debt service, prior debt service, debt service for project costs ineligible for clean water fund program assistance and hookup fees owed to another municipality.

(71) "Treatment works" or "treatment work" has the meaning given in s. 283.01 (18), Stats.

Note: Under s. 283.01 (18), Stats., "treatment work" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the treatment works, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. This definition of "treatment works" includes urban runoff projects for municipalities that are required to obtain a WPDES permit under ch. 283, Stats.

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

(73) "Urban runoff" means snowmelt, ice–melt, precipitation and surface drainage conveyed from an urban land use in either a diffuse manner, as a nonpoint source, or as a point source conveyance regulated under ch. NR 216.

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

(75) "User charge system" means a system of charges meeting the requirements of s. NR 162.08, and the requirements of s. 281.58 (14) (b) 1. and 7., Stats., or s. NR 216.06 (2) (c).

Note: User charge systems may apply to storm water utility districts.

(76) "Wastewater" means a waste stream conveyed to a treatment works via a sewage collection system, including a combined sewer conveying both sanitary wastewater and urban runoff.

(77) "Women business enterprise" or "WBE" means an independent business concern that is at least 51% owned by a woman or women who also control and operate it.

(78) "WPDES permit" means a Wisconsin pollution discharge elimination system permit issued under ch. 283, Stats.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03; CR 03–028: am. (27) and (75) Register July 2004 No. 583, eff. 8–1–04; **correction in (23) made under s. 13.92 (4) (b) 7., Stats., Register April 2013 No. 688.**

Subchapter II — Financial Assistance

NR 162.01 Types of financial assistance available. The department may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., provide any of 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 or structural urban BMP project located in the state and the project has not been substantially completed for more than 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 the interest cost on the municipal obligations.

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

(4) Provide hardship financial assistance to eligible applicants.

(5) Provide interest rate subsidies pursuant to subch. V.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.02 Annual funding policy, project priority list and funding list. (1) FUNDING POLICY AND PROJECT PRIORITY LIST. The department shall annually prepare a funding policy, which applies to all types of financial assistance including hardship financial assistance and interest rate subsidy, for the fiscal year in conjunction with the project priority list under s. NR 162.33. The department shall hold a public hearing regarding the funding policy prepared under this subsection.

(2) FUNDING LIST. The department shall prepare a funding list of all clean water fund applicants, including applications submitted under subchs. II, IV and V, when the amount available under s. 20.866 (2) (tc) or 281.59 (3e) (b) or (4) (f), Stats., is insufficient in accordance with s. 281.58 (9m) (f), Stats.

Note: A funding list for hardship projects will be prepared annually in accordance with s. NR 162.44.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.03 Project eligibility. (1) ELIGIBLE PROJECTS. A municipality may receive financial assistance under this chapter for a publicly owned project that meets any of the following criteria:

(a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes a sewage collection system project that is necessary to maintain the integrity and performance of the wastewater treatment works serving the municipality.

(b) The project is necessary to achieve compliance with an enforceable wastewater requirement changed or established after May 17, 1988, if the municipality is in substantial compliance with its permit issued under ch. 283, Stats.

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

(d) The project is necessary to control storm water runoff rates, volumes and discharge quality. This includes a municipal storm water conveyance system project that is necessary to maintain the integrity and performance of the urban runoff treatment works or structural urban BMP serving the municipality, as required by any of the following:

1. A WPDES storm water permit issued under subch. I of ch. NR 216.

2. A performance standard.

3. A plan approved by the department under s. 281.41, Stats., or a storm water management plan.

(e) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality.

(2) INDIVIDUAL SYSTEMS. (a) A project that is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste or urban runoff that serve one or more properties if the municipality:

1. Owns each individual system.

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2. Is responsible for the proper installation, operation and maintenance of each individual system.

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

4. Establishes a comprehensive program for the regulation, inspection, operation and maintenance of individual systems, and for monitoring the impact of the systems on the groundwater where required by the department.

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

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land or ordinance. The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(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 conditions or requirements of the clean water fund program or a financial assistance agreement, or with the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works or structural urban BMP.

(b) Laterals that transport wastewater from structures to municipally owned or privately owned wastewater systems.

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

(d) Projects of municipalities that will not request clean water fund program financial assistance for project construction costs, including projects solely for planning and design.

(e) Dams, pipes, conveyance systems and structural urban best management practices, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(f) In accordance with s. 281.58 (8) (d), Stats., a project of an unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality, unless it executes an agreement under s. 66.0301, Stats., with another municipality to receive, treat and dispose of the wastewater of the unsewered municipality.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.04 Cost eligibility. (1) ELIGIBLE COSTS. (a) *Eligible at a subsidized rate.* Allocable project−specific costs that are reasonable and necessary are eligible for financial assistance. Eligible costs include, but are not limited to, any of the following items and activities:

1. Municipal expenses incurred solely for the project.

2. Planning work directly related to the treatment works or structural urban BMP, including information, education and citizen participation.

3. Sanitary sewer system evaluation and rehabilitation.

4. Costs of complying with ch. NR 150 including costs of public notices and hearings.

5. Preparing construction drawings, specifications, estimates and construction contract documents.

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

7. Landscaping.

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

9. Materials acquired, consumed or expended specifically for the project.

10. Laboratory equipment, chemicals and supplies related to initial setup, upgrade or expansion of the laboratory.

11. Developing, preparing and revising an operation and maintenance manual.

12. Developing water conservation plans, user charge systems, sewer use ordinances and storm water utility ordinances under s. NR 162.08.

13. Project and treatment works identification signs.

14. Start–up expenses for a treatment works or structural urban BMP incurred solely because of the project, including costs for any of the following:

a. Preparing a start−up curriculum and training materials.

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

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

d. Implementing the maintenance management system.

e. Trucking seed sludge for start−up of the activated sludge process.

f. Obtaining necessary computers, upgrades, and software.

g. Attending off−site formal training programs, if necessary for the initial operation of the constructed treatment works.

15. Developing and preparing a plan of operation.

16. Developing a municipal pretreatment or toxicity reduction program and constructing facilities to be used by the municipal treatment works or structural urban BMP in the programs, including monitoring equipment.

17. Safety equipment.

18. Inspection fees related to construction.

19. The costs of acquiring land, including purchase cost and administrative and legal expenses if at least one of the following applies:

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

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

c. The land is property on which the structural urban BMP, treatment works, biosolids facility or lift stations will be located, including urban corridors needed to support integrated systems of a treatment works or structural urban BMP for urban runoff.

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

e. The land will be used for sludge spreading.

20. The costs of acquiring easements and rights–of–way, including purchase cost and administrative and legal expenses.

21. The cost of equipment used for monitoring, sampling and analyzing industrial discharges to a municipal wastewater treatment works, or illicit discharges to an urban runoff treatment works or structural urban BMP that is owned by the municipality.

22. Value engineering studies or analyses performed during the design phase.

23. Professional, consultant and engineering services.

24. Interim financing costs as per sub. (3).

25. Preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.

26. Indirect project costs.

27. Fees for permits obtained solely for construction of the project, including pit/trench dewatering permits, hydrostatic test

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water permits, construction site stormwater permits, ch. 30, Stats., permits, building, electrical and plumbing permits, and railroad crossing permits.

28. Abandonment of treatment works if approved in the plans and specifications of an eligible project or by department staff, including activities such as demolition, re−landscaping, and removal and disposal of municipal waste or other debris.

29. Access roads when included in an eligible project.

30. Costs associated with meeting requirements of the Americans with Disabilities Act.

31. Costs identified or incurred during the project for historical, architectural, archaeological and cultural resources work.

32. Buildings, offices and office equipment and furnishings used for purposes of operating a treatment works, such as administration and storage buildings, if included in the approved plans and specifications or otherwise approved by department staff. The department may prorate costs for buildings, offices and office equipment and furnishings that are partially used for purposes not related to a treatment works.

33. Loan closing costs, including financial advisor fees related to loan closing and bond counsel or other legal fees related to the issuance of bonds.

34. Demolishing existing structures if the demolition is part of an eligible project and at least one of the following applies:

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

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

c. The demolition is needed for site preparation.

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

35. Groundwater monitoring facilities or equipment if part of an eligible project.

36. Developing a detailed management plan for an individual system project that is eligible under s. NR 162.03 (2).

37. Costs for the treatment portion and treatment residue disposal portion of toilets with composting tanks, oil−flush mechanisms or similar in−house devices when part of an eligible project.

38. Construction site restoration to original condition or upgraded to meet state and local requirements.

39. Acquiring land on which individual systems are or will be located if the systems are publicly owned and maintained.

40. Property, liability and builders risk insurance, construction insurance and other insurance necessary during construction of the project.

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

42. Mobile equipment, such as portable stand−by generators, portable emergency pumps, sludge tanks and trailers, other vehicles necessary for transporting liquid or dewatered waste, sewer cleaning equipment, and grounds and maintenance equipment for mowing and snow removal for the treatment works. The department may prorate costs for equipment that is partially used for purposes not related to a treatment works.

43. Fees for services provided to a municipality by a state agency if the service is necessary solely because of the project.

44. Legal fees of an attorney that is not an on−staff municipal attorney if the fees are project−specific, including costs of legal reviews related to s. 60.726, Stats., legal reviews of architectural, engineering or construction contracts, user charge systems and sewer use ordinances, management plans, and intermunicipal agreements, and costs for legal work necessary for securing eligible permits.

45. Replacing, repairing or rehabilitating a treatment works if identified in the plans and specifications as cost−effective and necessary.

46. Restoring streets and rights−of−way, and repairing damage to items such as pavement, sidewalks and storm sewers necessary as a result of construction of the project.

47. Site preparation costs.

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

49. Tools necessary for construction or maintenance of the treatment works, when purchased as part of a project, including specialized tools for specific purposes, site and building maintenance tools such as wheelbarrows, lawn sprinklers, weed trimmers, hoses, shovels and rakes, and other basic tools such as trash cans, brooms, flashlights and multiple−use hand tools.

50. Machinery for manufacturing or repairing necessary treatment works tools or equipment.

51. Communication devices, such as walkie talkies, cellular phones, and pagers needed for operation of the treatment works.

52. Relocating water mains if necessary for construction, and replacing water mains of the same size or required minimum size if breakage from construction occurs.

(b) *Eligible at market rate.* Costs eligible for market interest rate financing include, but are not limited to, any of the following:

1. The cost of reserve capacity for sewage collection system, interceptor or individual system projects in unsewered municipalities necessary to serve projected flows beyond the initial flows expected at the project completion date.

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

3. The cost of capacity for present and future flows from industrial wastewater users or from industrial areas regulated under ch. NR 216.

4. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5% of the total flow to the treatment works or structural urban BMP.

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

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

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

8. The applicable portions of costs of projects that are in non–compliance with the requirements of s. NR 162.09 (3) (a) 2. to 4. regarding the solicitation of MBEs and WBEs.

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

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

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

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

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

$$PC = RC/DC$$

Where:

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

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

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

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

$$EM = (TP)(1–PC)$$

Where:

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

TP . . is the total project cost eligible for clean water fund program financing.

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

3. If the department determines that the project includes other market rate costs as described in par. (b) 5. to 8., the amount of those costs shall be subtracted from the amount eligible for below–market rate financing and added to the amount of market rate costs calculated in subd. 2.

Note: All questions relating to cost eligibility or allocation shall be resolved prior to the execution of the financial assistance agreement in accordance with s. NR 162.16.

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

(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 elected officials and on−staff attorneys, postage, utility bills and annual financial audits.

(g) Costs for which payment has been or will be received under another federal or state program, except for receiving a loan from the board of commissioners of public lands for a project receiving interest subsidy under subch. V.

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

(i) Costs incurred in a contract that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, award or administration of a contract supported by the clean water fund program and any of the following apply:

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.

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

(j) Project costs incurred after the closeout date, which is the date the department records the project as being completed and after which no further disbursements shall be made under the financial assistance agreement.

(k) Laterals that transport wastewater from structures to municipally owned or privately owned wastewater systems.

(L) Hook up charges imposed by one municipality on another for hooking into a treatment works or structural urban BMP, or transport system to such a facility.

(m) Ordinary operation and maintenance expenses of the treatment works or structural urban BMP.

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

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

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

(p) Interest or late fees charged a municipality for delayed payments to engineers, construction contractors, financial advisors and others providing services to the municipality.

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

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

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

(t) Costs associated with corrective action required following a negative project performance certification.

(u) Operator certification training.

(v) Costs related to leasing land or buildings.

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

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

(y) For a project receiving interest rate subsidy under subch. V, project costs determined to be ineligible for loan assistance from the board of commissioners of public lands.

(z) All costs of a project if the municipality will not request clean water fund program financing for at least some construction costs.

(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS. (a) *Net interest expense.* Interim financing interest expenses shall be offset with any interest earnings from the investment of the proceeds from the interim financing to determine the amount eligible for clean water fund program funding.

(b) *Interim financing issuance costs.* The amount of interim financing issuance costs eligible for funding is limited to $7,500 plus 0.5% of the total eligible face amount of the interim financing. If interim financing is rolled over or renewed, the face amount may 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 funding shall run from no earlier than 6 months prior to the start of construction through the earliest of any of the following:

1. The loan closing date of the clean water fund program loan.

2. One year following substantial completion of the project.

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

(d) *Cost proration.* If the term of the interim financing exceeds the limit in par. (c), the interim financing costs shall be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the debt used for interim financing is not exclusively for the clean water fund program treatment works or structural urban BMP project, costs shall be prorated according to the proportion of the total debt that is for the department−approved treatment works or structural urban BMP project.

(e) *Maximum principal.* The principal amount of interim financing that can be refinanced with clean water fund program financial assistance cannot exceed the total amount of the interim financing that was spent on eligible project costs.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

Removed by Register June 2015 No. 714. For current adm. code see: http://docs.legis.wisconsin.gov/code/admin_code.

NR 162.05 Notice of intent to apply. (1) A municipality shall submit a notice of intent to apply for financial assistance on a form provided by the department. The municipality shall submit the notice by December 31 prior to the state fiscal year from which the municipality is requesting to receive financial assistance. In order for the notice of intent to apply to be valid, one of the following shall apply:

(a) The notice of intent to apply is postmarked by December 31.

(b) The notice is received by the department by December 31. Hand−delivery, fax and other delivery methods are acceptable as long as the department receives the notice by the December 31 deadline.

Note: A Notice of Intent to Apply form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) The department may waive the requirement in sub. (1) upon the written request of a municipality pursuant to s. 281.58 (8m) (c), Stats. Before waiving the requirement in sub. (1), the department shall consider special circumstances and factors, consistent with those established in s. NR 162.20 (1) for granting variances.

(3) The department may waive the requirement in sub. (1) if the municipality has applied for a grant for which it is eligible under either s. 281.65 (4c) or 281.66, Stats.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.06 Application. (1) PROCEDURES. A municipality shall apply in accordance with s. 281.58 (9), Stats., on an application form provided by the department.

Note: An application form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707. An interest subsidy application is a different form and must be submitted in accordance with s. NR 162.63.

(2) CONTENTS OF APPLICATION. The applicant shall submit a complete application. The department shall accept an application as complete when all of the following items, if applicable, are received by the department either in the application form or separately:

(a) Evidence of an approved facility plan or other department approved plan.

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats.

(c) A completed financial assistance application form.

(d) Estimated or actual construction costs.

Note: The clean water fund program cannot provide any financial assistance for a project if construction costs are not included as part of the project costs to be funded by the clean water fund program.

(e) Copies of executed engineering contracts for planning and design, and a proposed or executed engineering contract for construction, if funds are requested for the activity.

(f) A resolution authorizing a municipal official or employee to act as the applicant's representative in connection with the application and with any additional information required for financial assistance.

(g) A proposed or an executed intermunicipal agreement when 2 or more municipalities discharge to or through the same treatment works or structural urban BMP. The intermunicipal agreement shall do all of the following:

1. Identify ownership for each individual portion of the treatment works or structural urban BMP, such as interceptors, sewage collection systems, municipal storm water conveyance systems, lift stations and privately owned treatment works or structural urban BMP.

2. Establish a term of agreement that is at least for the life of the loan.

3. For urban runoff treatment works or structural urban BMP projects, require each municipality to adopt local regulations for construction sites, and adopt a municipal storm water management plan and ordinance for new development and redevelopment, both consistent with the performance standards and with model ordinances developed by the department under s. 281.33 (4), Stats.

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

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

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

7. Require each entity to adopt a user charge and sewer use ordinance that is consistent with the requirements of s. NR 162.08.

(h) Financial information required by the department of administration to be used in determining the affordability of the proposed project, the financial capability of the municipality, and the adequacy of the pledge of revenues to repay the obligation securing the proposed clean water fund program loan.

(i) The proposed user charge system and information on a sewer use or storm water utility ordinance for the treatment works or structural urban BMP.

(j) Any existing contracts with users of the treatment works or structural urban BMP.

(k) Documentation applicable to U.S. internal revenue service tax information as requested in the application form.

(L) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds if required by U.S. treasury reimbursement regulations 26 CFR 1.150–2.

(m) A copy of the debt instrument of any debt to be refinanced with clean water fund program financial assistance.

(3) INTERMUNICIPAL EXCEPTION. The department may waive the requirement of an intermunicipal agreement if an order under s. 281.43 (1), Stats., has been issued, or if the department has obtained executed intermunicipal agreements for subscribers whose design flows, design suspended solids capacities, annual debt payments, and wastewater projects' designed biochemical oxygen demand (BOD) capacities total at least 90% of the total for the regional treatment works or structural urban BMP.

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

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.07 Financial assistance requirements. Before awarding financial assistance for any project under subch. II or IV, the department shall determine that all of the applicable requirements of s. NR 162.06 have been met and that all of the following have been satisfied:

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

(a) Certification for force account work as required by s. NR 162.09 (4).

(b) Initial flow documentation, if the project is for an unsewered municipality.

(c) Legal opinion on land ownership, and acquisition of easements and rights–of–way, necessary for the project.

(d) Items related to bids including all of the following:

1. The proposal of the successful bidder.

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

3. If a contract is awarded to other than the low bidder, a legal opinion that the award is in compliance with state statutes.

4. Contact and utilization information regarding MBEs and WBEs, and if applicable, small businesses in rural areas.

5. Any addenda to plans and specifications.

6. Evidence of bid advertisement.

7. A copy of the bid bond.

8. Evidence of a resolution awarding the construction contract.

9. A copy of the executed construction contract.

10. A construction start date and expected substantial and final completion dates.

(e) Request for disbursement and supporting invoices.

(f) Draft legal documents related to the authorization and issuance of bonds, if the department or the department of administration requests these documents.

(g) A copy of the title or deed for land purchased for the project, if the applicant is requesting clean water fund program financial assistance for land purchase costs.

(h) A plan of operation for the treatment works or structural urban BMP. The plan of operation shall identify specific actions and related completion dates for all of the following to ensure that the facilities and all associated personnel are properly prepared for start−up and continued operation of the treatment works or structural urban BMP:

1. A summary of implementation dates in chronological order.

2. Staffing and training.

3. Records, reports and laboratory control for wastewater projects.

4. Process control and start–up procedures.

5. Safety procedures.

6. Sludge management.

7. An emergency operating plan.

8. Maintenance management.

9. An operation and maintenance budget.

10. Operation and maintenance manual.

(i) Parallel cost percentage information.

(j) An executed intermunicipal agreement, if 2 or more municipalities will discharge to or through the same treatment works or structural urban BMP.

(k) Proof that a sewer use or storm water ordinance and user charge system that meet the requirements of s. NR 162.08 have been adopted by the municipality.

(L) A copy of the adopted user charge system.

(m) A copy of the executed construction management contract with an architectural and engineering firm, if costs are requested for this activity.

(n) A statement of the payoff amount, if the applicant is refinancing a debt with clean water fund program financial assistance.

(2) The department has approved the plans and specifications and the parallel cost percentage for the project, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

(3) The project has met the priority requirements of subchs. III and IV, as applicable.

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

(5) 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. 281.59, Stats.

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

(7) For an urban runoff treatment works or structural urban BMP, the applicant agrees to adopt local regulations for construction sites, and adopt a municipal storm water management plan and ordinance for new development and redevelopment, both consistent with performance standards and with model ordinances developed by the department under s. 281.33 (4), Stats.

Note: The performance standards are established in ch. NR 151. The model ordinance is established in ch. NR 152.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.08 Requirements for a user charge system and sewer use ordinance. (1) GENERAL. Any user charge system and sewer use ordinance adopted by a recipient shall be maintained in accordance with s. 281.58 (14) (b) 7., Stats., or s. NR 216.06 (2) (c), and this section, for the design life of a treatment works or structural urban BMP. The applicant shall submit user charge information to the department and shall certify to the department that the user charge system meets all of the requirements in this subsection.

(2) APPLICABILITY. (a) A user charge system and sewer use ordinance is required of any wastewater treatment works project receiving a loan under this chapter.

(b) A user charge system is required of any urban runoff project receiving a revenue pledge loan under this chapter.

