

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** NR 162 relating to the Clean Water Fund Program.

**CF-13-13**

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

**1. Statute Interpreted, Statutory Authority and Explanation:** Section 281.58(2), Wis. Stats., authorizes the department to promulgate rules necessary for the execution of its responsibilities under the Clean Water Fund program. This program provides financial assistance to municipalities for water infrastructure projects including wastewater treatment plants, collection systems and storm water systems.

**2. Related Statutes or Rules:** Concurrent with this effort, the department is also repealing and recreating ch. NR 166 relating to the Safe Drinking Water Loan Program. The Clean Water Fund Program and the Safe Drinking Water Loan Program are part of the Environmental Improvement Fund.

**3. Plain Language Analysis:** Revisions to ch. NR 162, Wis. Adm. Code, relating to the Clean Water Fund Program, clarify eligibility criteria, streamline processes, revise the scoring system, and update implementation issues since the rule was last revised. No new significant changes to the program result from the rule revisions. The main topics for revision include:

- Eligible projects/activities - updates language to incorporate current practices
- Dates for ITA/PERF submittals – changed to Oct 31<sup>st</sup> and allows for on-line submittals
- PERF scoring system – revised system to incorporate permit limits, automate the scoring process, and require on-line, annual submittals
- Interim financing costs - increased from \$7500 to up to \$15,000
- Refinancing - clarifies that a municipality cannot already have “long-term affordable debt” outstanding for its completed or substantially completed project”; any project that has been substantially completed for more than 3 years is not eligible for financing.
- Disadvantaged Business Enterprise – updated requirements to refer to federal requirements
- Median Household Income – clarifies the source of this data as the American Community Survey (as part of the U.S. Census Bureau) and provides options for sanitary districts.

**4. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** All state programs must comply with the federal requirements for the program, as outlined in 33 USC 1251 to 1376 and 33 USC 1381 to 1387. This rule complies with the requirements of the Federal Clean Water Act.

**5. Comparison with Similar Rules in Adjacent States:** Each state implements the Clean Water Act consistently with the associated state statutes and federal requirements. Each state loan program has unique features, but all of the programs are designed to meet federal Clean Water Act requirements. Each state has a unique priority scoring system based on state priorities but consistent with federal priorities. The EPA reviews program implementation to ensure consistency with the federal requirements.

**6. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** The implementation of the Clean Water Fund 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.

**7. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:** Rule revisions are expected to have minimal impact on small businesses, in that it streamlines existing processes and clarifies implementation criteria. Rule revisions to not contain any new requirements for small businesses.

**8. Effect on Small Business (initial regulatory flexibility analysis):** Minimal.

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## **SECTION 1. NR 162 is repealed and recreated to read:**

### **SUBCHAPTER I — GENERAL**

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

- (1) Establish rules under ss. 281.58 and 281.59, Stats., to implement and administer a financial assistance program for the engineering and construction of treatment works and best management practices.
- (2) Establish a priority system for distributing clean water fund program financial assistance as provided in s. 281.58, Stats., and the mechanisms and methodology to be used to modify the priority scoring system.
- (3) Establish rules under s. 281.58 (13), Stats., to implement and administer hardship financial assistance.
- (4) Establish rules under s. 281.58 (6) (b) 8., Stats., to implement and administer interest rate subsidies for loans issued by the board of commissioners of public lands for projects to engineer and construct treatment works and best management practices with total estimated project costs of \$2,000,000 or less.

**Note:** All forms necessary for funding under this chapter are available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and in paper form from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921. The forms are also available on the Department of Natural Resources website.

**NR 162.002 Applicability.** This chapter applies to all applicants for and recipients of financial assistance for the engineering and construction of treatment works and best management practices made pursuant to ss. 281.58 and 281.59, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.58 and 281.59, Stats.

**NR 162.003 Definitions.** In this chapter:

- (1) "Amendment" means a formal, written change to an existing legal agreement or contract, executed by all parties to the original agreement or contract.

(2) “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.

(3) “Applicant” means any municipality that applies for financial assistance under this chapter.

