

The statement of scope for this rule, SS 103-20, was approved by the Governor on July 31, 2020, published in Register No. 776A2 on August 10, 2020, and approved by the Natural Resources Board on October 28, 2020. This rule was approved by the Governor on insert date.

## ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** ch. NR 166, relating to the Safe Drinking Water Loan Program and affecting small business.

### CF-13-19

#### Analysis Prepared by the Department of Natural Resources

- 1. Statute Interpreted:** Sections 281.59 and 281.61, Wis. Stats.
- 2. Statutory Authority:** Section 281.61 (12), Wis. Stats., authorizes the department to promulgate rules establishing eligibility criteria for applicants and projects necessary for the execution of its responsibilities under the Safe Drinking Water Loan Program. The Safe Drinking Water Loan Program provides financial assistance to municipalities for drinking water system construction projects. In addition, s. 227.11(2)(a), Wis. Stats., authorizes state agencies to promulgate rules interpreting the statutes it administers and enforces if it is necessary to effectuate the purpose of the statute. The proposed rules are necessary to effectuate the purpose of s. 281.61, Wis. Stats.
- 3. Explanation of Agency Authority:** This order implements s. 281.61 (12), Wis. Stats., which requires the department to promulgate rules that are necessary for the proper execution of its responsibilities under the Safe Drinking Water Loan Program statute (s. 281.61, Wis. Stats.) including establishing eligibility criteria for applicants and projects. Section 281.61 (12), Wis. Stats., also requires the department to cooperate with the Department of Administration in administering the Safe Drinking Water Loan Program. This order provides the rules for municipalities and the department in determining eligibility of an applicant and of a project for Safe Drinking Water Loan 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, following procurement laws, amending a financial assistance agreement, obtaining applicant documentation required by the Department of Administration, scoring and ranking projects, allocating available funds, developing and publishing project priority and funding lists, determining the amount of subsidy to be provided to a municipality for their project, and requesting and processing disbursement of financial assistance.
- 4. Related Statutes or Rules:** Concurrent with this effort, the department is also repealing and recreating ch. NR 162 relating to the Clean Water Fund Program. Both the Safe Drinking Water Loan Program and the Clean Water Fund Program are part of the Environmental Improvement Fund.
- 5. Plain Language Analysis:** Revisions to ch. NR 166, Wis. Adm. Code, relating to the Safe Drinking Water Loan Program, bring the code in line with statutory changes that occurred after the current version became effective, clarify eligibility criteria, streamline processes, modify the scoring system, and update implementation issues since the rule was last revised. No significant changes to the program will result from the rule revisions. The main topics for revision include:
  - Definitions – adds, modifies, and removes various definitions to add clarity to several sections of the code.

- Types of financial assistance – adds language to state that the statutes allow funds from the federal capitalization grant to be used as allowed under federal law, including providing principal forgiveness.
- Eligible projects/activities – updates language to incorporate current practices.
- 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. 281.59 and 281.61, 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. 281.59 and 281.61, 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 completing a life cycle analysis of loan processes and procedures to determine the best timeline for the loan program and to look in detail at current submittal requirements and document reviews to gain efficiencies.
- 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.
- Legal opinion on land ownership and easements – codifies the policies the department has developed over time regarding what needs to be addressed in the legal opinion regarding who owns the land on which a project is being constructed.
- Procurement and disbursement processes – adds language to clarify what documentation is expected when from municipalities for these processes.
- Loan interest rates – revises language related to procedures for obtaining median household income data for applicants that are not a city, town, or village.
- Amendments – revises the financial assistance agreement amendment process as it was previously based on availability of present value subsidy, which was removed from the statutes, and clarifies the type of financial assistance that may be provided in an amendment.
- Priority scoring system – adds language to provide points for watermain replacement projects that include replacement of lead service lines, removes the financial need section to allow the median household income points to be directly tied to the principal forgiveness points identified in the annual intended use plan, assigns negative points to projects of municipalities that are lacking required capacity items (such as a written emergency action plan or a private well abandonment ordinance), and removes procedures for scoring notifications and reevaluations to allow flexibility in researching what kind of process will work best for program customers and staff as the current process is inadequate.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** All state drinking water revolving fund programs must comply with the federal requirements of the federal program, as outlined in 42 USC 300g-1. This rule complies with the requirements of the federal Safe Drinking Water Act, 42 USC 300f to 300j-26.

**7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:** A preliminary public hearing was not required for this rule.

**8. Comparison with Similar Rules in Adjacent States:** Each state implements the federal Safe Drinking Water Act consistently with the associated state statutes and federal requirements. Every state revolving fund program has unique features, but all of the programs are designed to meet federal Safe Drinking Water Act requirements. Each state has a unique priority scoring system based on state priorities but consistent with federal priorities. The U.S. Environmental Protection Agency reviews program implementation to ensure consistency with the federal requirements.

**9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** The implementation of the Safe Drinking Water Loan Program does not include regulatory activities. Refinements to the program were established with both internal and external advisory groups with the intent of streamlining processes and clarifying criteria for program implementation.

**10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:** These rule revisions are expected to have minimal impact on small businesses. The revisions streamline and clarify existing processes and criteria. The revisions do not contain new requirements for small businesses. The department did a section-by-section analysis of potential impacts to local governments and businesses.

**11. Effect on Small Business (initial regulatory flexibility analysis):** The department expects no or minimal economic impact directly related to these rule changes.

**12. Agency Contact Person:** Jeanne Cargill, Bureau of Community Financial Assistance, 101 S. Webster Street., PO Box 7921, Madison WI 53707-7921; [jeanne.cargill@wisconsin.gov](mailto:jeanne.cargill@wisconsin.gov); 608-436-6080.

**13. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, or email to:

Jeanne Cargill

Department of Natural Resources

Environmental Loans – CF/2

P.O. Box 7921

Madison WI 53707-7921

Phone: 608-436-6080 Fax: 608-267-0496

Email: [jeanne.cargill@wisconsin.gov](mailto:jeanne.cargill@wisconsin.gov)

Comments may be submitted to [DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov) or to the department contact person listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

## **RULE TEXT**

**SECTION 1. NR 166 is repealed and recreated to read:**

**SUBCHAPTER 1 - GENERAL**

**NR 166.01 Purpose.** The purposes of this chapter are all of the following:

- (1) Establish rules under ss. 281.59 and 281.61, Stats., for the implementation and administration of a financial assistance program for the engineering and construction of public water system projects.
- (2) Establish a priority system for the distribution of safe drinking water loan program financial assistance as provided in s. 281.61, Stats., and the mechanisms and methodology to be used to modify the priority system.

**Note:** All forms necessary for financial assistance under this chapter are available on the department's website. Paper forms 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. Most information, including applications for financial assistance, are required to be submitted through the department's online intent to apply and application systems.

**NR 166.02 Applicability.** This chapter applies to all applicants for and recipients of financial assistance for the engineering and construction of public water systems made under ss. 281.59 and 281.61, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.59 and 281.61, Stats.

**NR 166.03 Definitions.** In this chapter:

- (1) "Action level" or "AL" has the meaning given in s. NR 809.04 (1).
- (2) "Amendment" means a formal, written change to an existing legal agreement or contract executed by all parties to the original agreement or contract.
- (3) "American Community Survey" or "ACS" means the nationwide survey conducted by the U.S. bureau of the census to collect demographic, social, housing, and economic data and produce 1-year, 3-year, and 5-year estimates based on population thresholds.
- (4) "Applicant" means any municipality that submits to the department any of the following for financial assistance under this chapter:
  - (a) Intent to apply and priority evaluation and ranking form.
  - (b) A financial assistance application.
- (5) "Approval" means the written approval of the department.
- (6) "Block group" means a subdivision of a census tract made up of a cluster of blocks having the same first digit of their 4-digit identifying numbers within the tract.
- (7) "Breach of contract" means the failure of the financial assistance recipient to comply with any of the following:

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

(b) The terms and conditions of the municipal obligation resolution authorizing the issuance and sale of bonds or notes to the safe drinking water loan program.

(8) “Capital improvement” means construction resulting in improvements to real property or depreciable property, or both, and adding to the value or useful life of these assets, including structural improvements or improvements that enhance usefulness or productivity. “Capital improvement” includes capital assets that are not structural but are necessary for provision of safe drinking water by a municipality, including trucks and other tangible assets with a single item cost of greater than \$5,000.

**Note:** The following are examples of capital improvements: drilling a new well and constructing a well house; upgrading existing equipment or installing new, more efficient process equipment, such as pumps, or treatment equipment, such as chemical feed equipment; constructing new buildings or facilities; adding to or constructing major renovations of existing facilities; replacing aged or undersized water mains; constructing a water system crossing of a highway, railroad, or waterbody; constructing a watermain loop to eliminate one or more dead ends in the water system; constructing, upgrading, or improving an existing storage tank, including recoating the entire exterior or entire interior, or both, of a storage tank; or installing security, a supervisory control and data acquisition system, or monitoring equipment as part of a scored project. Replacing an old pump with a new pump that is the same size and efficiency as the old pump is not considered a capital improvement; rather, it is maintenance.

(9) “Census block” means the smallest unit for which the U.S. bureau of the census collects and tabulates population information in the decennial census and income information in the ACS.

(10) “Census designated place” means a statistical area delineated for each decennial census according to U.S. bureau of the census guidelines for the purpose of presenting census data and ACS data for a concentration of population, housing, and commercial structures that is locally identifiable by name, but is not within an incorporated place.

(11) “Census tract” means a small, relatively permanent statistical subdivision of a county used in the decennial census and the ACS, delineated for the purpose of presenting data, typically following visible features or governmental boundaries or both, including approximately 4,000 inhabitants, and designed to be a relatively homogeneous unit with respect to population characteristics, economic status, and living conditions.

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

(13) “Community water system” has the meaning given in s. NR 809.04 (5).

(14) “Construction” means a set of actions taken to make a capital improvement, including any of the following actions:

(a) Building, erecting, extending, or assembling a water system or a new major asset for an existing water system.

(b) Preparing a construction site or sites of a scored project for work activities, including grading, staking, digging, and demolition or abandonment of existing structures.

(c) Purchasing an entire existing water system or buying capacity in an existing water system owned by another entity.

(d) Altering, modifying, improving, upgrading, rehabilitating, or adding to existing water system facilities.

(e) Performing major repairs or replacing major components of existing facilities.

(f) Installing new piping or mechanical, electrical, or electronic equipment or facilities.

(15) “Contaminant” has the meaning given in s. NR 809.04 (13).

(16) “Custom tabulation” means a special tabulation of income data from the ACS microdata files that is performed by the U.S. bureau of the census, is not part of the standard ACS data tabulations, and results in generation of a median household income for an area designated by the applicant as the boundaries of a town sanitary district, public inland lake protection and rehabilitation district, or municipal water district, or of the area served by the water system if the water system serves only a portion of the place or minor civil division in which it is located.

(17) “Department” means the department of natural resources.

(18) “Disadvantaged business enterprise” or “DBE” means a business entity certified as disadvantaged under the U.S. department of transportation unified certification program or other program approved by the U.S. environmental protection agency to certify disadvantaged businesses.

(19) “Distribution system” means all pipes or conduits by which water is delivered to consumers except piping and fixtures inside buildings served and private service lines.

(20) “DOA” means the department of administration.

(21) “Engineering” includes any of the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a water system.

(b) Performing engineering, architectural, geotechnical, hydrogeological, environmental, archaeological, biological, fiscal, or economic investigations or studies.

(c) Preparing surveys, designs, plans, bidding documentation, working drawings, specifications, or as-built drawings.

(d) Coordinating, observing, inspecting, or supervising any of the activities under pars. (a) to (c) or under sub. (14).

(22) “Financial assistance” includes one or more of the following actions taken by the department and DOA under ss. 281.59 and 281.61, Stats.:

(a) Providing a loan, principal forgiveness, a guarantee, or credit enhancement to a municipality.

(b) Refinancing a municipality’s interim debt obtained for the project.

(c) Purchasing insurance for a municipality.

(23) “Financial assistance agreement” means a written agreement between a municipality, the department, and DOA that contains the terms and conditions of the financial assistance provided under this chapter to the municipality.

(24) “Financial assistance agreement amendment” means a formal, written change to an existing financial assistance agreement executed by all parties to the original agreement.