(c) A user charge system is required of any urban runoff project that requires an intermunicipal agreement under s. NR 162.06 (2) (g). In this case, "users" means the municipalities covered by the agreement.

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

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

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

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

(d) Require that the recipient establish a replacement fund and make deposits to this fund on an annual basis. This fund is to be used for the replacement of equipment related to the wastewater treatment works, or for periodic maintenance of an urban runoff treatment works or structural urban BMP.

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

1. Revenues generated.

2. Costs of operation and maintenance of the treatment works or structural urban BMP, including replacement of equipment.

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

(f) Require the review, at least every 2 years, of the wastewater or urban runoff contribution of users and user classes, the total costs of operation and maintenance of the treatment works or structural urban BMP, and the user charge system.

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

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

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

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

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

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

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

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

1. Prohibits any new connections from sources that will add substantial infiltration or inflow into the sanitary sewer system.

2. Requires that new sewers and connections to the sewer system be properly designed and constructed.

3. Requires that wastewater introduced into the treatment works not 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.

4. Defines normal domestic strength of the wastewater.

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

6. Provides a methodology for establishing sewer use rates that complies with sub. (1). A municipality may include an optional class of low income residential users, with incomes below a level established by the municipality, who are charged at a lower rate than other residential users.

7. Defines violations and penalties for violators.

(e) For an urban runoff treatment works or structural urban BMP, demonstrate adequate legal authority established by statute, ordinance or series of contracts to meet the provisions of s. NR 216.06 (2) (c).

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

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03; CR 03−028: am. (1) and (4) (e) Register July 2004 No. 583, eff. 8−1−04.

NR 162.09 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 that does not operate in conformance with state and federal civil rights and equal opportunity laws. The recipient shall administer and successfully complete the project as well as accept the terms of the financial assistance agreement or interest rate subsidy agreement.

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

(2) PROFITS. Contractors may earn only fair and reasonable profits under financial assistance agreements and interest rate subsidy agreements. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

(3) SOLICITATION OF MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES. (a) In order to provide MBEs and WBEs an opportunity to compete for work related to the project, recipients and their contractors, and a subcontractor if it subcontracts a portion of the work, shall do all of the following:

1. Use MBEs and WBEs to the extent feasible.

2. Make good faith efforts to provide MBEs and WBEs the maximum feasible opportunity to compete for contracts and subcontracts. Good faith efforts include, but are not limited to, all of the following:

a. Soliciting bids from qualified MBEs and qualified WBEs for contracts and subcontracts. A qualified MBE or WBE is a business that is certified by a state agency or other agency recognized by the department as able to certify disadvantaged businesses. The department may also recognize a business as an MBE or a WBE through self−certification. Solicited businesses shall be provided a reasonable amount of time to respond to requests for bids.

b. Providing to MBEs and WBEs, upon request, a list of individuals and firms in possession of plans, specifications and other information relevant to the project.

c. Breaking down work into smaller tasks to maximize the opportunity of MBEs and WBEs to compete for contracts and subcontracts.

d. Establishing work schedules that enable MBEs and WBEs to compete for contracts and subcontracts.

e. Using the assistance of the department as appropriate.

3. Document the efforts made to provide MBEs and WBEs with the opportunity to compete for contracts and subcontracts, and provide documentation of the efforts to the department.

4. If requested, explain to an MBE or a WBE that submitted a bid but did not receive a contract, why the contract was not awarded to it.

(b) Failure to comply with par. (a) 2. to 4. shall result in a sanction of up to 8% of the project costs eligible for subsidy being financed at the market interest rate. This paragraph does not apply to any recipient that awards contracts to MBEs or WBEs or both in an amount equal to or greater than the applicable fair share objectives. Fair share objectives means the percentage of participation in project costs by MBEs and WBEs that can be reasonably procured. Fair share objectives are determined by the department as negotiated with and agreed to by the U.S. environmental protection agency under 40 CFR part 35, subpart K, given the availability of qualified MBEs and WBEs in the state.

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

(a) The applicant's staff has the necessary competence required to accomplish the work and the work can be accomplished more economically by the use of the force account method than by hiring a contractor.

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

(5) 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 that are not eligible or reasonable.

(b) Reasonableness reviews may include 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 affecting costs.

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

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

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(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. (4). Each contract shall be a fixed or unit price contract, or a time and expense 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 any contract change orders, and submit all change orders to the department.

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

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.10 Reimbursement 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 U.S. treasury reimbursement regulations in 26 CFR 1.150–2.

(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 162.04 (3).

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.11 Loan interest rate. The department shall calculate interest rates in accordance with s. 281.58 (12), Stats., and all of the following:

(1) INTEREST RATE CATEGORIES. Costs of projects or portions of projects shall be charged any of the following interest rates:

(a) For costs of compliance maintenance or new or changed limits projects as described in s. NR 162.03 (1) (a) and (b), the interest rate shall be 55% of the market interest rate.

(b) For costs of unsewered projects, including individual systems, as described in s. NR 162.03 (1) (e) and (2), the interest rate shall be 70% of the market interest rate.

(c) For costs of urban runoff treatment works and structural urban BMP projects as described in s. NR 162.03 (1) (d), the interest rate shall be 65% of the market interest rate.

(d) For costs, identified in s. NR 162.04 (1) (b), the interest rate shall be the market interest rate.

(e) For project costs sanctioned under s. NR 162.09 (3) (b) for noncompliance with requirements for solicitation of MBEs and WBEs, the interest rate shall be the market interest rate.

(2) PROJECT INTEREST RATE CALCULATION. (a) If all of the eligible costs of a project are classified under one of the categories in sub. (1), the interest rate shall be the rate stated. If a project contains eligible costs from one or more of the categories, a composite rate shall be computed for the project in accordance with par. (b).

(b) All of the following methods, in the order listed, shall be used to estimate the total eligible costs associated with the project:

1. Each eligible cost that can be allocated, based on its purpose, exclusively to any one of the categories in sub. (1), shall be so allocated.

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

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

$$RC = (RT\ 1)(PR\ 1) + (RT\ 2)(PR\ 2) + (RT\ 3)(PR\ 3) + (RT\ 4)(PR\ 4)$$

Where:

RC . is the composite interest rate for the project.

RT1 . is the interest rate at 55% of market interest rate.

RT2 . is the interest rate at 65% of market interest rate.

RT3 . is the interest rate at 70% of market interest rate.

RT4 . is the market interest rate.

PR1 . is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.03 (1) (a) and (b).

PR2 . is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.03 (1) (d).

PR3 . is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.03 (1) (e) and (2).

PR4 . is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.04 (1) (b).

(c) Except as provided in s. 281.59 (13), Stats., the interest rate shall be based on the rates in effect at the time the financial assistance agreement is executed.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.12 Financial assistance agreement conditions. (1) Each financial assistance agreement shall bind the recipient to all of 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 162.08 for the design life of the treatment works or structural urban BMP.

(b) The treatment works or structural urban BMP 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 provide timely sewerage service to all users of the treatment works within the delineated service area except in areas where annexation is refused, pursuant to s. 281.43 (1m), Stats.

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

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

(g) The recipient shall expeditiously initiate and complete the project, including construction of and payments for the portions ineligible for financial assistance, in accordance with the financial 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 financial assistance agreement.

(h) The recipient shall promptly notify the department of changes to the project, including revisions to the plans and specifications.

(i) The recipient shall promptly submit to the department a copy of any prime contract or modification to a prime contract.

(j) The recipient shall begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement. The recipient shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(k) If applicable to the project, the recipient shall submit an operation and maintenance manual to the department as follows:

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1. 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 operation and maintenance manual shall address all of 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.

j. Manufacturer's information.

2. For projects or facilities that have an approved operation and maintenance manual, this requirement may be met by the submission of an addendum to the original manual.

(L) The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specifications 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, 30 West Mifflin Street, Madison, Wisconsin 53702, and Legislative Reference Bureau, One East Main Street, Suite 200, Madison, Wisconsin 53701. Copies of these documents may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

(m) The recipient shall provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(n) The recipient shall accept septage to the wastewater treatment works from septic tanks or holding tanks within the recipient's sewer service area, subject to s. 281.49, Stats. The recipient may regulate the time, rate, location and quantity of the septage contributions.

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

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.13 Financial management. The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department.

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

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.14 Financial assistance disbursements. (1) REQUESTS FOR DISBURSEMENT. The recipient shall submit to the department requests for disbursement for eligible costs in the format specified by the department.

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

(3) WITHHOLDING OF FUNDS. The department may withhold funds on the basis of any of the following:

(a) The department may direct 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.

(b) The department may withhold 5% of the principal amount of the loan until the requirements of the final project closeout have been completed.

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

(b) All of the following project closeout procedures shall occur prior to the final disbursement:

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

2. The recipient shall obtain department approval of all change orders and amendments for which disbursement is requested.

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

Note: A project acceptance certification form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

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

Note: An MBE/WBE/SBRA utilization form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

5. The recipient shall submit to the department an operation and maintenance manual certification checklist.

Note: O&M manual certification checklist forms are available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

6. The department shall 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 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.15 Amendments to a financial assistance agreement. (1) ALTERING THE PROJECT. The recipient shall obtain an amendment to the financial assistance agreement before any of the following occur:

(a) The type of wastewater or urban runoff treatment is altered.

(b) The facilities plan, plans and specifications or any major part of the project is substantially altered.

(2) CHANGES CONSISTENT WITH OBJECTIVES. The department may determine that execution of an amendment is not required before the recipient implements changes in the project if the changes are consistent with the objectives of the project, within the scope of the financial assistance agreement, and do not require review under ch. NR 110.

(3) ADDITIONAL FUNDING. (a) *General.* The department may provide additional funding in the form of a loan for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may not process a request to provide additional funding for a project until the time the total remaining costs to complete the project can be reasonably determined.

(b) *Applicability.* Additional funding for a project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

1. 'Sufficient PV, original biennium.' If there is sufficient project commitment present value subsidy available from the biennium in which the original financial assistance agreement was funded, a municipality may receive funding for the additional

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project costs from that biennium's project commitment present value subsidy. The loan interest rate and loan maturity date in the original financial assistance agreement shall be maintained in amending the original financial assistance agreement.

2. 'Continuous funding cycle loan, new biennium.' If there is not sufficient project commitment present value subsidy available from the biennium in which the original financial assistance agreement was funded, and the clean water fund program is accepting applications on a continuous funding cycle basis during the fiscal year in which the additional costs are to be funded, the municipality may receive funding for the additional costs from the current biennium's project commitment present value subsidy. If the interest rate and loan maturity dates for the additional funding are the same as in the original financial assistance agreement, the funds may be provided by amending the original financial assistance agreement. If the loan interest rate or loan maturity date for the additional funding is different than that contained in the original financial assistance agreement, the funds shall be provided by a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11.

