

Clearinghouse Rule 00-089

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES



Tommy G. Thompson, Governor
George E. Meyer, Secretary

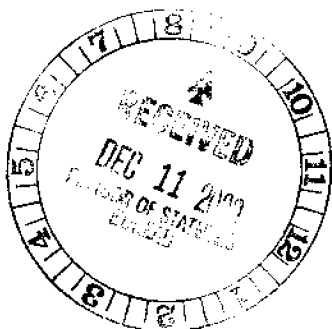
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STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CF-18-00 was duly approved and adopted by this Department on October 25, 2000. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 7 day of December, 2000



George E. Meyer
George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND CREATING RULES

The Natural Resources Board proposes an order to repeal chs. NR 161, 162, and 163 and create ch. NR 162 relating to Clean Water Fund Program financial assistance.

CF-18-00

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 227.11(2) and 281.58, Stats.

Statutes Interpreted: ss. 281.58, 1.13, subch.II of 19, subch.III of 227, 281.43 (1m), 281.49, and 281.59, Stats.

The department administers the Clean Water Fund Program under existing chapters NR 161, 162, 163 and 165. Chapter NR 161, 162 and 163 are proposed to be repealed and recreated as ch. NR 162. Currently, ch. NR 162 contains the general requirements for the Clean Water Fund Program, ch. NR 161 is the basis for scoring projects to establish a priority funding list, and ch. NR 163 is the basis for determining and implementing hardship financial assistance for eligible Clean Water Fund Program applicants. Combining these 3 chapters into one administrative chapter enhances clarity and convenience in locating the requirements for the Clean Water Fund financial assistance. A change has been made to the time an Intent to Apply is valid from 2 fiscal years to 1 fiscal year. This will aid in the implementation of preparing an annual funding list should the need arise. Additionally, modifications have been made to better reflect current policies and procedures and to provide further clarity. Chapter NR 165 which deals with the Clean Water Fund Small Loan Program is not being changed.

In addition, pursuant to 1999 Wisconsin Act 9, language related to capital cost loans and language related to projects for planning and design only is being deleted.

Also, pursuant to 40 CFR Part 35 and s. 281.58 (7) (b) 5., Stats., projects for the treatment of nonpoint source pollution and urban storm water runoff are now eligible for financial assistance. The proposed changes to ch. NR 162 allow these projects to be ranked with other treatment works projects and to be considered for funding under the Clean Water Fund Program.

No part of this rule is inconsistent with federal requirements.

Consent has been obtained from the Revisor of Statutes and the Attorney General in previous rule revisions for the incorporation of standards in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision.

Section 1. Chapters NR 161 to 163 are repealed.

Section 2. Chapter NR 162 is created to read:

**Chapter NR 162
CLEAN WATER FUND PROGRAM**

SUBCHAPTER I -- GENERAL

- NR 162.001 Purpose.
- NR 162.002 Applicability.
- NR 162.003 Definitions.

SUBCHAPTER II – FINANCIAL ASSISTANCE

- NR 162.01 Types of financial assistance available.
- NR 162.02 Annual funding policy, project priority list, and funding list.
- NR 162.03 Project eligibility.
- NR 162.04 Cost eligibility.
- NR 162.05 Notice of intent to apply.
- NR 162.06 Application.
- NR 162.07 Financial assistance requirements.
- NR 162.08 Requirements for a user charge system and sewer use ordinance.
- NR 162.09 Procurement.
- NR 162.10 Reimbursement and refinancing.
- NR 162.11 Loan interest rate.
- NR 162.12 Financial assistance agreement conditions.
- NR 162.13 Financial management.
- NR 162.14 Financial assistance disbursements.
- NR 162.15 Amendments to a financial assistance agreement.
- NR 162.16 Disputes.
- NR 162.17 Records and record retention.
- NR 162.18 Breach of contract.
- NR 162.19 Noncompliance.
- NR 162.20 Variances.
- NR 162.21 Administrative fees.

SUBCHAPTER III – PRIORITY SCORING AND RANKING SYSTEM

- NR 162.30 Project scoring system.
- NR 162.31 Project priority score.
- NR 162.32 Procedure for determination and reevaluation of project priority score.
- NR 162.33 Project ranking system.

SUBCHAPTER IV – HARDSHIP FINANCIAL ASSISTANCE

- NR 162.40 Applicability.
- NR 162.41 Types of hardship financial assistance.
- NR 162.42 Eligibility for hardship financial assistance.
- NR 162.43 Application.
- NR 162.44 Funding list.
- NR 162.45 Allocation of funds.
- NR 162.46 Requirements and conditions for receiving hardship financial assistance.
- NR 162.47 Procedure for determining amount of hardship financial assistance.
- NR 162.48 Operation, maintenance, and replacement cost estimates.
- NR 162.49 Hardship financial assistance agreement.
- NR 162.50 Hardship financial assistance disbursements.
- NR 162.51 Funding additional project costs.
- NR 162.52 Sale of hardship financed treatment works.
- NR 162.53 Breach of contract and noncompliance.

SUBCHAPTER I – GENERAL

NR 162.001 Purpose. The purposes of this chapter are all of the following:

(1) Establish rules under ss. 281.58 and 281.59, Stats., for the implementation and administration of a financial assistance program for the planning, engineering design, and construction of treatment works and structural urban BMPs.

(2) Establish a priority system for the distribution of clean water fund program financial assistance as provided in s. 281.58, Stats.

(3) Establish rules under s. 281.58 (13), Stats., for the implementation and administration of hardship financial assistance.

Note: All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

NR 162.002 Applicability. This chapter applies to all applicants and recipients of funding for the planning, engineering design and construction of treatment works and structural urban BMPs made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.58 and 281.59, Stats.

NR 162.003 Definitions. In this chapter:

(1) "Applicant" means any municipality that applies for financial assistance under ss. 281.58 and 281.59, Stats.

(2) "Approval" means the written approval of the department.

(3) "Breach of contract" means the failure of the municipality to comply with any of the following:

(a) The terms and conditions of the financial assistance agreement or hardship financial assistance agreement.

(b) The terms and conditions of the municipal resolution authorizing the issuance and sale of bonds or notes to the clean water fund program.

(4) "Census block" means the smallest entity for which the U.S. census bureau collects and tabulates decennial census information.

(5) "Census designated place" means a statistical entity defined for each decennial census according to U.S. census bureau guidelines, comprising a densely settled concentration of population that is not within an incorporated place, but is locally identified by a name.

(6) "Change order" means an action that specifies and justifies a change to a construction contract which alters the time of completion, the total price or both.

(7) "Clean water fund program" means the program established under ss. 25.43, 281.58 and 281.59, Stats., for the purpose of providing financial assistance to municipalities for the planning, engineering design and construction of treatment works and structural urban BMPs.

(8) "Closeout date" means the date the department records the project as being completed and after which no further disbursements shall be made under the financial assistance agreement.

(9) "Commercial facility" means any facility that is used for retail stores, restaurants, office buildings, laundries and other private business and service establishments or similar enterprises.

(10) "Compliance maintenance" means the program established and regulated under ch. NR 208, to prevent a permittee under ch. 283, Stats., from exceeding an effluent limitation contained in a permit issued under ch. 283, Stats.

(11) "Connection lateral" means a sewer service line which connects a residence, commercial establishment, institutional or industrial user to a municipal sewage collection system or individual system, including house service pipes whether located in the public right-of-way or on private property which connect to the "Y" fitting of a public sanitary sewer main.

(12) "Construction" means any of the following:

(a) Erecting, building, altering, remodeling, improving or extending a treatment works or structural urban BMP.

(b) Purchasing a package wastewater treatment system.

(c) Remediation of illicit discharges to a portion of a municipal storm water conveyance system draining to an urban runoff project.

(13) "Contractor" means a person or firm that agrees to furnish materials or perform services at a specified price for a project funded by the clean water fund program.

(14) "Debt" means a liability for a project, including general obligation bonds, revenue bonds, promissory notes and special assessment bonds.

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

(16) "Design flow" means the average annual flow or average daily flow specified in an approved facilities plan, the flow specified in a WPDES permit or the flow required to meet performance standards.

(17) "Dilution ratio" means the quotient obtained by dividing the 7-day Q10 of the surface waters receiving the wastewater discharge, in cubic feet per second (cfs), by the design flow of the wastewater treatment works, in million gallons per day (mgd).

$$\text{Dilution ratio} = \frac{\text{7-day Q10 of receiving water in cfs}}{\text{design flow in mgd} \times 1.55 \text{ cfs per mgd}}$$

(18) "Effluent limitation" has the meaning given in s. 283.01 (6), Stats.

Note: Flow rates and flow volumes are considered to be physical constituents restricted by WPDES permits.

(19) "Financial assistance" means loan funds, refinancing, guarantees, purchase of insurance, credit enhancement or grant funds provided to a municipality under ss. 281.58 and 281.59, Stats.

(20) "Financial assistance agreement" means a written agreement between a municipality, the department and the department of administration which provides for financial assistance to the municipality and contains the terms and conditions of the financial assistance.

(21) "Force account work" means the work a municipality performs using its own employees or equipment for construction, construction-related activities, repairs or improvements to a treatment works or structural urban BMP.

(22) "Governmental facility" means any public facility, including a facility used for legislative, judicial, administrative and regulatory activities of federal, state and local governments.

(23) "Groundwater" has the meaning given in s. 160.01 (4), Stats.

(24) "Hardship financial assistance" means financial assistance authorized under s. 281.58 (13), Stats.

(25) "Hardship financial assistance funding list" means a list established each fiscal year that ranks in environmental priority order, based on the priority list established under s. 281.58 (8e), Stats., projects eligible for hardship financial assistance under s. 281.58 (13) (b) or (be), Stats.

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

(27) "Hardship present value subsidy" or "hardship PV" means the present value subsidy provided to municipalities to reduce loan interest rates below those interest rates in s. NR 162.11 (1) (a) and (b), including 0% interest loans, and to provide grants.

(28) "Hardship subsidy" means the amount of subsidy provided by the clean water fund program under s. 281.58 (13), Stats., to reduce the interest rate of a clean water fund program loan to a rate below any interest rate specified in s. NR 162.11, and to provide grants.

(29) "Illicit discharge" has the meaning given in s. NR 216.002 (10).

(30) "Industrial facility" means any non-governmental or nonresidential facility that is used for activities such as agriculture, forestry, fishing, mining, manufacturing, transportation, communications or providing services including electric, gas and sanitary services.

(31) "Industrial user" has the meaning given in s. 281.58 (1) (c), Stats.

(32) "Inflow" means water other than wastewater that enters a sewage system, including water entering the sewage system from sources such as roof leaders, cellar drains, yard drains, area

drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface run-off, street wash waters or other drainage.

(33) "Institutional facility" means any facility that is used for social, charitable, religious and educational activities such as schools, churches, hospitals, nursing homes, penal institutions and similar uses.

(34) "Interim financing" means a debt necessary to temporarily finance a project until permanent financing can be obtained from the clean water fund program.

(35) "Interim financing costs" means the net interest, fees and charges associated with issuing interim financing, such as underwriter discounts, financial advisor fees, printing costs, bond rating charges, attorney fees and trustees fees.