(25) “Force account work” means engineering, construction, or other project-specific activities performed by a municipality’s paid employees or use of equipment owned by the municipality in construction of the project, or both.

(26) “Future growth” means distribution system expansion beyond the existing system and excess capacity built into facilities that exceeds standard engineering practices.

(27) “Interim debt” means a financial liability that is subject to repayment and incurred by an applicant to temporarily finance a scored project until permanent financing is obtained from the SDWLP, including liabilities in the form of lines of credit, short-term loans from the board of commissioners of public lands, bank loans, bond anticipation notes, general obligation bonds, revenue bonds, general obligation promissory notes, and certificates of indebtedness.

(28) “Interim debt costs” means the net interest, fees, and charges associated with issuing interim debt, including municipal advisor fees, attorney fees, printing costs, bond rating charges, and trustee fees.

(29) “Maintenance” means activities or procedures that are established, commonplace, or repetitious, and are performed or should be performed frequently or on a schedule to sustain the functional integrity and efficiency of existing facilities and to provide upkeep for prevention of early decline or failure, or are performed as needed in response to minor emergencies, such as watermain repair when a pipe bursts, including all of the following types of maintenance:

(a) Preventive maintenance, including scheduled service, repair, inspection, adjustment, or replacement of parts, to keep equipment or facilities in satisfactory operating condition, to avoid frequent breakdowns and premature replacements, and to achieve the expected life of constructed assets and installed building equipment, conducted with a frequency of one year or less.

(b) Corrective maintenance, including unscheduled maintenance repairs to correct deficiencies during the year in which they occur.

(c) Mobile equipment maintenance, including all corrective, preventive, emergency, or replacement maintenance work done on mobile equipment assets, except when performed at time of purchase of used equipment to bring the purchased equipment to a fully functional or improved condition, or both.

(d) Recurring maintenance, including preventive maintenance activities that recur on a periodic and scheduled cycle of greater than one year, but less than 10 years.

(e) Component renewal, which is preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 10 years, unless performed within the scope of a larger scored project. Storage tank recoating is an exception to this maintenance definition.

(f) Emergency maintenance, typically initiated within a very short amount of time from when a need is identified, to correct an emergency need to prevent injury, loss of property, or human health impacts, or to quickly return an asset to service, subject to all of the following:

1. Unscheduled activities and repairs, such as repairing watermain breaks or mechanical malfunctions in aged or damaged infrastructure, are considered emergency maintenance under this paragraph.

2. Emergency repairs or replacement needed due to damage caused by severe weather, cyber-attacks, or other unforeseen serious emergency situations over which the municipality has no control are not considered emergency maintenance under this paragraph.

(g) Minor equipment replacement that substitutes or exchanges one existing asset, asset component, or item of installed equipment for another having the same specifications and the same capacity to perform the same function, except when performed within the scope of a larger capital improvement.

(h) Demolition that does not meet the cost eligibility criteria established in s. NR 166.07 (1) (g).

(30) “Market interest rate” has the meaning given in s. 281.59 (1) (b), Stats.

(31) “Maximum contaminant level” or “MCL” have the meaning given in s. NR 809.04 (51).

(32) “MCL exceedance” means the analytical results of sampling for microbiological, inorganic, synthetic organic, volatile organic, disinfection byproducts, or radionuclide contaminants, as determined by methodology outlined in ch. NR 809, exceed the MCL of the contaminant.

(33) “Median household income” has the meaning given in s. 281.58 (1) (cm), Stats.

(34) “Minor civil division” means the primary governmental divisions of a county, including towns, as designated by the U.S. bureau of the census to collect and publish data.

(35) “Minority business enterprise” or “MBE” means a DBE that is owned or controlled on a daily basis by one or more minority group members.

(36) “Municipality” has the meaning given in s. 281.59 (1) (c), Stats.

Note: To be eligible for financial assistance from the safe drinking water loan program, an entity must be of a type included in the definition of “municipality” under s. 281.59 (1) (c), Stats. However, “municipality” includes some entities that are not eligible to receive safe drinking water loan program financial assistance because they are not eligible under federal regulations. The types of entities that are eligible to receive safe drinking water loan program financial assistance are those included in the definition of “local governmental unit” under s. 281.61 (1) (am), Stats. If a municipal water district applies for safe drinking water loan program financial assistance, the recipient of the financial assistance is the incorporated place, rather than the utility itself.

(37) “Non-community water system” means a public water system that is not a community water system.

(38) “Operations” means labor, materials, and chemicals used regularly, and work activities performed on a recurring basis throughout the year that are intended to meet routine, daily functional needs. Work activities may include any of the following:

(a) Operational maintenance activities related to continuing normal performance of the functions for which a water system asset or item of equipment is intended, such as lubricating gates and valves and removing organic growth or sediment, or related to keeping building systems such as HVAC, lighting, and electrical utilities working properly.

(b) Custodial maintenance activities, such as housekeeping duties, rodent and pest control, and lawn mowing, associated with general day-to-day care and cleaning necessary to maintain constructed assets.

(c) Trash removal activities to dispose of hazardous and non-hazardous waste and debris and to recycle products such as paper, cans, and bottles.

(d) Snow and ice removal and activities to treat surfaces to eliminate unsafe weather-related conditions.

(e) Office activities related to billing, collections, customer communications, personnel, and other types of work activities that support the administration of the water system.

(f) Monitoring and record-keeping activities associated with making sure all components of the water system are working properly, including: sampling, testing, analyzing data from a supervisory control and data acquisition system, patrolling and inspecting, reading gauges and meters, keeping plant logs and records, and preparing operations reports.

(39) “Place” means a concentration of population either legally bounded as an incorporated place, such as a city or village, or identified as a census designated place by the U.S. bureau of the census.

(40) “Plans and specifications” means project drawings and specification manuals for all construction work to be included in the financial assistance for the scored project.

(41) “Population” means the most recent year’s final population estimate published by the DOA demographic services center for the city, town, or village that submitted an intent to apply form. For a public water system owned by other than a city, town or village, “population” means the most recent population count or estimate done for the system or municipality and provided to the department by the municipality for purposes such as completing a sanitary survey or an estimate determined by multiplying the number of households served by the water system by the average household size in the area, as determined by the department.

(42) “Priority score” means the numerical value determined by the department that is assigned to each project in accordance with ss. NR 166.23 and 166.24.

(43) “Private service line” means the portion of a service line that is privately-owned.

**Note:** The privately-owned portion is typically the segment that is downstream of the curb stop and located on private property but may include a portion in the public right of way if the municipality considers the private residential, commercial, institutional, or industrial users to be the owners of the complete service line from the publicly-owned water main to the private structure being served.

(44) “Professional services” means non-construction work provided under contract for the project, including engineering, archaeological, legal, financial, or technical services, provided by a higher education institution or a formally certified member of a professional body, such as a trade association or organized profession.

(45) “Project” means a set of activities intended to result, or that has resulted in completed construction of drinking water system related facilities.

(46) “Project closeout” means the procedures described in s. NR 166.16 (4) (b).

(47) “Project completion date” means the earliest date on which all of the following apply:

(a) Construction of the scored project is complete.

(b) The department or its agents have certified that the scored 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 project closeout is complete.

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

(48) “Public service line” means the portion of a service line that is owned by the municipality.

**Note:** The public service line is typically the segment of pipe that goes from the public water main to the curb stop at the end of the public right of way but may include a segment of pipe located on private property if that segment is owned by the municipality.

(49) “Public water system” means a system for the provision to the public of water for human consumption through pipes and other conveyances, and may include any collection, treatment, storage, and distribution facilities used primarily in connection with the system that are under control of the water supplier for the public water system, if the water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days each year. A public water system is either a community water system or a non-community water system.

**Note:** The definition of public water system as regulated by this chapter is broader and includes more water systems than those governed by the Public Service Commission under its definition of a public utility in ch. 196, Stats.

(50) “Recipient” means any municipality or group of municipalities that has been awarded or has received financial assistance under ss. 281.59 and 281.61, Stats.

(51) “Replacement” means obtaining and installing equipment, accessories, or appurtenances that are necessary during the useful life of the public water system project funded through the SDWLP to maintain or improve the capacity and performance levels for which the public water system was designed and constructed.

(52) “Safe drinking water act” means the federal safe drinking water act, 42 USC 300f to 300j–26.

(53) “Safe drinking water loan program” or “SDWLP” has the meaning given in s. 281.61 (1) (d), Stats.

(54) “Scored project” means a project for which the department reviewed the scope provided by the applicant and assigned a priority score based on the scope determined by the department to be eligible for financial assistance under a single SDWLP project number.

(55) “Service line” means a pipe located in the public right-of-way or on private property that connects a residential, commercial, institutional, or industrial user to a publicly- or privately- owned water system.

(56) “Significant noncomplier” means a public water system that the U. S. environmental protection agency has reported to the department to be in significant noncompliance with any requirement of a primary drinking water regulation or variance under 42 USC 300g-1.

(57) “Subscribing municipality” means a municipality that receives piped water for human consumption from another municipality that owns a public water system.

(58) “Subsidy” means the amount provided by the environmental improvement fund to a recipient of SDWLP financial assistance to reduce the interest rate of a loan made under the SDWLP from the market interest rate to a lesser rate, or to forgive a portion of the principal of an SDWLP loan.

(59) “Substantial completion” means the date on which construction of the scored project is sufficiently complete in accordance with the contract documents so that the owner can occupy or utilize the scored project for its intended use.

(60) “Treatment technique” means one or more methods of treatment that are known to remove or inactivate giardia and viruses as described under ss. NR 810.29 and 810.31.

(61) “Utility” means a public utility as defined in s. 196.01 (5) (a), Stats.

(62) “Water rates” means a charge or system of charges levied on users of a water system for the user’s proportional share of the revenue requirement of a water system that consists of operation and maintenance expenses, depreciation, taxes, and return on investment.

(63) “Water system” means all structures, conduits, and appurtenances by means of which water is obtained or drawn from a source and eventually delivered to consumers, except piping and fixtures inside buildings served and any private service lines.

(64) “Women business enterprise” or “WBE” means a DBE that is owned or controlled on a daily basis by a woman or women.

## **SUBCHAPTER II — FINANCIAL ASSISTANCE REQUIREMENTS**

**NR 166.04 Types of financial assistance available.** The department and DOA may, subject to applicable requirements of ss. 281.59 and 281.61, Stats., and ch. Adm 35, provide to an eligible applicant for a scored project any of the following types of financial assistance described in subs. (1) to (4), except as provided under sub. (5):

(1) Subject to the limits established in s. NR 166.07 (3), the purchase or refinance of a municipality’s interim debt.

(2) The guarantee of, or purchase of insurance for, municipal obligations for construction of a water system if the guaranteed or purchased insurance would improve credit market access or reduce interest costs on the municipal obligations.

(3) Loans below the market interest rate.

(4) Using funds received as federal capitalization grants under 42 USC 300j-12, any other type of assistance that is consistent with the federal program for safe drinking water state loan funds under 42 USC 300j-12 or any other federal law providing funding for or otherwise relating to that program, except that funds received as federal capitalization grants may not be used to provide principal forgiveness to a private owner of a community water system.

**Note:** The language included in sub. (4) and under s. 281.61 (2r) (e), Stats., allows the department to provide principal forgiveness as part of a financial assistance agreement.

(5) If a project reaches substantial completion more than 3 years prior to the date the applicant submits a complete application for financial assistance under s. NR 166.08 (4) or the applicant already has long-term affordable debt outstanding for a project that is already complete or has reached substantial completion prior to the application submittal date, the department and DOA shall not provide financial assistance for the project.

**NR 166.05 Annual funding policy, project priority list, and funding list.** (1) FUNDING POLICY AND PROJECT PRIORITY LIST. The department may produce an annual SDWLP funding policy in conjunction with the fiscal year's project priority list established under s. NR 166.25. The funding policy may be in the form of the annual intended use plan and may describe methods for making funding determinations and other policies related to the fiscal year. When the department publishes a funding policy for a given year, it shall provide an opportunity for public comment regarding the funding policy.

(2) FUNDING LIST. The department shall prepare an annual funding list in accordance with s. 281.61 (8), Stats., and s. NR 166.25.

