

## Chapter NR 126

### STATE GRANTS FOR WATER POLLUTION CONTROL FACILITIES

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**NR 126.01 Purpose.** The purpose of this chapter is to establish rules for the administration of state grants for sanitary sewage treatment facilities and sanitary sewage collection systems under s. 281.56, Stats.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.

**NR 126.02 Definitions.** (1) “Department” means the department of natural resources.

(2) “Municipality” means a city, township, village, county, sanitary district, county utility district, metropolitan sewerage district or school district that is authorized by state statute to own, operate, maintain, finance and construct a publicly owned sewer system or sewage treatment plant.

(3) “Intercepting sewer” means a sewer constructed:

(a) To receive and convey the dry weather flow from one or more sanitary sewage system terminals in a previously developed area, other than from a dwelling or building, and to convey the flow to an existing sanitary sewer or to a treatment works, whichever is nearer, or

(b) To serve in lieu of an existing or proposed treatment works.

(4) “Industrial wastes” means the liquid wastes from manufacturing processes or food processing.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.03 Eligibility for a state grant.** (1) **ELIGIBLE PROJECTS.** In municipalities with a population of less than 10,000, based on the latest official state population estimates prepared in compliance with s. 16.96, Stats., state grants may be made for any of the following types of projects:

(a) The construction of new permanent sewage treatment works, or involving additions to or improvements of existing permanent sewage treatment works.

(b) Intercepting sewers.

(c) The outfall sewer from a municipal sewage treatment plant to the point of discharge of effluent.

(d) A municipal sanitary sewer collection system or sanitary sewer extensions constructed to eliminate pollution from private waste disposal systems in developed areas in existence prior to enactment of chapter 353, laws of 1969 (January 17, 1970). The maximum spacing between connections to the gravity sewer shall be no greater than 300 feet and the average spacing of connections shall be no greater than 200 feet. An exception will be allowed to provide an exclusive sewer connection to a publicly owned facility used at least 8 months a year serving at least 50 persons daily per 1,000 feet of pipe. The cost of sewers is limited to the construction of such facilities for servicing the eligible project’s initial flow, population and area.

(e) A sewage treatment plant project for an existing school district or for a sewer to connect the school to a proposed or existing sanitary sewer system.

(2) **INELIGIBLE PROJECTS.** Grants shall not be made for the following projects:

(a) The portion of the costs of the sewage treatment plant that is allocable for the treating of industrial wastes to be determined as the average of the percent of design flow, design BOD, and design total suspended solids for industrial waste treatment as compared to the total design capacity of the sewage treatment plant.

(b) A project to replace the existing sewers or to increase the capacity of an existing sanitary sewer system.

(c) Construction of any part of a storm sewer system or storm water treatment facilities.

(d) A project to treat process wastes from a municipal potable water treatment plant.

(e) A project to repair or replace existing components or devices which are part of a pollution prevention and abatement facility and which are needed to maintain the degree of treatment for which the facility was designed.

(f) Projects not in conformance with the applicable river drainage basin plans approved by the department.

(g) A project on which the municipality has awarded contracts or on which force account construction has commenced prior to approval by the department of the final detailed construction plans and specifications.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.04 Allowable costs.** (1) **PRELIMINARY PLANNING.** Costs of studies, investigations, surveys, planning and other steps necessary to determine the economic and engineering feasibility of a proposed project.

(2) **ENGINEERING, ARCHITECTURAL, INSPECTION AND OTHER FEES FOR TECHNICAL SERVICES.** Costs of services include preparation of preliminary and final engineering reports, design of facilities, preparation of plans and specifications, inspection and supervision of construction and any other services necessary for the construction of the project. Where technical services are provided by regularly employed persons of a municipality, actual recorded applicable costs are allowable, provided they do not exceed costs determined by the department to be reasonable if the work were performed privately on a fee basis.

(3) **LEGAL COSTS.** Fees and expenses shall be based on actual records for legal services rendered in connection with the project. Reasonable costs incurred in the development of the information necessary for the bond issue, including preparation of the prospectus, bond advertising, printing of bonds and other similar costs are eligible. When bond counsel and attorney fees cover all the steps from the drafting of the bond resolution through the final sale of the bonds, no additional financing costs are allowable.