(36) "Maintenance" means the preservation of the functional integrity and efficiency of a treatment works or structural urban BMP, such as its equipment and structures, including preventive maintenance, correctional maintenance and replacement of equipment.

(37) "Market interest rate" means the effective interest rate determined by the department of administration for a revenue obligation issued by the state to fund a project loan or a portion of a project loan under ss. 281.58 and 281.59, Stats.

(38) "Median household income" has the meaning given in s. 281.58 (1) (cm), Stats.

(39) "Minority owned business" or "MBE" means a business, sole proprietorship, partnership, joint venture or corporation that is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

(40) "Multi-category project" means a project that can be assigned to more than one of the project types listed in s. NR 162.30 (1).

(41) "Municipal WPDES storm water discharge permit" means any permit issued to a municipality by the department under s. 283.33 (2), Stats., for the purpose of controlling storm water discharges from a municipal separate storm sewer system owned or operated by a municipality.

(42) "Municipality" has the meaning given in s. 281.59 (1) (c), Stats.

Note: Under s. 281.59 (1) (c), Stats., "municipality" means any city, town, village, county, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or any federally recognized tribal governing body.

(43) "Municipal storm water conveyance system" means a system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains which meets all of the following criteria:

- (a) Owned or operated by a municipality.
- (b) Designed or used for collecting or conveying storm water.
- (c) Is not a combined sewer conveying both sanitary wastewater and urban runoff.
- (d) Is not part of a publicly owned treatment works or structural urban BMP which provides secondary or more stringent treatment.

(44) "New or changed limits" means an effluent limitation in a WPDES permit which was newly established or modified after May 17, 1988.

(45) "Nonpoint source" has the meaning given in s. 281.65 (2) (am), Stats.

Note: Under s. 281.65 (2), Stats., "nonpoint source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source under s. 283.01 (12), Stats.

(46) "Operation" means control of the unit processes and equipment which make up a treatment works or structural urban BMP, including financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(47) "Parallel cost percentage" means the proportion of project costs eligible for below-market rate financing relative to the total project cost eligible for clean water fund program financing as established in s. NR 162.04 (1).

(48) "Performance standards" means non-agricultural performance standards established by the department under s. 281.16 (2), Stats.

(49) "Planning and design" means any of the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works or structural urban BMP.

(b) Performing engineering, architectural, legal, fiscal or economic investigations or studies.

(c) Identifying illicit discharges to a portion of a municipal storm water conveyance system draining to an urban runoff project.

(d) Preparing surveys, designs, plans, working drawings or specifications.

(e) Inspecting or supervising construction or any of the activities under pars. (a) to (d).

(50) "Present value subsidy" or "PV" means the sum of periodic subsidies for loans made to or projected to be made to municipalities during a fiscal year discounted at a rate of 7% per year to the first day of the biennium during which the loans are made.

(51) "Prior debt service" means the principal and interest of debt incurred for a previous capital project which is related to the treatment works or structural urban BMP and is documented as incurred in the past.

(52) "Priority score" means the numerical value, determined by the department which is assigned to each project in accordance with s. NR 162.31.

(53) "Project" means any of the following:

(a) An activity described by a municipality on a notice of intent to apply for as the project description which then is assigned a clean water fund program project number by the department.

(b) An activity proposed by a municipality through submittal of plans to the department pursuant to s. 281.41, Stats, which then is assigned a project number by the department.

(54) "Project closeout" means the process for reconciling costs between the municipality and the department, and final steps that shall be taken by the municipality and the department so that a final disbursement may be made.

(55) "Project commitment present value subsidy" or "project commitment PV" means the present value subsidy provided to municipalities to reduce loan interest rates from the market interest rate to the interest rates in s. NR 162.11 (1) (a), (b) and (c).

(56) "Project completion" means all of the following:

(a) The project construction is complete.

(b) The department or its agents have certified that the project was constructed according to department approved plans and specifications.

(c) The department or its agents have certified that the facilities are operating according to design.

(d) The department has completed all necessary project closeout procedures.

(e) The department has notified the municipality that the project is complete.

(57) "Project ranking" means the ranking of eligible projects during a funding year based on their priority score which is used to establish a funding list.

(58) "Proportional share" means that the costs of the operation and maintenance of the treatment work or structural urban BMP is shared equitably and proportionately among the users through a user charge system.

(59) "Recipient" means any municipality or group of municipalities that has been awarded or received financial assistance under ss. 281.58 and 281.59, Stats.

(60) "Replacement" means obtaining and installing mechanical, operating equipment, accessories or appurtenances which are necessary during the useful life of the treatment works or structural urban BMP to maintain the capacity and performance for which the works or BMP were designed and constructed.

(61) "Residential percentage" means the figure for residential design flow divided by the figure for total design flow.

(62) "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 works or structural urban BMP.

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

(63) “7-day Q10” means the average 7 day low flow which occurs once in 10 years.

(64) “Sewage collection system” means the public sanitary sewer mains, and associated pump stations, including service connection “Y” fittings, which are primarily installed to receive wastewater directly from connection laterals.

(65) “Sewer” means either a sewage collection system or a municipal storm water conveyance system.

(66) “Sewer service area” means that area served or for which an agreement has been reached for future service to be served by a wastewater treatment works; or for which capacity is provided to allow disposal of septic tank or holding tank wastes.

(67) “Structural urban best management practice” or “structural urban BMP” means a practice, which is determined to be an effective means of preventing or reducing pollutants generated from nonpoint sources of urban runoff, including land acquisition, storm sewer rerouting, and the removal of structures.

(68) “Subscribing municipality” means a municipality which discharges or plans to discharge all or part of its wastewater or urban runoff to another municipality for treatment and disposal.

(69) “Subsidy” means the amount provided by the clean water fund program to projects receiving financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

(a) To reduce the interest rate of clean water fund program loans from market interest rate to a subsidized rate.

(b) To reduce the interest rate of eligible loans or portions of loans made by the board of commissioners of public lands.

(c) To provide hardship financial assistance, including grants.

(d) To provide financial assistance for additional eligible project costs.

(70) “Substantial completion” means the point in time when project construction has been completed and the treatment process operation has been initiated or is capable of being put into operation.

(71) “Total annual charges” means the annual treatment works or structural urban BMP costs, including operation, maintenance and replacement costs, clean water fund program debt service, prior debt service, debt service for project costs ineligible for clean water fund program assistance and hookup fees owed another municipality.

(72) “Treatment works” has the meaning given in s. 283.01 (18), Stats.

Note: Treatment works includes urban runoff projects for municipalities which are required to obtain a WPDES permit under ch. 283, Stats.

(73) "Unsewered municipality" means a municipality in which some or all of the residential areas lack a sewage collection system.

(74) "Urban runoff" means snowmelt, ice-melt, precipitation and surface drainage conveyed from an urban land use in either a diffuse manner, as a nonpoint source, or as a point source conveyance regulated under ch. NR 216.

(75) "User charge" means a charge levied on users of a treatment works or structural urban BMP for the user's proportional share of the cost of operation, maintenance and replacement of the works or practice.

(76) "User charge system" means a system of charges meeting the requirements of s. NR 162.08, and the requirements of s. 281.58 (14) (b) 1. and 7., Stats., or s. NR 216.06 (1).

Note: User charge systems may apply to storm water utility districts.

(77) "Wastewater" means a waste stream conveyed to a treatment works via a sewage collection system, including a combined sewer conveying both sanitary wastewater and urban runoff.

(78) "Women owned business" or "WBE" means an independent business concern which is at least 51% owned by a woman or women who also control and operate it.

(79) "WPDES permit" means a Wisconsin pollution discharge elimination system permit issued under ch. 283, Stats.

SUBCHAPTER II – FINANCIAL ASSISTANCE

NR 162.01 Types of financial assistance available. The department may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., provide any of the following types of financial assistance to eligible applicants:

(1) Purchase or refinance the debt obligation of a municipality if the debt was incurred to finance the cost of constructing an eligible treatment works or structural urban BMP project located in the state and the project has not been substantially complete for more than 5 years.

(2) Guarantee, or purchase insurance for, municipal obligations for the construction of treatment works if the guarantee or insurance would improve credit market access or reduce the interest cost on the municipal obligations.

(3) Make loans at or below the market interest rate.

- (4) Provide hardship financial assistance to eligible applicants.
- (5) Provide interest rate subsidies pursuant to ch. NR 165.

NR 162.02 Annual funding policy, project priority list, and funding list. (1) FUNDING POLICY AND PROJECT PRIORITY LIST. Each year, the department shall prepare an annual funding policy, which applies to all types of financial assistance including hardship assistance, for the fiscal year in conjunction with the project priority list under s. NR 162.33. The funding policy shall be subject to public hearing.

(2) FUNDING LIST. The department shall prepare a funding list when the amount available to the program is 85% or less than the amount requested in the biennial finance plan, according to s. 281.58 (9m) (f), Stats.

(3) HARDSHIP FINANCIAL ASSISTANCE FUNDING LIST. The department shall prepare an annual funding list for all applicants requesting hardship financial assistance.

NR 162.03 Project eligibility. (1) ELIGIBLE PROJECTS. A municipality may receive financial assistance under this chapter for a publicly owned project which meets any of the following:

(a) Is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes projects necessary for the replacement or major rehabilitation of an existing sewage collection system and is necessary to maintain the total integrity and performance of the wastewater treatment works serving the municipality.

(b) Is necessary to achieve compliance with an enforceable wastewater requirement changed or established after May 17, 1988, if the municipality is in substantial compliance with its permit, issued under ch. 283, Stats.

(c) Is necessary to correct violations of effluent limitation contained in a permit issued under ch. 283, Stats.

(d) Is necessary to control storm water runoff rates, volumes and discharge quality, including projects necessary for the replacement or major rehabilitation of an existing municipal storm water conveyance system and is necessary to maintain the total integrity and performance of the urban runoff treatment works or structural urban BMP serving the municipality, as required by any of the following:

1. A WPDES storm water permit issued under subch. I of NR 216.
2. A performance standard.
3. A plan approved by the department.

(e) Is necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered areas within a municipality.

(2) INDIVIDUAL SYSTEMS. (a) A project which is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste or urban runoff that serve one or more properties if the municipality does all of the following :

1. Own each individual system.
2. Be responsible for the proper installation, operation and maintenance of each individual system.
3. Have unlimited access to each individual system at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement of the system.
4. Establish a comprehensive program for the regulation, inspection, operation and maintenance of individual systems, and for monitoring the impact of the systems on the groundwater where required by the department.
5. Comply with all other applicable requirements, limitations and conditions for projects funded under this chapter.

(b) The access required in par. (a) 3. shall be evidenced by easements, covenants running with the land or ordinance. The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

(c) The department may grant a variance to allow the individual system to be privately owned if the municipality can show that public ownership of the system is not feasible and that private ownership will not adversely affect the tax-exempt status of the municipal obligations that the municipality sells to the clean water fund program.

(3) INELIGIBLE PROJECTS. The following projects or portions of projects are not eligible to receive financial assistance under this chapter:

(a) Projects of a municipality that has failed to substantially comply with any of the conditions or requirements of the clean water fund program or a financial assistance agreement, or the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works or structural urban BMP.

