

## Chapter NR 125

### STATE GRANTS FOR WATER POLLUTION CONTROL FACILITIES

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**Note:** Chapter NR 125 as it existed on July 31, 1976 was repealed and a new chapter NR 125 was created, effective August 1, 1976.

**NR 125.01 Purpose.** The purpose of this chapter is to establish rules under s. 281.55, Stats., for the administration of state grants to municipalities for small improvement projects for sanitary sewage treatment facilities and for compliance maintenance planning.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; am. Register, April, 1989, No. 400, eff. 5-1-89; **correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.**

**NR 125.02 Definitions.** (1) "Compliance maintenance planning" means planning for a project which the department determines is necessary to prevent a municipality from significantly exceeding an effluent limitation, as defined in s. 283.01 (6), Stats.

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

(3) "Industrial wastes" means the liquid wastes from manufacturing processes or food processing.

(4) "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.

(5) "Small improvement project" means a project of less than \$100,000 total cost which improves the sewage treatment capability of an existing sewage treatment plant. Small improvement project includes, but is not limited to, disinfection, phosphate removal, state required testing and monitoring equipment and other improvements to sewage treatment capabilities. Small improvement project does not include administration, operation, maintenance or replacement in kind of equipment or facilities.

(6) "Start of construction" means the signing of all eligible project construction contracts by the contractors and the municipality or the first excavation if the work is done by force account.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. (3), renum. (1), (2) and (4) to be (2), (4) and (3), cr. (1), r. and recr. (5), Register, April, 1989, No. 400, eff. 5-1-89; **correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.**

**NR 125.03 Eligibility for a state grant.** (1) **ELIGIBLE PROJECTS.** (a) The department may award grants to municipalities for small improvement projects for existing sewage treatment facilities.

(b) After June 30, 1988, and before July 1, 1990, the department may award grants to municipalities for compliance maintenance planning.

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

(a) Sewers to carry only industrial wastes.

(b) Projects to construct new sanitary sewers, to replace existing sewers or to increase the capacity of an existing sanitary sewer collection system.

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

(d) 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 or flows for which the facility was designed prior to when the service life has been exceeded and when it is more cost effective to replace the entire plant than to repair parts of it.

(e) Projects not in conformance with the applicable waste treatment management plans approved by the department.

(f) 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.

(g) Maintenance, administrative, operational and garage facilities for sewer systems.

(h) A project not competitively bid in accordance with chs. 59, 60, 61, 62 and 66, Stats.

(i) The laterals (both pressure and gravity) from the public street property line to the building.

(j) A project that receives a Step III construction grant under P.L. 92-500 as amended.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; cr. (2) (k), Register, October, 1976, No. 250, eff. 11-1-76; r. (1), am. (2) (b) and (c), r. (2) (g), renum. (2) (h) to (k) to be (2) (g) to (j), Register, April, 1989, No. 400, eff. 5-1-89.

**NR 125.04 Eligible 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 are eligible.

(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 documented applicable costs are allowable, provided they do not exceed costs determined by the department to be reasonable if the work were performed by a consulting engineer on a fee basis. Technical service costs for study of sewer infiltration-inflow problems performed in accordance with requirements of the federal grant program (P.L. 92-500) are allowable.

(3) **LEGAL AND FISCAL COSTS.** Reasonable fees and expenses based on actual records for legal services rendered in connection with the construction of the project are eligible provided that they are documented. 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 eligible.

(4) **CONSTRUCTION COSTS.** Construction costs incurred under competitively bid contracts or actual cost of labor and competitively purchased equipment and materials incurred under force

account procedures consistent with the provisions of chs. 59, 60, 61, 62 and 66, Stats., are eligible.

**(5) REPAIR OF ROADS, STREETS, SIDEWALKS, CURBS AND GUTTERS, ETC.** These costs shall be limited to the costs of repair or replacing in kind the areas damaged (by the construction of eligible facilities) to the same condition, quality, type and dimensions as that which existed before the construction of the eligible facilities. The eligible cost shall be the most cost effective repair or replacement in terms of the initial capital cost. Higher incremental replacement costs to reduce future maintenance or operation costs are not eligible. The width of the eligible repaired area shall not be greater than that of the top width of the sewer trench unless it can be demonstrated that it is less expensive to remove and replace the entire width of road pavement. Eligible costs of replacement of badly deteriorated road pavements shall be limited to that of the least expensive all weather road pavement regardless of the type of original material. Where the replaced item is better than the original item, the eligible cost shall be limited to a pro rata share of the replacement cost.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76.