(4) “Approval” means the written approval of the department.

(5) “Best management practices” or “BMPs” has the meaning given in s. NR 151.002 (4).

(6) “Block group” means a subdivision of a census tract made up of a cluster of blocks having the same first digit of their four-digit identifying numbers within the tract.

(7) “Board of commissioners of public lands” or “BCPL” means the organization comprised of the secretary of state, the state treasurer, and the attorney general that operates under the authority of ch. 24, Stats.

**Note:** The BCPL is also known as state trust funds.

(8) “Breach of contract” means the failure of the municipality to comply with any of the following:

(a) The terms and conditions of the financial assistance agreement or interest rate subsidy agreement.

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

(9) “Capital improvement” means construction resulting in improvements to real property or depreciable property, or both, or adding to the value or useful life of these assets, including structural improvements, such as constructing new treatment works or BMPs or modifying existing buildings or facilities, or improvements that enhance usefulness or productivity, including replacing an existing pump with a more efficient new pump.

**Note:** The following are examples of capital improvements: constructing permeable pavement or an infiltration pond to control runoff; constructing new clarifiers, aeration tanks, or other major components of a treatment works; upgrading existing equipment or installing new, more efficient process equipment, such as equipment for dewatering, aeration, scraping, skimming, or disinfection; constructing new process, administration, and storage buildings; adding to or constructing major renovations of existing facilities; replacing or rehabilitating aged or undersized sanitary sewer pipes; replacing a roof on a treatment plant building; constructing a new lift station or upgrading an existing lift station; installing security, a supervisory control and data acquisition system, or monitoring equipment as part of a scored project.

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

(11) “Census designated place” means a statistical area delineated for each decennial census according to U.S. census bureau 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.

(12) “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.

(13) “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.

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

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

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

**(17)** "Construction" means an action taken to make a capital improvement, including any of the following actions:

(a) Building, erecting, extending, or assembling a treatment works or BMP or a new major asset for an existing treatment works or BMP.

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

(c) Purchasing a package wastewater treatment system or capacity in an existing treatment works.

(d) Altering, modifying, improving, upgrading, rehabilitating, or adding to existing treatment works facilities or BMPs.

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

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

(g) Remediation of illicit discharges to an MS4 or runoff treatment works.

**(18)** "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 metropolitan sewerage district, or of the area served by the treatment works if the treatment works serves only a portion of the place or minor civil division in which it is located.

**(19)** "Debt" means a financial liability that is subject to repayment and incurred to fund a project, including liabilities in the form of lines of credit, bond anticipation notes, general obligation bonds, revenue bonds, general obligation promissory notes, certificates of indebtedness, and special assessment bonds.

**(20)** "Department" means the department of natural resources.

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

**(22)** "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.

**(23)** "Discharge" has the meaning given in s. 283.01 (4), Stats.

**Note:** Under s. 283.01 (4), Stats., “discharge”, when used without qualification, includes a discharge of any pollutant.

**(24)** “DOA” means the department of administration.

**(25)** “Effluent limitation” has the meaning given in s. 283.01 (6), Stats.

**Note:** Under s. 283.01 (6), Stats., “effluent limitation” means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of this state. Flow rates and flow volumes are considered to be physical constituents restricted by WPDES permits.

**(26)** “Engineering” includes the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works or BMP, including preparing a facilities plan.

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

(c) Identifying illicit discharges to an MS4, a BMP, or a wastewater treatment works if the identification work is directly related to the scored project.

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

(e) Observing, inspecting or supervising any of the activities under pars. (a) to (d) or under sub.(17).

**(27)** “Equipment replacement fund” means a separate fund established by the municipality for the purpose of making expenditures for major repair or replacement of equipment necessary for continuing operation of wastewater or runoff treatment works, or for maintenance of a BMP.

**(28)** “Financial assistance” includes one or more of the following actions taken by the department and DOA under ss. 281.58 and 281.59, Stats.:

(a) Providing a loan, principal forgiveness, interest rate subsidies, a grant, a guarantee, or credit enhancement to a municipality.