(b) Connection laterals that transport wastewater from structures to municipally - owned or privately-owned wastewater systems.

(c) Public sanitary sewer mains, individual systems and interceptors which exclusively serve development not in existence as of the date of the application.

(d) Projects solely for planning and design.

(e) Dams, pipes, conveyance systems and urban structural best management practices, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

NR 162.04 Cost eligibility. (1) ELIGIBLE COSTS. (a) *Eligible at a subsidized rate.* Allocable project costs which are reasonable and necessary are eligible for financial assistance. Eligible costs include, but are not limited to, any of the following.

1. Municipal expenses incurred solely for the project.
2. Planning work directly related to the treatment works or structural urban BMP, including information, education and citizen participation.
3. Sanitary sewer system evaluation and rehabilitation.
4. Costs of complying with ch. NR 150 including costs of public notices and hearings.
5. Preparation of construction drawings, specifications, estimates and construction contract documents.
6. Pumping units and pressurized lines from the pumping units to the public sanitary sewer main, or holding and septic tanks and their sewer lines to a public sanitary sewer main, that are included in a sewage collection system, are cost-effective, and owned and maintained by the applicant municipality.
7. Landscaping.
8. Removal, relocation, replacement or temporary provision of utilities, for which the recipient is legally obligated to pay.
9. Materials acquired, consumed or expended specifically for the project.
10. An inventory of laboratory chemicals and supplies.
11. Development and preparation of an operation and maintenance manual.
12. Costs for the development of water conservation plans, user charge systems, sewer use ordinances and storm water utility ordinances under s. NR 162.08 (1).
13. Project identification signs.
14. Start-up services for new treatment works or structural urban BMPs, including the training of operating personnel and the preparation of curriculum and training material for operating personnel on the new equipment or processes funded under ch. NR 162.
15. Development and preparation of a plan of operation.
16. Development of a municipal pretreatment or toxicity reduction program and construction of facilities to be used by the municipal treatment works or structural urban BMP in the programs, including monitoring equipment.

17. Costs necessary to mitigate demonstrated direct, adverse physical impacts resulting from construction of the treatment works or structural urban BMP.

18. The cost of safety equipment.

19. Inspection fees related to construction.

20. Acquisition of land that will be used for storage of treated wastewater in land treatment systems before land application.

21. Acquisition of land 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.

22. Acquisition of land on which the structural urban BMP, treatment works, biosolids facility, or lift stations will be located, including urban corridors needed to support integrated systems of treatment works or structural urban BMPs for urban runoff.

23. Acquisition of easements and rights-of-way, including administrative and legal costs.

24. The cost of equipment used for sampling and analysis of industrial discharges to municipal wastewater treatment works, or illicit discharges to an urban runoff treatment works or structural urban BMP that is owned by the municipality.

25. Costs for value engineering studies or analyses performed during the design phase.

26. Professional, consultant and engineering services.

27. Start-up expenses that were incurred solely because of the project, including computers, upgrades, software and training necessary to operate the treatment works or structural urban BMP.

28. Interim financing costs as per s. NR 162.04 (3).

29. Costs of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.

30. Indirect project costs.

(b) *Eligible at market rate.* Costs eligible for market interest rate financing include, but are not limited to any of the following:

1. The cost of reserve capacity for sewage collection system, interceptor or individual system projects in unsewered municipalities necessary to serve projected flows beyond the initial flows expected at the project completion date.

2. The cost of reserve capacity for wastewater projects necessary to treat projected flows beyond 10 years from the project completion date.

3. The cost of capacity for present and future flows from industrial wastewater users or from industrial areas regulated under ch. NR 216.

4. The costs of any portion of a project to correct violations of effluent limitation contained in a permit issued under ch. 283, Stats., or violations of performance standards.

5. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5% of the total flow to the treatment works or structural urban BMP.

6. The costs for any portion of a project designed solely for flood control and not required to meet WPDES storm water permit requirements or performance standards.

7. The costs for any portion of an urban runoff project which exclusively serve development not in existence as of the date of the application. These costs are eligible for funding only if the project furthers the local comprehensive planning goals identified in s. 1.13 (2), Stats., and, beginning January 1, 2010, is consistent with a comprehensive plan prepared pursuant to s. 66.1001, Stats.

8. The applicable portion of costs of projects which are in non-compliance of the utilization of minority- and women-owned businesses criteria in s. NR 162.09 (3).

(c) *Market rate cost calculation.* The amount of the costs described in par. (b) 1. to 5. is determined using a parallel cost percentage.

1. The parallel cost percentage is calculated as follows:

a. Determine the total design capacity based on total flows and loadings.

b. Calculate a reduced capacity condition by subtracting the flows and loadings associated with par. (b) 1. to 5. from the total design capacity.

c. Estimate the eligible project costs associated with each of the conditions in paragraphs a. and b.

d. Divide the cost of the reduced capacity condition by the costs of the total design capacity.

$$PC = RC/DC$$

Where:

PC is the parallel cost percentage expressed as a decimal.

RC is the cost associated with the reduced capacity condition.

DC is the cost associated with the total design capacity.

2. The amount of market rate project costs in par. (b) 1. to 5. is calculated as follows:

$$EM = (TP)(1-PC)$$

Where:

EM is the amount of project costs eligible for market rate financing only.

TP is the total project cost eligible for clean water fund program financing.

PC is the parallel cost percentage expressed as a decimal.

3. If the department determines that the project includes other market rate costs as described in par. (b) 6. to 8., the amount of those costs shall be subtracted from the amount eligible for below-market rate financing and added to the amount of market rate costs calculated in subd. 2.

Note: All questions relating to cost eligibility or allocation shall be resolved prior to the execution of the financial assistance agreement in accordance with s. NR 162.16.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for the construction or start-up of an eligible project are not eligible for financial assistance. Ineligible costs include, but are not limited to any of the following:

(a) Basin or areawide planning not related to the project.

(b) Bonus payments not legally required for completion of construction before a contractual completion date.

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation or otherwise.

(d) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws.

(e) Costs outside the scope of the approved project.

(f) Ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or city attorney, or an annual financial audit.

(g) Costs for which payment has been or will be received under another federal or state program.

(h) Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others.

(i) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, awarding or administration of a contract supported by the clean water fund program and any of the following:

1. The official or employee, the official or employee's spouse or the official or employee's partner has an ownership interest in the firm selected for the contract.

2. Any person identified in subd. 1. receives any contract, gratuity or favor from the award of the contract.

(j) Project costs incurred after the closeout date.

(k) Connection laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(l) Hook up charges imposed by one municipality on another for hooking into a treatment works or structural urban BMP, or transport system to such a facility.

(m) Ordinary operation and maintenance expenses of the treatment works or structural urban BMP.

(n) Interest payments or principal payments on interim financing, paid by the municipality out of its internal funds rather than capitalized funds.

Note: The ineligibility of interest or principal payments in par. (n) is based on U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS. (a) *Net interest expense.* Interim financing interest expense shall be offset with any interest earnings from the investment of the proceeds from the interim financing to determine the amount eligible for clean water fund program funding.

(b) *Interim financing issuance costs.* The amount of interim financing issuance costs eligible for funding is limited to \$7,500 plus 1/2 percent of the total eligible face amount of the interim financing. The total eligible face amount of interim financing may not exceed the face amount of the financial assistance agreement.

Note: If interim financing is rolled over or renewed, the face amount may not be counted multiple times in calculating the eligible face amount of interim financing for purposes of this limit.

(c) *Interim interest costs.* The period of time for which interest on interim financing is eligible for funding shall run from no earlier than 6 months prior to the start of construction through the earliest of any of the following:

1. The closeout date of the clean water fund program loan.
2. One year following substantial completion of construction.
3. September 30th in the year after the project's listing on the clean water fund program funding list.

(d) *Cost proration.* If the term of the interim financing exceeds the limit in par. (b), the interim financing costs shall be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the debt used for interim financing is not exclusively for the clean water fund program treatment works or structural urban BMP project, costs shall be prorated according to the proportion of the total debt that is for the department approved treatment works or structural urban BMP project.

NR 162.05 Notice of intent to apply. (1) A municipality shall submit to the department a notice of its intent to apply for funding. The notice shall be filed with the department by December 31, if the application for financial assistance will be submitted within the following fiscal year. The notice shall be submitted on a form provided by the department. The notice shall be valid for one fiscal year.

Note: A Notice of Intent to Apply form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(2) The department may waive the requirement in sub. (1) upon the written request of a municipality pursuant to s. 281.58 (8m) (c), Stats.

(3) The department may waive the requirement in sub. (1) if the municipality has applied for a grant for which it is eligible under either s. 281.65 (4c) or 281.66, Stats.

NR 162.06 Application. (1) DEADLINE FOR SIGNING FINANCIAL ASSISTANCE

AGREEMENT. An applicant shall sign the financial assistance agreement within 8 months after the date the department determines in writing the application is acceptable. An applicant shall time its submittal of the application accordingly. If a financial assistance agreement is not signed within 8 months of the department's determination of acceptance, the applicant's project shall lose its allocated subsidy. A municipality may not submit more than one application for a project in any 12 month period, except for an application for additional costs for the approved project.

(2) **PROCEDURES.** Municipalities shall apply in accordance with s. 281.58 (9), Stats., on forms provided by the department.

Note: An application form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(3) **CONTENTS OF APPLICATION.** The applicant shall submit a complete application. The department shall accept an application as complete when each of the following items, when applicable, is received from the applicant or included in the application form:

(a) Evidence of an approved facility plan or other department approved plan.

(b) A completed financial assistance application form.

(c) Construction costs, which shall be included as a project cost in order to receive loan funds for planning or design costs, or both.

(d) A copy of biddable construction plans and specifications which are approvable by the department.

(e) Copies of executed engineering contracts for planning and design, and a proposed or executed engineering contract for construction, if funds are requested for the activity.

(f) A resolution authorizing one individual to act as the applicant's representative in connection with the application and with any additional information required for financial assistance.

(g) A proposed or an executed intermunicipal agreement when 2 or more municipalities discharge to or through the same treatment works or structural urban BMP. The intermunicipal agreement shall include all of the following:

1. Identify ownership for each individual portion of the treatment works or structural urban BMP, such as interceptors, sewage collection systems, municipal storm water conveyance systems, lift stations and privately owned treatment works or structural urban BMP.

2. Establish the term of agreement.

3. For urban runoff treatment works or structural urban BMP projects, require each municipality to adopt local regulations for construction sites, and adopt a municipal storm water management plan and ordinance for new development and redevelopment, both consistent with performance standards and with model ordinances developed by the department under s. 281.33 (4), Stats.

4. Demonstrate the basis for generating revenue for operation, maintenance and replacement costs based on actual use, and state who shall be responsible for paying for these charges.

5. Indicate the method for generating revenue for capital costs and indicate who shall be responsible for payment.

6. Indicate that the owner of the regional facility shall accept the applicant's wastewater or urban runoff and identify the boundary from which the applicant's discharge originates.

7. Require each entity to adopt a user charge and sewer use ordinance which is consistent with the requirements of s. NR 162.08.

(h) Financial information required by the department of administration necessary to determine the affordability of the proposed project, the financial capability of the municipality, and the adequacy of the pledge of revenues to repay the obligation securing the proposed clean water fund program loan.