Note: Section 281.59 (3e) (c), Stats., allows present value subsidy to be allocated only until the December 30th following the end of the biennium.

3. 'Compete for PV, new biennium.' If a municipality is not able to obtain clean water fund program assistance for its additional project costs through the methods described in subd. 1. or 2., and a funding list for all clean water fund program projects is published for the fiscal year in which the additional costs are to be funded, a municipality may compete through the application process to receive clean water fund program project commitment present value subsidy to finance the additional costs. If a municipality is successful in obtaining project commitment present value subsidy for the additional costs, and the interest rate and loan maturity date for the additional funding are the same as in the original financial assistance agreement, the funds may be provided by amending the original financial assistance agreement. If the loan interest rate or loan maturity date for the additional funding is different than those established in the original financial assistance agreement, the funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11. The application for additional costs shall be ranked on the clean water fund program funding list based on the priority score the project received in the fiscal year in which the original financial assistance agreement was funded.

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

1. 'Request by letter.' If par. (b) 1. is applicable, the municipality shall submit a letter to the department that justifies the need for the additional funding and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. 'Request by application.' If par. (b) 2. or 3. is applicable, the municipality shall submit a clean water fund program notice of intent to apply as described in s. NR 162.05, and a financial assistance application as described in s. NR 162.06, requesting a loan for additional project costs. The department may waive specific application requirements for the amendment request if submittals made with the initial application are still acceptable to the department. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original financial assistance agreement. If par. (b) 3. is applicable, the application shall be postmarked by the June 30 prior to the fiscal year from which the funds for the additional costs are requested.

(4) EFFECTIVE DATE. A financial assistance agreement amendment is not effective until executed by all parties to the agreement.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.16 Disputes. (1) DECISION OF THE DEPARTMENT. Except as otherwise provided by law, any dispute arising under subch. II or III 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 applicant personally or by mail.

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.17 Records and record retention. (1) REQUIREMENTS. The recipient shall maintain books, documents, papers and records, and accounting procedures in accordance with generally accepted accounting principles or other method of accounting accepted by the department, the financial assistance agreement, and ch. Adm 35, and retain them in accordance with subch. II of ch. 19, Stats. The recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers and records related to the project that are necessary for the recipients' compliance with this section.

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

(3) RECORD RETENTION. The recipient and contractors of recipients shall preserve and make their records available to the department for a minimum of 3 years from the date that the department notifies the recipient that the project is closed out.

(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 that relate to appeals, disputes or litigation arising out of the performance of the project, shall be retained until any appeals, disputes or litigation have been finally resolved or for a period of 3 years from the date that the department notifies the recipient that the project is closed out, 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 31 USC 7501 to 7507, OMB circular A–133 and ch. Adm 35.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.18 Breach of contract. (1) Upon breach of contract by the recipient, the department may do any of the following:

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

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

(c) Rescind the grant and convert the grant amount to a loan.

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

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

(f) Seek any other appropriate administrative remedy.

(2) 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.

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Note: The department of administration may under s. 281.59 (11) (b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.19 Noncompliance. Upon failure of the recipient to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter, the department may do any of the following:

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

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

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.20 Variances. (1) GENERAL. The department may, on its own initiative or pursuant to a written request from an applicant, approve a variance from a requirement of this chapter when it determines that 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. Any variance approved shall be consistent with the objectives of ss. 281.58 and 281.59, Stats.

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

(3) REQUEST FOR VARIANCE. An applicant shall submit a request for a variance in writing to the department as soon as it is determined a variance is needed. Each request for a variance shall contain all of the following:

(a) The name of the applicant and project number.

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

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

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.21 Administrative fees. (1) An administrative fee, if one is imposed, shall be included in the biennial finance plan established under s. 281.59 (3), Stats., which is approved by the building commission under s. 13.48, Stats.

(2) Hardship financial assistance provided under subch. IV is not subject to an administrative fee.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

Subchapter III — Priority Scoring and Ranking System

NR 162.30 Project scoring system. The following factors, when applied to particular projects in accordance with s. NR 162.31, shall determine the priority scoring of treatment works and structural urban BMP projects for clean water fund program financial assistance pursuant to s. 281.58, Stats.

(1) PROJECT CATEGORY SCORE. The department shall assign one of the following project scores to each project:

(a) The department shall assign 50 points to a project that the department determines is necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats. This includes eligible projects identified under s. NR 162.03 (1) (a) and (d) 1.

(b) The department shall assign 45 points to a project needed to provide treatment to achieve compliance with an enforceable requirement changed or established after May 17, 1988, if the project is for a municipality that is in substantial compliance with its permit, issued under ch. 283, Stats., in regard to the changed or established enforceable requirements. This includes eligible projects identified under s. NR 162.03 (1) (b) and (d) 1.

(c) The department shall assign 25 points to a project for an unsewered municipality. This includes eligible projects identified under s. NR 162.03 (1) (e).

(d) The department shall assign 5 points to a structural urban BMP project identified under s. NR 162.03 (1) (d) 2. and 3.

(e) The department shall assign 5 points to a project for planning, design, construction or replacement of treatment works that violate a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., of a performance standard. This includes eligible projects or costs identified under s. NR 162.03 (1) (c) or 162.04 (1) (b).

(f) For a multi–category project that includes elements from more than one of the categories described in pars. (a) to (e), the department shall assign the project category score for the project type that has the largest estimated cost percentage of the total cost of the project, as approved by the department.

(2) HUMAN HEALTH SCORE. The department shall assign a human health score to a project only if the project is necessary to eliminate a health hazard. The human health score (HHS) is the product of the severity subscore (SS) as defined in par. (c) and the population multiplier (PM) as defined in par. (d). The department shall determine the human health score as follows:

$$HHS = SS \times PM$$

(a) *Maximum score.* The department may assign a maximum of 40 points to a project for the human health score.

(b) *Applicability.* The department shall assign a score only for those human health hazards for which the applicant submits supporting documentation and that have occurred within 5 years prior to the applicant's submittal of a request for a project priority score.

(c) *Severity subscore.* The department shall assign to a project a severity subscore (SS) that is the cumulative total of the following applicable categories. The percentages calculated under subds. 1., 7., and 9. may not include a holding tank if the discharge or malfunction of the holding tank is the result of improper maintenance.

1. The department shall assign one of the following scores to a project that will reduce or eliminate pollution of groundwater, where contaminant levels exceed or are projected to exceed safe drinking water standards in ch. NR 809 for public water supplies, or will reduce or eliminate discharges from private sewage systems or will reduce untreated urban runoff discharges from municipal storm water conveyance systems located within 3 feet of groundwater or crevassed bedrock. The department shall base the score on the percentage of the water supplies that are affected, or the percentage of the private sewage systems discharging to high groundwater or crevassed bedrock.

a. 75% or more: 15 points.

b. 50% to 74.99%: 12 points.

c. 33% to 49.99%: 9 points.

d. 20% to 32.99%: 6 points.

e. 10% to 19.99%: 4 points.

f. 5% to 9.99%: 2 points.

g. 3% to 4.99%: 1 point.

h. Less than 3%: 0 points.

2. The department shall assign the highest applicable score from one of the following for a wastewater project that is designed to achieve or maintain compliance with effluent limitations based on groundwater quality standards in ch. NR 140:

a. 10 points for effluent limitations based on public health standards under s. NR 140.10.

b. 8 points for effluent limitations based on public welfare standards under s. NR 140.12.

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c. 6 points for effluent limitations based on indicator parameter standards under s. NR 140.20.

d. 4 points for correction of excessive leakage from a lagoon or pond as required by a WPDES permit.

3. The department shall assign the highest applicable score from one of the following for an urban runoff project that contributes to the achievement or maintenance of groundwater standards under ch. NR 140:

a. 10 points for a project designed to reduce or eliminate substances of public health concern identified under s. NR 140.10 or other substances identified by the department under s. NR 140.02 (4).

b. 8 points for a project designed to reduce or eliminate substances of public welfare concern identified under s. NR 140.12 or other substances identified by the department under s. NR 140.02 (4).

c. 6 points for a project designed to reduce or eliminate substances necessary to comply with the preventative action limit for an indicator parameter identified under s. NR 140.20.

4. The department shall assign the highest applicable score from one of the following to a wastewater project necessary to achieve or maintain compliance with effluent limitations based on surface water quality criteria as enumerated in ss. NR 105.08 and 105.09:

a. 10 points for effluent limitations based on water supply human threshold or human cancer water quality standards.

b. 5 points for effluent limitations based on non–water supply human threshold or human cancer water quality standards.

5. The department shall assign the highest applicable score from one of the following for an urban runoff project contributing to the achievement or maintenance of surface water quality standards under ss. NR 105.08 and 105.09:

a. 10 points for a project designed to reduce or eliminate substances contributing to an existing or anticipated violation of water supply human threshold or human cancer water quality standards.

b. 5 points for a project designed to reduce or eliminate substances contributing to an existing or anticipated violation of non–water supply human threshold or human cancer water quality standards.

6. The department shall assign 4 points to a project designed to reduce or eliminate substances contributing to an existing or probable violation of recreational use standards under s. NR 102.04 (5).

7. The department shall assign one of the following scores to a project that will eliminate the ponding or discharging of sewage by private sewage systems onto the ground or into roadside ditches, or to a watercourse or waterbody. The department shall base the score on the percentage of private sewage systems in the project area contributing to the ponding or discharging.

a. 50% or more: 4 points.

b. 25% to 49.99%: 3 points.

c. 15% to 24.99%: 2 points.

d. 5% to 14.99%: 1 point.

e. Less than 5%: 0 points.

8. The department shall assign one of the following scores to a project necessary to eliminate or prevent bypasses and overflows, as defined in s. NR 110.05 (2), from a municipal sewerage system to a watercourse or waterbody:

a. For category 1 bypasses and overflows: 4 points.

b. For category 2 bypasses and overflows: 2 points.

9. The department shall assign one of the following scores to a project that will eliminate basement backups caused by malfunctioning private sewage systems or overloaded sanitary sewer collection systems, except for malfunctions caused by improper maintenance. The department shall base the score on the percentage of residences in the project area that have had basement backups.

a. 50% or more: 4 points.

b. 25% to 49.99%: 3 points.

c. 15% to 24.99%: 2 points.

d. 5% to 14.99%: 1 point.

e. Less than 5%: 0 points.