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

(c) Purchasing insurance for a municipality.

**(29)** “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 to the municipality under subch. II or III.

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

**(31)** “Force account work” means engineering, construction, or other project-specific activities performed by municipal paid employees, or using equipment owned by the municipality, or both.

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

**(33)** “Groundwater” has the meaning given in s. 160.01 (4), Stats.

**(34)** “Hardship financial assistance” means financial assistance authorized under s. 281.58 (13), Stats.

**(35)** “Hardship financial assistance funding list” means a list established by the department each fiscal year that ranks, in environmental priority order, based on the priority list established under s. 281.58 (8e), Stats., scored projects eligible for hardship financial assistance under s. 281.58 (13) (b), Stats.

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

**(37)** “Hardship present value subsidy” or “hardship PV” means the present value subsidy provided to municipalities to reduce loan interest rates below those interest rates established in s. 281.58 (12) (a), Stats., including 0% interest loans, and to provide grants.

**(38)** “Hardship subsidy” means the amount of subsidy provided by the CWFP under s. 281.58 (13), Stats., to reduce the interest rate of a CWFP loan to a rate below any interest rate specified in s. 281.58 (12) (a), Stats., and to provide grants.

**(39)** “Illicit discharge” has the meaning given in s. NR 216.002 (11).

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

**(41)** “Industrial user” has the meaning given in s. 281.58 (1) (c), Stats.

**(42)** “Infiltration” has the meaning given in s. NR 110.03 (16).

**(43)** “Inflow” has the meaning given in s. NR 110.03 (17).

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

**(45)** “Interest rate subsidy” means the subsidy, expressed in percentage points, provided by the CWFP under ss. 281.58 and 281.59, Stats., to reduce the interest cost of loans provided to municipalities by the BCPL under ch. 24, Stats.

**(46)** “Interest rate subsidy agreement” means a written agreement between a municipality, the department, and DOA that contains the terms and conditions of financial assistance provided to the municipality under subch. IV.

**(47)** “Interim financing” means a debt incurred by a municipality to temporarily finance a scored project until permanent financing is obtained from the CWFP.

**(48)** “Interim financing costs” means the net interest, fees, and charges associated with issuing interim financing, including underwriter discounts, attorney fees, financial advisor fees, printing costs, bond rating charges, and trustees fees.

**(49)** “Lateral” means a privately-owned sewer service line that connects a residence, commercial establishment, institutional facility, or industrial user to a municipal sewage collection system or individual system.

**(50)** “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 sewer pipe repair or replacement when a pipe bursts, including 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 1 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.

(f) Emergency maintenance, including unscheduled activities and repairs, such as repairing watermain breaks or mechanical malfunctions in aged or damaged infrastructure, 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, excepting 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.

(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 occurring outside of the construction site of a scored project or that is not necessary for construction of a scored project.

**(51)** "Market interest rate" has the meaning given in s. 281.59 (1) (b), Stats.

**Note:** Under s. 281.59 (1) (b), Stats., "market interest rate" means the effective interest rate on a fixed-rate revenue obligation issued by the state to fund a loan made under this section or, for a variable rate obligation, the effective interest rate that DOA determines would have been paid if the variable rate obligation had been sold at a fixed rate.

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

**Note:** Under s. 281.58 (1) (m), Stats., "median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

**(53)** "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.

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

**(55)** “Municipal separate storm sewer system” or “MS4” means a system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, that is all of the following:

- (a) Owned or operated by a municipality.
- (b) Designed or used for collecting or conveying storm water.
- (c) Not a combined sewer conveying both wastewater and storm water.
- (d) Not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

**(56)** “Municipal WPDES storm water discharge permit” means any permit issued to a municipality by the department under s. 283.33 (3), Stats., for the purpose of controlling storm water discharges from an MS4.

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

**Note:** Under s. 281.59 (1) (c), Stats., “municipality” means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, joint local water authority created under s. 66.0823, Stats., or federally recognized American Indian tribe or band in this state.

**(58)** “New or changed limits” means an effluent limitation in a WPDES permit that was newly established or modified after May 17, 1988.