(i) The proposed user charge system and information on a sewer use or storm water utility ordinance for treatment works or structural urban BMPs.

(j) Any existing contracts with users of the treatment works or structural urban BMP.

(k) Documentation applicable to U.S. internal revenue service tax information.

(l) A resolution declaring intent to reimburse municipal accounts with debt proceeds if required by U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(4) INTERMUNICIPAL EXCEPTION. The department may waive the requirement of an executed intermunicipal agreement if an order under s. 281.43 (1), Stats., has been issued, or if the department has obtained executed intermunicipal agreements for subscribers whose design flows, design suspended solids capacities, annual debt payments, and wastewater projects' designed biochemical oxygen demand (BOD) capacities total at least 90% of the total for the regional treatment works or structural urban BMP.

NR 162.07 Financial assistance requirements. Before awarding financial assistance for any project, the department shall determine that all of the applicable requirements of s. NR 162.06 have been met and that all of the following have been satisfied:

- (1) The department has approved the plans and specifications for the project and the parallel cost percentage, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.
- (2) The project is entitled to priority in accordance with subchs. III and IV, as applicable.
- (3) The applicant has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works or structural urban BMP throughout the applicant's jurisdiction.
- (4) The department of administration has determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.
- (5) The applicant has received, or has applied for, any state permits required by the department, including those under chs. 283 and 30, Stats.
- (6) The applicant has made satisfactory provision to assure the efficient operation and maintenance of the treatment works or structural urban BMP, in accordance with s. NR 162.12 (1) (L).
- (7) The applicant has adopted and implemented a user charge system and sewer use ordinance for a treatment works or structural urban BMP in accordance with s. NR 162.08.
- (8) For an urban runoff treatment works or structural urban BMP, the applicant agrees to adopt local regulations for construction sites, and adopt a municipal storm water management plan and ordinance for new development and redevelopment, both consistent with performance standards and with model ordinances developed by the department under s. 281.33 (4), Stats.
- (9) All of the following documentation, if applicable to the project, is submitted to the department:
 - (a) Certification as required by s. NR 162.09 (4).
 - (b) Marked plan sheets and flow documentation, if the project is for an unsewered municipality.
 - (c) Legal opinion on land ownership, and acquisition of easements and right-of-ways necessary for the project.
 - (d) Items related to bids including all of the following:
 1. The proposal of the successful bidder.
 2. An engineer's evaluation of the bids, including bid tabulation, and a recommendation.
 3. If a contract is awarded to other than the low bidder, a legal opinion that the award is in compliance with state statutes.
 4. Contract and utilization information regarding minority- and women-owned businesses and, if applicable, small businesses in rural areas.
 5. Any addenda to plans and specifications.

6. Evidence of bid advertisement.
7. A copy of the bid bond.
8. Evidence of a resolution awarding the construction contract.
9. A copy of the executed construction contract.
10. A construction start date and expected substantial and final completion dates.

(e) Request for disbursement and supporting invoices.

(f) Draft legal documents related to the authorization and issuance of bonds.

(g) The title for land purchased for the project, if land purchase costs are requested.

(h) An executed copy of the construction engineering contract.

(i) A plan of operation for the treatment works or structural urban BMP. The plan of operation shall include necessary actions and an implementation schedule to assure the timely start-up and efficient operation of the facilities for all of the following as appropriate:

1. A summary of implementation dates in chronological order.
2. Staffing and training.
3. Records, reports and laboratory control for wastewater projects.
4. Process control and start-up procedures.
5. Safety procedures.
6. Sludge management.
7. An emergency operating plan.
8. Maintenance management.
9. An operation and maintenance budget.
- (j) Parallel cost percentage information.

NR 162.08 Requirements for a user charge system and sewer use ordinance. (1) GENERAL.

Any user charge system and sewer use ordinance adopted by a recipient shall be maintained in accordance with s. 281.58 (14) (b) 7., Stats., or s. NR 216.06 (1), and this section, for the design life of a treatment works or structural urban BMP. The applicant shall submit user charge information to the department and shall certify to the department that the user charge system meets all of the requirements in this subsection.

(2) APPLICABILITY. (a) A user charge system and sewer use ordinance is required of any wastewater treatment works project receiving a loan under this chapter.

(b) A user charge system and sewer use ordinance is required of any urban runoff project receiving a revenue pledge loan under this chapter.

(c) A user charge system and sewer use ordinance is required of any urban runoff project which requires an intermunicipal agreement under s. NR 162.06 (3) (g). In this case, "users" means the municipalities covered by the agreement.

(3) USER CHARGE SYSTEM REQUIREMENTS. Any user charge system shall contain all of the following:

(a) Require that each user or user class pays its proportionate share of operation and maintenance costs, including replacement costs, of the treatment works or structural urban BMP within the recipient's service area.

(b) Provide that the costs of operation and maintenance for all flow not directly attributable to users be distributed proportionally among all users of the recipient's treatment works or structural urban BMP.

(c) Require that the charges for users or user classes generate sufficient revenue to pay costs identified in par. (e) 2. and 3.

(d) Require that the recipient establish a replacement fund and make deposits to this fund on an annual basis. This fund is to be used only for the replacement of equipment related to the wastewater treatment works, or for periodic maintenance of an urban runoff treatment works or structural urban BMP.

(e) Establish a financial management system that accounts for all of the following:

1. Revenues generated.

2. Costs of operation and maintenance of the treatment works or structural urban BMP, including replacement of equipment.

3. Debt service costs, including debt service reserves, and debt coverage requirements. Debt coverage means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

(f) Require the review, at least every 2 years, of the wastewater or urban runoff contribution of users and user classes, the total costs of operation and maintenance of the treatment works or structural urban BMP, and the user charge system.

(g) Require that each user which discharges any toxic pollutants or high strength wastes to a wastewater treatment works pay for any increased costs associated with the discharge.

(h) Provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to service provided by the treatment works or structural urban BMPs.

(i) Be based on actual or estimated use except as provided for under s. 281.58 (14) (b) 7, Stats.

(4) MUNICIPAL RESPONSIBILITIES. The municipality shall comply with all of the following:

(a) Incorporate the user charge system in one or more municipal ordinances or other legislative enactments.

(b) Terminate any term or condition of any pre-existing agreement or contract between the recipient and user which is inconsistent with the requirements of this section.

(c) Maintain records to document compliance with this section.

(d) For a wastewater treatment works, shall enact and enforce a sewer use ordinance that does all of the following:

1. Prohibits any new connections from sources which include substantial infiltration or inflow into the sanitary sewer system.

2. Requires that new sewers and connections to the sewer system be properly designed and constructed.

3. Requires that wastewater introduced into the treatment works not endanger public safety or the environment, not jeopardize the physical integrity of the treatment works, not cause substantial upset to the treatment process and not cause a violation of effluent or water quality limitations.

4. Defines normal domestic strength of the wastewater.

5. Controls and monitors industrial discharges by requiring control manholes, pretreatment, and grease, oil and sand interceptors.

6. Provides a methodology for establishing sewer use rates that complies with sub. (1). A municipality may include an optional class of low income residential users, with incomes below a level established by the municipality, who are charged at a lower rate than other residential users.

7. Defines violations and penalties for violators.

(e) For an urban runoff treatment works or structural urban BMP, shall demonstrate adequate legal authority established by statute, ordinance or series of contracts to meet the provisions of s. NR 216.06 (1).

(5) DEPARTMENT REVIEW. The department:

(a) May annually review a recipient's user charge system to assure that it continues to meet the requirements of this section.

(b) May not approve the user charge systems and sewer use ordinance for an applicant owning a regional treatment works or structural BMP until the department has given final approval to user charge systems and sewer use ordinances for subscribers whose design flows, design suspended solids capacities, annual debt payments and wastewater projects' designed biochemical oxygen demand (BOD) capacities total at least 90% of the total for the regional treatment works or structural urban BMP.

NR 162.09 Procurement. (1) APPLICABILITY. Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law. No contract may be awarded to any person or organization which does not operate in conformance with state and federal civil rights, equal opportunity and affirmative action laws. The recipient shall administer and successfully complete the project as well as accept the terms of the financial assistance agreement.

Note: See ss. 60.47, 60.77 (6) (a), 61.54, 61.55, 62.15, 66.0131 and 66.0901, Stats.

(2) PROFITS. Contractors may earn only fair and reasonable profits under financial assistance agreements. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

(3) UTILIZATION OF MINORITY- AND WOMEN-OWNED BUSINESSES. In order to provide minority- and women-owned businesses with an opportunity to compete for work related to the project, the recipient, their contractors and subcontractors shall comply with all of the following:

(a) Use minority- and women-owned businesses to the extent feasible.

(b) Make good faith efforts to provide minority- and women-owned businesses the maximum feasible opportunity to compete for contracts and subcontracts. Good faith efforts include, but are not limited to, all of the following:

1. Soliciting bids from qualified, minority-owned businesses certified by the department of commerce and qualified women-owned businesses whenever contracts and subcontracts are awarded. Solicited businesses shall be provided a reasonable time to respond to requests for bids.

2. Providing to minority- and women-owned businesses, upon request, a list of individuals and firms in possession of plans, specifications and other information relevant to the project.

3. Breaking down work into smaller tasks to maximize the opportunity of minority- and women-owned businesses to compete for contracts and subcontracts.

4. Establishing work schedules that shall enable minority- and women-owned businesses to compete for contracts and subcontracts.

5. Using the assistance of the department as appropriate.

(c) Document the efforts made to provide minority- and women-owned businesses with the opportunity to compete for contracts and subcontracts.

(d) If requested, explain to a minority- or women-owned business that bid but did not receive a contract, why the contract was not awarded to it.

(e) Failure to comply with pars. (b) to (d) shall result in a sanction of up to 8% of the project costs eligible for subsidy being financed at the market interest rate. This paragraph does not apply to any recipient that awards contracts to minority- or women-owned businesses or both in an

amount equal to or greater than the applicable fair share objectives. Fair share objectives means the percentage of participation in project costs by minority- and women-owned businesses which can be reasonably procured, as determined by the department as negotiated with and agreed to by the U.S. environmental protection agency under 40 CFR part 35, subpart K, given the availability of qualified minority- and women-owned businesses in the state.

(4) FORCE ACCOUNT WORK. The department may approve financial assistance for force account work based on the applicant's certification that all of the following apply:

(a) The applicant's staff has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of the force account method.

(b) Emergency circumstances dictate the use of the force account method.

(5) CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES. (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department may not provide financial assistance for costs which are not eligible or reasonable.

(b) Reasonableness reviews may include a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. Consideration shall be given to completeness of scope of work, the recipient's procurement and negotiation process associated with the costs, any conditions unique to the project and any other factors affecting costs.

(c) Architectural or engineering services contracts shall indicate a maximum estimated cost for a defined scope of work which cannot be exceeded without a negotiated contract amendment prior to incurring additional costs.

(6) CONSTRUCTION CONTRACTS AND SUBCONTRACTS. (a) *Applicability.* This subsection applies to construction contracts or subcontracts awarded by recipients for any construction activity.

(b) *Type of contract.* The project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized by sub. (4). Each contract shall be a fixed or unit price contract, unless the department gives advance written approval for the recipient to use some other acceptable type of contract. In any event, the cost-plus-a-percentage-of-cost type contract may not be used.