(d) *Population multiplier.* The population multiplier (PM) shall be the logarithm to the base 10 (log 10) of the residential population that the project will initially serve.

(e) *Regional project.* 1. If the regional project is a multi–category project, the department shall assign to the project the total human health scores of the several categories.

2. If a regional project is proposing to serve another municipality and the subscribing municipality's design flow constitutes 10% or more of the design flow of the regional project, then any of the following may apply:

a. The department may add the health hazard score of the subscribing municipality to the health hazard score of the regional project.

b. The department may assign the prior health hazard score of the regional project to the subscribing municipality. The human health score may not exceed the maximum points in par. (a).

(3) FISH AND AQUATIC LIFE SCORE. The fish and aquatic life score for wastewater projects shall be the score assigned under par. (b), and for urban runoff projects shall be the score assigned under par. (c). The department shall determine the fish and aquatic life score as follows:

(a) *Maximum score.* The department may assign a maximum of 40 points to a project for the fish and aquatic life score.

(b) *Wastewater project score.* The fish and aquatic life score for a wastewater project shall be the water quality standard score plus the water quality classification score. The department shall determine the wastewater project fish and aquatic life score as follows:

Note: Score = water quality standard score + water quality classification score.

1. 'Water quality standard score.' The water quality standards score shall be the sum of this subd. 1. a. and b.

a. The department shall assign 10 points to a project necessary to achieve or maintain compliance with effluent limitations based on a water quality standard contained in s. NR 102.04 (4) (a), (b), (c) or (e).

b. The department shall assign 10 points to a project necessary to achieve or maintain compliance with an effluent limitation based on the water quality standard contained in s. NR 102.04 (4) (d) only if an acute or chronic criterion contained in or calculated under s. NR 105.05 or 105.06 is the basis of the effluent limitation.

2. 'Water quality classification score.' Each project where there is an existing surface water discharge shall receive a water quality classification score based on the potential impact of that discharge on the receiving water and the classification of the receiving water. A water quality classification score shall be the product of the dilution ratio point value determined under subd. 3. and the classification point value determined under subd. 4.

Note: Score = dilution ratio point value x classification point value.

3. 'Dilution ratio point value.' The department shall assign one of the following for the dilution ratio point value:

a. Waste load allocated streams: 4 points.

b. Dilution ratio of 0.00 to 0.99: 4 points.

c. Dilution ratio of 1.00 to 4.99: 3 points.

d. Dilution ratio of 5.00 to 9.99: 2 points.

e. Dilution ratio of 10.00 or greater: 1 point.

f. Lakes and wetlands: 1 point.

4. 'Classification point value.' The department shall base the classification point value on the classification contained in s. NR

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102.04 (3). The point value shall be the highest of any of the following:

a. Outstanding or exceptional resource water or impaired waters: 7 points.

b. Great Lakes communities and cold water communities: 6 points.

c. Warm water sport fish communities: 5 points.

d. Warm water forage fish communities: 4 points.

e. Limited forage fish communities: 2 points.

f. Limited aquatic life: 1 point.

(c) *Urban runoff project score.* The fish and aquatic life score for an urban runoff project shall be the water quality standard score plus the water quality classification score. The department shall determine the urban runoff project fish and aquatic life score as follows:

Note: Score = water quality standard score + water quality classification score.

1. 'Water quality standard score.' The department shall assign 15 points to a project contributing to the achievement or maintenance of surface water quality standards established by the department under s. 281.15, Stats., or performance standards established by the department under s. 281.16 (2), Stats.

2. 'Water quality classification score.' Each urban runoff project that will address an existing surface water discharge shall receive a water quality classification score based on the potential impact of that discharge on the receiving water and the classification of the receiving water. A water quality classification score shall be the product of the classification point value determined under subd. 3. and the pollution reduction value determined under subd. 4.

Note: Score = classification point value x pollution reduction value.

3. 'Classification point value.' The department shall base the classification point value on the classification contained in s. NR 102.04 (3). The point value shall be the highest of any of the following:

a. Outstanding or exceptional resource water or impaired waters: 7 points.

b. Great Lakes communities and cold water communities: 6 points.

c. Warm water sport fish communities: 5 points.

d. Warm water forage fish communities: 4 points.

e. Limited forage fish communities: 2 points.

f. Limited aquatic life: 1 point.

4. 'Pollution reduction value.' The pollution reduction value shall be one of the following based on the percentage of the total pollutant or water load contributing the nonpoint source pollution that will be controlled by the project:

a. Greater than or equal to 75%: 4 points.

b. 50% – 74.99%: 3 points.

c. 25% – 49.99%: 2 points.

d. Less than 25%: 1 point.

(d) *Regional project.* 1. If the regional project is a multi–category project that includes elements from more than one project category described in s. NR 162.30 (1), the department shall assign the total fish and aquatic life scores of the several categories to the project.

2. If a regional project is proposing to serve another municipality and the subscribing municipality's design flow constitutes 10% or more of the design flow of the regional project, then any of the following may apply:

a. The department may add the fish and aquatic life score of the subscribing municipality to the fish and aquatic life score of the regional project.

b. The department may assign the prior fish and aquatic life score of the regional project to the subscribing municipality. The fish and aquatic life score may not exceed the maximum points in par. (a).

(4) IMPAIRED WATERS SCORE. The department shall assign 5 points to a proposed project if the project will reduce the level of pollutants currently affecting a 303(d) listed waterbody and the pollutants proposed to be reduced or removed are related to the impairment. A 303(d) listed waterbody means a waterbody included on the list of impaired waterbodies in the state developed by the department pursuant to 33 USC 1313 and 40 CFR 130.7.

Note: A list of 303(d) waterbodies may be acquired, at no charge, from the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, WI 53707.

(5) WILD AND DOMESTIC ANIMAL SCORE. (a) The department shall assign 5 points to a wastewater project that is needed to achieve or maintain compliance with effluent limitation based on a water quality standard contained in s. NR 102.04 (7).

(b) The department shall assign 5 points to an urban runoff project that will contribute to the achievement or maintenance of surface water quality standards contained in s. NR 102.04 (7).

(6) OUTSTANDING AND EXCEPTIONAL RESOURCE WATERS CATEGORY SCORE. The department shall assign 5 points to a proposed project that will reduce the level of pollutants currently affecting an outstanding or exceptional resource water, designated under ss. NR 102.10 and 102.11.

(7) LOCAL PRIORITIES SCORE. The department shall assign 5 points to a project that is identified in or is consistent with local resource management plans or ordinances if at least one of the following applies:

(a) The plans or ordinances are not already required for financial assistance under this chapter and provide a strategy for controlling water pollution sources.

(b) The plans or ordinances will otherwise have an effect on reducing existing or future sources of water pollution.

Note: Examples of local resource management plans include, but are not limited to: storm water management plans, land use plans, growth management plans, wellhead protection plans, lake management plans, sewer service area plans, parks and recreation plans, county land and water resource management plans and comprehensive plans.

(8) SEPTAGE AND LEACHATE SCORE. The department shall assign 2 points to a wastewater project if its approved facilities plan includes facilities to receive and treat septage or leachate.

(9) POPULATION SCORE. Each project shall receive a population score. The population score is the logarithm to the base 10 of the residential population to be served by the project, divided by 10.

$$\text{Population score} = \frac{\log 10 \ \text{residential population}}{10}$$

(10) JOINT TREATMENT WORKS SCORE. The department shall assign one point to a wastewater project that meets the criteria established in s. 281.58 (8e) (cm), Stats.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.31 Project priority score. (1) The department shall assign a project priority to each project for which a completed priority evaluation and ranking form has been submitted pursuant to s. NR 162.32. The department shall determine the project priority score using the following formula:

project priority score = A + B + C + D + E + F + G + H + I + J

where

A = Project category score

B = Human health score

C = Fish and aquatic life score

D = Impaired waters score

E = Wild and domestic animal score

F = Outstanding and exceptional resource waters score

G = Septage and leachate score

H = Local priorities score

I = Population score

J = Joint treatment works score.

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(2) In computing the project priority score, the department shall consider only those scores properly assignable to a particular project. If a project does not satisfy the necessary criteria associated with the assignment of a particular score, the department shall record a score of zero for that particular factor.

(3) A subscribing municipality shall receive the same priority score as the receiving municipality to which it will discharge if either pars. (a) and (c), or pars. (b) and (c) conditions are met.

(a) The receiving municipality needs to expand its treatment works or structural urban BMP design flow by 10% or more to treat the flow from the subscribing municipality.

(b) An approved facilities plan or WPDES permit requires the receiving municipality facility expansion and subscribing municipality project to occur concurrently.

(c) The receiving municipality and subscribing municipality have certified to the department that they will prepare and submit an intermunicipal agreement to the department prior to the award of financial assistance for construction of the project.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.32 Procedure for determination and reevaluation of project priority score. (1) An applicant intending to apply for clean water fund program assistance for a project for the first time shall submit to the department a written request for priority determination on a priority evaluation and ranking form.

Note: A priority evaluation and ranking form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(2) The department may not assign a priority score greater than 0 to any project until the department has received a completed priority evaluation and ranking form for the project from the applicant and has evaluated it.

(3) Upon completion of the review and determination of a priority score, the department shall notify the applicant in writing of the determination.

(4) Annually, the department may review and, if necessary under the requirements of this chapter, recalculate priority scores to ensure accuracy and timeliness of information. The department shall notify the applicant in writing of any change in priority score.

(5) After a facilities plan is approved, the department shall reevaluate the priority score of the project, making revisions if necessary. The department shall notify the applicant in writing of any change in priority score.

(6) If the applicant objects to the department's determination of the priority score in sub. (3), (4) or (5), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (3), (4) or (5). The notice shall state the specifics of the objection. The applicant shall submit any information that supports the objection and the priority score which the applicant believes the department should assign to the project based on this information.

(7) Upon receipt of a notice under sub. (6), the department shall reevaluate its determination of the project priority score and shall notify the applicant. If the department denies the requested priority score, it shall state the reasons in writing.

(8) Notwithstanding sub. (6), an applicant may request a reevaluation of its project priority score within 45 days of the application deadline. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (3).

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.33 Project ranking system. (1) The department shall maintain a project priority list that ranks the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first.

(2) If 2 or more projects have the same priority score, the project serving the larger population, as based on the population factor score, shall be considered to have the higher priority.

(3) The department shall prepare a project priority list and shall use it for prioritizing clean water fund program assistance to eligible projects.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

Subchapter IV — Hardship Financial Assistance

NR 162.40 Applicability. (1) GENERAL. This subchapter applies to all applicants for and recipients of hardship financial assistance pursuant to s. 281.58 (13), Stats. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving financial assistance under s. 281.58 (13), Stats. This subchapter does not apply to financial assistance for structural urban best management practices under subch. II or to interest rate subsidy provided under subch. V.

