

# DRAFT STATEMENT OF SCOPE

## Department of Administration

Rule No.: ADM 35

Relating to: Environmental Improvement Fund

Rule Type: Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable

### 2. Detailed description of the objective of the proposed rule:

Provide for the Department of Administration (DOA) to administer the Environmental Improvement Fund (EIF). DOA administers the EIF jointly with the Department of Natural Resources (DNR). The EIF comprises the Clean Water Fund (CWF) and Safe Drinking Water Loan Program (SDWLP). The proposed rule would change the name of ADM 35 to Environmental Improvement Fund to fully describe the scope of the program and rule.

ADM 35 does not currently reflect:

- The creation of the SDWLP in 1997 and addition in 2019 of drinking water revenue bonding authority;
- Changes to the EIF's financial structure and revenue bonding program in 2017, i.e. creation of the EIF revenue bond program that funds both the CWF and SDWLP, replacing the Clean Water revenue bond program that was specific to CWF; and
- The EIF's changing administrative and policy needs due to its growth and financial maturity, relative to the EIF's needs at the time of ADM 35's last revision in 2002.

The proposed rulemaking would address the above issues and make any other changes needed to fulfill DOA's responsibilities under Wis. Stats. ss. 281.58, 281.59, and 281.61.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

- Existing policy: DOA's administration of the EIF is subject to:
  - The federal Clean Water Act and Safe Drinking Water Act. "Clean Water Act" is the common name of the Federal Water Pollution Control Act and its amendments. The Clean Water Act and Safe Drinking Water Act require EIF funds to remain in the EIF in perpetuity; specify how, to whom, and for what projects the EIF can provide financial assistance; and require financial assistance to include principal forgiveness, which does not need to be repaid.
  - Regulations of the U.S. Environmental Protection Agency (EPA). EPA regulations govern assistance recipient federal single audit requirements; the documentation required to disburse

- assistance; and for what purposes the EIF expend money from different sources, e.g. the EIF cannot use loan principal repayments to fund debt service on the state match portion of EIF revenue bonds.
- Regulations of the U.S. Treasury (Treasury). Treasury regulations govern tax-exempt municipal debt, including both EIF financial assistance to projects and the EIF's issuance of revenue bonds. Treasury restricts who and for what purposes entities can issue tax-exempt deb.
  - Wisconsin Administrative Code NR 162 and 166 – governing technical and application requirements of the CWF and SDWLP, respectively. NR 162 and 166 govern recipient and project eligibility, interest rates for various project activities, the assistance disbursement request form and process.
  - The annual Intended Use Plans (IUP) prepared by DNR in consultation with DOA and submitted to EPA. There is one IUP for the CWF and one for the SDWLP. The IUPs describes the policies, goals, and administration of the EIF. State fiscal year 2021 IUPs govern the maximum loan term, program timelines, details for disbursing assistance.
  - Resolutions enacted by the Wisconsin Building Commission regarding the EIF revenue bonds. Resolutions specify how money flows through EIF accounts; requires bond counsel opinions for EIF loans; requires the EIF to diligently enforce loan terms; and limits the EIF's ability to take certain actions, such as modifying the terms of outstanding loans.
- New policies proposed
- Update the code to reflect:
    - The creation of the SDWLP and DOA's role in administering the program
    - The creation of the EIF revenue bond program to replace the Clean Water revenue bond program
    - The EIF's different needs due to its growth and financial maturity. The EIF's mature financial capacity could allow processes for adjusting the market interest rate or accepting a taxable bond to prioritize streamlined administration.
  - Increase flexibility to accommodate future changes, such as by referring to applicants for or recipients of financial assistance, rather than narrowly referring to municipalities.
  - Remove obsolete, unnecessary, or duplicative provisions of ADM 35. This could include removing the provision regarding notice of financial assistance commitment, which are rarely used and for which the statutes are already sufficiently detailed.
  - Incorporate EPA policy changes to reduce compliance burdens on recipients of financial assistance, such as by narrowing the requirement for recipients to prepare federal single audits.
  - Any other changes that are needed to align with Chs. NR 162 and 166 of the administrative code, including concurrent DNR revisions. This may include clarifying how DOA will provide the information that DNR requires under NR 162.06(3)(b) and NR 166.10(3)(b).
- Policy alternatives: There is no realistic alternative to the proposed rulemaking.
- The EPA requires an annual IUP describing the policies, goals, and administration of Wisconsin's EIF. DNR writes the IUP, in cooperation with DOA. When possible, DOA puts policies in the annual IUP, which can be adapted more frequently than statutes and administrative code. However, the IUP cannot be used to change or remove text of ADM 35.

- In addition to ADM 35, the EIF is administered subject to Chs. NR 162 and 166 of the administrative code. Instead of DOA promulgating rules in ADM 35, the same rules could be promulgated by DNR in NR 162 and 166. Even if DNR and DOA collaborated closely, making DNR responsible for administrative rules governing DOA's responsibilities under the EIF would generate unavoidable inefficiency.

**4. Detailed explanation of statutory authority for the rule (including statutory citation and language):**

Mandated by statute

Wis. Stat. s. 281.59(14): "The department of administration shall promulgate rules that are necessary for the proper execution of this section and of its responsibilities under ss. 281.58, 281.60 and 281.61."

Necessary to interpret statutes administered by DOA

Wis. Stat. s. 227.11(2)(a): "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..."

Wis. Stat. s. 281.59(2)(a) and (b):

(2) The department of administration shall:

(a) Administer its responsibilities under this section and ss. 281.58, 281.60, and 281.61.

(b) Cooperate with the department in administering the clean water fund program, the safe drinking water loan program and the land recycling loan program.

Wis. Stat. s. 281.61(2): "[DNR] and the department of administration shall administer a program to provide financial assistance to local governmental units and to the private owners of community water systems that serve local governmental units for projects for the planning, designing, construction or modification of public water systems, if the projects will facilitate compliance with national primary drinking water regulations under 42 USC 300g-1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j-26."

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

212 hours

**6. List with description of all entities that may be affected by the proposed rule :**

- State of Wisconsin
  
- Wisconsin municipalities and municipal water and sewer utilities, and any other recipients eligible in the future
  
- Engineers, attorneys, bond counsels, and accountants employed by Wisconsin municipalities and other eligible recipients
  
- Wisconsin municipal taxpayers and customers of water and wastewater utilities

- Users of Wisconsin waterways
- Investors in Environmental Improvement Fund revenue bonds

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

The federal Clean Water Act and Safe Drinking Water Act govern the EIF. “Clean Water Act” is the common name of the Federal Water Pollution Control Act. The U.S. EPA also has regulations that apply to the EIF. Because the EIF receives grants from EPA, it is also subject to an annual grant agreement with EPA.

The EPA annually reviews Wisconsin’s EIF and regularly determines that the EIF complies with federal law and regulations. When possible, DOA and DNR implement changed federal requirements in the annual IUP or financial assistance agreements entered into with recipients of financial assistance.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The EIF is a major source of funding for municipal water and wastewater infrastructure in Wisconsin. Recipients of financial assistance incur significant costs to comply with federal requirements of the EIF, such as mandates to certify that projects use iron and steel from U.S. producers. DOA does not expect this proposed rulemaking to affect compliance costs for recipients.

Updated rules may allow the EIF to make more loans, which would promote economic activity.

Several Wisconsin engineering firms, accounting firms, financial advisor firms, and law firms currently employ experts who understand EIF processes and policies. If this rulemaking can simplify state requirements pertaining to the EIF, more firms, potentially including small businesses, may find it feasible to work on EIF-funded projects.

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