**NR 166.06 Project eligibility.** (1) ELIGIBLE PROJECTS. Under s. 281.61 (2), Stats., the department and DOA administer a financial assistance program for projects that facilitate compliance with national primary drinking water regulations under [42 USC 300g-1](#) or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, [42 USC 300f](#) to [300j-26](#). Under s. 281.61 (2), Stats., a municipality may receive financial assistance under this chapter for a project that has any of the following purposes:

(a) Address safe drinking water act health standards that have been exceeded or prevent future violations of health standards and regulations contained in ch. NR 809. This includes projects to maintain compliance with existing regulations for contaminants with acute health effects and regulations for contaminants with chronic health effects.

(b) Replace infrastructure if necessary to maintain compliance with or further the public health protection goals of the safe drinking water act. This includes projects with any of the following purposes:

1. Rehabilitate or develop sources to replace contaminated sources, excluding reservoirs, dams, dam rehabilitation, and water rights.

2. Install or upgrade treatment facilities if, in the department's opinion, the project would improve the quality of drinking water to comply with primary or secondary drinking water standards.

3. Install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the public water system.

4. Install, replace, or rehabilitate transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.

(c) Consolidate existing community water systems that have technical, financial, or managerial difficulties. Projects for consolidating existing systems shall be limited in scope to the service area of the systems being consolidated.

(d) Purchase a portion of another public water system's capacity if it is the most cost-effective solution.

(e) Restructure a public water system that is in noncompliance with the safe drinking water act requirements or lacks the technical, managerial, and financial capability to maintain the system if the assistance will ensure that the system will return to and maintain compliance with the safe drinking water act requirements.

(f) Create a new community water system or expand an existing community water system that, upon completion, will address an existing public health threat from contaminated drinking water provided by individual wells or surface water sources. Projects to address existing public health threats associated with individual wells or surface water sources shall be limited in scope to the specific geographic area affected by contamination and shall be a cost-effective solution to resolve the problem threatening public health. Projects in this paragraph must meet all of the following criteria:

1. The municipality submits documentation, such as well sampling results, showing that the MCL for a microbiological, nitrate or nitrite, or chronic contaminant is exceeded by 40 percent or more of the individual wells or surface water sources within the affected area; or, for other public health threats, the municipality submits hydrogeological data or other documentation that indicates contamination is imminent.

2. The department determines that a community water system is a necessary and appropriate response to the contamination.

**(2) INELIGIBLE PROJECTS.** The department may determine that an entire project or a portion of a project is ineligible for SDWLP financial assistance. If the department determines that a portion of a project is ineligible, it shall specifically identify the ineligible portion and the associated costs or prorate the amount of financial assistance provided to reflect the appropriate proportion of eligible to ineligible project costs, or both, in the

financial assistance agreement. The following types of projects or portions of projects are not eligible for financial assistance under this chapter:

- (a) Building or rehabilitating a dam.
- (b) Purchasing or selling water rights, except if the water rights are owned by a public water system that is being purchased through consolidation as part of a capacity development strategy.
- (c) Developing a reservoir, except a finished water reservoir or a reservoir that is part of the treatment process and located on the property where the treatment facility is located.
- (d) A project or a portion of a project needed primarily for fire protection.
- (e) A project for a public water system that lacks adequate technical, managerial, and financial capability, unless assistance will ensure compliance.
- (f) A project for a water system determined to be a significant noncomplier unless funding will ensure compliance with safe drinking water act requirements.
- (g) A project or a portion of a project primarily intended to serve future growth.
- (h) A project or a portion of a project for water systems owned by state or federal agencies.
- (i) A project not reasonably necessary and appropriate to address a public health concern.
- (j) Any portion of a project that is not reasonably necessary and appropriate to address a public health concern within the scope of the scored project, except when approved by the department as eligible and necessary for the efficient operation or integrity of the overall water system.
- (k) Any project from which no construction costs are to be funded through the SDWLP, unless another governmental agency is providing financing for the construction costs and the department receives acceptable documentation of the other agency's commitment, as determined by the department, except for a project for which the project type falls under s. NR 166.06 (1) (c) or (d).
- (L) Any project that will serve two or more municipalities and to which any of the following applies, unless the municipalities served by the project execute an intermunicipal agreement that meets the requirements described in s. NR 166.08 (4) (i):
  - 1. The applicant will obtain water from another municipality's water facilities.
  - 2. The applicant is providing water to another municipality.
- (m) Projects of a municipality that is failing to substantially comply with conditions or requirements of s. 281.58 or 281.59, Stats., ch. Adm 35, this chapter, an existing financial assistance agreement with the SDWLP or the clean water fund program, or the terms of a federal or state grant used to pay the costs to plan, design, or construct a water system.

**NR 166.07 Cost eligibility. (1) ELIGIBLE COSTS.** Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance under this subsection. Eligible costs include expenses incurred by

the municipality for any of the following items and activities when specific to the scope of a scored project, or when approved by the department as necessary and reasonable for the efficient operation or integrity of the overall water system:

(a) *Abandonment*. Abandonment of an entire water system or portions of a water system if approved in the plans and specifications of an eligible project or by department staff, including activities such as demolition, re-landscaping, and removal and disposal of debris.

(b) *Access roads*. Construction of roadways necessary to provide appropriate access to water system facilities such as wellhouses, storage tanks, and water treatment plants.

(c) *Administrative buildings and equipment*. Buildings, offices, and office equipment and furnishings used for purposes of operating a water system, such as administration and storage buildings when part of the scope of the scored project and included in the approved plans and specifications or otherwise approved by department staff. The department may prorate costs for buildings, offices, and office equipment and furnishings that are partially used for purposes not related to the water system.

(d) *Administrative costs of a commission*. Administrative, legal, and other costs incurred by a commission solely for the scored project if identifiable in a contract or agreement between the member municipalities.

(e) *Compliance with state and federal requirements*. Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

**Note:** State and federal requirements may include any of the following: Americans with Disabilities Act design and construction; green project reserve documentation; Davis-Bacon and Related Acts administration or other activities associated with wage rate requirements; DBE solicitation and documentation; activities associated with the use of products made in the United States; environmental review of project sites and other activities related to ch. NR 150 compliance, including costs of public notices and hearings; historical, architectural, archaeological, and cultural resources work identified during planning, design, or construction of the project and incurred prior to project closeout; signage requirements, including on a website or at a drinking water facility or project site; audit activities related to the federal single audit act portion of the municipality's annual audit report until the project is complete.

(f) *Construction activities*. Activities defined in s. NR 166.03 (14) and included in construction contracts or performed by force account, including any of the following:

1. Replacing, repairing, or rehabilitating a water system if identified in the plans and specifications as cost-effective and necessary.
2. Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and sewers necessary as a direct result of construction of the project.
3. Completing punch list item activities.
4. Acquiring, consuming, or expending materials.
5. Obtaining products that comply with federal requirements to use products made in the United States in SDWLP projects.
6. Incurring other capital costs solely for purposes of the scored project.

(g) *Demolition.* Demolishing existing portions of a water system if the demolition is part of a scored project and at least one of any of the following applies:

1. The demolition will remove an existing building structure located in the space in which a new structure is to be constructed.
2. The demolition is necessary for site preparation.
3. The demolition is included in abandonment procedures as approved in the plans and specifications of the scored project or when otherwise approved by department staff.
4. The demolition entails removal of equipment or materials, or both, from inside an existing water system building or other structure being modified or repurposed as part of the scored project.

(h) *Easements and rights-of-way.* Acquiring easements and rights-of-way if acquisition is from a willing seller. Expenses related to acquisition include purchase cost and administrative and legal expenses.

(i) *Equipment.* Equipment related to the scored project, the costs of which the department may prorate if the municipality intends to use the equipment for multiple purposes rather than solely for the water system. Eligible equipment includes any of the following:

1. Mobile equipment, such as portable stand-by generators, portable emergency pumps, and grounds and maintenance equipment for mowing and snow removal, for the water system.
2. Spare parts, if included in the plans and specifications or otherwise approved by the department.
3. Machinery for manufacturing or repairing necessary tools or equipment for the water system.
4. Computers, tablets, and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the public water system. Equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, communications, geographic information, and supervisory control and data acquisition are included under this subdivision.

(j) *Fees.* Fees paid by the municipality for any of the following:

1. Permits obtained for construction, including building, electrical, and plumbing permits, pit or trench dewatering permits, hydrostatic test water permits, construction site storm water permits, and railroad crossing permits.

**Note:** Permit fees are not required by the department for waterway projects authorized under ch. 30, Stats., that are funded in whole or in part by any federal or state agency. Therefore, under sub. (2) (dm), if a municipality at the time of purchase of a permit under ch. 30, Stats., pays a fee for the permit due to not identifying the project as being funded with state or federal funds, the fee is not eligible for reimbursement by the SDWLP.

2. Legal fees of an attorney that is not an on-staff municipal attorney, including costs of legal reviews of architectural, engineering, or construction contracts, user charge systems and water system ordinances, management plans, intermunicipal agreements, and legal work necessary for securing eligible permits.

3. Service fees paid to a state or federal agency, except administrative fees paid annually along with principal and interest payments on a SDWLP loan.

(k) *Galvanized pipe.* Removal of galvanized pipe that was or is downstream of lead pipe, a lead gooseneck, or other appurtenances containing lead if the municipality has approval from the public service commission for a lead service line replacement program or is pledging general obligation bonds to the SDWLP.

(L) *Groundwater monitoring.* Installing groundwater monitoring equipment or facilities.

(m) *Insurance.* Purchasing insurance necessary during construction of the project, including property, liability, builder's risk, and construction insurance.

(n) *Interim debt.* Costs associated with interim debt for the scored project as delineated in sub. (3).

(o) *Laboratories.* Laboratory equipment related to initial setup or a significant upgrade or expansion of an on-site laboratory if requested in the financial assistance application.

(p) *Land acquisition.* Acquiring land, including purchase cost and administrative and legal expenses if all of the following apply:

1. The land is integral to the project, including land needed to locate a treatment facility, transmission line, storage tank, pump station, or well.
2. The land is acquired from a willing seller.

(q) *Lead service lines.* Costs for removal and replacement of private service lines that are made of lead or galvanized materials if the municipality has PSC approval for a lead service line replacement program or is pledging general obligation bonds to the SDWLP.

(r) *Municipal staff, equipment, and materials.* Municipal expenses incurred solely for the scored project and documented by the municipality as force account, including any of the following:

1. Salary and benefits of municipal employees, except elected officials or on-staff attorneys, for time spent working directly on the scored project.
2. Expendable material costs incurred by the municipality.
3. Estimated costs incurred using equipment owned by the municipality.

(s) *Professional services.* Engineering, architectural, legal, and other professional services and fees, including any of the following:

1. Conducting value engineering studies or analyses during the design phase.
2. Conducting system evaluations and studies, including well site investigations.
3. Developing, preparing, and submitting engineering reports and plans and specifications.
4. Preparing, printing, and distributing bidding documents.
5. Gathering documents and information for, completing, and submitting the SDWLP financial assistance application and other forms and information required for financial assistance.
6. Developing or revising an operations and maintenance manual.

7. Preparing a plan of operation for the project.
8. Advertising for and conducting bid lettings.
9. Analyzing bids, preparing award recommendations, and preparing contracts.
10. Providing construction management, observation, and inspection.
11. Preparing for and facilitating public education and participation opportunities.
12. Travel, indirect costs, and labor for services provided for the scored project.
13. Preparing a user charge system, including associated attorney fees and completing and submitting application documents to the public service commission for a water rate increase and developing or updating water system related ordinances.
14. Preparing environmental assessment reports and evaluations.
15. Conducting archaeological surveys and gathering historical site information.
16. Providing municipal advisor or bond counsel services related to loan closing or the issuance of bonds.
17. Preparing a water conservation or wellhead protection plan.
18. Producing record drawings.
19. Updating or upgrading water system maps of the areas impacted by the scored project.
20. Providing administration of activities related to the federal Davis-Bacon and Related Acts or other wage rate requirements.

**Note:** Links to the Davis-Bacon and Related Acts can be found on the U.S. department of labor's website at <https://www.dol.gov/agencies/whd/government-contracts/construction/laws>. The Davis-Bacon Act is found in 40 USC 3141 et seq. with procedures and rules in 29 CFR parts 1 to 7.

21. Monitoring use of American-made products.
22. Conducting research or energy audits for incorporation of energy and water efficiency and conservation into the planning and design of a project.

