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such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(25) "User charge" means a charge levied on users of a treatment works for the user's proportional share of the cost of operation and maintenance (including replacement as defined in sub. (18)) of such works.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.04 Severability. Should any section, paragraph, phrase, sentence, clause or word of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.05 Eligibility for a state grant. (1) **ELIGIBLE PARTICIPANTS.** Municipalities, as defined by NR 128.03 (14) are eligible to participate in the financial assistance program for the construction of point source pollution abatement facilities established by this chapter.

(2) **ELIGIBLE PROJECTS.** Projects for the construction of publicly owned treatment works and privately owned treatment works meeting the requirements of NR 128.08 are eligible for participation in the financial assistance program established by this chapter. Grant assistance may be awarded by the department for the following types of projects.

(a) *Step 1 projects.* Facilities planning and/or related elements required to apply for step 2 grant assistance are eligible provided that federal sources of funding for step 1 activities are not available.

(b) *Step 2 projects.* Preparation of construction plans and specifications are eligible provided that federal sources of funding for step 2 activities are not available.

(c) *Step 3 projects.* Building and erection of treatment works are eligible.

(3) **INELIGIBLE PROJECTS.** (a) Projects not in conformance with approved areawide waste treatment management plan are not eligible.

(b) Projects not satisfactorily completing all steps of planning and design are not eligible.

(4) **ELIGIBLE COSTS.** The grantee's allocable project costs which are reasonable and necessary, are eligible. These costs may include, but are not limited to:

(a) The cost of step 3 construction of treatment works designed to transport and/or treat the fundable capacity as determined in NR 128.06 (1) and (2). This cost shall be determined in accordance with NR 128.07;

(b) Costs of salaries, benefits, and expendable material the grantee incurs for the project except as provided in NR 128.05 (5) (g);

(c) Costs under construction contracts;

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- (d) Professional and consultant services;
- (e) Facilities planning directly related to the treatment works;
- (f) Sewer system evaluation and rehabilitation;
- (g) Project feasibility and engineering reports;
- (h) Costs of complying with the Wisconsin Environmental Policy Act, including costs of public notices and hearings;
- (i) Preparation of construction drawings, specifications, estimates, and construction contract documents;
- (j) Landscaping;
- (k) Removal, relocation, replacement or temporary provision of utilities, for which the grantee is legally obligated to pay;
- (l) Materials acquired, consumed, or expended specifically for the project;
- (m) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operation;
- (n) Development and preparation of an operation and maintenance manual;
- (o) Reasonable costs in the development of water conservation plans and user charge system plans;
- (p) Project identification signs;
- (q) Start-up services for new treatment works;
- (r) A plan of operation; and
- (s) Development of a municipal pretreatment program and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.
- (t) Notwithstanding the provisions of NR 128.11 (14), costs associated with determination of the fundable capacity and the cost of fundable capacity as required by NR 128.06 and NR 128.07. These costs may be reimbursed to the grantee as part of a step 3 grant award. Approval must be obtained from the department before initiating such work in order for the costs to be grant eligible.
- (5) **INELIGIBLE COSTS.** Costs which are not necessary for the construction of a treatment works project are ineligible. Such costs include, but are not limited to:
 - (a) Basin or areawide planning not directly 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;

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(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) Interest on bonds or any other form of indebtedness required to finance the project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney;

(h) Site acquisition expenses (for example, sewer rights-of-way, sewage treatment plant sites, sanitary landfills and sludge disposal areas) except as otherwise provided in NR 128.05 (6) (a) through (c);

(i) Costs for which payment has been or will be received under another federal or state financial assistance program;

(j) Costs of studies to determine pollutant removals in existing treatment works or tolerance to pollutants which interfere with the treatment works' operation, sludge use, or disposal in development of a municipal pretreatment program;

(k) Costs of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works;

(l) Cost of sewage collection systems except as identified in NR 128.11 (10);

(m) Costs associated with transporting and/or treating sewage capacity in excess of the fundable capacity as determined in NR 128.06 (1) and (2);

(n) The cost for that portion of a project related to present and future capacity for industrial users as defined in NR 128.03 (10);

(o) The cost of revision of a facilities plan or construction plans and specifications to provide for the construction of the fundable capacity, if a longer design life was originally planned for in the facilities plan;

(p) Construction of privately-owned treatment works, including pretreatment facilities, except as authorized by NR 128.08 and NR 128.30;

(q) Preparation of a grant application, including a plan of study.

