

Chapter NR 163

CLEAN WATER FUND – FINANCIAL HARDSHIP ASSISTANCE

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Note: Chapter NR 163 as it existed on June 30, 1996 was repealed and a new chapter NR 163 was created, Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.01 Purpose. (1) **PURPOSE.** This chapter establishes rules under s. 144.241 (13), Stats., for the implementation and administration of the financial hardship assistance program.

(2) **FORMS.** All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, 101 South Webster Street, P. O. Box 7921, Madison, Wisconsin 53707-7921.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.02 Applicability and cross referencing.

(1) **GENERAL.** This chapter applies to all applicants for and recipients of financial hardship assistance pursuant to s. 144.241(13), Stats. Compliance with the applicable requirements of this chapter and ch. NR 162 is a prerequisite to receiving financial assistance under s. 144.241(13), Stats. This chapter does not apply to assistance for stormwater or nonpoint source pollution abatement facilities under ss. 144.241 and 144.2415, Stats.

(2) **ADMINISTRATIVE OR SERVICE FEES.** Administrative or service fees under s. NR 162.24 may not be charged to hardship assistance recipients.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.03 Definitions. Definitions of terms used in ch. NR 162 apply to terms used in this chapter. In addition:

(1) “Commercial facility” means facilities that are used for retail stores, restaurants, office buildings, laundries and other private business and service establishments or similar enterprises.

(2) “Debt” means a liability for a capital project. It includes general obligation bonds, revenue bonds, promissory notes and special assessment bonds.

(3) “Financial hardship assistance funding list” means a list established each fiscal year that ranks in environmental priority order, based on the priority list established under s. 144.241 (8e), Stats., projects eligible for financial hardship assistance under s. 144.241 (13) (b), Stats.

(4) “Governmental facility” means public facilities, including facilities used for legislative, judicial, administrative and regulatory activities of federal, state and local governments.

(5) “Hardship fundable range” means those projects on the financial hardship assistance funding list which are projected to consume all available financial hardship present value subsidy for each fiscal year.

(6) “Hardship subsidy” means the amounts provided by the clean water fund under s. 144.241 (13), Stats., to reduce the interest rate of a clean water fund loan to a rate below the tier rate and to provide grants.

(7) “Industrial facility” means nongovernmental or nonresidential facilities that are used for activities such as agriculture, forestry, fishing, mining, manufacturing, transportation, communications or providing services including electric, gas and sanitary services.

(8) “Institutional facility” means facilities that are used for social, charitable, religious and educational activities such as

schools, churches, hospitals, nursing homes, penal institutions and similar uses.

(9) “Median household income” means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(10) “Prior wastewater debt service” means the principal and interest of debt incurred for a previous capital project which is related to the treatment works and is documented as incurred in the past.

(11) “Residential percentage” means the design for existing residential flow and loadings divided by the design for existing total flow and loadings. For initial determination of eligibility for financial hardship assistance, the residential percentage will be based on application information and submitted plans and specifications. For final determination of eligibility for and amount of financial hardship assistance, the residential percentage will be based on approved plans and specifications and application information verified by the department.

(12) “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 work. “Residential user” does not include an institutional, commercial, industrial or governmental facility.

(13) “Total annual charges” means the annual wastewater system costs, including operation, maintenance and replacement costs, clean water fund debt service, prior wastewater debt service, debt service for project costs ineligible for clean water fund funding and hookup fees owed another municipality.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.04 Types of financial hardship assistance.

The department may provide the following types of financial hardship assistance:

- (1) Loans with interest rates lower than the tier interest rates;
- (2) Grants not to exceed 70% of the eligible costs of the project.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.05 Eligibility for financial hardship assistance.

(1) **ELIGIBLE MUNICIPALITIES.** Municipalities which meet the following criteria are eligible for financial hardship assistance:

- (a) The median household income in the municipality is 80% or less of the median household income in this state.
- (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. 144.241 (13), Stats.

(2) **ELIGIBLE PROJECTS.** Those projects described in s. NR 162.06 (1) are eligible for financial hardship assistance.

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

1. The municipality started or completed construction of the project prior to receiving financial hardship 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 loan at the tier rate for the project and:

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

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

(b) A refinancing financial assistance agreement shall be executed within 5 years of the substantial completion of the project.

(c) 1. An applicant for refinancing shall meet the planning and design criteria and application requirements as established in this chapter and ch. NR 162 for clean water fund financing.

2. The department's annual funding policy and ch. NR 161 shall establish the funding priority for refinancing projects.

3. Refinancing shall be subject to the limitations of issuance and interim financing costs established in s. NR 162.07(3).

4. Reimbursement of previously paid project costs shall be in accordance with s. NR 162.13(1).

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.06 Application. (1) PROCEDURE. Subject to sub. (3), financial hardship assistance applicants shall follow the procedure described in s. NR 162.09 (1).

(2) NOTICE OF INTENT TO APPLY. Each municipality intending to apply for financial hardship assistance shall inform the department of its intent in accordance with s. NR 162.08.

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

(4) CONTENTS OF APPLICATION. An application for financial hardship assistance shall comply with the requirements of s. NR 162.09 (3).

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.07 Funding list. (1) GENERAL. The department shall establish a financial hardship assistance funding list in accordance with s. 144.241 (13) (d), Stats., and the funding policy established in s. NR 162.05 (1).

(2) ELIGIBILITY CALCULATION. (a) The department shall determine eligibility for hardship 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 debt service for a tier rate loan for below market eligible project costs.

M is the annual principal and interest costs based upon a 20 year repayment schedule at the market 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 financial hardship assistance.