(c) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for any contract change orders.

2. The department may require that change orders for projects funded under this chapter be approved by the department.

NR 162.10 Reimbursement and refinancing. (1) REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS. The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150-2.

(2) REFINANCING OF INTERIM FINANCING. The department may refinance the eligible portion of the municipality's interim financing subject to the limits established in s. NR 162.04 (3).

NR 162.11 Loan interest rate. The department shall calculate interest rates in accordance with s. 281.58 (12), Stats., and all of the following:

(1) INTEREST RATE CATEGORIES. Costs of projects or portions of projects shall be charged any of the following interest rates:

(a) For costs of compliance maintenance or new or changed limits projects as described in s. NR 162.03 (1) (a) and (b), the interest rate shall be 55% of the market interest rate.

(b) For costs of unsewered projects, including individual systems, as described in s. NR 162.03 (1) (e) and (2), the interest rate shall be 70% of the market interest rate.

(c) For costs of urban runoff treatment works and structural urban BMP projects as described in s. NR 162.03 (1) (d), the interest rate shall be 65% of the market interest rate.

(d) For costs, identified in s. NR 162.04 (1) (b) the interest rate shall be the market interest rate.

(e) For the applicable portion of costs of projects which are in noncompliance of the utilization of minority- and women-owned businesses criteria in s. NR 162.09 (3), the interest rate shall be the market interest rate.

(2) PROJECT INTEREST RATE CALCULATION. (a) If all of the eligible costs of a project are classified under one of the categories in sub. (1), the interest rate shall be the rate stated. If a project contains eligible costs from one or more of the categories, a composite rate shall be computed for the project in accordance with par. (b). Project costs shall be based on the final approved engineering design.

(b) All of the following methods, in the order listed, shall be used to estimate the total eligible costs associated with the project:

1. Each eligible cost which can be allocated, based on its purpose, exclusively to any one of the categories in sub. (1), shall be so allocated.

2. Each eligible cost which cannot be allocated to a particular category, shall be divided among the categories based on the portion of the design flow of the project that is attributable to each category.

3. The composite interest rate shall be computed as follows:

$$RC = (RT\ 1)(PR\ 1) + (RT\ 2)(PR\ 2) + (RT\ 3)(PR\ 3) + (RT\ 4)(PR\ 4)$$

Where:

- RC is the composite interest rate for the project.
- RT1 is the interest rate at 55% of market interest rate.
- RT2 is the interest rate at 65% of market interest rate.
- RT3 is the interest rate at 70% of market interest rate.
- RT4 is the market interest rate.
- PR1 is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.03 (1) (a) and (b).
- PR2 is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.03 (1) (d).
- PR3 is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.03 (1) (e) and (2).
- PR4 is the percentage of the project being financed by the clean water fund program that is eligible under s. NR 162.04 (1) (b).

(c) Except as provided in s. 281.59 (13), Stats., the interest rate shall be based on the rates in effect at the time the financial assistance agreement is executed.

NR 162.12 Financial assistance agreement conditions. (1) Each financial assistance agreement shall bind the recipient to all of the following conditions:

(a) The recipient shall agree to maintain a system of user charges and a sewer use ordinance in accordance with s. NR 162.08 for the design life of the treatment works or structural urban BMP.

(b) The treatment works or structural urban BMP shall comply with all pertinent requirements of federal, state and local environmental laws and regulations.

(c) For financial assistance provided directly from a federal capitalization grant, the recipient shall agree to comply with the requirements contained in 33 USC 1251 to 1266 and 33 USC 1381 to 1387, if required by the terms of the capitalization grant.

(d) If an unsewered municipality will be disposing of wastewater in the wastewater treatment works of another municipality, financial assistance may be provided at a subsidized rate only if the department determines that the unsewered municipality has executed an agreement under s. 66.0813, Stats., with another municipality to receive, treat and dispose of wastewater.

(e) The recipient shall provide timely sewerage service to all users within the delineated service area except in areas where annexation is refused, pursuant to s. 281.43 (1m), Stats., for wastewater treatment works.

(f) The recipient shall comply with all state and local laws regarding procurement and public contracts.

(g) The recipient shall provide department representatives access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow department representatives access to records of the contractor and subcontractor which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(h) The recipient shall expeditiously initiate and complete the project, including construction of and payments for the portions which are ineligible for financial assistance, in accordance with the financial assistance agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

(i) The recipient shall promptly notify the department of changes to the project, including revisions to the plans and specifications.

(j) The recipient shall promptly submit to the department a copy of any prime contract or modification to a prime contract.

(k) The recipient shall begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement, and shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(l) The recipient shall submit an operation and maintenance manual to the department.

1. The project engineer and the authorized representative of the recipient shall certify that the operation and maintenance manual meets or exceeds the requirements of this chapter. The operation and maintenance manual shall address all of the following areas:

- a. General information.
- b. Staffing.
- c. Records and recordkeeping.
- d. Laboratory.
- e. Safety.
- f. Utility systems.
- g. A description of the process, operations and controls.
- h. Maintenance.
- i. Sludge management.
- j. Manufacturer's information.

2. For projects or facilities which have an approved operation and maintenance manual, this requirement may be met by the submission of an addendum to the original manual.

(m) The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision. WDNR publication WR-222 is incorporated by reference for this chapter.

Note: Copies of the WDNR publication WR-222, Wisconsin Construction Site Best Management Practice Handbook, November 1993 Revision, are available for inspection in the offices of the department of natural resources, secretary of state, and revisor of statutes, Madison, Wisconsin.

(n) The recipient shall provide and maintain adequate construction inspection to assure conformance with the approved plans and specifications.

(o) The recipient shall accept septage to the wastewater treatment works from septic tanks or holding tanks within the recipient's sewer service area, subject to s. 281.49, Stats. The recipient may regulate the time, rate, location and quantity of the septage contributions.

(p) The recipient shall notify the department of the substantial completion of the project.

(2) The financial assistance agreement is not effective until executed by all parties to the agreement.

NR 162.13 Financial management. The recipient shall comply with all of the following:

(1) Maintain project accounts in accordance with generally accepted government accounting standards.

(2) Maintain a financial management system which conforms with the requirements, terms and conditions of the financial assistance agreement and ch. Adm 35.

(3) Comply with any U.S treasury requirements for maintaining the tax-exempt status of the bonds sold to the clean water fund program.

NR 162.14 Financial assistance disbursements. (1) REQUESTS FOR DISBURSEMENT. The recipient shall submit to the department requests for disbursement for eligible costs in the format specified by the department.

(2) ADJUSTMENT. Before the final disbursement under the financial assistance agreement, the department may recommend to the department of administration that any request for disbursement be reviewed or audited.

(3) WITHHOLDING OF FUNDS. The department may withhold funds on the basis of any of the following:

(a) The department may direct the department of administration to withhold financial assistance disbursements where the department determines in writing that a recipient has failed to comply with project objectives, or the terms, conditions or reporting requirements of the financial assistance agreement.

(b) The department may withhold 5% of the principal amount of the loan until the requirements of the final project closeout have been completed.

(4) FINAL DISBURSEMENT AND PROJECT CLOSEOUT. (a) The recipient shall submit the final request for disbursement after completion of the project. The recipient shall include written certification that it has accepted the project from its contractors in the final disbursement request.

(b) All of the following shall occur prior to the final disbursement:

1. The department shall complete a final inspection and sign-off of the project.
2. The municipality shall obtain department approval of all change orders and amendments for which disbursement is requested.
3. The municipality shall document final utilization of minority- and women-owned businesses on a form provided by the department.

Note: A utilization form is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(c) The department shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

NR 162.15 Amendments to a financial assistance agreement. (1) ALTERING THE PROJECT. The recipient shall obtain an amendment to the financial assistance agreement before any of the following occur:

- (a) The type of wastewater or urban runoff treatment is altered.
- (b) The facilities plan, plans and specifications or any major part of the project is substantially altered.

(2) CHANGES CONSISTENT WITH OBJECTIVES. Changes in the project that are consistent with the objectives of the project, within the scope of the financial assistance agreement, and which do not require review under ch. NR 110 may not require the execution of an amendment before the recipient implements the change.

(3) ADDITIONAL FUNDING. The department may provide additional funding in the form of a loan for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may not process a request to provide additional funding for a project until the time the total remaining costs to complete the project can be reasonably determined.

(a) *Applicability.* Additional funding for a project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats.

Note: Section 281.59 (3e) (c), Stats., allows present value subsidy to be allocated only until the December 30th following the end of the biennium.

1. 'Sufficient PV, original biennium.' If there is sufficient project commitment present value subsidy available from the biennium in which the original financial assistance agreement was funded, a municipality may receive funding for the additional project costs from that biennium's project commitment present value subsidy. The loan interest rate and loan maturity date in the original financial assistance agreement shall be maintained in amending the original financial assistance agreement.

2. 'Continuous funding cycle loan, new biennium.' If there is not sufficient project commitment present value subsidy available from the biennium in which the original financial assistance agreement was funded, and the clean water fund program is accepting applications on a continuous funding cycle basis during the fiscal year in which the additional costs are to be funded, the municipality may receive funding for the additional costs from the current biennium's project commitment present value subsidy. If the interest rate and loan maturity dates for the additional funding are the same as in the original financial assistance agreement, the funds may be provided by amending the original financial assistance agreement. If the loan interest rate or loan maturity date for the additional funding is different than those contained in the original financial assistance agreement, the funds shall be provided by a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11.

3. 'Compete for PV, new biennium.' If a municipality is not able to obtain clean water fund program assistance for its additional project costs through the methods described in subd. 1. or 2., and a funding list for all clean water fund program projects is published for the fiscal year in which the additional costs are to be funded, a municipality may compete through the application process to receive clean water fund program project commitment present value subsidy to finance the additional costs. If a municipality is successful in obtaining project commitment present value subsidy for the additional costs, and the interest rate and loan maturity date for the additional funding are the same as in the original financial assistance agreement, the funds may be provided by amending the original financial assistance agreement. If the loan interest rate or loan maturity date for the additional funding is different than those established in the original financial assistance agreement, the funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11. The application for additional costs shall be ranked on the clean water fund program funding list based on

the priority score the project received in the fiscal year in which the original financial assistance agreement was funded.

(b) *Requesting funds.* A municipality may request funding for additional project costs using one of the following options:

1. 'Request by letter.' If par. (a) 1. is applicable, the municipality shall submit a letter to the department that justifies the need for the additional funding and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. 'Request by application.' If par. (a) 2. or 3. is applicable, the municipality shall submit a clean water fund program application, requesting a loan for additional project costs. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original financial assistance agreement. If par. (a) 3. is applicable, the application shall be postmarked by the June 30 prior to the fiscal year from which the funds for the additional costs are requested.

(4) **EFFECTIVE DATE.** A financial assistance agreement amendment is not effective until executed by all parties to the agreement.

NR 162.16 Disputes. (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this chapter or ch. NR 165 prior to the execution of a financial assistance agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the applicant personally or by mail.

(2) **REVIEW OF THE DECISION.** A final decision of the department may be reviewed pursuant to subch. III of ch. 227, Stats., and ch. NR 2.