**(59)** “Nonpoint source” has the meaning given in s. 281.65 (2) (b), Stats.

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

**(60)** “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 treatment works or BMP asset or item of equipment is intended, including activities to keep 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 treatment works or BMP.

(f) Routine walk-through and other surveillance activities associated with identifying operational anomalies and ensuring all treatment works or BMP components are working as intended.

**(61)** “Parallel cost percentage” means, for a scored project, the proportion of costs eligible for below-market rate financing relative to the total costs eligible for CWFP financing as established in s. NR 162.04 (1).

**Note:** The calculation of the parallel cost percentage is described in s. NR 162.04 (1) (c).



**(62)** "Performance standards" means nonagricultural performance standards established by the department in ch. NR 151, pursuant to s. 281.16 (2), Stats.

**(63)** "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.

**(64)** "Plans and specifications" means project drawings and specification manuals for all construction work to be included in the financial assistance for the scored project.

**(65)** "Population" means the most recent year's final population estimate published by the DOA demographic services center for the Wisconsin city, town, or village that submitted an intent to apply form. For a municipality other than a city, town, or village, "population" means the most recent population count or estimate done for the municipality and provided to the department by the municipality for purposes such as completing a sanitary survey.

**(66)** "Present value subsidy" or "PV" means the sum of periodic subsidies for loans made to or projected to be made to municipalities during a fiscal year, discounted at a rate of 5% to 7% per year to the first day of the biennium during which the loans are made.

**(67)** "Prior debt service" means the principal and interest of debt incurred for a previous capital improvement that is related to the treatment works or BMP and is documented as incurred in the past.

**(68)** "Priority score" means the numerical value, determined by the department, that is assigned to each project in accordance with s. NR 162.51.

**(69)** "Professional services" includes engineering, archaeological, legal, or financial services, provided by a formally certified member of a professional body, such as a trade association or organized profession.

**(70)** "Project" means a set of activities intended to result, or that has resulted, in completed construction of wastewater related or storm water related facilities or practices.

**(71)** "Project closeout" means the procedures described in s. NR 162.14 (4) for projects funded under subchs. II and III, and in s. NR 162.70 (4) for projects funded under subch. IV.

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

**(73)** "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.

**(74)** "Proportional share" means the costs of the operation and maintenance of the treatment works or BMP shared equitably and proportionately among the users through a user charge system.

**(75)** "Receiving municipality" means a municipality that owns a treatment works and accepts discharges from one or more other municipalities into its treatment works for treatment and disposal.

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

**(77)** "Replacement" means obtaining and installing equipment, accessories, or appurtenances that are necessary during the useful life of the treatment works or BMP project funded through the CWFP to maintain or improve the capacity and performance levels for which the treatment works or BMP was designed and constructed.

**(78)** "Residential user" means a structure or part of a structure, including a mobile home, that is used primarily as a home, residence, or sleeping place by one or more persons maintaining a common household and that uses a publicly owned treatment works. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

**(79)** "Runoff" has the meaning given in s. NR 151.002 (40).

**Note:** In s. NR 151.002 (40), "runoff" means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

**(80)** "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 CWFP project number.

**(81)** "Sewage collection system" has the meaning given under s. NR 110.03 (28), and includes individual systems, such as septic tanks, holding tanks, mound systems, and cluster systems, if the individual systems meet the criteria established under s. NR 162.03 (2).

**(82)** "Sewer" means either a sewage collection system or an MS4, or a portion of a sewage collection system or MS4.

**(83)** "Sewer service area" means that area served by a wastewater treatment works, or an area for which an agreement has been reached for future wastewater service, or an area for which capacity is provided to allow disposal of septic tank or holding tank wastes.

**(84)** "Storm water" has the meaning given in s. NR 216.002 (33).

**Note:** Under s. NR 216.002 (33), "storm water" means runoff from precipitation, including rain, snow, ice melt, or similar water that moves on the land surface via sheet or channelized flow.

**(85)** "Subscribing municipality" means a municipality that discharges or plans to discharge all or part of its wastewater or storm water to another municipality for treatment and disposal.