(t) *Project site.* Construction-related work activities at the project site of a scored project, including any of the following:

1. Landscaping areas impacted by construction of the scored project.
2. Reconnecting water service lines due to the rehabilitation of a water system.
3. Relocating storm water or wastewater sewer pipes if necessary for construction and replacing sewer pipes with the same size or required minimum size pipe if breakage from construction occurs.
4. Erecting project and water system identification signs.
5. Preparing a site for construction, including surveying, staking, and grading.
6. Restoring the construction site to original condition or, when necessary, upgrading the site to meet state and local requirements.

7. Removing, relocating, or replacing utilities, providing temporary utilities, installing new utility equipment, or upgrading utilities, if necessary for construction of the scored project and the recipient is legally obligated to pay these costs.

(u) *Safety*. Purchasing and installing safety equipment related to the scored project.

(v) *Security*. Purchasing and installing security equipment and appurtenances for the water system, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.

(w) *Sewers on site*. Storm sewers and sanitary sewers necessary for controlling storm water runoff and wastewater on water system sites, such as at a wellhouse or water treatment plant site.

(x) *Special assessment fees*. Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments toward repayment of its SDWLP loan.

(y) *Staffing evaluations*. Conducting an evaluation of staffing needs to determine appropriate changes to staffing levels as a result of the scored project.

(z) *Startup*. Startup expenses for a water system incurred solely because of the scored project, including costs for any of the following:

1. Preparing a startup curriculum and training materials.
2. Initial training of operating personnel on new or modified equipment, laboratory procedures, computers, controls, records management, and treatment processes.
3. Obtaining expert operational assistance for adjustments to the treatment process or other significant portions of the water system.
4. Implementing a maintenance management system.
5. Obtaining necessary computers, upgrades, and software.
6. Attending off-site formal training programs if necessary for the initial operation of the constructed water system.
7. Purchasing the first fuel fill-up for new equipment, such as generators.

(zm) *Street restoration*. Restoring streets and rights-of-way, and repairing items damaged during construction of the scored project, such as pavement, sidewalks, sanitary sewers, and storm sewers. Eligibility of costs may be prorated based on participation by one or more other funding sources, or on the percent of the project attributable to SDWLP-eligible activities.

**Note:** Other funding sources that tend to participate in the types of projects that involve street restoration include the department of transportation, the community development block grant program, and the U.S. department of agriculture rural development community programs. Proration of costs may be due to the other funding source covering a portion of costs that would otherwise be eligible for SDWLP funding or because some of the project costs are not eligible for SDWLP funding, such as wastewater or storm water pipe costs being ineligible when the overall project purpose is to replace both watermains and sanitary sewers.

(2) **INELIGIBLE COSTS.** Costs for items and activities not directly associated with or not necessary for the construction or startup of a scored project are not eligible for financial assistance unless specifically approved by the department as necessary and reasonable for the efficient operation or integrity of the overall water system. Ineligible items and activities include all of the following:

(a) *Allowances.* Any contingency or allowance amounts built into a bid contract for nonspecific or ineligible items or activities.

(b) *Basin planning.* Basin or areawide planning not related to the scored project.

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

(d) *Certification.* Fees for operator certification training.

(dm) *Chapter 30 permit fees.* Chapter 30 permit fees if a municipality at the time of purchase of a permit under ch. 30, Stats., pays a fee for the permit due to not identifying the project as being funded with state or federal funds.

**Note:** Permit fees are not required by the department for waterway projects authorized under ch. 30, Stats., that are funded in whole or in part by any federal or state agency.

(e) *Conflict of interest.* Costs incurred under a contract that 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, award, or administration of a contract supported by the SDWLP and any of the following conditions exist:

1. The official or employee, the official's or employee's spouse, or the official's 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.

(f) *DBE noncompliance.* The amount of project costs determined by the department to be appropriate for a sanction under s. NR 166.11 (4) (b) for noncompliance with DBE good faith effort requirements.

(g) *Engineering.* Engineering costs relatable to ineligible construction costs when the ineligible construction and equipment costs are more than 10 percent of total construction and equipment costs.

(h) *Grant administration.* Any costs for administering or applying for funding from sources other than the SDWLP, such as U.S. department of agriculture's rural development programs, a community development block grant program, federal state and tribal assistance grants, U.S. army corps of engineers, focus on energy, or other non-SDWLP federal or state government loan or grant programs, or other types of financial assistance programs.

(i) *Hookup charges.* Hookup charges imposed by one municipality on another for hooking up to a water system, unless the charges are based on identifiable capital improvement costs incurred by the municipality imposing the charge, proportional to the capacity to be used by the municipality hooking up, and included in an intermunicipal agreement meeting the requirements of s. NR 166.08 (4) (i).

(j) *Interim debt*. Interest or principal payments on interim debt paid by the municipality out of its internal funds rather than capitalized funds, unless DOA notifies the department that such payments are eligible under the particular circumstances.

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

(k) *Lab fees*. Laboratory fees incurred for activities related to monitoring, except when the monitoring is project specific.

(L) *Late fees*. Interest or late fees on payments for services provided to the municipality in relation to the scored project.

(m) *Leases*. Costs related to leasing land or buildings.

(n) *Mismanagement and litigation*. Costs of claims against the recipient resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others and costs resulting from litigation of contract disputes, liquidated damages, appeals, and other related disputes.

(o) *Negligence*. Costs incurred due to negligence or error of a party contracted by the municipality.

(p) *No construction*. All costs of a project if the municipality does not finance some construction costs through the SDWLP, unless the department is cooperating with another governmental funding agency to provide an affordable financing package for the project, the other agency is financing the construction costs, and the department receives acceptable documentation of the other agency's commitment.

(q) *Operations and maintenance*. Operations and maintenance expenses as defined in s. NR 166.03 (38) and (29), respectively.

(r) *Ordinary municipal operating expenses*. Ordinary operating expenses of a municipality, such as salaries and expenses of elected officials and on-staff attorneys, postage, utility bills, and annual financial audits.

(s) *Other funding*. Costs for which payment has been or will be received from another funding source, including costs for which funds from the U.S. department of agriculture's rural development program or a community development block grant program are committed, or costs covered by a focus on energy grant. If the municipality does not receive the funds expected from the other source, the department may consider the costs of the work that was to be funded through the other source to be eligible for SDWLP financial assistance unless the costs are considered ineligible under another paragraph in this subsection.

(t) *Outside of scope*. Costs outside the scope of the scored project unless the department approves the costs as necessary and reasonable to improve the overall integrity, operation, or functionality of the water system.

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

(v) *Post-closeout*. Expenses incurred after the project completion date of the scored project.

(w) *Private service lines.* Removal or replacement of private service lines that are not made of lead or galvanized materials.

(x) *Sewer pipes.* Storm sewer or wastewater sewer pipe construction, replacement, or repair, unless the work is necessary as a direct result of work performed for a scored project, such as moving a wastewater pipe to allow appropriate distance between it and a watermain being constructed or repairing or replacing a sewer pipe damaged during construction of the scored project.

(xm) *Site acquisition.* Site acquisition expenses other than those meeting the criteria established under sub. (1) (h) and (p).

(y) *Source water protection.* Land acquisition or easement costs incurred for land used for source water protection.

(ym) *Special districts.* Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, public inland lake protection and rehabilitation districts, joint local water authorities created under s. 66.0823, Stats., municipal water districts, and joint commissions.

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

(zm) *Warranty inspections after construction completion.* Costs related to post-construction warranty inspections, including costs of a consulting engineer or a third-party inspector, and costs of extended warranties or service contracts that go beyond construction completion.

**(3) LIMITATION ON ELIGIBILITY OF INTERIM DEBT COSTS.** (a) *Net interest expense.* Interim debt interest expenses shall be offset with any interest earnings from the investment of the proceeds from the interim debt to determine the amount eligible for SDWLP financial assistance.

(b) *Interim debt issuance costs.* The amount of interim debt issuance costs eligible for financial assistance is limited to \$15,000 plus 0.5 percent of the total eligible face amount of the interim debt. If interim debt is rolled over or renewed, the face amount may not be counted multiple times in calculating the eligible face amount of interim debt for purposes of this limit.

(c) *Interim debt interest costs.* The period of time for which interest on interim debt is eligible for financial assistance shall run from no earlier than 18 months prior to the start of construction to the earliest of the following:

1. The date of the first disbursement of the financial assistance.
2. One year following substantial completion of the project.

(d) *Cost proration.* If the term of the interim debt exceeds the limit in par. (c), the interim debt costs shall be prorated using the length of the eligible term divided by the total time that the interim debt is outstanding. If the interim debt is not exclusively for the SDWLP scored project, costs shall be prorated according to the proportion of the total debt that is for the scored project.

(e) *Maximum principal.* The amount of interim debt principal that may be refinanced with SDWLP financial assistance shall not exceed the total amount of the interim debt that was spent on eligible project costs.

**NR 166.08 Application process. (1) NOTICE OF INTENT TO APPLY SUBMITTAL.** A municipality shall submit notice of its intent to apply for financial assistance via the department's online intent to apply and priority evaluation and ranking form system by any applicable deadline set in the SDWLP annual intended use plan. The municipality or its designated representatives shall complete the requirements established by the department for gaining access to and submitting information through the department's online intent to apply system. Information provided through the intent to apply system shall include all of the following:

**Note:** Instructions regarding the online intent to apply system are available on the Environmental Improvement Fund website at [dnr.wisconsin.gov/aid/EIF.html](http://dnr.wisconsin.gov/aid/EIF.html).

(a) A clear, concise, and comprehensive project description that includes the public health or water system problem or concern being addressed, the general solution proposed through a single project, and detailed information regarding what structures are to be constructed, what equipment is to be purchased and installed, and project location, including detailed information for purposes of eligibility determinations regarding storm sewer or sanitary sewer construction being done at the same time as watermain construction on the same block of a street or in the same intersection.

(b) Contact information.

(c) An estimate of the total project cost and what amount of the cost is likely to be requested from the SDWLP.

(d) Estimated or actual dates related to the bidding and construction timeline of the project.

(e) Date and number of the department approval of plans and specifications for each set of plans and specifications associated with the project, if available at time of intent to apply submittal.

(f) Any other information required to complete the submission in the department's online intent to apply and priority evaluation and ranking form system.

**(2) ENGINEERING REPORT.** A municipality shall submit an engineering report to the department for approval as required under s. 281.61 (4), Stats., subject to all of the following:

(a) An engineering report shall comply with the applicable engineering report requirements contained in chs. NR 108 and 811 for the type of project being constructed.

(b) The department shall determine whether there are activities included in the engineering report that fall outside of the scope of the project for purposes of this chapter.

(c) If neither ch. NR 108 nor ch. NR 811 requires an engineering report for a specific project, or if either ch. NR 108 or 811 allows submittal and review of the engineering report and plans and specifications simultaneously, and the department receives the plans and specifications with or prior to submittal of the SDWLP

application, the municipality may submit an application for financial assistance prior to receiving department approval of the engineering report.

**(3) APPLICATION PROCEDURES.** (a) A municipality shall apply for financial assistance in accordance with s. 281.61 (5), Stats. All applicants must submit the required information and documentation through the department's online application system.

**Note:** Directions regarding online submittal are available on the Environmental Improvement Fund website at [dnr.wisconsin.gov/aid/EIF.html](http://dnr.wisconsin.gov/aid/EIF.html).

(b) The applicant shall submit plans and specifications to the department drinking water plan review section as required under ch. NR 108 or 811, or both, prior to or simultaneously with submitting the financial assistance application for the project to the department environmental loans staff. The applicant must submit a copy of the plans and specifications with the financial assistance application via the online application system in addition to submitting the copies required for drinking water plan review.

(c) For any type of project for which plans and specifications are required under ch. NR 108 or 811, the department may deny an applicant funding if the applicant does not provide appropriately complete plans and specifications to the department prior to or with the application for the project as required under par. (b) and sub. (4).

**(4) CONTENTS OF APPLICATION.** The applicant shall submit a complete application, including all of the following items that are applicable to the project:

(a) Evidence of compliance with sub. (2).

(b) Except as provided in par. (bg), for a project for which the department requires plans and specifications under ch. NR 108 or 811, or both, a copy of biddable construction plans and specifications approvable by the department for all parts of the scored project for which the municipality is requesting financial assistance from the fiscal year applicable to the project.

(bg) For a well construction project, at least plans and specifications for the drilling of a permanent well with or prior to submittal of the application for financial assistance; the applicant may submit additional well-related plans and specifications for the scored project, such as those for pumps or the wellhouse, after the department determines the application is complete.