NR 162.17 Records and record retention. (1) **REQUIREMENTS.** The recipient shall maintain books, documents, papers and records, and accounting procedures in accordance with generally accepted government accounting standards, the financial assistance agreement, and ch. Adm 35, and retain them in accordance with subch. II of ch. 19, Stats. The recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers and records related to the project which are necessary for the recipients' compliance with this section.

(2) **INSPECTION.** The department or its agents may, during normal business hours, inspect and copy the recipient's records and the records of its contractors.

(3) RECORD RETENTION. The recipient and contractors of recipients shall preserve and make their records available to the department for a minimum of 3 years from the date that the department notifies the recipient that the project is closed out.

(a) If a financial assistance agreement is partially or completely terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

(b) Records which relate to appeals, disputes or litigation arising out of the performance of the project, shall be retained until any appeals, disputes or litigation have been finally resolved or for a period of 3 years from the date that the department notifies the recipient that the project is closed out, whichever is later.

(4) FEDERAL SINGLE AUDIT. Recipients of financial assistance provided directly from the federal capitalization grant shall comply with the federal single audit act 31 USC 7501 to 7507, OMB circular A-133 and ch. Adm 35.

NR 162.18 Breach of contract. (1) Upon breach of contract by the recipient, the department may initiate any of the following:

(a) Declare the unpaid loan balance due and immediately payable.

(b) Increase the interest rate on the unpaid balance of the loan to the market interest rate in effect on the date the financial assistance agreement was executed.

(c) Rescind the grant and convert the grant amount to a loan.

(d) Immediately terminate the financial assistance agreement and disburse no additional funds, if the financial assistance has not been fully disbursed.

(e) Seek an injunction or any other equitable or judicial relief from a court of appropriate jurisdiction.

(f) Seek any other appropriate administrative remedy.

(2) The department of administration's receipt of any payment after the occurrence of a breach of contract does not constitute the department's waiver of any rights and remedies under this section.

Note: The department of administration may under s. 281.59 (11) (b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

NR 162.19 Noncompliance. Upon failure of the recipient to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter or ch. NR 165, the department may do any of the following:

- (1) Refuse to enter into a financial assistance agreement.
- (2) Seek penalties as provided in s. 281.98, Stats.
- (3) Seek any other appropriate remedy, relief or penalty.

NR 162.20 Variances. (1) **GENERAL.** The department may, on its own initiative or pursuant to a written request from an applicant, approve a variance from a requirement of this chapter or ch. NR 165 when it determines that special circumstances make a variance in the best interest of the state. Any variance approved shall be consistent with the objectives of ss. 281.58 and 281.59, Stats.

(2) **APPLICABILITY.** The department may only approve a variance from any non-statutory requirement of this chapter or ch. NR 165.

(3) **REQUEST FOR VARIANCE.** Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient and financial hardship. A request for a variance shall be submitted in writing to the department, as soon as it is determined a variance is needed. Each request for a variance shall contain all of the following:

(a) The name of the applicant and project number.

(b) The section of this chapter or ch. NR 165 from which a variance is sought and a statement explaining why the variance is necessary.

(c) An adequate description of the variance desired, and the facts which the recipient believes warrant the department's approving the variance.

(d) A statement as to whether the same or a similar variance has been requested previously by the recipient, and if so, the circumstances of the previous request.

NR 162.21 Administrative fees. (1) An administrative fee, if one is imposed, shall be included in the biennial finance plan, as described in s. 281.59 (3), Stats., which is approved by the building commission under s. 13.48, Stats.

(2) Assistance provided for hardship financial assistance under subch. IV is not subject to an administrative fee.

SUBCHAPTER III – PRIORITY SCORING AND RANKING SYSTEM

NR 162.30 Project scoring system. The following factors, when applied to particular projects in accordance with s. NR 162.31, shall determine the priority scoring of treatment works and structural urban BMP projects for clean water fund program financial assistance pursuant to s. 281.58, Stats.

(1) PROJECT CATEGORY SCORE. Projects shall be assigned one of the following project scores:

(a) Projects that the department determines are necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats., shall be assigned 50 points. This includes eligible projects identified under s. NR 162.03 (1) (a) and (d) 1.

(b) Projects needed to provide treatment to achieve compliance with an enforceable requirement changed or established after May 17, 1988, if the project is for a municipality that is in substantial compliance with its permit, issued under ch. 283, Stats., in regard to the changed or established enforceable requirements shall be assigned 45 points. This includes eligible projects identified under s. NR 162.03 (1) (b) and (d) 1.

(c) Projects for unsewered municipalities shall be assigned 25 points. This includes eligible projects identified under s. NR 162.03 (1) (e).

(d) Structural urban BMPs projects identified under s. NR 162.03 (1) (d) 2. and 3 shall be assigned 20 points.

(e) Projects for the planning, design, construction or replacement of a treatment works that violate a permit issued under ch. 283, Stats., or projects that have been the subject of an enforcement action pursuant to s. 281.98, Stats., of a performance standard, shall be assigned 5 points. This includes eligible projects or costs identified under s. NR 162.03 (1) (c) or 162.04 (1) (b).

(f) A multi-category project shall receive the project category score for the project type which has the largest estimated cost percentage of the total cost of the project, as approved by the department.

(2) HUMAN HEALTH SCORE. A project shall be assigned a human health score only if the project is necessary to eliminate a health hazard. The human health score (HHS) is the product of the severity subscore (SS) as defined in par. (c) and the population multiplier (PM) as defined in par. (d), expressed as follows:

$$\text{HHS} = \text{SS} * \text{PM}$$

(a) *Maximum score.* The maximum human health score assignable to a project is 40 points.

(b) *Applicability.* Scores shall be assigned for only those human health hazards for which the applicant submits supporting documentation and that have occurred within 5 years prior to the applicant's submittal of a request for a project priority score.

(c) *Severity subscore.* A project is assigned a severity subscore (SS) which is the cumulative total of the following applicable categories. A holding tank may not be included in the

percentages calculated under subds. 1., 7., and 9., if the discharge or malfunction of the holding tank is the result of improper maintenance.

1. Projects necessary to reduce or eliminate pollution of groundwater, where contaminant levels exceed or are projected to exceed safe drinking water standards in ch. NR 809 for public water supplies, or to reduce or eliminate discharges from private sewage systems or reduce untreated urban runoff discharges from municipal storm water conveyance systems located within 3 feet of groundwater or crevassed bedrock, shall be assigned one of the following scores based on the percentage of the water supplies that are affected, or the percentage of the private sewage systems discharging to high groundwater or crevassed bedrock :

- b. 75% or more: 15 points.
- c. 50% to 74.99%: 12 points.
- d. 33% to 49.99%: 9 points.
- e. 20% to 32.99%: 6 points.
- f. 10% to 19.99%: 4 points.
- g. 5% to 9.99%: 2 points.
- h. 3% to 4.99%: 1 point.
- i. Less than 3%: 0 points.

2. Wastewater projects necessary to achieve or maintain compliance with effluent limitations based on groundwater quality standards in ch. NR 140 shall be assigned the highest applicable score from one of the following:

- a. Effluent limitations based on public health standards under s. NR 140.10 shall be assigned 10 points.
- b. Effluent limitations based on public welfare standards under s. NR 140.12 shall be assigned 8 points.
- c. Effluent limitations based on indicator parameter standards under s. NR 140.20 shall be assigned 6 points.
- d. Correction of excessive leakage from a lagoon or pond as required by a WPDES permit shall be assigned 4 points.

3. Urban runoff projects that contribute to the achievement or maintenance of groundwater standards under ch. NR 140 shall be assigned the highest applicable score from one of the following:

- a. A project designed to reduce or eliminate substances of public health concern identified under s. NR 140.10 or other substances identified by the department under s. NR 140.02 (4) shall be assigned 10 points.

b. A project designed to reduce or eliminate substances of public welfare concern identified under s. NR 140.12 or other substances identified by the department under s. NR 140.02 (4) shall be assigned 8 points.

c. A project designed to reduce or eliminate substances necessary to comply with the preventative action limit for an indicator parameter identified under s. NR 140.20 shall be assigned 6 points.

4. Wastewater projects necessary to achieve or maintain compliance with effluent limitations based on surface water quality criteria as enumerated in ss. NR 105.08 and 105.09 shall be assigned the highest applicable score from one of the following:

a. Effluent limitations based on water supply human threshold or human cancer water quality standards shall be assigned 10 points.

b. Effluent limitations based on non-water supply human threshold or human cancer water quality standards shall be assigned 5 points.

5. Urban runoff projects contributing to the achievement or maintenance of surface water quality standards under ss. NR 105.08 and 105.09 shall be assigned the highest applicable score from one of the following:

a. A project designed to reduce or eliminate substances contributing to an existing or anticipated violation of water supply human threshold or human cancer water quality standards shall be assigned 10 points.

b. A project designed to reduce or eliminate substances contributing to an existing or anticipated violation of non-water supply human threshold or human cancer water quality standards shall be assigned 5 points.

6. A project designed to reduce or eliminate substances contributing to an existing or probable violation of recreational use standards under s. NR 102.04 (5) shall be assigned 4 points.

7. Projects necessary to eliminate the ponding or discharge of sewage by private sewage systems onto the ground or into roadside ditches, or to a watercourse or waterbody, shall be assigned one of the following scores based on the percentage of systems in the project area contributing to the ponding or discharge:

a. 50% or more: 4 points.

b. 25% to 49.99%: 3 points.

c. 15% to 24.99%: 2 points.

d. 5% to 14.99%: 1 point.

e. Less than 5%: 0 points.

8. Projects necessary to eliminate or prevent bypasses and overflows, as defined in s. NR 110.05 (2), from a municipal sewerage system to a watercourse or waterbody shall be assigned one of the following scores:

- a. For category 1 bypasses and overflows: 4 points.
- b. For category 2 bypasses and overflows: 2 points.

9. Projects necessary to eliminate basement backups caused by malfunctioning private sewage systems or overloaded sanitary sewer collection systems, except for malfunctions caused by improper maintenance, shall be assigned one of the following scores based on the percentage of residences in the project area with basement backups:

- a. 50% or more: 4 points.
- b. 25% to 49.99%: 3 points.
- c. 15% to 24.99%: 2 points.
- d. 5% to 14.99%: 1 point.
- e. Less than 5%: 0 points.

(d) *Population multiplier.* The population multiplier (PM) shall be the logarithm to the base 10 (log 10) of the residential population which will initially be served by the project.

(e) *Regional project.* 1. If the regional project is a multi-category project, it shall be assigned the total human health scores of the several categories.

2. If a regional project is proposing to serve another municipality and the subscribing municipality's design flow constitutes 10% or more of the design flow of the regional project, then any of the following may apply:

- a. The health hazard score of the subscribing municipality may be added to the health hazard score of the regional project.
- b. The subscribing municipality may be assigned the prior health hazard score of the regional project.

Note: The human health score may not exceed the maximum points in par. (a).

(3) **FISH AND AQUATIC LIFE SCORE.** The fish and aquatic life score for wastewater projects shall be the score assigned under par. (b), and for urban runoff projects shall be the score assigned under par. (c).