(2) ADMINISTRATIVE OR SERVICE FEES. Administrative or service fees under s. NR 162.21 may not be charged to hardship financial assistance recipients.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.41 Types of hardship financial assistance. The department may provide any of the following types of hardship financial assistance:

(1) Loans with interest rates lower than the interest rates specified in s. NR 162.11.

(2) Grants not to exceed 70% of the eligible costs of the project.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.42 Eligibility for hardship financial assistance. (1) ELIGIBLE MUNICIPALITIES. A municipality that meets all of the following criteria is eligible for hardship financial assistance:

(a) The median household income in the municipality is 80% or less of the median household income in this state. The department shall determine median household income as follows:

1. If the municipality is a city, town, village or county, or is a town sanitary district or public inland lake protection and rehabilitation district in an area that is a census designated place, or is a federally recognized American Indian tribe or band in this state, the department shall obtain a median household income figure for the municipality from the most recent federal census as published by the U.S. census bureau.

2. If the municipality is a town sanitary district or public inland lake protection and rehabilitation district, the municipality shall submit a map showing the boundaries of the municipality, with its intent to apply form, to the department. The department shall compare this map to a census block map and determine which census blocks contain any portion of the municipality. The department shall then obtain from the U.S. census bureau a median household income figure for the municipality through special tabulation of census block data collected in the most recent federal census for the appropriate census blocks.

3. The department shall adjust median household income figures from the most recent federal census to reflect the estimated change in annual income. The department shall apply to the census data the percent increase in per capita income since the most recent federal census in the county in which the municipality is located. The department shall determine the percent increase in per capita income data using figures published by the U.S. department of commerce.

4. If a municipality is located in more than one county, the department shall weight, according to population or number of households located within each county's portion of the municipality, the percent increase in per capita income used to adjust the median household income figure.

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(b) The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2% of the median household income in the municipality without assistance under s. 281.58 (13), Stats.

(2) PROJECT ELIGIBILITY. (a) Wastewater projects described in s. NR 162.03 (1) (a), (b) and (e) and (2) are eligible for hardship financial assistance.

(b) Projects or portions of projects described in s. NR 162.03 (1) (c) are not eligible for hardship financial assistance.

(c) Projects described in s. NR 162.03 (1) (d) and (3) are not eligible for hardship financial assistance.

(3) COST ELIGIBILITY. Eligible and ineligible costs described in s. NR 162.04 apply to hardship financial assistance projects.

(4) REFINANCING AND REIMBURSEMENT. (a) The department may refinance a project with hardship financial assistance for a municipality in the hardship fundable range if any of the following applies:

1. The municipality started or completed construction of the project prior to receiving hardship financial assistance and received a loan for the project from a source other than the department.

2. The municipality received a financial assistance agreement for a clean water fund program loan at an interest rate specified in s. NR 162.11 for the project and all of the following apply:

a. The municipality was on a hardship financial assistance funding list and did not receive hardship financial assistance for the entire project due to insufficient hardship present value subsidy.

b. At the time of each application submittal for the project, the municipality met the criteria described in sub. (1).

(b) A financial assistance agreement to refinance an existing project debt shall be executed before the project has been substantially complete for more than 5 years.

(c) An applicant for refinancing shall meet the planning and design criteria and application requirements as established in subch. II.

(d) Refinancing shall be subject to the limitations of issuance and interim financing costs established in s. NR 162.04 (3).

(e) Reimbursement of the municipality's internal funds for previously paid project costs shall be in accordance with s. NR 162.10 (1) and subject to U.S. treasury reimbursement regulations in 26 CFR 1.150–2.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.43 Application. (1) NOTICE OF INTENT TO APPLY. Each municipality intending to apply for hardship financial assistance shall inform the department of its intent by the December 31 prior to the hardship application deadline specified in sub. (2). Section NR 162.05 (1) and (2) apply to hardship financial assistance projects.

Note: A Notice of Intent to Apply form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) APPLICATION DEADLINE. To request hardship financial assistance for the following state fiscal year, a municipality shall submit a complete application and plans and specifications by June 30.

Note: An application form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707. An interest subsidy application is a different form and must be submitted in accordance with s. NR 162.63.

(3) PROCEDURE. Subject to sub. (2), hardship financial assistance applicants shall follow the procedure described in s. NR 162.06 (1) and s. 281.58 (9) (a) to (c), Stats.

(4) CONTENTS OF APPLICATION. An application for hardship financial assistance shall comply with the requirements of s. NR 162.06 (2).

(5) AMENDED APPLICATION. An applicant may submit an amended application prior to the date the department publishes the hardship financial assistance funding list.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.44 Funding list. (1) GENERAL. The department shall establish a hardship financial assistance funding list in accordance with s. 281.58 (13) (d), Stats., and the funding policy established in s. NR 162.02 (1).

Note: Hardship financial assistance projects are included in the project priority list established annually under s. NR 162.33.

(2) ELIGIBILITY CALCULATION. (a) The department shall determine eligibility for hardship financial assistance using the following method:

$$S = \frac{(AT+M+O+W)\ R}{(MHI)(N)}$$

where:

S . . . is the estimated total annual charges per residential user as a percentage of the median household income in the municipality.

AT . . is the annual principal and interest costs, based upon a 20–year repayment schedule at the appropriate interest rate, for that portion of the project that is eligible for the below market interest rate, if the municipality did not receive hardship financial assistance for the project.

M . . is the annual principal and interest costs, based upon a 20–year repayment schedule at the market interest rate, for that portion of the project that is eligible for the market interest rate.

O . . . is the annual operation, maintenance and replacement costs of the treatment works to be paid by the recipient of the hardship financial assistance.

W . . is the total remaining prior wastewater debt service of the municipality plus the estimated debt service for project costs ineligible for clean water fund program funding, such as hook–up fees owed another municipality and debt for lateral sewers, divided by 20 years. If the prior wastewater debt has more than 20 years remaining, the total debt service on that portion of "W" shall be divided by the actual number of years remaining on the debt. In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

R . . . is the residential percentage. Residential percentage is determined by dividing the residential design flow by the total design flow from the applicant municipality.

MHI is the median household income in the municipality.

N . . . is the number of residential users in the municipality.

(b) If S is greater than 2% and the municipality meets the criterion listed in s. NR 162.42 (1) (a), the municipality is eligible for hardship subsidy and the department shall place the project on the hardship financial assistance funding list. If S is 2% or less, the municipality is not eligible for hardship subsidy and may request a non–hardship loan unless the municipality has already received a clean water fund program loan for the project.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

NR 162.45 Allocation of funds. At the time of publication of the funding list, the hardship present value subsidy shall be allocated to those projects within the hardship fundable range in the order specified in s. 281.58 (13) (e), Stats. The department shall base the amount allocated on figures in the municipality's current application and additional information provided to the department prior to publication of the funding list.

History: CR 03−027: cr. Register November 2003 No. 575, eff. 12−1−03.

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NR 162.46 Requirements and conditions for receiving hardship financial assistance. (1) REQUIREMENTS. Before awarding hardship financial assistance for any project, the department shall determine that all of the applicable requirements established in s. NR 162.07, and the user charge and sewer use ordinance requirements of s. NR 162.08, the procurement requirements of s. NR 162.09 and the application requirements of s. NR 162.43 have been met.

(2) CONDITIONS. The conditions in s. NR 162.12 shall be included in financial assistance agreements that award hardship financial assistance.

(3) FINANCIAL MANAGEMENT. Section NR 162.13 applies to recipients of hardship financial assistance.

(4) RECORDS AND RECORD RETENTION. Section NR 162.17 applies to recipients of hardship financial assistance.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.47 Procedure for determining type and amount of hardship financial assistance. (1) GENERAL. (a) The department shall determine the type and amount of hardship financial assistance at the time the hardship financial assistance agreement is awarded.

(b) The department may provide financial assistance in the form of a loan or a combination of loan and grant for eligible project costs for the amount specified in s. 281.58 (13) (c), Stats. The municipality shall pay at least 30% of the project costs eligible for the below–market interest rate.

(2) CALCULATION OF HARDSHIP FINANCIAL ASSISTANCE AMOUNT. (a) The interest rate for a hardship financial assistance loan on eligible below–market project costs shall be no greater than a rate specified in s. NR 162.11. The department may only provide grant funding to a municipality if it is necessary in order to bring the total annual charges per household down to 2% of the median household income. The department shall determine the amount of financial assistance to be provided for a project as follows:

1. 'Determining the grant amount.' a. To determine whether or not a municipality is eligible for a grant and to determine the amount of grant needed to keep total annual charges at 2% of the median household income in the municipality, the department shall use the following method:

$$(MHI)(N)(.02) = A$$

$$A / R = B$$

$$B–O–W–M = C$$

$$P / 20 = D$$

$$D–C = H$$

where:

MHI is the median household income in the municipality.

N . . . is the number of residential users in the municipality.

A . . . is the estimated amount the residential users can afford annually for wastewater treatment.

R . . . is the residential percentage. Residential percentage is determined by dividing the residential design flow by the total design flow from the applicant municipality.

B . . . is the estimated amount the residential and nonresidential users can afford for all wastewater treatment costs annually.

O . . . is the annual operation, maintenance and replacement costs of the treatment works to be paid by the recipient of the hardship financial assistance.

W . . is the total remaining prior wastewater debt service of the municipality plus the estimated total municipal debt service for project costs ineligible for clean water fund program funding, such as hook–up fees owed another municipality and debt for lateral sewers, divided by 20 years. If the prior wastewater debt has more than 20 years remaining, the total debt service on that portion of "W" shall be divided by the actual number of years remaining on the debt. In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

M . . is the annual principal and interest costs based upon a 20–year repayment schedule at the market interest rate for that portion of the project that is eligible for the market interest rate.

C . . . is the estimated amount the residential and nonresidential users can afford annually to pay for debt service on the clean water fund program project loan.

P . . . is the project costs eligible for below market interest rate.

D . . . is the annual debt service for a zero percent interest rate loan for below market eligible project costs.

H . . . if positive, is the annual grant amount a municipality needs to keep total annual charges per household at 2% of the municipality's median household income. If H is negative, the municipality is not eligible for a grant and the interest rate for a loan shall be determined in accordance with subd. 2. and par. (b).

b. H (20) equals the total maximum grant the municipality is eligible to receive, subject to the 70% grant limit with the remainder at a zero percent loan for eligible project costs.