(br) A certification from the applicant or its consulting engineer stating that plans and specifications are not required under chs. NR 108 and 811 for the project if the applicant submits an application for financial assistance for a project type that does not require plans and specifications review under ch. NR 108 or 811.

(c) Completion of the required fields in and upload of required documentation to the department's online application system, including all of the following:

1. A clear, concise, and comprehensive project description including any modifications to the project description provided in the online intent to apply system.

2. Estimated or actual construction costs.
3. Identification of known ineligible costs included within the total budget provided in the online application.
4. Information regarding assistance received or expected from another funding source.

**Note:** The project description may already be included in the online application as it should transfer over to the application system from the online intent to apply system. When that transfer of information is successful, the applicant must only provide information regarding any modifications to the project description that is already included in the application rather than providing an additional complete project description.

(d) Items or information for compliance with federal regulations identified by the department in the online application system as required for a complete application; these items may include documentation of compliance with wage rate laws, completed federal forms, and information regarding green project components or procuring American-made products for use in the project.

(e) A copy of each executed engineering contract and any associated existing contract amendments for planning and design of the project if funds are requested for planning and design in the application project budget.

(f) A copy of each executed engineering contract and any associated contract amendments for construction management if funds are requested for construction management in the application project budget and the contract or amendment is available at the time of application submittal.

(g) A copy of each executed non-engineering professional services contract related to the project and any associated amendments if funds are requested in the application project budget for services included in the contract and the contract or amendment is available at the time of application submittal.

(h) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds that meets the requirements established in U.S. treasury reimbursement regulations 26 CFR 1.150–2.

(i) A proposed or an executed intermunicipal agreement for each municipality served by the project when the project will serve 2 or more municipalities. Prior to receiving financial assistance, the applicant shall ensure that each required intermunicipal agreement does all of the following that are applicable to the project:

1. Identify ownership for each individual portion of the water system, including distribution systems, pumping stations, storage, wells, and water treatment facilities.

2. Establish the term of the intermunicipal agreement unless it is effective in perpetuity. If the intermunicipal agreement is new or being negotiated specifically for the project for which financial assistance is being requested, the term shall be for at least the term of the loan. If there is an existing intermunicipal agreement in place that meets the requirements of this paragraph but expires during the term of the loan, the municipality shall renegotiate or extend the existing intermunicipal agreement prior to the end of its term and maintain the agreement throughout the term of the loan.

3. Demonstrate the basis for generating revenue for operation and maintenance costs based on actual use or PSC approved water rates and state the parties that are responsible for paying these charges.

4. Indicate the method for generating revenue for capital costs and indicate who is responsible for payment.
5. Indicate that the owner of the regional facility shall supply water to the identified users of the system.

(j) Financial information required by DOA to be used in determining 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 financial assistance.

(k) Proposed water rates, if the public water system is not regulated by the public service commission.

(L) Any existing or proposed contracts with customers of the water system.

(m) Documentation applicable to U.S. internal revenue service tax information as indicated in the department's online application system.

(n) A copy of the debt instrument of any interim debt to be refinanced with SDWLP financial assistance.

(o) A completed design life calculation worksheet if the applicant at the time of application requests or is interested in a loan term that is greater than 20 years. All of the following apply to applicants requesting a loan term greater than 20 years:

1. An applicant requesting a loan term greater than 20 years shall pledge system revenues to secure the SDWLP loan.

2. A loan term greater than 20 years is not available for projects for which the applicant pledges general obligation bonds to secure the loan.

Note: The design life calculation worksheet is an excel spreadsheet that is available on the department's website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html#sdwform>.

**(5) APPLICATION SUBMITTAL DEADLINE.** In fiscal years for which the department sets an application submittal deadline for all or a specific type of funding, the applicant shall submit the items and information required in the department's online application system by the applicable application submittal deadline in order to be considered eligible to obtain financial assistance from funds available during the funding cycle for which the deadline is set. The department may set application submittal deadlines in the intended use plan.

**(6) APPLICATION ACCEPTANCE.** The department shall accept an application as complete after all of the following occur:

- (a) The department determines that it received all the applicable items and information required under sub. (4) for the scored project. The department may consider a submitted application complete for purposes of acceptability if the application is otherwise complete, but a wrong document was uploaded to the department's online application system, the proper document existed at the time of application submittal, and the applicant uploads the proper document to the system within a timeframe specified by the department in written communication, which may be via email, to the applicant.

- (b) The department receives a certification worksheet documenting DOA's initial determination that there is a reasonable likelihood the municipality will be financially capable of repaying a loan from the SDWLP.

(7) PROJECTS FUNDED JOINTLY WITH OTHER AGENCIES. If a project is receiving funding from another state or federal agency, and the department is unable to obtain the same type of documentation typically submitted for a specific project requirement due to differences between agencies in items or procedures, including a project that is let with a group of projects by the department of transportation or a project for which the contents of a contract includes language specific to another agency, the department may determine what documentation is appropriate to satisfy the application requirements.

(8) DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT. The department shall set in the SDWLP annual intended use plan a deadline for signing a financial assistance agreement. An applicant shall sign the financial assistance agreement within the timeframe set by the department. An applicant shall time its submittal of the application accordingly. If a financial assistance agreement is not signed within the established timeframe, the applicant's project shall lose its SDWLP allocated subsidy.

**NR 166.09 Legal opinion regarding land ownership.** For all projects for which an applicant requests financial assistance through the application process under s. NR 166.08, the applicant shall obtain a legal opinion regarding ownership of the land on which the project takes place. The applicant shall assure that all of the following requirements applicable to the project, the legal opinion regarding land ownership, and the land on which the project is being constructed are met:

(1) ATTORNEY'S REVIEW. The legal opinion regarding land ownership shall be written by the applicant's attorney and shall include information regarding the documents the attorney reviewed or researched to prepare the legal opinion. The purpose of the legal opinion regarding land ownership is to provide evidence to the department that the project is being constructed on land that is and will continue to be under the control of the municipality; therefore, appropriate documents for the attorney to review include any of the following:

- (a) Plat maps.
- (b) Department of transportation permits.
- (c) Municipal easement documents.
- (d) Utility easement documents.
- (e) County property tax documentation.
- (f) Property titles and deeds.
- (g) Project site maps and plans.
- (h) Other permits and legal documents applicable to the land on which the project is taking place.

(2) MUNICIPALITY OWNS THE LAND. If the applicant already owns the land on which the project is taking place, the legal opinion under sub. (1) shall include all of the following:

- (a) A statement confirming that the applicant owns and controls the land on which the project is being constructed.

(b) A statement confirming that the land on which the project is taking place is available for the project or will be available prior to the start of construction.

(c) A statement confirming that the project is being constructed within the boundaries of the land owned and controlled by the municipality.

**(3) TITLE OPINION IN LIEU OF LAND OWNERSHIP LEGAL OPINION.** If a municipality is unable to obtain a legal opinion as proof of land ownership from its municipal attorney for purposes of meeting the requirements under subs. (1) and (2), the department may accept or require a title opinion as proof of land availability.

**(4) MUNICIPALITY DOES NOT OWN THE LAND.** If the municipality does not own all of the land on which the project is being constructed, the applicant shall obtain and maintain for at least the term of the financial assistance agreement but preferably in perpetuity easements or permits for access to the property that is not under ownership of the municipality but is necessary for the project. For land not owned by the municipality, the land ownership legal opinion under sub. (1) shall include all of the following:

(a) A statement confirming that all necessary easement rights are secured for the property on which the project is taking place.

(b) A statement affirming that the easement rights are at least for the term of the financial assistance agreement.

(c) Information regarding permit access to the land if the applicant cannot obtain an easement, including situations under sub. (5) in which the department of transportation has control of a highway that is disturbed during project construction.

**(5) PERMIT ACCESS.** (a) If project construction requires work on a state or federal highway, the applicant shall assure that all permits necessary for the project are obtained from the department of transportation for constructing, operating, and maintaining the applicant's infrastructure in department of transportation rights-of-way throughout the term of the financial assistance agreement.

(b) If the applicant receives a permit from the department of transportation for a project, the attorney writing the legal opinion under sub. (1) regarding land ownership and control shall include the department of transportation permit number in text regarding easements and rights-of-way and include a statement affirming the applicant's legal ability to perform future maintenance of pipes, catch basins, manholes, or any other infrastructure that is part of the project at least throughout the term of the financial assistance agreement.

(c) If there are other permits or agreements necessary for access to the land on which the project is taking place, and the permits or agreements needed are not from the department of transportation, the attorney shall include information regarding the permit or agreement access similar to that required when there is a department of transportation permit.

**NR 166.10 Financial assistance requirements.** Before executing a financial assistance agreement for any project under this chapter, the department shall determine that all of the applicable requirements of s. NR 166.08 are met and that all of the following are satisfied:

(1) All of the following documentation, if applicable to the scored project, is submitted to the department:

(a) Certification for force account as required by s. NR 166.11 (5).

(b) A legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project. The legal opinion shall include all the applicable information required under s. NR 166.09.

(c) Items related to bids for each prime contract including all of the following:

1. The proposal of the successful bidder.

2. An engineer's evaluation of the bids, including bid tabulation, and an award recommendation.

3. If an applicant awards a construction or equipment contract to a contractor other than the lowest bidder, any of the following:

a. Written documentation of the reasons why the lowest bidder is considered nonresponsive or not responsible.

b. A legal opinion stating that the award to a contractor other than the lowest responsive, responsible bidder meets the requirements of municipal bidding law.

4. Solicitation and utilization information regarding DBEs.

5. Evidence of bid advertisement, including a copy of the affidavit of publication and a copy of the newspaper advertisement, which should include appropriate language regarding DBEs submitting bid proposals, American-made product requirements, and wage rates, when applicable.

6. A copy of the bid bond and the performance bond.

7. Evidence of award of the construction contract by the municipality, which may be a notice of award, a municipal resolution, or minutes from the municipal meeting at which the determination of award was made.

8. A complete copy of the executed construction contract with up-to-date copies of all addenda, attachments, appendices, appropriate Davis-Bacon or other wage rate information, and all other applicable documentation that makes the contract complete. If available, the contract submittal should be a copy of the conformed contract.

9. Documentation of the construction start date and estimated substantial and final completion dates.

**Note:** A notice of award and a notice to proceed are preferred but not required for this documentation.

10. All negotiated pending change orders and all executed change orders.

(d) A request for disbursement and required supporting invoices, payoff statements for interim debt, and other applicable documentation of expenditures, including a copy of the title or deed for land purchased for the project if the applicant is requesting financial assistance for land purchase costs, and complete copies of any

contract change orders for which costs are included in the request for disbursement, along with a copy of the department construction management engineer's change order approval.

(e) Evidence that a bond counsel is drafting legal documents related to the authorization and issuance of bonds for action at a municipal meeting prior to the scheduled loan closing.

(f) Completed federal forms, if applicable, and any other required documentation of compliance with federal requirements, which may include certification of compliance with Davis-Bacon wage rate requirements, certification of use of American-made products in the project, and the cost, effectiveness, energy efficiency, and water efficiency of the selected design.

(g) An executed intermunicipal agreement or multiple executed agreements described under s. NR 166.08 (4) (i), if 2 or more municipalities utilize shared or interconnected water systems.

(h) A copy of each executed construction management or other professional services contract associated with the project if funds are requested for services included in the contract.

(i) A completed design life calculation worksheet with any backup documentation required by the department if, after the application submittal, the applicant requested a loan term greater than 20 years. All of the following apply to applicants requesting a loan term greater than 20 years:

1. The applicant shall submit the design life calculation worksheet at least 9 weeks prior to loan closing.
2. The applicant shall pledge system revenues to secure the SDWLP loan.
3. A loan term greater than 20 years is not available for projects for which the applicant pledges general obligation bonds to secure the loan.

**Note:** The design life calculation worksheet is an excel spreadsheet that is available on the department's website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html#sdwform>. The department strongly encourages applicants to submit the design life calculation worksheet with the rest of its application submittal in order to allow enough review and response time for the worksheet contents. Later submittal of the design life calculation worksheet may delay a loan closing.

(2) The department has done all of the following, if applicable to the scored project:

(a) Complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

(b) Reviewed and approved the plans and specifications if approval is required under ch. NR 108 or 811,

(c) Reviewed and concurred with the design life calculation for the scored project if the applicant is requesting a loan term greater than 20 years.