**(86)** "Subsidy" means the amount provided by the environmental improvement fund to a recipient of CWFP financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

- (a) To reduce the interest rate of CWFP loans from market interest rate to a lower subsidized rate.
- (b) To reduce the interest payments on eligible loans or portions of loans made by the BCPL.
- (c) To provide hardship financial assistance, including grants.
- (d) To provide financial assistance for additional eligible costs of the scored project.
- (e) To forgive a portion of the principal of a CWFP loan.

**(87)** “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.

**(88)** “Total annual charges” means the annual treatment works or BMP costs, including operation and maintenance costs, equipment replacement fund deposits, CWFP debt service, prior debt service, debt service for project costs ineligible for CWFP assistance, and hookup fees owed to another municipality.

**(89)** “TSS” means total suspended solids.

**(90)** “Treatment works” or “treatment work” has the meaning given in s. 283.01 (18), Stats.

**Note:** Under s. 283.01 (18), Stats., “treatment work” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the treatment works, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, “treatment works” means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. This definition of “treatment works” includes storm water projects for municipalities that are required to obtain a WPDES permit under ch. 283, Stats.

**(91)** “Unsewered municipality” means a municipality in which some or all of the residential areas lack a sewage collection system.

**(92)** “Useful life” means one of following:

(a) The period during which a treatment works operates, if the treatment works was constructed partially or wholly with U.S. environmental protection agency title II construction grants.

(b) The term of the loan, if the treatment works was constructed partially or wholly with CWFP financing.

**(93)** “User charge” means a charge levied on users of a treatment works or BMP for the user’s proportional share of the cost of operation, maintenance and replacement of the treatment works or BMP.

**(94)** “User charge system” means a system of charges meeting requirements applicable to the project, established in s. NR 162.08, s. 281.58 (14) (b) 1. and 7., Stats., and s. NR 216.06 (2) (c) to (e).

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

**(95)** “Wastewater” means a waste stream conveyed to a treatment works via a sewage collection system, including a combined sewer conveying both sanitary wastewater and storm water.

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

**(97)** “WPDES permit” means a Wisconsin pollution discharge elimination system permit issued under ch. 283, Stats.

## SUBCHAPTER II — FINANCIAL ASSISTANCE REQUIREMENTS

**NR 162.01 Types of financial assistance available.** The department and DOA may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., and ch. Adm 35, provide to an eligible applicant for a scored project any of the following types of financial assistance unless the project has been substantially complete for 3 years or longer or the applicant already has long-term affordable debt outstanding for its completed or substantially completed project:

(1) Subject to the limits established in s. NR 162.04 (3), purchase or refinance a municipality's interim financing.

(2) Guarantee, or purchase insurance for, municipal obligations for construction of a treatment works or BMP if the guaranteed or purchased insurance would improve credit market access or reduce interest costs on the municipal obligations.

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

(4) Provide hardship financial assistance to eligible applicants pursuant to subch. III.

(5) Provide interest rate subsidies pursuant to subch. IV.

**NR 162.02 Annual funding policy, project priority list, and funding list. (1) FUNDING POLICY AND PROJECT PRIORITY LIST.** The department may produce an annual CWFP funding policy in conjunction with the fiscal year's priority list established under s. NR 162.53. The funding policy may describe methods for making funding determinations and other policies related to the fiscal year. If 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 a funding list of all CWFP-eligible applicants, including applications submitted under subchs. II to IV, when the amount available under s. 20.866 (2) (tc) or 281.59 (3e) (b) or (4) (f), Stats., is insufficient in accordance with s. 281.58 (9m) (f), Stats.

**Note:** A separate funding list for hardship projects will be prepared annually in accordance with s. NR 162.26.

**NR 162.03 Project eligibility. (1) TRADITIONAL WASTEWATER TREATMENT PLANT AND COLLECTION SYSTEM PROJECTS.** A municipality may receive financial assistance under this chapter for a publicly-owned wastewater treatment works scored project, including a treatment plant or sewage collection system project, that meets any of the following criteria:

(a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes the following types of projects:

1. Projects for which construction will completely take place inside the fence or on site of a wastewater treatment plant, such as projects to build or modify headworks, clarifiers, aeration basins, stabilization ponds, sludge processing equipment, sludge storage facilities, or on-site administrative buildings, and projects to build or modify facilities for the receiving, storage, or treatment of septage, as defined in s. 281.58 (1) (cv), Stats.