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

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

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

(c) Land acquired after departmental approval, that will be used for composting or temporary storage of compost residues which result from

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wastewater treatment if the department has approved a program for use of the compost;

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

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

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

(7) **INDIRECT COSTS.** The grantee's indirect costs shall be eligible in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements eligible under NR 128.05 (4). Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated if the department determines that this amount will be approximately the same as the actual indirect costs.

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

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

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

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

(2) The fundable capacity for interceptor sewers shall be that capacity necessary to transport the projected flows on June 30, 1985. The fundable capacity shall not include capacity for transporting present and future flows from industrial users as defined in NR 128.03 (10).

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

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

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.08 Individual systems. (1) **ELIGIBLE PARTICIPANTS.** A municipality eligible for a grant under this chapter, is eligible for a grant to Register, November, 1979, No. 286
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construct privately owned treatment works serving one or more principal residences or small commercial establishments if the requirements of NR 128.08 (2) are met.

Note: These eligibilities are distinct and separate from septic system grants authorized by s. 144.24 (10), Stats.

(2) **ADDITIONAL LIMITATIONS ON AWARDS FOR INDIVIDUAL SYSTEMS.** In addition to those limitations set forth in NR 128.11 the grant applicant shall:

(a) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(b) Demonstrate in the facility plan that the solution chosen is cost-effective;

(c) Apply on behalf of a number of individual units located in the facility planning area;

(d) Certify that public ownership of such works is not feasible and list the reasons in support of such certification;

(e) Certify that such treatment works will be properly installed, operated and maintained and that the public body will be responsible for such actions;

(f) Certify that the project will be constructed, and an operation and maintenance program established to meet local, state and federal requirements, including those protecting present or potential underground potable water sources;

(g) Establish a system of user charges in accordance with NR 128.13;

(h) Obtain assurances (such as an easement or another covenant running with the land) of unlimited access to each individual system at all reasonable times for such purposes as inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement. An option will satisfy this requirement if it can be exercised no later than the initiation of construction;

(i) Establish a comprehensive program for regulation and inspection of individual systems before department approval of the plans and specifications. Planning for this comprehensive program shall be completed as part of the facility plan. The program shall include as a minimum, periodic testing of water from existing potable water wells in the area. Where a substantial number of on-site systems exist, appropriate additional monitoring of the aquifer (s) shall be provided; and

(j) Comply with all other applicable limitations and conditions which publicly-owned treatment works projects funded under this chapter must meet.

(3) **ELIGIBLE AND INELIGIBLE COSTS.** (a) Acquisition of land in which the individual system treatment works are located is not grant eligible.

(b) Only the treatment and treatment residue disposal portions of toilets with composting tanks, oilflush mechanisms or similar in-house systems are grant eligible.

(c) Commodes, sinks, tubs, drains and other wastewater generating fixtures and associated plumbing are not grant eligible. Modifications to homes or commercial establishments are also not grant eligible.

(d) Only reasonable costs of construction site restoration to preconstruction conditions are eligible. Costs of improvement or decoration created by the installation of individual systems are not eligible.

(e) Conveyance pipes from wastewater generating fixtures to the treatment unit connection flange or joint are not eligible where the conveyance pipes are located on private property.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.09 Distribution of grant funds. (1) **GENERAL.** Grant funds distributed under this program will be allocated to those projects placed on the funding list or the supplemental funding list. Project sequence on these lists shall be the same as that of the federal project priority list established under 33 USC 1251 et. seq. The department shall not allocate funds to a municipality which can reasonably expect to receive an EPA grant within 12 months of the time that the department is ready to allocate funds.

(a) Between October 1 and December 31, each municipality intending to apply for a step 3 grant during the following year shall notify the department of its intent in writing. For those municipalities that notify the department by January 1, the department shall annually compile a funding list which ranks those municipalities in the same order as they appear on the federal project priority list. If there are not sufficient funds available under this section to fund all grant requests in that year, the department shall award available funds to projects in the order in which they appear on the funding list. The department may provide a notice entitled a "ready to allocate notice" to municipalities which appear on the funding list and which fulfill the requirements of sub. (2) (a). The department may presume that a municipality which has not submitted complete plans and specifications for review by June 30 and a step 3 state grant application by July 31 will not be able to receive a ready to allocate notice prior to December 31 and receive funding under this paragraph.

(b) For those municipalities that may notify the department after January 1, but before April 1 of each year of their intent to apply for a grant under this section, the department shall compile a supplemental funding list as of April 1 of each year.

(c) If funding remains from the allocations under par. (a), the department shall allocate available remaining funding to projects on the supplemental funding list in the order in which they appear on the funding list compiled under par. (b).

(d) As of January 1 of each year, both lists created under this section in the prior year expire. The department may allocate funds to a municipality on the lists after the expiration of the lists if a municipality received a ready to allocate notice before the expiration of the lists and the requirements of sub. (2) (b) are met.

