

Report From Agency

REPORT TO LEGISLATURE NR 162 Wis. Adm. Code

Board Order No. CF-12-19
Clearinghouse Rule No. CR 22-045

Basis and Purpose of the Proposed Rule

Section 281.58 (2), Wis. Stats., authorizes the department to promulgate rules necessary for the execution of its responsibilities under the Clean Water Fund program. This program provides financial assistance to municipalities for water infrastructure projects including wastewater treatment plants, collection systems, and storm water best management practices.

Chapter NR 162, Wis. Adm. Code, implements s. 281.58 (2), Wis. Stats., which requires the department to promulgate rules that are necessary for the proper execution of its responsibilities under s. 281.58, Wis. Stats. This order provides the rules for municipalities and the department for all of the following:

- determining eligibility of an applicant and of a project for Clean Water Fund Program financial assistance,
- preparing and submitting a complete financial assistance application,
- processing a financial assistance application,
- documenting the costs of a project,
- preparing financial assistance agreements,
- developing and maintaining a user charge system,
- including specific provisions in financial assistance agreements, following procurement laws, amending a financial assistance agreement,
- cooperating with the Board of Commissioners of Public Lands (BCPL) to provide interest rate subsidy on a loan taken out by an applicant from BCPL for a wastewater or storm water construction project,
- scoring and ranking projects,
- allocating available funds,
- developing and publishing project priority and funding lists,
- amending a financial assistance agreement,
- determining the amount of subsidy to be provided to a municipality for their project, and
- requesting and processing disbursement of financial assistance.

Summary of Public Comments

Economic Impact Analysis (EIA): A 14-day public comment period for the EIA was held from March 14, 2022, through March 28, 2022. The EIA states that the proposed rule “will have minimal effects on businesses or municipalities.” No public comments were received regarding the EIA.

Public Hearings and Comments: The public comment period for the draft rule began with the posting in the administrative rules register on May 23, 2022, and ended on June 21, 2022. No comments were received during the public comment period or at the virtual public hearing on June 21, 2022.

Modifications Made

Because no public comments were received regarding NR 162 revisions, no modifications were necessary.

Appearances at the Public Hearing

No appearances were made at the public hearing, and no written comments were received.

Changes to Rule Analysis and Fiscal Estimate

No changes were required after the public hearing.

Response to Legislative Council Rules Clearinghouse Report

Most of the comments received from the Wisconsin Legislative Council Rules Clearinghouse (in the Clearinghouse Rule #22-045 Report) were formatting, word choice, and numbering suggestions and corrections in the “Form, Style and Placement in Administrative Code” and “Clarity, Grammar, Punctuation, and Use of Plain Language” sections of the Clearinghouse Report. The department made all requested changes except for a suggestion that the department consider changing the word “assure” to “ensure”; the department did not consider “ensure” to be a better word choice so kept “assure” in the language.

One editorial comment made by the Clearinghouse staff under the “Statutory Authority” section of the Clearinghouse Report was as follows:

1. Statutory Authority

Until recently, a municipality was required by statute to submit a notice of intent to apply for clean water fund program financial assistance. [See s. 281.58 (8m), 2019 Stats.] That requirement was repealed by 2021 Wisconsin Act 112, though the agency’s statutory authority under s. 281.58 (2), Stats., to “promulgate rules that are necessary for the proper execution of its responsibilities”, was not directly affected by the act. The agency’s August 26, 2021 testimony on 2021 Senate Bill 489, before the Senate Committee on Utilities, Technology and Telecommunications, included support for the elimination of the intent to apply requirement. Senate Bill 489 passed both houses of the Legislature without amendment, and was enacted as Act 112.

The proposed rule, similar to the current administrative code, requires a municipality to submit a notice of intent to apply for clean water fund program financial assistance. [See, e.g., ss. NR 162.05 (1), 162.24 (1), and 162.40 (1) in the proposed rule.] Given the recent repeal in statute of the requirement, could the agency more clearly articulate the need to retain such a requirement in the proposed rule? Similarly, it may be useful for the agency to describe how its approach to the program has changed since the testimony in favor of Senate Bill 489.

In response to this Clearinghouse suggestion, the department drafted additional language to put in the Plain Language Analysis of the Board Order to explain the department’s intentions regarding the intent to apply requirement in ch. NR 162. The department was in favor of eliminating the notice of intent to apply requirement from the statute to allow department staff to work with the customers of the Clean Water Fund Program to streamline the application process, of which the intent to apply has always been the first step. One option to be considered is to eliminate the intent to apply requirement completely, but the department has not yet had a chance to work with the customers on streamlining. The intention at the time of testifying for Senate Bill 489 was to temporarily continue the notice of intent to apply requirement as-is until a life cycle analysis of the loan application process can be completed and customer input can be obtained. Having a deadline for the notice of intent to apply in the statute very much limited what the department could do in terms of revising the application process. With that deadline now eliminated from the statute, there are many more possibilities for creating a better timeline for Clean Water Fund Program staff, plans and specifications reviewers for wastewater construction projects, and the program’s municipal and consulting engineering firm customers.

The department intends to do another code revision shortly after analysis of the loan process is completed. Under ss. 227.11 (2) (a) and 281.58 (2) , Wis. Stats., the department is authorized to promulgate rules to implement the Clean Water Fund statute, including rules regarding the application process, which in the proposed code includes the notice of intent to apply for now.

The paragraphs below state what changes are proposed in this rule revision within the loan application process section of the code and describe the department's intentions regarding streamlining the loan application process:

- Dates for ITA/PERF submittals – revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.59, Wis. Stats.), including the intent to apply requirement and submittal deadline; the department put a policy paper out for public comment stating that the intent to apply is not being eliminated immediately but that the department will be looking at potential changes; the department may look at whether information requested from applicants in the intent to apply should become part of the financial assistance application and whether the intent to apply should be eliminated, modified, or requested less frequently; eliminating the intent to apply requirement and deadline from the statute was needed to be able to examine the entire application process from beginning to end to determine what streamlining should be done to better align the process with customer needs, administrative responsibilities, Wisconsin's construction season, and multiple other factors that impact water infrastructure project timelines; the department will engage program customers to seek input regarding these streamlining efforts.
- Application process – requires applicant use of the online intent to apply and application systems, revises language to be flexible for implementing potential changes to the application process after 2021 Wisconsin Act 112 removed some of the barriers to streamlining the process from the statutes (ss. 281.58 and 281.59, Wis. Stats.), and modifies requirements for application submittals, including removing submittals no longer needed, adding clarity for certain submittals, revising requirements for intermunicipal agreements, and adding a design life calculation worksheet requirement for municipalities requesting loan terms greater than 20 years since language was added to the statutes allowing terms of up to 30 years; the department intends to begin another administrative rule revision after doing some strategic planning and timeline analysis to determine the best timeline for the loan program and look in detail at current submittal requirements and document reviews.
- Deadline for signing a financial assistance agreement – modifies the language regarding the timeframe within which a municipality must sign a financial assistance agreement to provide flexibility for potential modifications to the loan process timeline.