**Note:** "Septage", under s. 281.58 (1) (cv), Stats., means the scum, liquid, sludge, or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system.

2. Projects for which construction takes place outside of the fence of the wastewater treatment plant that are necessary to maintain or improve the integrity and performance of wastewater treatment works facilities

servicing the municipality, including sanitary sewer replacement or rehabilitation, sanitary sewer or lateral lining, lift station or headworks upgrades, and construction of new interceptors, lift stations, pretreatment facilities, septage receiving stations, and other treatment works facilities outside of the fence of the wastewater treatment plant.

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

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

(d) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality. This includes the following types of projects:

1. Projects for construction of a new wastewater treatment plant or upgrade of an existing plant to accept and treat wastewater from a previously unsewered area, such as projects to build or add capacity to clarifiers, aeration basins, stabilization ponds, or sludge facilities.
2. Sewage collection system projects to install sewer pipes where there were none and interceptors to carry wastewater to a new or existing wastewater treatment plant.

**Note:** Traditional wastewater treatment plant and collection system projects are those that use common infrastructure and processes to collect and treat wastewater, including pipes to collect wastewater from homes and businesses and carry the water to a treatment plant that uses techniques and equipment to filter and settle out solids, aerate the water to encourage natural processes of growth of bacteria and other organisms to consume much of the waste, disinfect the processed water, and process the sludge removed from the wastewater. Traditional projects tend to collect and treat point-source pollution only, unless storm sewers contribute to the flow of water to the wastewater treatment plant or the system has infiltration or inflow problems. The purpose of some traditional projects is to fix these types of excess flow issues. Traditional wastewater treatment is discussed in the Primer for Municipal Wastewater Treatment Systems, Publication EPA 832-R-04-001, dated September 2004, available on the U.S. environmental protection agency's website at: [http://water.epa.gov/aboutow/owm/upload/2005\\_08\\_19\\_primer.pdf](http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf)

**(2) INDIVIDUAL WASTEWATER TREATMENT SYSTEMS.** (a) A project that is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste that serve one or more properties if the municipality:

1. Owns each individual system.
2. Is responsible for the proper installation, operation, and maintenance of each individual system.
3. Has unlimited access to each individual system at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation, and replacement of the system.
4. Establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual systems, and for monitoring the impact of the systems on groundwater where required by the department.

5. Complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

Note: Individual wastewater treatment systems may include cluster systems, mound systems, holding tanks, septic tanks, pipes to transport wastewater, and other alternative systems for small communities.

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

**(3) AREA-WIDE STORM WATER PROJECTS.** A municipality may receive financial assistance under this subchapter for a publicly owned project that is necessary to control storm water runoff rates, volumes, and discharge quality. This includes projects to install new infiltration practices, meet performance standards contained in a permit issued under ch. NR 216, or construct an MS4 that is necessary to maintain the integrity and performance of the runoff treatment works or BMP serving the municipality, or storm water projects eligible under s. 281.58, Stats., and required by any of the following:

(a) A WPDES storm water permit issued under subch. I of ch. NR 216.

(b) A performance standard.

(c) A storm water management plan or other applicable plan approved by the department for purposes of managing runoff.

**(4) INDIVIDUAL STORM WATER PROJECTS.** (a) A project that is eligible under sub. (3) may consist of individual systems that treat runoff and serve one or more properties if the municipality:

1. Owns each individual BMP.

2. Is responsible for the proper installation, operation and maintenance of each individual BMP.

3. Has unlimited access to each individual BMP at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation, and replacement of the BMP.

4. Establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual BMPs, and for monitoring the impact of the BMPs on the groundwater where required by the department.

5. Complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land, or ordinance.

(c) The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

**(5) INELIGIBLE PROJECTS.** The department may determine that an entire project or a portion of a project is ineligible for CWFP financial assistance. If the department determines that a portion of a scored project is ineligible, it shall specifically identify the ineligible portions 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 to receive financial assistance under this chapter:

(a) Projects of a municipality that is failing to substantially comply with conditions or requirements of s. 281.58 or s. 281.59, Stats., ch. Adm 35, ch. NR 162, an existing financial assistance agreement with the CFWP, a financial assistance agreement with the safe drinking water loan program under s. 281.61, Stats., or the terms of a federal or state grant used to pay the costs to plan, design, or construct a treatment works or BMP.

(b) As specified in s. 281.58 (8) (a) 2., Stats., connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(c) Public sanitary sewer mains, interceptors, and individual systems that exclusively serve development not in existence as of the date the department receives an application submitted by a municipality under this chapter.

(d) Any project from which no construction costs are to be funded through the CFWP, 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.

(e) Dams, pipes, conveyance systems, and BMPs, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(f) In accordance with s. 281.58 (8) (d), Stats., a project of an unsewered municipality that does not own and is not constructing a treatment plant and will be disposing of wastewater in the treatment work of another municipality, unless it executes an agreement under s. 66.0301, Stats., with another municipality that will receive, treat, and dispose of the wastewater of the unsewered municipality.

**NR 162.04 Cost eligibility. (1) ELIGIBLE COSTS.** (a) *Eligible at a subsidized rate.* Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include any of the following items and activities when specific to the scored project scope, or when approved by the department after being identified in the application as necessary for efficient operation of or the integrity of the overall treatment works or BMP and having de minimis cost:

1. 'Abandonment.' Abandonment of treatment works if approved in the plans and specifications of a scored project or by department staff, including activities such as demolition, re-landscaping, and removal and disposal of municipal waste or other debris.

2. 'Access roads.' Construction of roadways necessary to provide appropriate access to facilities such as lift stations and treatment plants.

3. 'Acquisition of facilities.' Costs associated with acquiring facilities of an existing treatment works or BMP if the municipality will own, operate, and maintain the facilities throughout the term of the financial assistance agreement.

4. 'Administrative buildings and equipment.' Buildings, offices, and office equipment and furnishings used for purposes of operating a treatment works, such as administration and storage buildings, if 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 treatment works.

5. '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.

6. 'Compliance with state and federal requirements.' Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

**Note:** 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 American iron and steel; 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.

7. 'Construction activities.' Activities defined in s. NR 162.003 (17) and included in construction contracts or performed by force account, including any of the following:

a. Replacing, repairing, or rehabilitating a treatment works or BMP if identified in the plans and specifications as cost-effective and necessary.

b. Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, watermains, and storm sewers necessary as a result of construction of the scored project.

c. Punch list item activities.

d. Acquiring, consuming, or expending materials.

e. Obtaining products that comply with federal requirements to use American iron and steel in CWFPP projects.

f. Other capital costs incurred solely for purposes of the scored project.

8. 'Demolition.' Demolishing existing structures if the demolition is part of a scored project and at least one of the following applies:

a. The existing structure is part of the treatment works.

b. The existing structure is part of a BMP project.

c. The demolition is needed for site preparation.

d. 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.

9. 'Discharge monitoring.' The cost of equipment owned or to be owned by the municipality for monitoring, sampling, and analyzing industrial discharges to a municipal wastewater treatment works, or illicit discharges to a runoff treatment works or BMP.

10. 'Easements and rights-of-way.' Acquisition of easements and rights-of-way, including purchase cost, and administrative and legal expenses.