(2) **ALLOCATION PROCEDURE.** (a) The department may give notice that it is ready to allocate funds to a municipality on lists compiled under sub. (1) above upon the submittal of the following:

1. Approved current detailed plans and specifications;
2. Proof of acquisition of appropriate land and easements; and
3. A complete step 3 grant application.

(b) The department may allocate funds to a municipality on lists compiled under sub. (1) above if the municipality has submitted a bid tabulation to the department for review and concurrence within 3 months of the department's notice given under par. (a) above.

(c) Upon departmental concurrence with bid tabulations and grantee compliance with all applicable grant conditions and other provisions of this chapter the department shall give notice to the grantee to proceed with construction.

(3) **REIMBURSEMENT.** (a) *General.* To accelerate construction under this program to meet statutory treatment standards and water quality goals, the legislature provided for a system of reimbursement to allow early construction of treatment works in anticipation of legislative appropriation of funds according to the following procedures.

(b) *Eligibility.* 1. The reimbursement process shall be implemented in any fiscal year only when there are more eligible step 3 construction projects on the lists under sub. (1) above than are fundable with the legislatively appropriated funds under s. 20.370(4)(b), Stats., for that fiscal year.

2. To be eligible for reimbursement, a municipality must meet the same planning, design criteria and application requirements as are established in this chapter for regular grant projects.

(c) *Reimbursement process.* 1. For those projects which are eligible for reimbursement funding, the department may enter into a reimbursement offer. All reimbursement offers shall be made on forms prepared by the department. The reimbursement offer shall be signed by the authorized administrator of the department and will set forth the terms and conditions of the offer. The terms and conditions shall specify that a reimbursement offer can be funded only upon the appropriation of funds by the legislature in a subsequent fiscal year. Only step 3 projects will be eligible for funding under reimbursement offers.

2. The reimbursement offer shall specify a grant share as a percentage of eligible costs.

3. The department shall convert a reimbursement offer to a grant contract within 45 days after the legislature appropriates funds sufficient to convert the reimbursement offer. Priority for conversion shall be in the same order as the sequence of community acceptance of reimbursement offers.

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4. The state grant administration procedures for reimbursement shall follow the same processes as established in this chapter for regular grants.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; emerg. am. (1) (a) and (d), eff. 4-20-81; am. (1) (a) and (d), Register, August, 1981, No. 308, eff. 9-1-81.

NR 128.10 Grant application. (1) **PROCEDURE.** An application must be submitted to the department for each proposed step 1, step 2, or step 3 project. Submissions required for subsequent related projects shall be provided in the form of amendments to the basic application. Each such submission must be complete (see NR 128.10 (2)). If any information required under sub. (2) below has been furnished with an earlier application, the applicant need only incorporate by reference and, if necessary revise such information utilizing the previous application.

(2) **CONTENTS OF APPLICATION.** (a) *Step 1 projects.* (Facilities plan and related elements) An application for a grant for a step 1 project shall include the following:

1. A plan of study presenting:

a. The proposed planning area;

b. An identification of the entity or entities that will be conducting the planning;

c. The nature and scope of the proposed step 1 project, including a schedule for the completion of specific tasks; and

d. An itemized description of the estimated costs for the project.

2. Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

3. Required comments or approvals of appropriate state, local, and federal agencies.

(b) *Step 2 projects.* (Preparation of construction drawings and specifications) Before the award of a grant or grant amendment for a step 2 project, the applicant must furnish the following:

1. An approved facilities plan in accordance with NR 128.19. Where an EPA step 1 grant was awarded prior to September 30, 1978, the facilities planning requirements of ss. NR 110.09 (1) (b) 11., NR 110.09 (2) (1) and (m), Wis. Adm. Code, need not be met by the applicant. For projects where an EPA step 1 grant was awarded prior to June 26, 1978 the facilities planning requirements of NR 110.09 (2) (j) and NR 110.10 (2) need not be met by the applicant. Where an EPA step 1 grant was awarded prior to May 12, 1978 the planning requirements of NR 110.09 (2) (k) need not be met.

2. Satisfactory evidence of compliance with the user charge provisions of NR 128.11 (9);

3. A statement regarding availability of the proposed site;

4. Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

5. Required comments or approvals of appropriate state, local, and federal agencies;

6. Proposed intermunicipal agreements necessary for the construction and operation of the proposed treatment works, for any treatment works serving two or more municipalities;

7. A schedule for initiation and completion of the project work including milestones; and

8. Satisfactory evidence of compliance with NR 128.20 (5) regarding a sewer use ordinance.