**NR 125.05 Costs not eligible.** 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 survey or 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 construction of the project.

**(5) ADMINISTRATIVE COSTS.** Costs such as office space, telephone service and municipal personnel, including accountants, bookkeepers and clerks except as allowed by s. NR 125.04 (2).

**(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 governmental 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) OPERATION AND MAINTENANCE.** The costs of operation, maintenance or administration or replacement in kind of equipment or facilities.

**(14) COSTS.** The portion of the costs of the sewage treatment plant that is allocable for the treatment 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.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. (14) and (16), renun. (15) to be (14), Register, April, 1989, No. 400, eff. 5-1-89.

**NR 125.06 Preliminary project evaluation.** A municipality may request a preliminary determination of project eligibility prior to submitting a complete application to the department.

**(1)** A request for a preliminary project evaluation shall include a project description as required under s. NR 125.07 (2), an itemized estimate of project costs, a proposed schedule for completion and other information requested by the department as needed to determine project eligibility.

**(2)** The department shall notify the municipality of the preliminary determination of eligibility.

**(3)** The department may not assign a priority rating under ss. NR 125.09 and 125.10 until after the complete grant application is received by the department.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. and recr. Register, April, 1989, No. 400, eff. 5-1-89.

**NR 125.07 Grant applications.** To be considered for a grant award, a municipality shall submit an application to the department. A municipality may submit an application only after the project is completed and paid for by the municipality. An application shall be completed on forms provided by the department and shall include the following, as applicable:

**(1) AUTHORIZING RESOLUTION.** A certified copy of a resolution of the municipality's governing body authorizing the filing of the grant application by municipality's authorized representative. The authorized representative shall be an official or employee of the municipality.

**(2) PROJECT DESCRIPTION.** A description of the construction or list of the equipment for which grant funding is requested. The description shall include an explanation of why the project was needed.

**(3) STATE PLAN AND SPECIFICATIONS APPROVAL.** A copy of the department letter approving plans and specifications for the project if plan approval is required under s. 281.41, Stats.

**(4) STATE FACILITIES PLAN APPROVAL.** For compliance maintenance planning projects, a copy of the department letter approving the facilities plan as required under ss. NR 110.08 and 110.09 and s. 281.41, Stats.

**(5) BIDDING DOCUMENTS.** For projects which require competitive bidding under ch. 59, 60, 61, 62 or 66, Stats.:

(a) A copy of the bid advertisement.

(b) A copy of the bid tabulation.

(c) A copy of the successful bid proposal.

(d) A copy of the resolution or meeting minutes of the municipality's governing body awarding the contract to the lowest responsible bidder or, if the contract was not awarded to the lowest responsible bidder, justification for disqualification of the lowest bid.

**(6) CONSTRUCTION CONTRACTS.** A copy of any signed construction contracts and change orders relating to the project.

**(7) MUNICIPAL LABOR OR MATERIAL COSTS.** For a project which includes labor or materials provided by the municipality:

(a) A listing of the labor costs including the employee's name, work performed, dates worked, hours worked each day and wages paid.

(b) A listing of any materials or equipment provided by the municipality including a description of the item, size of unit, number

of units, where used or installed, date installed, date installed and cost per item.

(8) **ENGINEERING AND TECHNICAL SERVICES.** A copy of the signed engineering contract or other basis for engineering costs and technical services.

(9) **PROOF OF SATISFACTORY COMPLETION.** (a) A statement signed by the municipal representative certifying that all claims, liens, disputes, etc., have been settled with contractors, engineers, property owners or other involved persons, or providing an explanation of any outstanding problems.

(b) A statement signed by the municipality and consulting engineer, as appropriate, certifying that the municipality has complied with all department conditions and that the project was completed in accordance with state approved plans and specifications.

(c) A description of any significant changes from the original approved plans and specifications.

(10) **PROOF OF PAYMENT.** (a) A statement signed by the municipal representative certifying that all costs in connection with the project have been paid.

(b) A listing of all payments to contractors and engineers when such payments are claimed as eligible costs. The list shall include the name of payee, date of payment, voucher number, and check number.

(c) A copy of invoices for all eligible costs.