(a) *Maximum score.* The maximum fish and aquatic life score assignable to a project is 40 points.

(b) *Wastewater project score.* The fish and aquatic life score for a wastewater project shall be the water quality standard score plus the water quality classification score.

Note: Score = water quality standard score + water quality classification score.

1. 'Water quality standard score.' The water quality standards score shall be the addition of this subd. 1. a. and b.

a. Projects necessary to achieve or maintain compliance with effluent limitations based on a water quality standard contained in s. NR 102.04 (4) (a), (b), (c) or (e) shall receive 10 points.

b. Projects necessary to achieve or maintain compliance with an effluent limitation based on the water quality standard contained in s. NR 102.04 (4) (d) shall receive 10 points only if an acute or chronic criterion contained in or calculated under s. NR 105.05 or 105.06 is the basis of the effluent limitation.

2. 'Water quality classification score.' Each project where there is an existing surface water discharge shall receive a classification score based on the potential impact of that discharge on the receiving water and the classification of the receiving water. A water quality classification score shall be the product of the dilution ratio point value and the classification point value.

Note: Score = dilution ratio point value x classification point value.

3. 'Dilution ratio point value.' The dilution ratio point value shall be one of the following:

- a. Waste load allocated streams: 4 points.
- b. Dilution ratio of 0.00 to 0.99: 4 points.
- c. Dilution ratio of 1.00 to 4.99: 3 points.
- d. Dilution ratio of 5.00 to 9.99: 2 points.
- e. Dilution ratio of 10.00 or greater: 1 point.
- f. Lakes and wetlands: 1 point.

4. 'Classification point value.' The classification point value shall be based on the classification contained in s. NR 102.04 (3). The point value shall be the highest of any of the following:

- a. Outstanding or exceptional resource water or impaired waters: 7 points.
- b. Great Lakes communities and cold water communities: 6 points.
- c. Warm water sport fish communities: 5 points.
- d. Warm water forage fish communities: 4 points.
- e. Limited forage fish communities: 2 points.
- f. Limited aquatic life: 1 point.

(c) *Urban runoff project score.* The fish and aquatic life score for an urban runoff project shall be the water quality standard score plus the water quality classification score.

Note: Score = water quality standard score + water quality classification score.

1. 'Water quality standard score.' Projects contributing to the achievement or maintenance of surface water quality standards established by the department under s. 281.15, Stats., or

performance standards established by the department under s. 281.16 (2), Stats., shall be assigned 15 points.

2. 'Water quality classification score.' Each urban runoff project where there is an existing surface water discharge shall receive a score based on the potential impact of that discharge on the receiving water and the classification of the receiving water. A water quality classification score shall be the product of the classification point value and the pollution reduction value.

Note: Score = classification point value x pollution reduction value

3. 'Classification point value.' The classification point value shall be based on the classification contained in s. NR 102.04 (3). The point value shall be the highest of any of the following:

- a. Outstanding or exceptional resource water or impaired waters: 7 points.
- b. Great Lakes communities and cold water communities: 6 points.
- c. Warm water sport fish communities: 5 points.
- d. Warm water forage fish communities: 4 points.
- e. Limited forage fish communities: 2 points.
- f. Limited aquatic life: 1 point.

4. 'Pollution reduction value.' The pollution reduction value shall be one of the following based on the percentage of the total pollutant or water load contributing the nonpoint source pollution which will be controlled by the project:

- a. Greater than or equal to 75%: 4 points.
- b. 50% – 74.99%: 3 points.
- c. 25% - 49.99%: 2 points.
- d. Less than 25%: 1 point.

(d) *Regional project.* 1. If the regional project is a multi-category project, it shall be assigned the total fish and aquatic life scores of the several categories.

2. If a regional project is proposing to serve another municipality and the subscribing municipality's design flow constitutes 10% or more of the design flow of the regional project, then any of the following may apply:

- a. The fish and aquatic life score of the subscribing municipality may be added to the fish and aquatic life score of the regional project.
- b. The subscribing municipality may be assigned the prior fish and aquatic life score of the regional project.

Note: The fish and aquatic life score may not exceed the maximum points in par. (a).

(4) **IMPAIRED WATERS SCORE.** A proposed project shall receive 5 points if the project will reduce the level of pollutants currently affecting a 303(d) listed waterbody and the pollutants

proposed to be reduced or removed are related to the impairment. A 303(d) listed waterbody means the list of impaired waterbodies in the state developed by the department pursuant to 33 USC 1313 and 40 CFR 130.7.

Note: A list of 303(d) waterbodies may be acquired, at no charge, from the Department of Natural Resources, Bureau of Watershed Management, Box 7921, Madison, WI 53707.

(5) WILD AND DOMESTIC ANIMAL SCORE. (a) Wastewater projects necessary to achieve or maintain compliance with effluent limitation based on a water quality standard contained in s. NR 102.04 (7) shall receive 5 points.

(b) Urban runoff projects contributing to the achievement or maintenance of surface water quality standards contained in s. NR 102.04 (7) shall receive 5 points.

(6) OUTSTANDING AND EXCEPTIONAL RESOURCE WATERS CATEGORY SCORE. A proposed project which will reduce the level of pollutants currently affecting an outstanding or exceptional resource water, designated under ss. NR 102.10 and 102.11 shall be assigned 5 points.

(7) LOCAL PRIORITIES SCORE. Projects which are identified in or are consistent with local resource management plans or ordinances, where the plans or ordinances provide a strategy for controlling water pollution sources or will otherwise have an effect on reducing existing or future sources of water pollution shall receive 5 points. Examples of local resource management plans include, but are not limited to: storm water management plans, land use plans, growth management plans, wellhead protection plans, lake management plans, sewer service area plans, parks and recreation plans, county land and water resource management plans and comprehensive plans.

(8) SEPTAGE AND LEACHATE SCORE. A wastewater project whose approved facilities plan includes facilities to receive and treat septage or leachate shall be assigned a score of 2 points.

(9) POPULATION SCORE. Each project shall receive a population score. The population score is the logarithm to the base 10 of the residential population to be served by the project, divided by 10.

Note: Population score = $\frac{\log_{10} \text{residential population}}{10}$

NR 162.31 Project priority score. (1) A project priority score shall be assigned by the department to each project for which a completed priority evaluation and ranking form (PERF) has been submitted pursuant to s. NR 162.32. The project priority score shall be determined using the following formula:

$$\text{project priority score} = A + B + C + D + E + F + G + H + I$$

where

A = Project category score

B = Human health score

- C = Fish and aquatic life score
- D = Impaired waters score
- E = Wild and domestic animal score
- F = Outstanding and exceptional resource waters score
- G = Septage and leachate score
- H = Local priorities score
- I = Population score.

(2) In computing the project priority score, the department shall consider only those scores properly assignable to a particular project. If a project does not satisfy the necessary criteria associated with the assignment of a particular score, a score of zero shall be recorded for that particular factor.

(3) A subscribing municipality shall receive the same priority score as the receiving municipality to which it will discharge if either pars. (a) and (c), or pars. (b) and (c) conditions are met.

(a) The receiving municipality needs to expand its treatment works or structural urban BMP design flow by 10% or more to treat the flow from the subscribing municipality.

(b) An approved facilities plan or WPDES permit requires the receiving municipality facility expansion and subscribing municipality project to occur concurrently.

(c) The receiving municipality and subscribing municipality have certified to the department that they will prepare and submit an intermunicipal agreement to the department prior to the award of financial assistance for construction of the project.

NR 162.32 Procedure for determination and reevaluation of project priority score. (1) An applicant intending to apply for clean water fund program assistance for the first time shall submit to the department a written request for priority determination on a priority evaluation and ranking form (PERF).

Note: A PERF is available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

(2) No project shall be assigned a priority score greater than 0 until a completed PERF for the project has been submitted by the applicant and evaluated by the department.

(3) Upon completion of the review and determination of a priority score, the department shall notify the applicant in writing of the determination.

(4) Annually, the department may review and, if necessary under the requirements of this chapter, recalculate priority scores to assure accuracy and timeliness of information. The department shall notify the applicant in writing of any change in priority score.

(5) After approval of a facilities plan, the department shall reevaluate the priority score of the project, making revisions if necessary. The department shall notify the applicant in writing of any change in priority score.

(6) If the applicant objects to the department's determination of the priority score in sub. (3), (4) or (5), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (3), (4) or (5). The notice shall state the specifics of the objection. The applicant shall submit any information which supports the objection and the priority score which the applicant believes should be assigned to the project based on this information.

(7) Upon receipt of a notice under sub. (6), the department shall reevaluate its determination of the project priority score and shall notify the applicant. If the department denies the requested priority score, it shall state the reasons in writing.

(8) Notwithstanding sub. (6), an applicant may request a reevaluation of its project priority score within 45 days of the application deadline. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (3).

NR 162.33 Project ranking system. (1) The department shall maintain a project priority list which shall rank the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first.

(2) In case 2 or more projects have the same priority score, the project serving the larger population, as based on the population factor score, shall be considered to have the higher priority.

(3) The department shall prepare a project priority list. It shall be used for prioritizing clean water fund program assistance to eligible projects.

SUBCHAPTER IV – HARDSHIP FINANCIAL ASSISTANCE

NR 162.40 Applicability. (1) GENERAL. This subchapter applies to all applicants for and recipients of hardship financial assistance pursuant to s. 281.58 (13), Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under s. 281.58 (13), Stats. This subchapter does not apply to assistance for structural urban best management practices under subchs. II and III.

(2) ADMINISTRATIVE OR SERVICE FEES. Administrative or service fees under s. NR 162.21 may not be charged to hardship financial assistance recipients.

NR 162.41 Types of hardship financial assistance. The department may provide any of the following types of hardship financial assistance:

- (1) Loans with interest rates lower than the interest rates specified in s. NR 162.11.
- (2) Grants not to exceed 70% of the eligible costs of the project.

NR 162.42 Eligibility for hardship financial assistance. (1) ELIGIBLE MUNICIPALITIES.

Municipalities which meet all of the following criteria are eligible for hardship financial assistance:

(a) The median household income in the municipality is 80% or less of the median household income in this state.

1. If the municipality is a city, town, village, county, or is a town sanitary district or public inland lake protection and rehabilitation district in an area that is a census designated place, or is a federally recognized American Indian tribe or band in this state, the department shall obtain a median household income figure for the municipality from the most recent federal census as published by the U.S. census bureau.

2. If the municipality is a town sanitary district or public inland lake protection and rehabilitation district, the municipality shall submit to the department with its intent to apply form a map showing the boundaries of the municipality. The department shall compare this map to a census block map and determine which census blocks contain any portion of the municipality. The department shall then obtain from the U.S. census bureau a median household income figure for the municipality through special tabulation of census block data collected in the most recent federal census for the appropriate census blocks.

3. Median household income figures from the most recent federal census shall be adjusted to reflect the estimated change in annual income. The department shall apply to the census data the percent increase in per capita income since the most recent federal census in the county in which the municipality is located. The percent increase in per capita income data shall be determined using figures published by the U.S. department of commerce.

4. If a municipality is located in more than one county, the percent increase in per capita income used to adjust the median household income figure shall be weighted according to population or number of households located within each county's portion of the local governmental unit.

(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. 281.58 (13), Stats.