(3) The scored project is entitled to priority in accordance with ss. NR 166.23 to 166.25.

(4) The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the water system throughout the applicant's jurisdiction.

(5) DOA finds that the municipality is likely to be able to meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

(6) The applicant has received or applied for permits required by the department for the scored project, including those under chs. 30 and 283, Stats.

(7) If a public water system is regulated by the public service commission, the applicant has filed the appropriate applications to increase water rates with the public service commission, if necessary for the scored project, and the public service commission has issued the corresponding order authorizing the water rates and operating rules.

(8) If a public water system is not regulated by the public service commission, the applicant has, to the satisfaction of the department and DOA, developed and adopted water rates and operating rules.

**NR 166.11 Procurement.** (1) **APPLICABILITY.** Procurement of professional services and construction contracts by financial assistance recipients under this chapter shall be in accordance with local, state, and federal laws applicable to the SDWLP project. No contract may be awarded to any person or organization that does not operate in conformance with state and federal civil rights and equal opportunity laws.

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

(3) **FINANCIAL ASSISTANCE RECIPIENT RESPONSIBILITY.** The recipient is responsible for the administration and successful completion of the project as well as acceptance of the terms of the financial assistance agreement.

(4) **SOLICITATION OF DISADVANTAGED BUSINESS ENTERPRISES.** (a) Whenever a recipient or its prime contractor is procuring construction, equipment, raw materials, or supplies for a project funded wholly or in part with SDWLP financial assistance, the recipient or contractor shall make a good faith effort to provide DBEs opportunities to compete for participation in the project. Recipients and their prime contractors shall comply with DBE regulations contained in 40 CFR part 33, as modified by memoranda and exceptions, in the manner required by the department. Failure to comply with DBE regulations and requirements may result in a sanction as provided under par. (b). Recipient and contractor efforts under this subsection may include any of the following activities:

1. Using outreach and recruitment activities to make DBEs aware of contracting opportunities, including any of the following activities:

a. Including a sentence in bid advertisements that encourages DBEs to submit bids or proposals and submitting a copy of the advertisement to the department with evidence of publishing.

b. Contacting DBEs via telephone, faxed or mailed letter, e-mail, or other methods of correspondence, informing the DBEs of the project and encouraging their participation, and submitting documentation of those contacts to the department.

c. Advertising the project in trade publications and submitting a copy of the advertisement and evidence of publishing to the department.

2. Arranging timeframes for contracts and establishing delivery schedules in a way that encourages and facilitates participation by DBEs in the competitive process, including posting solicitations for bids or proposals for at least 30 calendar days before the bid or proposal closing date, when possible.

3. Dividing total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by DBEs in the competitive process.

4. Considering contracting with a consortium of DBEs when a contract is too large for one DBE to handle individually.

5. Using the services and assistance of the federal small business administration and the minority business development agency of the U.S. department of commerce.

6. Using required federal forms when applicable.

7. Including in project bidding documents DBE information prescribed by the department.

8. Soliciting DBEs certified under the unified certification program or by the U.S. environmental protection agency or an agency approved by the U.S. environmental protection agency to certify DBEs and providing to the department documentation of solicitation efforts made.

Note: The Wisconsin department of transportation unified certification program's list of certified DBEs is available online at <https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>.

9. Documenting all participation of DBEs, including MBEs and WBEs, and submit the documentation in the required form to the department. Documentation of all participation of DBEs under this subdivision includes documentation participation of engineering or other professional services firms, materials suppliers, equipment suppliers and contractors, and construction contractors that are certified DBEs as described in subd. 8.

(b) Failure to comply with par. (a) may result in a sanction of up to 8 percent of the construction costs otherwise eligible for financial assistance being determined ineligible for financial assistance. This paragraph does not apply to a recipient that awards at least one contract directly related to the project to at least one MBE or WBE selected through proper solicitation methods.

**(5) FORCE ACCOUNT WORK.** The department may approve financial assistance for force account work based on the applicant's certification that at least one of the following applies:

(a) The applicant's staff has the necessary competence required to accomplish the work and can accomplish the required tasks more economically as force account work.

(b) Emergency circumstances make force account work necessary.

**(6) CONTRACTS FOR PROFESSIONAL SERVICES.** (a) The department may review professional services contracts and amendments for eligibility and reasonableness of costs. The department shall only provide financial assistance for costs that are eligible, necessary, and reasonable for the scored project.

(b) Reasonableness reviews may include a comparison of professional services fees for the project to the range of professional services fees for similar work on similar projects undertaken within the state. The department may consider the scope of work, conditions unique to the project, and any other factors affecting costs.

(c) Professional services contracts shall indicate a maximum estimated cost for a defined scope of work that the contractor may not exceed without a negotiated contract amendment for additional costs.

(d) The department shall disburse funds for professional services costs in excess of the estimated or not-to-exceed amount of a contract only after the applicant submits an amendment to the contract that includes signatures of all parties to the contract, a description of the additional work covered by the amendment, and a revised not-to-exceed amount.

(e) The recipient shall submit each professional services agreement amendment within 90 days of execution of the amendment, or, for amendments executed prior to submittal of the SDWLP application, with the application submittal. The department may deny the costs included in the amendment if the recipient does not submit the amendment within the timeframes specified in this paragraph.

(7) CONSTRUCTION CONTRACTS AND SUBCONTRACTS. (a) *Applicability.* This subsection applies to construction contracts or subcontracts awarded by recipients for any construction activity. The department may provide SDWLP financial assistance for costs of a construction contract if the municipality complies with all applicable procurement laws in obtaining the construction contractor.

(b) *Type of contract.* The scored project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized under sub. (5). Unless the department gives advance written approval for the recipient to use some other acceptable type of contract, each contract shall be one of the following types or a combination of these types: lump sum, unit price, or time and expense. A cost-plus-a-percentage-of-cost type contract may not be used in any circumstance.

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

2. The recipient shall promptly and no later than 90 days after execution of the change order submit to the department construction management engineer each change order and all associated backup documentation.

3. If a change order is executed fewer than 90 days but no more than 9 weeks prior to the estimated loan closing date for the project, the recipient shall submit the change order to the department promptly after execution and no later than 9 weeks prior to the loan closing in order to have the impact of the change order on the contract reflected in the financial assistance agreement budget.

4. The department may deny the costs of the change order if the recipient does not submit the change order to the department within the timeframes specified in subds. 2. and 3.

5. If the recipient is in the process of negotiating a change order, has a change order pending execution, or executes a change order less than 9 weeks but no more than 3 weeks prior to the estimated loan closing date, the recipient shall provide information regarding the purpose of and likely cost for the change order in writing to the department construction management engineer or loan project manager for consideration of inclusion in the financial assistance agreement budget.

6. The recipient shall submit for approval by the department all change orders for all contracts included in whole or in part in a project funded under this chapter.

7. The recipient shall receive the department construction management engineer's approval of the costs included in the change order prior to submitting to the department a request for disbursement of funds for costs of the change order.

**NR 166.12 Reimbursement and refinancing.** (1) REIMBURSEMENT OF PREVIOUSLY PAID DEBT. The department may approve reimbursement of 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, the project does not reach substantial completion more than 3 years prior to the date the applicant submits a complete application for financial assistance under s. NR 166.08 (4), and the applicant does not already have outstanding long-term affordable debt for its project that reached substantial completion more than 3 years prior to the date on which a complete application was submitted to the department.

(2) REFINANCING OF INTERIM DEBT. The department may approve refinancing of the eligible portion of a municipality's interim debt subject to the limits established in s. NR 166.07 (3).

**Note:** The department's approval of reimbursement and refinancing transactions is preliminary. DOA makes the final determination regarding whether the state revolving fund is able to refinance a municipality's interim debt or reimburse a municipality's internal accounts.

**NR 166.13 Loan interest rates.** Interest rates for projects eligible under s. NR 166.06 shall be set in accordance with s. 281.61 (11) (a), Stats., and all of the following:

(1) If the municipality meets all of the following criteria, the loan interest rate shall be determined as specified in s. 281.61 (11) (a) 2., Stats.:

(a) The population of the municipality is less than 10,000.

(b) The median household income of the municipality is 80 percent or less of the median household income in this state. The department shall determine median household income of a municipality for the fiscal year from which financial assistance is requested as established under s. NR 166.135.

(2) If the municipality does not meet all of the criteria established in sub. (1), the loan interest rate shall be determined as specified in s. 281.61 (11) (a) 1., Stats.

(3) The department shall determine the interest rate based on the market rate in effect at the time the municipality passes a bond resolution to secure the loan from the SDWLP.

**NR 166.135 Median household income.** (1) The department shall determine the median household income of each applicant for the fiscal year from which financial assistance is requested based on all of the following instructions as applicable to the applicant:

(a) If the municipality is a place, as defined for purposes of data collection by the U.S. bureau of the census, including a city, village, or census designated place, or the municipality is a county or a minor civil division, as defined for purposes of data collection by the U.S. bureau of the census, the department shall obtain the most recent 5-year-data median household income figure published for the municipality by the U.S. bureau of the census prior to the department's publishing of the annual project priority list.

**Note:** The department uses U.S. bureau of the census municipal incomes as derived from the American Community Survey and published annually in the 5-year survey data. At the time of writing of this administrative code, the U.S. bureau of the census is not collecting income data during the decennial census. The U.S. bureau of the census does not publish data for all types of municipalities eligible for SDWLP financial assistance.

(b) The department may require a municipality for which the U.S. bureau of the census does not publish median household income data to provide information to assist the department in determining a median household income for the municipality for purposes of this chapter. The information required and used by the department may include any of the following:

1. The number of residential users served by the municipality.
2. A map showing the municipal boundaries, and the number of residential users served by or the population of the municipality within each town or county for municipalities that cross town or county boundaries.

(c) If the municipality is a town sanitary district or public inland lake protection and rehabilitation district, the municipality may supply a median household income provided by the U.S. bureau of the census, along with documentation of how the median household income was determined. Whether the median household income is initially determined by the department or supplied by the municipality for the department's approval, this median household income of the municipality shall be derived from the same ACS data release as that being used by the department for the fiscal year applicable to the funding cycle for which the intent to apply notice was submitted and shall be one of the following:

1. A median household income derived by requesting a custom tabulation from the bureau of the census of ACS income data at the census block level.

**Note:** To obtain a custom tabulation, the municipality will likely need to compare a map showing the boundaries of the municipality to a census block map and determine which census blocks contain any portion of the municipality. The municipality would then submit the

appropriate census block numbers to the U.S. bureau of the census (see <https://www.census.gov/programs-surveys/acs/data/custom-tables.html>) with a request for a custom tabulation of a median household income figure for that set of identified blocks only.

2. The median household income of the census tract, block numbering area, or block group that encompasses the municipality. If the municipality falls within 2 or more census tracts, block numbering areas, or block groups, the median household income shall be weighted by the population of the municipality that resides within each census tract, block numbering area, or block group.

3. The median household income of the minor civil division, such as a town, within which the municipality is located. If the municipality falls within 2 or more minor civil divisions, the median household income shall be weighted by the population of the municipality that resides within each minor civil division.

4. An average median household income calculated by: determining the published median household income of each member municipality of the applicant municipality, such as a joint local water authority or sanitary district, is made up of multiple municipalities, such as cities, villages, and census designated places; weighting each of those median household incomes by the percentage that the population of the individual municipality is of the total population; summing the individual weighted median household incomes; and dividing the sum by the total number of municipalities that are members of the applicant municipality.

(d) If the service area of the water system within the boundaries of the municipality is different than the municipality's boundaries, the municipality may choose to follow the custom tabulation procedure as described under subd. 2. a. and submit the result to the department to use in lieu of the median household income obtained by the department as described in subd. 1.

**NR 166.14 Financial assistance agreement conditions.** (1) Each financial assistance agreement shall require the recipient to do all of the following:

- (a) Maintain system water rates and operating rules in accordance with s. NR 166.10 (7) or (8).
- (b) Comply with all pertinent requirements of federal, state, and local environmental laws and regulations.
- (c) Comply with the requirements contained in 42 USC 300j-12.
- (d) Pay the costs of water system construction that are ineligible for financial assistance under this chapter.
- (e) Comply with all state and local laws regarding procurement and public contracts.