(4) **CONSTRUCTION COSTS.** Construction costs incurred under competitively bid contracts or actual cost of purchased equipment, materials and labor incurred under force account procedures consistent with the provisions of s. 62.15, Stats.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.05 Costs not allowable.** The following costs are not allowable for state participation:

(1) **INELIGIBLE WORK.** The cost of any work not included in the eligible portion of the project as approved by the department.

(2) **COST OF SITE.** The cost of the site or easements or any estate or interest therein, and any cost associated with the acquisition thereof.

(3) **REBATES, REFUNDS, TAX EXEMPTIONS.** Any costs exceeding the actual net cost of materials or services are not eligible. A rebate or refund received from a firm or individual is not an allowable project cost. Where municipalities are exempt from the payment of sales taxes and excise taxes, such taxes are not an allowable cost.

(4) **FEE NOT RELATED TO CONSTRUCTION.** Any portion of a fee which covers services performed in staffing of the facility, training of personnel or other functions not directly related to the actual project.

(5) **ADMINISTRATIVE COSTS.** Costs such as provision of extra office space, telephone service and additional municipal personnel, including accountants, bookkeepers and clerks.

(6) **LEGAL SERVICES.** Costs of legal services rendered in connection with ineligible parts of the projects, such as acquisition of site or easements.

(7) **INTEREST.** Interest on bonds (including discounts below par) or any other form of indebtedness.

(8) **DAMAGE AWARDS.** Damage awards arising out of the construction, equipping or operation of the project, whether such awards are determined by judicial procedure, arbitration, negotiation or otherwise.

(9) **BONUS PAYMENTS.** Bonus payments made by the applicant to the contractor for completing work in advance of a specified time.

(10) **COST IN EXCESS OF BID PRICE.** When a bid is rejected and later reinstated in the contract, its eligible cost may not exceed the original bid price.

(11) **NORMAL GOVERNMENT COSTS.** Costs incident to normal operating costs of government such as bond election costs and salaries and expenses of statutory government officials such as the mayor, city manager, city council members, etc.

(12) **UNNECESSARY OR UNREASONABLE COSTS.** Any costs found by the department to be unreasonable or unnecessary to construction of the approved eligible project.

(13) **COMPLETION PRIOR TO JUNE 30, 1974.** All costs of a project which was operational and on which the construction was essentially completed prior to the effective date of s. 281.56, Stats., (June 29, 1974).

(14) **OPERATION AND MAINTENANCE.** The costs for operation or maintenance or replacement of equipment of facilities.

(15) **COSTS INCURRED PRIOR TO AUGUST 1, 1966.** Costs for any purpose paid prior to or work covered by construction contracts awarded prior to August 1, 1966, the date on which the first appropriation for state grants for construction of water pollution abatement projects under the State Water Resources Act was authorized.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75; correction in (13) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.

**NR 126.06 Preliminary project evaluation.** Municipalities desiring a preliminary point rating and eligibility determination made for a project, prior to the submission of an application or plans and specifications, may submit such a request with accompanying documents s. NR 126.07 (2) (b), (c) or if not available, such alternative information or as needed for eligibility and priority determination, NR 126.07 (2) (f) and (i) as listed in s. NR 126.07. The department will review the project and notify the applicant of the priority rating and eligibility and when the grant may be available, conditioned upon the prompt submission of the completed application and final detailed approvable construction plans and specifications. However, the project will not be placed on the priority list until final detailed approvable construction plans and specifications and the complete grant application are submitted to the department.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.07 Grant applications.** (1) **APPLICATION FORMS.** Municipalities shall submit applications in accordance with instructions and on forms supplied by the department. Applications shall be updated by the applicant as necessary to keep the information current.

(2) **DOCUMENTS TO ACCOMPANY APPLICATIONS.** (a) A certified copy of the recent authorization by the applicant's governing body authorizing the filing of the application and appointing a municipal official as the authorized representative.

(b) Description of project, including maps and/or layouts.

(c) Engineering reports that are up to date containing information as outlined in s. NR 110.08.

(d) Final approvable project plans and specifications as described in chs. NR 108 and 110 unless they have been previously submitted to or approved by the department.