(2) **ELIGIBLE PROJECTS.** Wastewater projects described in s. NR 162.03 (1) (a), (b) and (e) are eligible for hardship financial assistance.

(3) **REFINANCING AND REIMBURSEMENT.** (a) The department may refinance a project with hardship financial 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 hardship financial 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 program loan at an interest rate specified in s. NR 162.11 for the project and:

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

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

(b) A financial assistance agreement to refinance an existing project debt shall be executed before the project has been substantially complete for more than 5 years.

1. An applicant for refinancing shall meet the planning and design criteria and application requirements as established in subch. II.

2. Refinancing shall be subject to the limitations of issuance and interim financing costs established in s. NR 162.04 (3).

3. Reimbursement of the municipality's internal funds for previously paid project costs shall be in accordance with s. NR 162.10 (1) and subject to U.S. treasury reimbursement regulations in 26 CFR 1.150-2.

NR 162.43 Application. (1) **NOTICE OF INTENT TO APPLY.** Each municipality intending to apply for hardship financial assistance shall inform the department of its intent by the December 31 prior to the hardship application deadline specified in sub. (2).

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

(3) **PROCEDURE.** Subject to sub. (2), hardship financial assistance applicants shall follow the procedure described in s. NR 162.06 (2) , and s. 281.58 (9) (a) to (c), Stats.

(4) **CONTENTS OF APPLICATION.** An application for hardship financial assistance shall comply with the requirements of s. NR 162.06 (3).

(5) AMENDED APPLICATION. An applicant may submit an amended application prior to the date the department publishes the hardship financial assistance funding list.

NR 162.44 Funding list. (1) GENERAL. The department shall establish a hardship financial assistance funding list in accordance with s. 281.58 (13) (d), Stats., and the funding policy established in s. NR 162.02 (1).

(2) ELIGIBILITY CALCULATION. (a) The department shall determine eligibility for hardship financial 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 principal and interest costs, based upon a 20-year repayment schedule at the appropriate interest rate, for that portion of the project that is eligible for the below market interest rate, if the municipality did not receive hardship financial assistance for the project.

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

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

Note: In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

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

NR 162.45 Allocation of funds. At the time of publication of the funding list, the hardship present value subsidy shall be allocated to those projects within the hardship fundable range in the order specified in s. 281.58 (13) (e), Stats. The amount allocated shall be based on figures in the current application and information provided to the department prior to publication of the funding list.

NR 162.46 Requirements and conditions for receiving hardship financial assistance. (1)
REQUIREMENTS. Before awarding hardship financial assistance for any project, the department shall determine that all of the applicable application requirements of s. NR 162.43 have been met and that sufficient documentation has been submitted to show that the applicant has complied, or shall comply, with the financial assistance requirements listed in s. NR 162.07.

(2) CONDITIONS. Each hardship financial assistance agreement shall bind the recipient to the conditions listed in s. NR 162.12.

NR 162.47 Procedure for determining amount of hardship financial assistance. (1)
GENERAL. The type and amount of hardship financial assistance shall be determined at the time the hardship financial assistance agreement is awarded.

(2) CALCULATION OF HARDSHIP FINANCIAL 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. 281.58 (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 hardship financial assistance loan on eligible below-market project costs shall be no greater than a rate specified in s. NR 162.11. 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:

$$(MHI)(N)(.02) = A$$

$$A / R = B$$

$$B - O - W - M = C$$

$$P / 20 = D$$

$$D - C = H$$

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 hardship financial assistance.

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

Note: In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

M is the annual principal and interest costs based upon a 20-year repayment schedule at the market interest 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 program 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

i = interest rate

Note: "Interest rate" means the discount rate at which the present value of clean water fund program loan payments equals the clean water fund program loan amount.

c. If it is determined that the affordable interest rate for hardship financial assistance is greater than the interest rate for that project type defined in s. NR 162.11 (1), the interest rate for the project shall be determined according to the method described in s. NR 162.11 (2).

(b) If portions of the project costs are only eligible for funding at the market interest rate, pursuant to s. NR 162.04 (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 program market interest rate.

CT3 is the project costs eligible for clean water fund program market interest rate funding under s. NR 162.04 (1) (b).

NR 162.48 Operation, maintenance, and replacement cost estimates. (1) The maximum amount allowable for operation, maintenance and replacement cost estimates used in ss. NR 162.44 (2) and 162.47 (2) shall be 2 standard deviations above 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 program projects on population size, segregated by project type.

(2) The estimated operation, maintenance and replacement costs used for "O" under ss. NR 162.44 (2) and 162.47 (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.

NR 162.49 Hardship financial assistance agreement. (1) NOTICE OF HARDSHIP FINANCIAL ASSISTANCE COMMITMENT. The department may issue a notice of hardship financial assistance commitment to a municipality in the hardship fundable range upon the municipality's request and its compliance with the requirements in s. NR 162.46.

(2) EXECUTION OF HARDSHIP FINANCIAL ASSISTANCE AGREEMENT. (a) The department may enter into a hardship financial assistance agreement with a municipality in the hardship fundable range if the requirements and conditions under s. NR 162.46 are met.

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

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

(3) DEADLINE FOR SIGNING A FINANCIAL ASSISTANCE AGREEMENT. The applicant shall sign the financial assistance agreement by August 30 of the calendar year that follows the year in which hardship present value subsidy is allocated to the project. If a financial assistance agreement is not signed by that August 30, the subsidy allocated for the applicant's project shall be released for reallocation to other projects.

NR 162.50 Hardship financial assistance disbursements. (1) GENERAL. Disbursements shall be made in accordance with s. NR 162.14.

(2) ORDER OF LOAN AND GRANT DISBURSEMENTS. Disbursements of hardship financial assistance shall first be made in the form of a loan, up to the loan amount identified in the hardship financial assistance agreement. Grant disbursements, if any, shall be made after all hardship loan proceeds have been disbursed.

NR 162.51 Funding additional project costs. (1) APPLICABILITY. The department may provide additional funding in the form of a loan or grant for eligible project costs incurred beyond the amount specified in the hardship financial assistance agreement. The department may not process a request to provide additional funding for a project until the time the total remaining costs to complete the project can be reasonably determined. Additional funding for a project is subject to availability of present value subsidy.

Note: Section 281.59 (3e) (c), Stats., allows present value subsidy to be allocated only until the December 30th following the end of the biennium.

(a) *Hardship PV available, original biennium.* If sufficient hardship present value subsidy is available from the biennium in which the original hardship financial assistance agreement was funded, the municipality may receive funding for the additional costs from that biennium's present value subsidy. The proportion of loan to grant, the interest rate, and the final maturity date in the original financial assistance agreement shall be maintained in the amendment to the original hardship financial assistance agreement.

(b) *Insufficient hardship PV, sufficient commitment PV, original biennium.* If there is not sufficient hardship present value subsidy but there is sufficient project commitment present value subsidy available from the biennium in which the original hardship financial assistance agreement was funded, a municipality may receive a financial assistance agreement to fund the additional costs from that biennium's project commitment present value subsidy. The funding shall be in the form of a loan at the interest rate corresponding to the project type as defined in s. NR 162.11 with a loan term of up to 20 years.

(c) *Continuous funding cycle loan, new biennium.* If there is not sufficient project commitment or hardship present value subsidy available from the biennium in which the original hardship financial assistance agreement was funded, and the clean water fund program is accepting applications on a continuous funding cycle basis for the fiscal year in which the additional costs are to be funded, the municipality may receive funding for the additional costs from the current biennium's project commitment present value subsidy. If the interest rate and final maturity date for the additional funding are the same as in the original financial assistance agreement, the funds may be provided in an amendment to the original hardship financial assistance agreement. If the interest rate or final maturity date of the additional funding is different than those in the original financial assistance agreement, the funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the interest rate corresponding to the project type as defined in s. NR 162.11.

(d) *Compete for hardship PV, new biennium.* A municipality may compete for hardship financial assistance for additional project costs through the application process in a biennium other than that in which the original hardship financial assistance agreement was funded. The application for additional funding may be submitted in any fiscal year through the second year of the biennium following the substantial completion date of the project indicated in the original hardship financial assistance agreement. The application shall be ranked on the hardship financial assistance funding list based on the priority score the project received in the fiscal year in which the original hardship financial assistance agreement was funded.

1. 'Sufficient hardship PV available.' If the municipality is successful in obtaining sufficient hardship financial assistance from another biennium for the entire amount of additional costs, the original proportion of loan to grant, interest rate, and final maturity date shall be maintained in an amendment to the original hardship financial assistance agreement.

2. 'Partial hardship PV available.' If there is hardship present value subsidy available to only partially fund the additional costs, the municipality may receive funding from the current biennium's project commitment present value subsidy for any eligible costs beyond the amount funded with the available hardship present value subsidy. The funds shall be provided in a financial assistance

agreement in the form of a loan or a combination of grant and loan for up to 20 years with an interest rate determined by the department and the department of administration based on the proportion of hardship and non-hardship funding.

(e) *Compete for commitment PV, new biennium.* If a municipality is not able to obtain clean water fund program assistance for its additional project costs through the methods described in pars. (a) to (d), and a funding list for all clean water fund program projects is published for the fiscal year in which the additional costs are to be funded, a municipality may compete through the application process to receive clean water fund program project commitment present value subsidy to finance additional project costs. The funds shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate corresponding to the project type as defined in s. NR 162.11. The application for additional funds shall be ranked on the clean water fund program funding list based on the priority score the project received in the fiscal year in which the original hardship financial assistance agreement was funded.

(2) REQUESTING FUNDS. A municipality may request funding for additional project costs using one of the following options:

(a) *Request by letter.* If sub. (1) (a) or (b) is applicable, the municipality shall submit a letter to the department that justifies the need for the additional funding and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

(b) *Request by application.* If sub. (1) (c) or (e) is applicable, the municipality shall submit a clean water fund program application, requesting a loan for additional project costs. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement. If the municipality submits its application for additional funding as part of the continuous funding cycle and intends to later apply for hardship financial assistance for these same project costs, the municipality shall inform the department in writing that waiting to obtain hardship financial assistance to pay those costs would have negative impacts on the municipality.

(c) *Request by application, hardship.* If sub. (1) (d) is applicable, the municipality shall submit a clean water fund program application requesting hardship financial assistance for additional project costs. The application shall be postmarked by the June 30 prior to the fiscal year from which the additional funds are requested. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement.

NR 162.52 Sale of hardship financed treatment works. The sale of clean water fund program hardship financed treatment works may not take place without prior written approval from the department.

NR 162.53 Breach of contract and noncompliance. The rules established in ss. NR 162.18 and 162.19 shall apply upon breach of contract or noncompliance by the recipient.

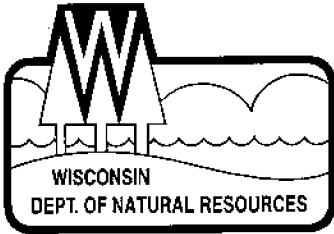
The foregoing rules were approved and adopted by the State of Wisconsin Natural Resource Board on October 25, 2000

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin December 7, 2000

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
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December 5, 2000

Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CF-18-00. These rules were reviewed by the Assembly Committee on Environment and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

George E. Meyer
Secretary

Enc.

