

(s) The cost of additional insurance for a specific project beyond that normally carried by the contractor;

(t) The cost of office furnishings including draperies, furniture and office equipment;

(u) Items of routine maintenance, including vehicles except as authorized by sub. (6) (g).

(v) The costs associated with instream improvements and modifications including but not limited to instream aeration, controlling and creating access points for maintenance purposes, dredging, channelization and erosion control not located directly at the discharge point or a direct result of construction activities.

(w) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a grantee participates in the selection, awarding or administration of a contract supported by the Wisconsin fund and:

1. The official or employe, the official or employe's spouse or offspring, or the official or employe's partner has a financial interest in the firm selected for the contract; or

2. Any person identified in subd. 1 receives any benefit from the award of the contract, including but not limited to, gratuities, favors and award of any subcontract.

(6) COSTS ELIGIBLE IF APPROVED. Certain direct costs are sometimes necessary for the construction of a treatment works. The following costs are eligible if reasonable and if the department approves them in the grant agreement or a grant amendment:

(a) Land acquired after departmental approval, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent);

(b) Land acquired after departmental approval, that will be used for storage of treated wastewater in land treatment systems before land application;

(c) Land acquired after departmental approval, that will be used for composting or temporary storage of compost residues which result from wastewater treatment if the department has approved a program for use of the compost;

(d) Acquisition of an operable portion of a treatment works;

(e) Rate determination studies required under s. NR 128.11 (9); and

(f) A limited amount of end-of-pipe sampling and associated analysis of industrial discharges to municipal treatment works.

(g) Mobile equipment including portable stand-by generators; large portable emergency pumps to provide "pump around" capability in the event of pump station failure or pipeline breaks; and sludge or septic tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point, including individual or on-site system to the treatment works or disposal site.

(7) **INDIRECT COSTS.** The grantee's indirect costs shall be eligible in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements eligible under sub. (4). Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated if the department determines that this amount will be approximately the same as the actual indirect costs.

(8) **CONSTRUCTION CONTRACT CLAIMS.** Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible provided:

(a) The grantee issues a written notification to the department prior to incurring costs;

(b) The claim arises from work within the scope of the grant;

(c) The claim or assessment costs are not a result of mismanagement;

(d) The claim or assessment costs are not caused by the grantee's vicarious liability for the improper action of others;

(e) The grantee provides an acceptable record of negotiation;

(f) Any arbitration based settlement includes written findings of fact, allocation of award to each issue, conclusion of law, basis of award and rationale;

(g) The grantee provides a written record of negotiations;

(h) The department determines that an overriding state interest exists in the issues involved in the claim; and

(i) The department subsequently formally amends the cost into the grant.

(9) **DISPUTES CONCERNING ELIGIBLE COSTS.** The grantee should seek to resolve any questions relating to cost eligibility or allocation at the earliest opportunity (if possible, before execution of the grant agreement). Disputes regarding eligible costs shall be resolved in accordance with s. NR 128.23.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; emerg. cr. (4) (u), eff. 9-29-81; cr. (4) (u), Register, February, 1982, No. 314, eff. 3-1-82; am. (1) and (2) (intro.), Register, April, 1982, No. 316, eff. 5-1-82; am. (2) (intro.) and (4) (q), renum. (8) to be (9), cr. (4) (v) and (w), (5) (r) to (v), (6) (g) and (8) (a) to (i), Register, March, 1986, No. 363, eff. 4-1-86; cr. (5) (w), Register, September, 1988, No. 393, eff. 10-1-88.

NR 128.06 Fundable capacity. The fundable capacity of treatment works shall be determined as follows.

(1) The fundable capacity of sewage treatment facilities and sewage collection systems exclusive of interceptor sewers shall be that capacity necessary to treat the projected flows 10 years from the estimated date that they will begin operation. The fundable capacity shall not include capacity for present and future flows from industrial users as defined in s. NR 128.03 (10).

(2) The fundable capacity for interceptor sewers shall be that capacity necessary to transport the projected flows expected to exist on the date the interceptor is estimated to become operational. The fundable capac-

ity may not include capacity for transporting present and future flows from industrial users as defined in s. NR 128.03 (10).

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (2), Register, March, 1986, No. 363, eff. 4-1-86.

NR 128.07 Cost of fundable capacity. The estimated cost of step 3 construction of treatment works to transport and/or treat the fundable capacity shall be determined as follows. The facilities plan shall provide parallel cost estimates for treatment works designed to treat the fundable capacity as well as for treatment works designed to treat the actual proposed design capacity. The actual design capacity shall be determined in accordance with ss. NR 110.09 (2) (j) and 110.10 (2). The ratio

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