(e) Contracts or agreements applicable to engineering and other technical services, and legal services and other information concerning the basis upon which fee or costs for such services were determined.

(f) An itemized estimate of construction costs, or bid tabulation, if available.

(g) If the site has been acquired, a copy of the site title opinion showing municipal ownership and a description of the site which has been acquired.

(h) If the site has not been acquired, a statement of the nature and extent of interest in lands, which are to be acquired and the proposed method and time required for acquisition. Specify statutory requirements and authority affecting acquisition procedures.

(i) If the project is in an area served by a regional or county planning agency, that agency's evaluation and comment on conformance of the project with the comprehensive plan developed or in process of development for the metropolitan or regional area.

(j) An environmental analysis which meets the requirements of the Wisconsin Environmental Policy Act, s. 1.11, Stats., and which includes an evaluation of feasible alternatives and provides clear justification for selecting a particular course of action based on monetary, environmental and other considerations. The analysis shall be available for public information and public participation in evaluation of the project.

(k) Adequate analysis and data establishing that the works or modification is the most cost efficient method of meeting the limitations and standards required of the facility.

(L) A dated statement, signed by the authorized municipal representative, the municipal attorney, and the engineer as to whether the municipality has all the necessary public easements

and rights-of-way, and all construction will take place only on public easements or rights-of-way.

(m) A dated statement, signed by the authorized municipal representative and the consulting engineer, as to whether any sewer laterals are to be installed on private property under this project.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75; CR 13-022: am. (2) (j) Register March 2014 No. 699, eff. 4-1-14.

**NR 126.08 Departmental processing of applications.** (1) **PROJECT NUMBER ASSIGNMENT.** Upon receipt of an application, the department will assign a project number in chronological order of receipt. The project number will be used on all documents and correspondence relating to the project.

(2) **INITIAL REVIEW.** The department will review the application and accompanying supporting documents in sufficient detail to assure completeness and that the proposed project is eligible as described in s. NR 126.03. Applications which are incomplete may be returned to the applicant for the appropriate information. Applicants having projects which are determined to be ineligible will be notified of such determination.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.09 Priority determination.** The total of priority points shall be the sum of the applicable points for items in subs. (1) and (2) and the sum of points for each column in sub. (3).

**POINTS**

(1) **STATUS OF PLANNING AND ENGINEERING.** (a) Final detailed approvable construction project plans and specifications received by the department prior to June 30, 1974.

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(b) Final detailed approvable construction project plans and specifications received by the department after June 29, 1974.

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(2) **PUBLIC HEALTH HAZARD AND ADEQUACY OF EXISTING WATER POLLUTION ABATEMENT SYSTEM.** (a) A project for a municipality without a public sanitary sewage collection system and without a public water supply system to provide a sanitary sewer system and a sewage treatment plant, or a sanitary sewer system to be served by an existing or proposed sewage treatment plant owned by another municipality.

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(b) A project in a municipality without a public sanitary sewage collection system but that has a public water supply system to provide a sanitary sewer system and a sewage treatment plant, or a sanitary sewer system to be served by an existing or proposed sewage treatment plant owned by another municipality.

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(c) A project to provide secondary treatment for a municipality with only a primary sewage treatment plant.

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(d) A project to provide adequate sewage treatment for a municipality with an inadequate secondary sewage treatment plant.

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(e) A project to provide sewer extensions in a municipality that has a public sanitary sewer system.

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(f) Intercepting sewers, force mains and pump stations shall receive the same number of points as the project of which they are a part.

(3) **FINANCIAL NEED.** Financial ability of the municipality shall be the sum of points of each column.

| Points Applicable to Each Column | *Per Capita Income, Percent of State Average | Project Cost Dollars Per Capita Based on Current Population | *Local Share of Project Cost Plus Current Long Term Non School Indebtedness As A Percent of Statutory Limitation Based on Equalized Valuation |
|----------------------------------|--|---|---|
| 1                                | Over 135%                                    | \$1 - 200   | Less than 10%   |
| 2                                | 100 to less than 135                         | 201 - 400   | 10% to less than 20%  |
| 3                                | 89 to less than 100                          | 401 - 600   | 20% to less than 30%  |
| 4                                | 80 to less than 89                           | 601 - 800   | 30% to less than 40%  |
| 5                                | 72 to less than 80                           | 801 - 1,000   | 40% to less than 50%  |
| 6                                | 65 to less than 72                           | 1,001 - 1,200   | 50% to less than 60%  |
| 7                                | 59 to less than 65                           | 1,201 - 1,400   | 60% to less than 70%  |
| 8                                | 54 to less than 59                           | 1,401 - 1,600   | 70% to less than 80%  |
| 9                                | 50 to less than 54                           | 1,601 - 1,800   | 80% to less than 90%  |
| 10                               | Less than 50                                 | Over 1,800  | 90% to less than 100%   |