2. 'Determining the interest rate for a loan.' a. If H is zero, the municipality is eligible for a zero percent interest rate loan with no grant portion.

b. If H is negative, the municipality is eligible for a below market interest rate loan with no grant portion. The department determines the interest rate by entering figures from the calculation in subd. 1. a. as the following into a financial calculator, such as the Hewlett Packard HP–12C or equal, and solving for the interest rate:

–C = payment

P = principal or present value

20 = term

i = interest rate

Note: "Interest rate" means the discount rate at which the present value of clean water fund program loan payments equals the clean water fund program loan amount.

c. If the department determines that the affordable interest rate for hardship financial assistance is greater than the interest rate for that project type defined in s. NR 162.11 (1), the department shall determine the interest rate for the project according to the method described in s. NR 162.11 (2).

(b) If portions of the project costs are only eligible for funding at the market interest rate, pursuant to s. NR 162.04 (1) (b), then the department shall calculate a composite interest rate for the project. The department shall compute the composite interest rate for a hardship project as follows:

$$HRC = \frac{(i)(P) + (im)(CT\ 3)}{P + CT\ 3}$$

where:

HRC is the composite interest rate.

i . . . is the interest rate calculated in par. (a), if any; otherwise it is zero.

P . . . is the project costs eligible for below market interest rate.

im . . is the clean water fund program market interest rate.

CT3 is the project costs eligible for clean water fund program market interest rate funding under s. NR 162.04 (1) (b).

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NR 162.48 Operation, maintenance, and replacement cost estimates. (1) The maximum amount allowable for operation, maintenance and replacement cost estimates used in ss. NR 162.44 (2) and 162.47 (2) shall be 2 standard deviations above the mean operation, maintenance and replacement costs, as obtained from a regression analysis of the operation, maintenance and replacement costs of previously funded clean water fund program projects on population size, segregated by project type.

(2) The estimated operation, maintenance and replacement costs used for "O" under ss. NR 162.44 (2) and 162.47 (2) (a) 1. shall be the operation, maintenance and replacement costs contained in the application and the approved user charge, respectively, or the maximum allowable amount derived under sub. (1), whichever is less.

(3) The department shall periodically update the operation, maintenance and replacement costs used under sub. (1) to reflect new data and inflation.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.49 Hardship financial assistance agreement. (1) NOTICE OF HARDSHIP FINANCIAL ASSISTANCE COMMITMENT. The department may issue a notice of hardship financial assistance commitment to a municipality in the hardship fundable range upon the municipality's request if the municipality has complied with the requirements of s. NR 162.43 and has submitted sufficient documentation to show that it has complied or will comply with the financial assistance requirements of s. NR 162.07.

(2) EXECUTION OF HARDSHIP FINANCIAL ASSISTANCE AGREEMENT. (a) The department may enter into a hardship financial assistance agreement with a municipality in the hardship fundable range if the requirements under s. NR 162.46 (1) are met.

(b) The department shall specify the type of hardship financial assistance to be provided in the hardship financial assistance agreement for each application that it approves.

(c) The date the hardship financial assistance agreement is signed by the department shall be deemed the date the hardship financial assistance agreement is awarded for purposes of determining the interest rate for the loan portion of the financial assistance.

(3) DEADLINE FOR SIGNING A FINANCIAL ASSISTANCE AGREEMENT. The applicant shall sign the financial assistance agreement by August 30 of the calendar year that follows the year in which hardship present value subsidy is allocated to the project. If a financial assistance agreement is not signed by that August 30, the subsidy allocated for the applicant's project shall be released for reallocation to other projects.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.50 Hardship financial assistance disbursements. (1) GENERAL. Disbursements of financial assistance shall be made in accordance with s. NR 162.14.

(2) ORDER OF LOAN AND GRANT DISBURSEMENTS. The department shall make disbursements of hardship financial assistance first in the form of a loan, up to the loan amount identified in the hardship financial assistance agreement. The department shall make grant disbursements, if any, after all hardship loan proceeds have been disbursed.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.51 Funding additional project costs. (1) APPLICABILITY. The department may provide additional funding in the form of a loan or grant for eligible project costs incurred beyond the amount specified in the hardship financial assistance agreement. The department may not process a request to provide additional funding for a project until the time the total remaining costs to complete the project can be reasonably determined. Additional funding for a project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

(a) *Hardship PV available, original biennium.* If sufficient hardship present value subsidy is available from the biennium in which the original hardship financial assistance agreement was funded, the municipality may receive funding for the additional costs from that biennium's present value subsidy. The proportion of loan to grant, the interest rate, and the final maturity date in the original financial assistance agreement shall be maintained in the amendment to the original hardship financial assistance agreement.

(b) *Insufficient hardship PV, sufficient commitment PV, original biennium.* If there is not sufficient hardship present value subsidy but there is sufficient project commitment present value subsidy available from the biennium in which the original hardship financial assistance agreement was funded, a municipality may receive a financial assistance agreement to fund the additional costs from that biennium's project commitment present value subsidy. The funding shall be in the form of a loan at the interest rate corresponding to the project type as defined in s. NR 162.11 with a loan term of up to 20 years.

(c) *Continuous funding cycle loan, new biennium.* If there is not sufficient project commitment or hardship present value subsidy available from the biennium in which the original hardship financial assistance agreement was funded, and the clean water fund program is accepting applications on a continuous funding cycle basis for the fiscal year in which the additional costs are to be funded, the municipality may receive funding for the additional costs from the current biennium's project commitment present value subsidy. If the interest rate and final maturity date for the additional funding are the same as in the original financial assistance agreement, the funds may be provided in an amendment to the original hardship financial assistance agreement. If the interest rate or final maturity date of the additional funding is different than those in the original financial assistance agreement, the funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the interest rate corresponding to the project type as defined in s. NR 162.11.

Note: Section 281.59 (3e) (c), Stats., allows present value subsidy to be allocated only until the December 30th following the end of the biennium.

(d) *Compete for hardship PV, new biennium.* A municipality may compete for hardship financial assistance for additional project costs through the application process in a biennium other than that in which the original hardship financial assistance agreement was funded. The application for additional funding may be submitted in any fiscal year through the second year of the biennium following the substantial completion date of the project indicated in the original hardship financial assistance agreement. The application shall be ranked on the hardship financial assistance funding list based on the priority score the project received in the fiscal year in which the original hardship financial assistance agreement was funded. The additional funding is subject to the following:

1. 'Sufficient hardship PV available.' If the municipality is successful in obtaining sufficient hardship financial assistance from another biennium for the entire amount of additional costs, the original proportion of loan to grant, interest rate and final maturity date shall be maintained in an amendment to the original hardship financial assistance agreement.

2. 'Partial hardship PV available.' If there is hardship present value subsidy available to only partially fund the additional costs, the municipality may receive funding from the current biennium's project commitment present value subsidy for any eligible costs beyond the amount funded with the available hardship present value subsidy. The funds shall be provided in a financial assistance agreement in the form of a loan or a combination of grant and loan for up to 20 years with an interest rate determined by the department and the department of administration based on the proportion of hardship and non–hardship funding.

(e) *Compete for commitment PV, new biennium.* If a municipality is not able to obtain clean water fund program assistance for its additional project costs through the methods described in pars.

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(a) to (d), and a funding list for all clean water fund program projects is published for the fiscal year in which the additional costs are to be funded, a municipality may compete through the application process to receive clean water fund program project commitment present value subsidy to finance additional project costs. The funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11. The application for additional funds shall be ranked on the clean water fund program funding list based on the priority score the project received in the fiscal year in which the original hardship financial assistance agreement was funded.

(2) REQUESTING FUNDS. A municipality may request funding for additional project costs using one of the following options:

(a) *Request by letter.* If sub. (1) (a) or (b) is applicable, the municipality shall submit a letter to the department that justifies the need for the additional funding and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

(b) *Request by application.* If sub. (1) (c) or (e) is applicable, the municipality shall submit a clean water fund program notice of intent to apply as described in s. NR 162.05 and a financial assistance application as described in s. NR 162.06, requesting a loan for additional project costs. The department may waive specific application requirements for the amendment request if submittals made with the initial application are still acceptable to the department. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement. If the municipality submits its application for additional funding as part of the continuous funding cycle and intends to later apply for hardship financial assistance for these same project costs, the municipality shall inform the department in writing that waiting to obtain hardship financial assistance to pay those costs would have negative impacts on the municipality.

(c) *Request by application, hardship.* If sub. (1) (d) is applicable, the municipality shall submit a clean water fund program notice of intent to apply and a financial assistance application as described in s. NR 162.43, requesting hardship financial assistance for additional project costs. The application shall be postmarked by the June 30 prior to the fiscal year from which the additional funds are requested. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.52 Sale of hardship financed treatment works. A municipality may not sell a treatment works or a portion of a treatment works that received financing under this subchapter unless the municipality receives prior written approval from the department.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.53 Breach of contract and noncompliance. Sections NR 162.18 and 162.19 apply upon breach of contract or noncompliance by the recipient.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.54 Variances. Section NR 162.20 applies to hardship financial assistance projects.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.55 Disputes. (1) DECISION OF THE DEPARTMENT. Except as otherwise provided by law, any dispute arising under this subchapter 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 applicant personally or by mail.

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

Subchapter V — Interest Rate Subsidies for Small Loans

NR 162.60 Applicability. This subchapter applies to all applicants for and recipients of interest rate subsidy on a loan from the board of commissioners of public lands for planning, design and construction of treatment works and structural urban BMPs with estimated costs of $1,000,000 or less made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving interest rate subsidy under ss. 281.58 and 281.59, Stats. The following sections in subchs. I to III apply to projects receiving an interest rate subsidy under this subchapter: ss. NR 162.01, 162.02, 162.04 (1) (a) and (2), 162.05, 162.09 (1), (2) and (4) to (6), 162.11 (1) (a) to (d) and (2), 162.16, 162.20, 162.21, and 162.30 to 162.33.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.61 Project eligibility. (1) ELIGIBLE PROJECTS. A municipality may receive financial assistance under this subchapter for a publicly owned project that meets any of the following criteria:

(a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes a sewage collection system project that is necessary to maintain the integrity and performance of the wastewater treatment works serving the municipality.

(b) The project is necessary to achieve compliance with an enforceable wastewater requirement changed or established after May 17, 1988, if the municipality is in substantial compliance with its permit, issued under ch. 283, Stats.

(c) The project is necessary to control storm water runoff rates, volumes and discharge quality. This includes a municipal storm water conveyance system project that is necessary to maintain the integrity and performance of the urban runoff treatment works or structural urban BMP serving the municipality, as required by any of the following:

1. A WPDES storm water permit issued under subch. I of ch. NR 216.

2. A performance standard.

3. A plan approved by the department under s. 281.41, Stats., or a storm water management plan.

(d) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality.