W is the total remaining prior wastewater debt service of the municipality divided by 20 years, and the estimated annual debt service amortized over 20 years for project costs ineligible for clean water fund funding, such as hook-up fees owed another municipality and debt for lateral sewers.

R is the residential percentage.

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 163.05(1)(a), the municipality is eligible for hardship subsidy and the project will be placed on the financial hardship assistance funding list. If S is 2% or less, the municipality is not eligible for hardship subsidy and may request a tier rate loan unless the municipality has already received a clean water fund loan for the project.

(3) FUNDING LIST EFFECTIVE DATE. The list established under sub. (1) is effective for the fiscal year beginning on July 1. If a municipality received a notice of financial hardship assistance commitment before the expiration of the list, and the requirements of s. NR 163.12(2) are met, the department may enter into a financial hardship assistance agreement with a municipality on the list after the expiration of the list.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.08 Allocation of funds. Financial hardship assistance shall be allocated to those projects within the hardship fundable range in the order specified in s. 144.241 (13) (e), Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.09 Requirements and conditions for receiving financial hardship assistance. (1) REQUIREMENTS. Before awarding financial hardship assistance for any project, the department shall determine that all of the applicable application requirements of s. NR 162.09 have been met and that sufficient documentation has been submitted to show that the applicant has complied, or will comply, with the financial assistance requirements listed in s. NR 162.10.

(2) CONDITIONS. Each financial hardship assistance agreement shall bind the recipient to the conditions listed in s. NR 162.15.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.10 Procedure for determining amount of hardship assistance. (1) GENERAL. The type and amount of financial hardship assistance shall be determined at the time the financial hardship assistance agreement is awarded.

(2) CALCULATION OF FINANCIAL HARDSHIP ASSISTANCE AMOUNT. (a) 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. 144.241 (13) (c), Stats. The municipality shall pay at least 30% of the project costs eligible for below-market interest rate. The interest rate for a financial hardship assistance loan on eligible tier project costs shall be no greater than the tier rate. 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.

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 following method shall be used:

$$\begin{aligned} (MHI)(N)(.02) &= A \\ A \div R &= B \\ B - O - W - M &= C \\ C \div 20 &= D \\ D - C &= H \end{aligned}$$

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.
- 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 financial hardship assistance.
- W is the total remaining prior wastewater debt service of the municipality divided by 20 years, and the estimated annual debt service amortized over 20 years for project costs ineligible for clean water fund funding, such as hook-up fees owed another municipality and debt for lateral sewers.
- M is the annual principal and interest costs based upon a 20 year repayment schedule at the market 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 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.

b. H(20) = 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 interest rate is determined 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

"Interest rate" means the discount rate at which the present value of the periodic payments (the Clean Water Fund loan payments) equals the Clean Water Fund loan amount.

c. If it is determined that the affordable interest rate for financial hardship assistance is greater than the appropriate tier rate, the tier rate shall apply.

(b) If portions of the project costs are only eligible for funding at the market interest rate, pursuant to s. NR 162.07(1)(b), then a composite interest rate shall be calculated for the project. The composite interest rate for a hardship project shall be computed 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 market interest rate.
- CT₃ is the project costs eligible for clean water fund market rate funding under s. NR 162.07 (1) (b).

Note: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.11 Operation, maintenance and replacement cost estimates. (1) The maximum amount allowable for operation, maintenance and replacement cost estimates used in ss. NR 163.07(2) and 163.10(2) shall be 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 projects on population size, segregated by project type.

(2) The estimated operation, maintenance and replacement costs used for "O" under ss. NR 163.07(2) and 163.10(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. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.12 Financial hardship assistance agreement. (1) NOTICE OF FINANCIAL HARDSHIP ASSISTANCE COMMITMENT. The department may issue a notice of financial hardship assistance commitment to a municipality in the hardship fundable range upon the municipality's request and its compliance with the requirements in ss. NR 162.09 and 162.10.

(2) EXECUTION OF FINANCIAL HARDSHIP ASSISTANCE AGREEMENT. (a) The department may enter into a financial hardship assistance agreement with a municipality in the hardship fundable range if:

1. The requirements and conditions under s. NR 163.09 are met; and

2. The municipality has submitted a bid tabulation with a recommendation to the department for review and concurrence after the department's notice given under sub. (1).

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

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

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.13 Financial hardship assistance disbursements. (1) GENERAL. Disbursements shall be made in accordance with s. NR 162.17.

(2) FORM OF DISBURSEMENTS. Disbursements of financial hardship assistance shall first be made in the form of a loan, up to the amount identified in the financial hardship assistance agreement. Grant disbursements, if any, shall be made after all hardship loan disbursements are issued.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.14 Amending financial hardship assistance agreements. (1) ADDITIONAL FUNDING. The department may provide additional funding in the form of a loan or grant for eligible costs incurred beyond the amount specified in the financial hardship assistance agreement. Subject to availability of hardship present value subsidy, the proportion of loan to grant in the original financial hardship assistance agreement shall be maintained for the amendment. If there is not sufficient hardship present value subsidy available, the loan shall be at the appropriate tier rate. Financial hardship assistance agreement amendments for additional project costs shall be implemented in accordance with s. NR 162.18.

(2) REFINANCING. Refinancing of a market interest rate loan for additional costs or amendments shall conform with the refinancing requirements of s. NR 163.05(3).

(3) SALE OF HARDSHIP FINANCED TREATMENT WORKS. The sale of clean water fund hardship financed treatment works may not take place without prior written approval from the department.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

NR 163.15 Breach of contract and noncompliance.

The rules established in ss. NR 162.21 and 162.22 shall apply upon breach of contract or noncompliance by the recipient.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.