(d) A copy of both sides of all canceled checks used for payment.

(11) **OPERATION AND MAINTENANCE.** A written statement from the department district or area engineer certifying that the operation, maintenance, testing and reporting of the municipal wastewater treatment plant meets all state and federal requirements pertaining to the project.

(12) **OTHER INFORMATION.** Other information as requested by the department to determine the eligibility of a project or to determine the eligible costs.

(13) **COMPLIANCE MAINTENANCE PROJECTS.** Applications for compliance maintenance planning grants shall include documents required under subs. (1), (2), (4), (7), (8), (9) (a), (10) and (12).

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. and recr. Register, April, 1989, No. 400, eff. 5-1-89; corrections in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.

**NR 125.08 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 whether the proposed project is eligible as pursuant to s. NR 125.03. 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.

(3) **OBSOLETE APPLICATIONS.** The application and supporting materials must be current and correct before the project can be placed on the priority list or before the state grant offer can be made. Generally information that is more than one year old is considered out of date and must be resubmitted or recertified as being up to date.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76.

**NR 125.09 Priority designation.** (1) **PRIORITY CATEGORIES.** After June 30, 1988 and before July 1, 1990 the department shall give priority for available funding as follows:

(a) The department shall give first priority to funding annual payments to municipalities required under s. 281.55 (8), Stats.

(b) The department shall give second priority to funding applications for compliance maintenance planning.

(c) The department shall give third priority to funding applications for small improvement projects.

(2) **PRIORITY WITHIN CATEGORIES.** Priority within each category shall be determined by the point rating system under sub. (3). Projects shall be rated for priority for grants in descending order of the sum of the points. In the case of a tie in the point rating, the completed application received by the department at the earlier date shall be given the higher priority.

(3) **POINT RATING SYSTEM.** In ranking projects for priority for grants, financial capacity will be considered. A combined maximum of 30 points is assigned to these 3 measures of financial capacity and will be computed in accordance with the following table:

Points Applicable to Each Column	Per Capita Income % of State Average*	Project Cost Dollars Per Capita Based on Current Population	Local Share of Project Cost Plus Current Long-Term Nonschool 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 Wisconsin 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.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; am. Register, November, 1976, No. 251, eff. 12-1-76; renum. (1) to be (3), cr. (1), am. (2), Register, April, 1989, No. 400, eff. 5-1-89; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.

**NR 125.10 Priority list, closing date.** The department shall determine the amount of money needed to fund complete applications received by the department prior to April 1 of each year.

(1) If the amount of money available for grants is not sufficient to fully fund all applications, the department shall determine

the priority rating of each application in accordance with s. NR 125.09. The department shall award grants for projects with the highest priority ratings until available funds are depleted.

(2) If the amount of money available for grants is sufficient, a priority list will not be compiled. The department shall award grants for all eligible applications received prior to April 1. The department may award any surplus funds which would otherwise lapse at the end of the state fiscal year on a first-come, first-served basis for applications received on or after April 1.

(3) Applications which are not funded in one fiscal year due to shortage of funds may be considered for funding in the following fiscal year.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. and recr. Register, April, 1989, No. 400, eff. 5-1-89.

**NR 125.11 Grant awards.** (1) A grant awarded under this chapter shall be made on forms prepared by the department. The award shall be signed by the authorized representative of the department and shall list the conditions to which the award is subject.

(2) A grant may not be awarded for any project unless the project meets all department requirements and has priority for available funds under ss. NR 125.09 and 125.10.

(3) A grant award may not exceed 25% of the eligible cost, or \$15,000, whichever is less.

(4) The authorized representative of the municipality shall accept the grant award by signing the award document and returning it to the department. The department may terminate a grant award if the award is not accepted within 45 days of the date of issuance by the department.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; am. (2), Register, October, 1976, No. 250, eff. 11-1-76; renum. (3) to be (4) and cr. (3), Register, November, 1976, No. 251, eff. 12-1-76; r. and recr. Register, April, 1989, No. 400, eff. 5-1-89.

**NR 125.12 Payment procedure.** Final payment will be made only after the project is fully functional and final inspection and audit and evidence of satisfactory operation and maintenance. The total state grant will be based on the final audited eligible costs.

**History:** Cr. Register, July, 1976, No. 247, eff. 8-1-76; r. (1), Register, April, 1989, No. 400, eff. 5-1-89.