(f) Provide department representatives access to the scored project, including construction activities, whenever the project is in preparation or progress, and for a final inspection when the project is complete. For purposes of providing access, the recipient shall do all of the following:

1. In each of its contracts for the scored project include a provision that requires the recipient and its contractors to allow the department access to records of contractors and subcontractors pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions.

2. Allow DOA or its agent access to project-related records for audits.

(g) Expeditiously initiate and complete the project in accordance with the financial assistance agreement and application, including construction of and payments for the portions ineligible for SDWLP financial assistance and 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.

(h) Promptly notify the department of changes to the project, including notifying a department plan reviewer and the department construction management engineer when plans and specifications are being revised.

(i) Promptly submit to the department a copy of any prime contract or modification of it and any revisions to plans and specifications.

(j) 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 make the final principal payment no later than 20 years after the date of the financial assistance agreement unless the financial assistance agreement term is greater than 20 years but not more than 30 years. If the loan term is greater than 20 years, the municipality shall make the final principal payment no later than 30 years after the date of the financial assistance agreement.

(k) Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications, proper construction methods, and the financial assistance agreement.

(L) Notify the department of the substantial completion of the project.

(m) Maintain all required intermunicipal agreements throughout the term of the financial assistance agreement as described in s. NR 166.08 (4) (i).

(n) Comply with all applicable provisions of any outstanding SDWLP and clean water fund program financial assistance agreements and interest rate subsidy agreements.

(o) Obtain and maintain full legal right and authority required to own, control, operate, and maintain the project for at least the term of the financial assistance agreement, including assuring that any of the following requirements regarding the land on which the project takes place are met:

1. If the municipality prior to signing a financial assistance agreement owns all of the land on which the project takes place, the municipality shall maintain ownership of the land on which the project is built for at least the term of the financial assistance agreement unless the municipality obtains approval from the department to discontinue operation of, sell, or otherwise dispose of the project.

2. If the municipality prior to signing a financial assistance agreement does not own any of the land on which the project takes place, the municipality shall obtain and maintain for at least the term of the financial assistance agreement all necessary permits, licenses, easements, and approvals required to give the municipality the authorities and permissions needed to construct, operate, and maintain the project on the land on which the project is built unless the municipality obtains approval from the department to discontinue operation of, sell, or otherwise dispose of the project.

3. If the municipality prior to signing a financial assistance agreement owns some but not all of the land on which the project takes place, the municipality shall follow the requirements under subds. 1. and 2. regarding maintaining ownership of or access needed to the land on which the project takes place to allow the municipality to construct, operate, and maintain the project on the land on which the project is built for at least the term of the financial assistance agreement.

(2) The financial assistance agreement is not effective until all parties to the financial assistance agreement have signed it.

**NR 166.15 Financial management.** The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles, governmental accounting standards board requirements, or other methods of accounting accepted by the department or required by the federal government.

(2) Maintain a financial management system that meets 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 or notes sold to the SDWLP.

**NR 166.16 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 DOA 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 DOA to withhold financial assistance disbursements if the department determines 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 percent of the principal amount of a loan until all of the project closeout requirements under sub. (4) (b) are completed.

(c) The department may withhold payment of costs that fall outside of the beginning or end dates of a contract or that are in excess of the estimated not-to-exceed amount in the contract until the recipient amends the contract.

(d) The department may withhold payment of costs of a contract until the recipient submits the required documentation for the costs, including a copy of the department construction management engineer's approval letter for any change order for which payment is requested and any amendments to engineering or other

professional services contracts for which disbursement of financial assistance for costs of the contract will be requested.

**(4) FINAL DISBURSEMENT AND PROJECT CLOSEOUT.** (a) The recipient shall submit the final request for disbursement as soon as is practicable after final completion of project construction.

(b) All of the following project closeout procedures shall occur prior to the final disbursement or as soon as is practicable after final completion of project construction if the recipient determines it will not be requesting any additional funds but did not previously label a request for disbursement as the final request:

1. The department shall complete a final inspection and sign off on the scored project.
2. The recipient shall submit to the department for review all change orders and amendments for all contracts associated with the project that the recipient did not submit before or during construction of the project.
3. The recipient shall certify its acceptance of the project from its contractors and engineers on a form provided by the department.

**Note:** A project acceptance certification form is available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html> or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

4. The recipient shall document final utilization of MBEs and WBEs on a form provided by the department.

**Note:** An MBE/WBE utilization form is available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html> or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921. This form is also provided in the financial assistance agreement as an exhibit.

5. The recipient shall certify its compliance with federal requirements as detailed in the financial assistance agreement.

6. The department shall inform DOA of the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

7. After the department determines that the project closeout requirements under subds. 1. to 6. are completed, the department shall notify the recipient that the project is closed out, or, if there is a final disbursement yet to be sent to the recipient, the department shall notify the recipient of the date and amount of the final disbursement and that the project will be closed out on the date of the final disbursement.

(c) If construction of a project is complete prior to the SDWLP loan closing for the project, the recipient shall submit project closeout documents within 90 days of the loan closing date.

(d) If the recipient does not provide the required documents for project closeout of a completed project to the department for any SDWLP financial assistance agreement or any other financial assistance from the environmental improvement fund and applies for funding from the environmental improvement fund for another project, the department may deny financial assistance for the new project until the previous project is closed out according to requirements under this chapter.

**NR 166.17 Amendments to a financial assistance agreement. (1) ADDITIONAL FUNDING. (a) General.**

1. 'Additional assistance at end of project.' The department may issue an amendment to a financial assistance agreement to provide additional financial assistance for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may process a request to provide additional financial assistance for a project only after the total remaining costs to complete the project can be reasonably determined.

2. 'Consistent with scope.' To be eligible for additional financial assistance, any changes in the project necessitating the amendment must be consistent with the objectives and scope of the project as described in the original financial assistance agreement. Changes that necessitate an amendment must be due to unforeseen circumstances or approvable change orders to a project construction contract.

3. 'Plans and specifications approval.' If there are changes in the project that require department approval of plans and specifications, the municipality shall obtain department approval prior to the amendment loan closing.

4. 'New financial assistance agreement.' An amendment shall be in the form of a new financial assistance agreement tied to the original project through the budget and project description. The department and the DOA shall determine the appropriate interest rate for the amendment based on the market interest rate in effect on the date of the municipality's meeting at which they pass the related bond resolution.

5. 'Debt coverage requirements.' The municipality must meet debt coverage requirements for the additional financial assistance.

(b) *Applicability.* Additional financial assistance under par. (a) for a scored project is subject to all of the following:

1. 'Availability of funds.' If there are sufficient loan funds available, as determined under s. 281.59, Stats., a municipality may receive loan funds for additional project costs incurred that cause the total eligible project costs to be greater than the amount provided in the original financial assistance agreement. The loan interest rate and loan maturity date shall be determined by the department and DOA.

2. 'No principal forgiveness.' The department shall not provide additional principal forgiveness funds in the amendment to the financial assistance agreement.

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

1. 'Request in writing.' The municipality shall submit a written request to the department that justifies the need for additional financial assistance and details the additional eligible costs. A revised budget shall be submitted with the request indicating in one column the line-item totals in the financial assistance agreement, in a second column the requested additional costs, and in a third column the total project costs requested to be funded

through the SDWLP via an amendment to the original financial assistance agreement. If there are other funding sources participating in the project, the revised budget shall indicate all funding changes applicable to the additional financial assistance being requested. All costs in the revised budget shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. ‘Electronic submittal.’ The department may require the written request for an amendment to be submitted as an email message with an attachment, as input into the department’s online application system, or by other appropriate means determined by the department.

(d) *Plans and specifications.* A municipality shall submit to the department any plans and specifications required for changes in the project that necessitate the amendment to the financial assistance agreement. The department shall issue an amendment for the additional project costs only after the department approves any engineering reports or plans and specifications required for the work related to the additional costs.

(e) *Notice of intent to apply.* A new notice of intent to apply for funding as described under s. NR 166.08 (1) is not required for purposes of requesting a financial assistance agreement amendment.

(2) **EFFECTIVE DATE.** A financial assistance agreement amendment is effective when executed by all parties to the agreement.

**NR 166.18 Disputes.** (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this chapter 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 by mail.

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

**NR 166.19 Records and records retention.** (1) **REQUIREMENTS.** The recipient shall maintain SDWLP project-related books, documents, papers, records, and accounting procedures in accordance with generally accepted accounting principles, governmental accounting standards board requirements, or another method of accounting accepted by the department or required by the federal government and authorized under 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 SDWLP project-related books, documents, papers, and records related to the project that are necessary for the recipient’s compliance with this section.

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

(3) **RECORDS RETENTION.** (a) The recipient and its contractors shall retain and make all files, books, documents, and records relating to the construction of the scored project available to the department for a

minimum of either 3 years from the date the department notifies the recipient that the project closeout is complete or 3 years from final completion of construction, whichever is later.

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

(c) Records that 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 the department notifies the recipient under s. NR 166.16 (4) (b) 7. that the project closeout is complete, whichever is later.

(d) All other files and records relating to the scored project, including as-built plans, shall be retained for at least the term of the financial assistance agreement for the project.

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

**NR 166.20 Breach of contract.** (1) Upon breach of the financial assistance agreement by the recipient, the department may do any of the following:

(a) Declare the unpaid loan balance mature 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) Immediately terminate the financial assistance agreement and disburse no additional funds if the financial assistance has not been fully disbursed.

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

(e) Seek any other appropriate administrative remedy.

(2) DOA'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:** DOA 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 166.21 Noncompliance.** Upon failure of the recipient to comply with s. 281.59 or 281.61, Stats., or with provisions of this chapter, the department may do any of the following:

(1) Refuse to enter into a financial assistance agreement.

(2) Seek penalties as provided in ch. 281, Stats.

(3) Seek any other appropriate remedy, relief, or penalty.

**NR 166.22 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 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. 281.59 and 281.61, Stats.

**(2) APPLICABILITY.** The department may only approve a variance from any non–statutory requirement of this chapter.

**(3) REQUEST FOR VARIANCE.** An applicant shall submit any request for a variance 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 the SDWLP project number.

(b) The section of this chapter from which the applicant seeks a variance 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 recipient has previously requested the same or a similar variance, and if so, the circumstances of the previous request.

**(4) GRANTING A VARIANCE.** Before granting a variance, the department shall consider factors such as good cause, circumstances beyond the control of the recipient, emergencies, natural disasters, and financial hardship.

### **SUBCHAPTER III — PRIORITY SCORING AND RANKING SYSTEM**

**NR 166.23 Priority scoring criteria. (1) PURPOSE.** The purpose of the priority scoring criteria is to establish a list of eligible projects to be funded in a manner that is in accordance with the federal requirements of the safe drinking water act, 42 USC 300j–12. Consistent with the act, the criteria in subs. (1) to (4) shall apply. The department may require documentation to support any points requested by the municipality. The department may also require a potential applicant to communicate with the department prior to priority evaluation and ranking form submittal to determine what type of documentation is appropriate to show existing contamination for projects that will expand an existing water system or create a new community water system.

**(2) GENERAL PRIORITY.** The department shall give first priority to acute public health risks, particularly those related to microbiological organisms, and second priority to situations that pose chronic and longer-term health risks to consumers, such as organic chemical contamination. The scoring criteria also consider issues that are related to infrastructure upgrading or replacement to address those projects, or portions of a project, that are

eligible for funding but not included in the first 2 priority groups, including projects to correct significant deficiencies or develop capacity in a water system.

**Note:** The act requires, to the maximum extent practicable, that priority ranking be given to projects that: 1) address the most serious risk to human health; 2) are necessary to ensure compliance with the requirements of the safe drinking water act, including requirements for filtration; and 3) assist systems most in need on a per household basis according to state affordability criteria.