\*Based on the most recent department of revenue publications, "Long Term Indebtedness of Wisconsin Political Subdivisions" and "Taxes, Aids and Shared Taxes" and confirmation of its applicability by department investigation.

(4) **PROJECT PRIORITY.** Projects shall be rated for priority for grants in descending order of the sum of the points (maximum possible points: 200). In case of a tie in the priority ranking, the project with final detailed approvable construction plans received at the earlier date shall be given the higher rating.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.10 Priority ranking and notice of funding allocation.** (1) **PRIORITY RANKING.** During January and July, all pending project applications (for which final approvable plans and specifications meeting chs. NR 108 and 110 have been submitted to or approved by the department) will be evaluated for completeness and to determine the priority ranking of the projects, as outlined in s. NR 126.04.

(2) **NOTICE OF FUNDING ALLOCATION.** The department will determine which projects, in accordance with the priority list, can be funded with the available funds and notify the respective applicants of this. If the project has not already been bid the applicant will be advised to bid the project within 60 days and submit the results to the department so that a formal grant offer can be extended to the applicant. Failure of the applicant to bid the project within 90 days will result in the project not being considered again until funds are available and one priority deadline has elapsed.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.

**NR 126.11 Offer and acceptance.** (1) **GRANT OFFER.** (a) No grant offer shall be made for any project unless such

project conforms with department requirements and has been determined by the department as entitled to priority over other eligible projects. All grant offers shall be made on forms prepared by the department. The grant offer shall be signed by the authorized administrator of the department and will set forth the terms and conditions of the offer.

(b) All grant offers shall be made after bids have been received and the municipality has made tentative contract awards conditional upon state approval and a state grant under s. 281.56, Stats., or an estimated cost in the event of force account work.

(c) If a municipality receives grant under s. 281.56, Stats., it cannot receive or retain a grant under s. 281.55, Stats., for that same project.

(d) A municipality can receive a grant under s. 281.55, Stats., for one portion of an eligible project and a grant under s. 281.56, Stats., for a different portion of that same eligible project.

(e) If a previous grant under s. 281.55, Stats., for a project eligible per s. NR 126.03 is relinquished by the municipality then it can receive a grant under s. 281.56, Stats., for that same project provided that the project is eligible and entitled to priority over other projects under s. 281.56, Stats., and this code.

**(2) AMOUNT OF GRANT OFFER.** No municipality shall receive more than 10% of the funds authorized by the Wisconsin legisla-

ture for a given year, nor shall a state grant exceed 50% of the eligible costs of an approved project. The state grant plus funding from other nonlocal sources shall not exceed 80% of the eligible project costs.

**(3) ACCEPTANCE OF GRANT OFFER.** If the recipient of a grant offer agrees to the terms and conditions thereof, acceptance shall be effected by signature of the authorized representative of the municipality in the designated place on all copies of the Offer and Acceptance Form. Two signed copies of the form shall be returned to the department with a certified copy of a resolution by the municipality's governing body authorizing their representative to accept the grant offer. The offer must be accepted within 40 days from the date of offer or it will be withdrawn and the funds will be obligated to another applicant.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75; corrections in (1) (b) to (e) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.

**NR 126.12 Payment procedure. (1) PARTIAL PAYMENTS.** Partial payments will be made after inspection at the 25, 50, 75 and 90% stages of completion of the project.

**(2) FINAL PAYMENT.** Final payment will be made only after final inspection and audit and evidence of satisfactory operation and maintenance. The total state grant will be based on the audited allowable costs.

**History:** Cr. Register, March, 1975, No. 231, eff. 4-1-75.