(2) INDIVIDUAL SYSTEMS. (a) A project that is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste or urban runoff that serve one or more properties if the municipality:

1. Owns each individual system.

2. Is responsible for the proper installation, operation and maintenance of each individual system.

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

4. Establishes a comprehensive program for the regulation, inspection, operation and maintenance of individual systems, and for monitoring the impact of the systems on the groundwater where required by the department.

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5. Complies with all other applicable requirements, limitations and conditions for projects funded under this subchapter.

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land or ordinance. The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

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

(a) Projects that are found ineligible for financing by the board of commissioners of public lands.

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

(c) Laterals that transport wastewater from structures to municipally owned or privately owned wastewater systems.

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

(e) Projects of municipalities that will not request interest rate subsidy for project construction costs, including projects solely for planning and design.

(f) Dams, pipes, conveyance systems and structural urban best management practices, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

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

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.62 Cost eligibility. (1) ELIGIBLE COSTS. Project costs described in s. NR 162.04 (1) (a) are eligible for interest rate subsidy.

(2) INELIGIBLE COSTS. Project costs described in s. NR 162.04 (1) (b) and (2) are not eligible for interest rate subsidy.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.63 Notice of intent to apply and application. (1) NOTICE OF INTENT TO APPLY. A municipality that intends to apply for an interest rate subsidy shall submit to the department a notice of its intent to apply in accordance with s. NR 162.05.

Note: A Notice of Intent to Apply form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) PROCEDURES. A municipality shall apply for an interest rate subsidy in accordance with s. 281.58 (9), Stats., on an application form provided by the department.

Note: An application form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(3) CONTENTS OF APPLICATION. The applicant shall submit a complete application. The department shall accept an application as complete when all of the following items, if applicable, are submitted to the department either in the application form or separately:

(a) Evidence of an approved facility plan or other department approved plan.

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats.

(c) A completed interest subsidy application form.

(d) Estimated or actual construction costs.

(e) A proposed or an executed intermunicipal agreement, in accordance with s. NR 162.06 (2) (g), in cases where 2 or more municipalities discharge to or through the same treatment works or structural urban BMP.

(f) Replacement fund information.

(4) DEADLINE FOR SIGNING INTEREST RATE SUBSIDY AGREEMENT. An applicant shall sign an interest rate subsidy agreement within 8 months after the date the department determines in writing the application is acceptable. An applicant shall time its submittal of the application accordingly. If an interest subsidy agreement is not signed within 8 months of the department's determination of acceptance, the applicant's project shall lose its allocated subsidy. A municipality may not submit more than one application for any single project in any 12–month period.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.64 Interest rate subsidy requirements. Before awarding interest rate subsidy for any project, the department shall determine that all of the applicable requirements of s. NR 162.63 have been met and that all of the following have been satisfied:

(1) The department has received the following information pertaining to the applicant's board of commissioners of public lands loan:

(a) A copy of the loan application.

(b) A copy of the application review letter from the attorney general's office.

(c) A signed copy of the certificate of indebtedness.

(2) The project has met the priority requirements of subch. III.

(3) If requested by the department, copies of executed engineering contracts for planning, design and construction have been submitted to the department.

(4) If requested by the department, information related to bids and construction contracts has been submitted to the department.

(5) The department has approved the plans and specifications for the project and the parallel cost percentage, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

(6) The applicant has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of the treatment work or structural urban BMP throughout the applicant's jurisdiction.

(7) 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. 281.59, Stats.

(8) If requested by the department, additional financial information required by the department of administration has been submitted to the department.

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

(10) If requested by the department, information on the applicant's user charge system and sewer use or storm water utility ordinance in addition to that required by s. NR 162.63 (3) (f) has been submitted to the department.

(11) If requested by the department, other documentation or certification in support of the application has been submitted to the department.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.65 Procurement. (1) APPLICABILITY. Procurement of professional services and construction contracts by recipients under this subchapter shall be in accordance with the requirements of s. NR 162.09 (1), (2) and (4) to (6).

(2) UTILIZATION OF MINORITY–BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES. Recipients are encouraged to provide MBEs and WBEs the maximum feasible opportunity to com-

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pete for contracts and subcontracts and to utilize MBEs and WBEs for their projects. Recipients shall provide documentation of any MBE or WBE utilization to the department.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.66 Determination of interest rate subsidy. **(1)** GENERAL. Interest rate subsidies shall be set in accordance with s. 281.58 (8) (j) and (12) (a), Stats., and this section. Subsidies are not available for interest payments that were due the board of commissioners of public lands prior to the execution of an interest rate subsidy agreement with the department.

(2) PROJECT COST CATEGORIES. (a) The department shall classify costs of projects and portions of projects according to s. NR 162.11 (1) (a) to (d).

(b) The department may not provide an interest rate subsidy for costs classified under s. NR 162.11 (1) (d).

(3) PROJECT INTEREST RATE CALCULATION. The department shall calculate the project interest rate according to s. NR 162.11 (2).

Note: Section NR 162.11 (1) (e) does not apply to projects subsidized under this subchapter.

(4) CALCULATION OF INTEREST RATE SUBSIDY. (a) Only that portion of the recipient's board of commissioners of public lands loan that is used for an eligible project under s. 281.58, Stats., is eligible for interest rate subsidy.

(b) The maximum amount of project costs eligible for interest rate subsidy is the total eligible project costs multiplied by the parallel cost percentage as determined under the applicable requirements of s. NR 162.04 (1) (c).

(c) The interest rate subsidy shall be based on the market interest rate in effect at the time the interest rate subsidy agreement is executed.

(d) The department shall calculate the interest rate subsidy as follows:

1. If the interest rate charged for the loan by the board of commissioners of public lands is greater than or equal to the clean water fund program market interest rate, the interest rate subsidy is calculated as follows:

$$SB = RT4 - RC$$

where:

SB . . is the interest rate subsidy for which the project is eligible under this subchapter.

RT4 . is the market interest rate.

RC . is the project interest rate, as calculated under s. NR 162.11 (2) (b).

2. If the interest rate charged for the loan by the board of commissioners of public lands is less than the clean water fund program market interest rate, the interest rate subsidy is calculated as follows:

$$SB = RF - RC$$

where:

SB . . is the interest rate subsidy for which the project is eligible under this subchapter.

RF . . is the interest rate established for the project by the board of commissioners of public lands.

RC . is the project interest rate, as calculated under s. NR 162.11 (2) (b).

Note: Annually, the department of administration will calculate the interest subsidy payment to a recipient based on the interest charged by the board of commissioners of public lands on the principal balance outstanding on the recipient's loan and as established in the interest rate subsidy agreement. The payment will be calculated as follows:

$$IS = (I)(E)(SB/RF)$$

where:

IS . . . . is the subsidy payment provided in a given year to the recipient, in dollars.

I . . . . . is the amount of interest on a recipient's loan due the board of commissioners of public lands in a given year.

E . . . . . is the percentage that results from dividing the eligible loan amount by the total loan amount, as determined by the department of administration.

SB . . . . is the interest rate subsidy for which the project is eligible under this subchapter.

RF . . . . is the interest rate established for the project by the board of commissioners of public lands.

Note: The board of commissioners of public lands shall determine the type of municipal obligation that is required for the repayment of its loan.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.68 Interest rate subsidy agreement conditions. **(1)** The interest rate subsidy agreement shall bind the recipient to all of the following conditions:

(a) *Compliance with laws and regulations.* The recipient and the treatment work or structural urban BMP shall comply with all pertinent requirements of federal, state and local laws and regulations.

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

(c) *Operation and maintenance.* The recipient shall develop and adopt a program of system–wide operation and maintenance of the treatment work, including the training of personnel.

(d) *Erosion control.* The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR–222, November 1993 Revision.

Note: See s. NR 162.12 (1) (L) for information on inspecting and obtaining copies of this publication.

(e) *Construction inspection.* The recipient shall provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(f) *Substantial completion.* The recipient shall notify the department of the substantial completion of the project.

(g) *Minority business enterprise and women business enterprise utilization reporting requirements.* The recipient shall document any utilization of minority– and women–owned businesses on the project.

(2) The interest rate subsidy agreement is not effective until executed by all parties to the agreement.

(3) If requested pursuant to s. 281.58 (14) (b) 7., Stats., the recipient shall adopt and maintain a user charge system that generates sufficient revenue to cover the cost of debt service and equipment replacement.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.69 Financial management. The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department.

(2) Maintain a financial management system that meets the requirements, terms and conditions of the interest rate subsidy agreement.

(3) Comply with any requirements of the board of commissioners of public lands.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.70 Interest rate subsidy disbursements and project closeout. **(1)** GENERAL. After execution of the interest rate subsidy agreement, the department of administration may provide interest rate subsidy for the eligible portion of project costs incurred within the scope of an approved project. The department shall determine compliance with the terms and condi-

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tions of the interest rate subsidy agreement before interest rate subsidy payments are made.

(2) APPLICATION OF SUBSIDY PAYMENTS. Subsidy payments shall be applied to the interest due on the board of commissioners of public lands loan.

(3) AMENDMENTS AND CHANGE ORDERS. (a) The eligible project costs established in the interest rate subsidy agreement that were used to calculate the subsidy payment may not be increased by amendment or change order.

(b) An executed interest rate subsidy agreement may not be amended, unless the department or the department of administration determines that an amendment is needed to correct an error or errors in the agreement.

(4) PROJECT CLOSEOUT. All of the following project closeout procedures shall be completed:

(a) *Final inspection.* The recipient shall notify the department of the final completion of the project. The department may complete a final inspection of the project.

(b) *Documentation of minority business enterprise and women business enterprise utilization.* The recipient shall document any utilization of MBEs and WBEs on a form provided by the department.

Note: An MBE/WBE utilization form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(c) *Operation and maintenance.* The municipality shall submit to the department evidence that its operation and maintenance manual has been updated as required by the department.

(d) *DNR certification of recipient's compliance.* The department shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.71 Breach of contract and noncompliance. The department may rescind an interest rate subsidy agreement or seek any other appropriate administrative remedy upon breach of contract by the recipient, or if the recipient fails to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.

NR 162.72 Termination. The department shall terminate the interest rate subsidy agreement if the recipient terminates its loan agreement with the board of commissioners of public lands or prepays all of the principal of the loan prior to the end of the term of the loan agreement. No subsidy payment may be made for a year in which the loan is paid off early or the interest rate subsidy agreement is terminated early.

History: CR 03–027: cr. Register November 2003 No. 575, eff. 12–1–03.