**(3) RISK TO HUMAN HEALTH.** The following criteria related to human health risks are divided into acute and chronic risk categories. The department shall assign points to a project based on criteria in a single category in par. (a), if applicable, or a single category in par. (b), if applicable, but not from both. If the severity of the problem is not reflected in any of the categories in par. (a) or (b), the department shall determine the number of points to assign to the project. This subsection also includes par. (c) which the department shall use when assigning points for a project that will eliminate lead service lines. The department shall assign points for risk to human health based on all of the following criteria as applicable to the project:

(a) *Violations and exceedances.* Project addresses a maximum contaminant level violation, an action level exceedance, or a treatment technique violation, or an acute or a chronic health hazard under any of the following requirements:

1. ‘Acute contaminants.’ Acute contaminants are divided into 3 groups. Points shall be awarded in the following manner for a project that eliminates a problem that poses an acute health hazard from one of these groups:

a. Five hundred points shall be awarded to a project that proposes to eliminate a microbiological MCL violation that already occurred or will address a confirmed waterborne disease outbreak as defined in s. NR 809.04 (90), or a demonstrated microbiological contamination problem for a newly created community water system or for expanding an existing community water system in accordance with s. NR 166.06 (1) (f).

b. Four hundred points shall be awarded to a project that eliminates violations of filtration requirements in s. NR 810.29 and disinfection requirements in ss. NR 810.09 and 810.31, or confirmed microbial, including giardia and cryptosporidium, contamination found in finished water.

c. Three hundred points shall be awarded to a project that eliminates a continuing nitrate or nitrite MCL exceedance, or a demonstrated nitrate or nitrite problem for a newly created community water system or expansion of an existing community water system in accordance with s. NR 166.06 (1) (f).

2. ‘Chronic contaminants.’ Chronic contaminants are divided into 5 subgroups: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides, and disinfection byproducts. For a newly created community water system or for expanding an existing community water system in this subdivision, points shall be assigned by determining the 90th percentile sample for the project area. All individual wells or surface water sources in the project area shall be included in the determination. A single water sample from each individual well or surface water source shall be used for the determination. All water samples submitted shall be collected within the same 6-month period and shall be representative of current conditions. If there is no sample for an

individual well or surface water source, a value of zero or no detect shall be used in the determination. The maximum point total that shall be awarded in this subdivision is 250 points. Points shall be awarded in the following manner for a project that eliminates a chronic health hazard from these groups of chemicals:

a. For each subgroup, other than the disinfection byproducts subgroup, only the MCL exceedance of greatest percentage magnitude shall be used for the point calculation, even though multiple contaminant MCL exceedances might be occurring. For exceedances in multiple subgroups, see subd. 2. c. The MCL exceedance shall be divided by the current MCL or AL and then multiplied by 50 to obtain a subgroup point total.

b. For the disinfection byproducts subgroup, the total sum disinfection byproducts exceedance as defined in s. NR 809.566 shall be used for the calculation.

c. For MCL exceedances in more than one subgroup, the highest point level of the subgroups shall be used as the primary number to be divided by the current MCL or AL and then multiplied by 50. The other subgroup exceedances will be divided by their respective MCL or AL and then multiplied by 10. The total point value shall be the sum of points in each subgroup.

(b) *Anticipated violations and exceedances.* Project prevents an anticipated MCL, AL, or treatment technique violation or critical health hazard. Points shall be awarded to a single group under either subd. 1. or 2. to a project that proposes to eliminate an anticipated acute or chronic health hazard under the following requirements:

1. 'Acute contaminants.' Acute contaminants are divided into 3 groups. Points shall be awarded from one of the following groups for a project that eliminates an anticipated acute health hazard:

a. Three hundred points shall be awarded to a project that eliminates an anticipated microbiological MCL violation, where no actual violation has yet occurred.

b. Two hundred points shall be awarded to a project that proposes to eliminate anticipated violations of filtration requirements, or turbidity, in s. NR 810.29, or anticipated violations of the requirements of the federal long term 2 enhanced surface water treatment rule promulgated by the U.S. environmental protection agency as directed by the U.S. congress.

c. One hundred points shall be awarded to a project that proposes to eliminate an anticipated nitrate or nitrite violation.

2. 'Chronic contaminants.' Chronic contaminants are divided into 5 subgroups: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides and disinfection byproducts. Points shall be awarded in the following manner for a project that eliminates an anticipated chronic health hazard from these groups of chemicals:

a. Twenty points shall be awarded to a project that proposes to eliminate an anticipated exceedance of an inorganic, volatile organic chemical, synthetic organic chemical, radionuclide, or disinfection byproducts contaminant.

b. Five points shall be awarded for each additional subgroup addressed by a project that eliminates an anticipated exceedance.

(c) *Private LSL replacement.* Points shall be awarded to watermain replacement projects that also include the replacement of private LSLs under the following defined quantities: 1. Thirty points shall be awarded if at least 200 private LSLs are being removed as part of the project.

2. Twenty-five points shall be awarded if at least 100 private LSLs but less than 200 are being removed as part of the project.

3. Twenty points shall be awarded if at least 50 private LSLs but less than 100 are being removed as part of the project.

4. Fifteen points shall be awarded if at least 25 private LSLs but less than 50 are being removed as part of the project.

5. Ten points shall be awarded if at least 15 private LSLs but less than 25 are being removed as part of the project.

6. Four points shall be awarded if less than 15 private LSLs are being removed as part of the project.

7. Ten points shall be awarded if project will remove all remaining private LSLs in the municipality.

(4) SECONDARY CONTAMINANT VIOLATION OR SYSTEM COMPLIANCE WITH CH. NR 811. The department may not award points for specific areas related to secondary contaminant violations or system compliance with ch. NR 811 if the project is already receiving points under sub. (1) for the same issue. The department shall assign points to a project for any of the following criteria that are applicable to the project:

(a) Twenty points shall be awarded if the project will reduce a secondary drinking water contaminant, as listed in s. NR 809.70, to a level below the aesthetic standard.

(b) Twenty points shall be awarded if the project addresses areas of inadequate distribution system pressure, as defined in s. NR 810.10, 810.11, or 811.70 (4).

(c) Twenty points shall be awarded if the project will address a documented storage deficiency, excluding fire demand, within an existing public water supply system.

(d) Twenty points shall be awarded if the project addresses a source or capacity deficiency where there is a demonstrated need within the existing public water supply system.

(e) Twenty points shall be awarded if the project will address system reliability under all operational situations, where there are significant concerns regarding reliability in the existing system, such as lack of redundancy of major components of the water system. Activities for which these points may be awarded include the addition of a second crossing of a river, railroad, or highway to a major system divide; installation of a second surface water intake; or construction of a second well.

(f) Twenty points shall be awarded if a major portion of the project will address significant deficiencies identified in a sanitary survey conducted by the department and the activities to correct deficiencies are related to the scored project activities.

(g) Four points shall be awarded if the project replaces lead joints in water mains.

(h) Four points shall be awarded if the project includes long-term zebra mussel control.

(i) Four points shall be awarded if the project includes installation of an auxiliary power source to a well, pump station, or water treatment plant.

(j) Four points shall be awarded if the project includes replacement of asbestos-cement pipe material.

(k) Four points shall be awarded if the project includes upgrading an existing supervisory control and data acquisition system.

(L) Four points shall be awarded if the project includes installation or replacement of fluoridation equipment.

(m) Four points shall be awarded if the project includes the upgrading of existing facilities for capturing, holding, or disposing of liquid or solid waste generated from the water system operation.

(n) Four points shall be awarded if the project includes the replacement of a water main or mains less than 6 inches in diameter.

(o) Four points shall be awarded if the project includes the looping of water mains or the elimination of dead-end water mains.

(p) Four points shall be awarded if the project includes treatment that reduces the potential for formation of disinfection by-products.

(q) Four points shall be awarded if, as a secondary benefit, the project will increase the fire protection of the community.

**Note:** If the primary purpose of the project is to improve the fire protection of the system, the project is not eligible for funding.

(r) Four points shall be awarded if the project will include the installation of a water booster station or pressure reducing station to improve the quality of service to the customers by supplying water at a more acceptable level of pressure.

(s) Four points shall be awarded if the project includes the installation of an additional river, railroad, or highway crossing to a major system divide when two or more crossings already exist, and the additional crossing may result in greater system reliability.

(t) Four points shall be awarded if the project includes replacement of one or more pumps or pump motors that are no longer functional or have reached the end of their useful life.

(u) Four points shall be awarded if the project improves the intake structure for a surface water plant.

(v) Four points shall be awarded if the public water system currently has non-revenue water in excess of 30 percent of the total amount of water that enters the distribution system, or water losses exceeding 25 percent for

public water systems with 1,000 customers or less, or water losses exceeding 15 percent for public water systems with more than 1,000 customers, and the project reduces the amount of non-revenue water within the system.

(w) Four points shall be awarded if the project includes removal of watermain that pass through sanitary sewer manholes, or correction of other types of undesirable cross connections as determined by the department.

(x) Four points shall be awarded if the applicant has a wellhead protection plan for all active source water wells in their water system constructed prior to May 1, 1992.

(5) **SYSTEM CAPACITY POINTS.** The department shall assign negative points to a project based on an applicant's lack of required technical, financial, and managerial capacity for the existing public water system as follows:

(a) Negative 5 points shall be assigned if the applicant does not have a written emergency action plan for the public water system.

(b) Negative 5 points shall be assigned if the applicant has not implemented a private well abandonment ordinance for the public water system.

(c) Negative 5 points shall be assigned if the applicant's public water system operator is not certified or the applicant has a certified operator but does not have provisions for a certified back-up operator for the public water system.

(d) Negative 5 points shall be assigned if the applicant does not have a cross connection control program for the public water system.

(6) **CONSOLIDATED SYSTEMS CAPACITY POINTS.** For consolidating existing systems that are eligible in accordance with s. NR 166.06 (1) (c), the department shall award 30 points for each existing water system that is consolidated which is having technical, financial, or managerial difficulties. The maximum number of points that shall be awarded under this subsection is 90 points.

(7) **PROJECT PRIORITY SCORE.** The total points from subs. (1) to (6) shall be summed to determine the final project priority score.

(8) **INTENDED USE PLAN.** The department may include additional or modify existing scoring criteria through the annual SDWLP intended use plan.

**Note:** The intended use plan is required of the department by the U.S. environmental protection agency as part of the application package for the federal capitalization grant for the SDWLP.

**NR 166.24 Procedure for determining and updating project priority scores.** A municipality intending to apply for SDWLP financial assistance under this chapter shall submit to the department project priority evaluation and ranking form information in the department's online format and by the date required by the department. The submittal shall include all required documentation to justify points requested in the form. The department may not assign a priority score greater than 0 to a project until the applicant has submitted complete

priority evaluation and ranking form information to the department for evaluation. The procedure for determining and updating project priority scores shall be detailed in the annual intended use plan.

**NR 166.25 Project ranking system.** (1) The department shall maintain a project priority list for each state fiscal year, based on the intent to apply forms submitted under s. NR 166.08 (1), and shall rank the projects for which the department has determined priority scores. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first. The department shall develop an annual funding list consisting of all projects for which applications are submitted under s. NR 166.08 (3) to (5).

(2) If 2 or more projects have the same priority score, the project serving the larger population shall have the higher priority.

(3) Funds shall be allocated to projects in the order in which they appear on the funding list, except that projects may be given priority or removed from the list, upon written notice by the department, if any of the following situations occur:

(a) Ranking the projects in descending order does not result in at least 15 percent of the funds allocated to small systems serving less than 10,000 persons. In this case, systems serving less than 10,000 persons shall be given priority until the 15 percent funding allocation requirement is met.

(b) Requirements of s. NR 166.08 (3) to (5) are not met.

(c) A project is canceled, or the funding request is withdrawn by an applicant.

(d) The applicant is unable to provide bidding documentation to the department by a date that allows enough time for a loan closing to occur by the loan closing deadline for the project.

**Note:** The amount of time needed between submittal of bidding documentation and loan closing can vary by project. Typically, though, several weeks are needed to accomplish all of the steps that must be taken by various players in the process prior to loan closing-- review the bidding documents, prepare a financial assistance agreement, have bond documents drafted, review invoices for the first disbursement of funds, conduct final reviews of the applicant's revenues and expenses, pass a bond resolution and sign the financial assistance agreement, mail signed documents to appropriate agencies, and arrange for the wiring of funds to the municipality's account.

(e) The project fails to meet the engineering review requirements or does not have department approval of the project.

(f) The applicant has reached the 25 percent biennial funding cap, as established under s. 281.61 (8) (bL), Stats.

**Note:** In any biennium, no municipality may receive more than 25 percent of the SDWLP funds projected by DOA to be available for that biennium.

(g) DOA is not satisfied that the municipality has the financial capacity as described in ch. Adm 35 to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations it issues for the project.

(h) Federal or state refinancing or reimbursement restrictions prevent funding of the project with SDWLP monies.

**SECTION 2. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 3. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].