11. 'Equipment and tools.' Equipment and tools, the costs of which the department may prorate if the municipality intends to use these items for multiple purposes rather than solely for the treatment works or BMP. Eligible equipment and tools include any of the following:

- a. Mobile equipment, such as portable stand-by generators, portable emergency pumps, and grounds and maintenance equipment for mowing and snow removal, for the treatment works or BMP.
- b. Spare parts, if included in the plans and specifications or otherwise approved by the department.
- c. Tools necessary for operations and maintenance of the treatment works or BMP, including specialized tools for specific purposes, site and building maintenance tools such as wheelbarrows, lawn sprinklers, weed trimmers, hoses, shovels, and rakes, and other basic tools such as trash cans, brooms, flashlights, and multiple-use hand tools.
- d. Machinery for manufacturing or repairing necessary tools or equipment for the treatment works or BMP.
- e. Computers and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the treatment works or BMP. This includes equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, communications, and supervisory control and data acquisition.

12. 'Fees.' Fees paid by the municipality for any of the following:

- a. Permits obtained for construction, including building, electrical, and plumbing permits, construction site storm water permits, and railroad crossing permits.
- b. 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 sewer use ordinances, management plans, intermunicipal agreements, and legal work necessary for securing eligible permits.
- c. Service fees paid to a state or federal agency, except administrative fees paid annually along with principal and interest payments on a CWFPP loan.

13. 'Groundwater monitoring.' Installing groundwater monitoring equipment or facilities.

14. 'Insurance.' Purchasing insurance necessary during construction of the scored project, including property, liability, builders risk, and construction insurance.

15. 'Interim financing.' Costs associated with interim financing for the scored project as delineated in sub. (3).

16. 'Laboratories.' Laboratory equipment, chemicals, and supplies related to initial setup, upgrade, or expansion of the laboratory.

17. 'Land Acquisition.' Acquiring land, including purchase cost and administrative and legal expenses if at least one of the following applies:

- a. The land will be used for storage of treated wastewater in land treatment systems before land application.

- b. The land will be used for composting or temporary storage of compost residues that result from wastewater treatment if the department has approved a program for use of the compost.

- c. The land is property on which the BMP, treatment works, biosolids facility or lift stations will be located, including urban corridors needed to support integrated systems of a treatment works or BMP for urban runoff.
- d. The land will serve to isolate a treatment facility as required under s. NR 110.15 (3) (d).
- e. The land will be used for sludge spreading.
- f. The land is the property on which individual systems are or will be located if the systems are publicly-owned and maintained.

**Note:** If the CWFPP has only federal funds available for providing financial assistance for a project, the department may only fund land acquisition for land that is “integral to the treatment process,” as defined by the U.S. environmental protection agency.

20. ‘Lines to public sewer mains.’ Pumping units and pressurized lines from the pumping units to the public sanitary sewer main, or holding and septic tanks and their sewer lines to the public sanitary sewer main, that are included in a sewage collection system, are cost-effective, and are owned and maintained by the applicant municipality.

21. ‘Management plans.’ Developing a detailed management plan for a scored project or, if eligible as an activity with de minimis cost, for a larger portion of a treatment works or BMP.

22. ‘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:

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

23. ‘Municipally owned facilities on private property.’ Grinder pumps, sewer laterals, service connections, service branches, risers and riser pipes, when municipally owned and municipally maintained.

24. ‘Pretreatment or toxicity reduction.’ Developing a municipal pretreatment or toxicity reduction program and constructing facilities to be used by the municipal treatment works or BMP in the program, including monitoring equipment.

25. ‘Professional services.’ Engineering, architectural, legal, and other professional services and fees, including any of the following:

- a. Conducting value engineering studies or analyses during the design phase.
- b. Conducting system evaluations and studies.
- c. Developing facilities plans and engineering reports.
- d. Preparing and submitting plans and specifications.
- e. Preparing, printing, and distributing bidding documents.
- f. Gathering documents and information for, and completing, the CWFPP financial assistance application or interest rate subsidy application, and other forms required for financial assistance.
- g. Developing or revising an operations and maintenance manual.
- h. Preparing a plan of operation for the project.
- i. Advertising for and conducting bid lettings.

- j. Analyzing bids, preparing award recommendations, and preparing contracts.
- k. Providing construction management, observation, and inspection.
- L. Preparing for and facilitating public education and participation opportunities.
- m. Travel, indirect costs, and labor included in contracts for services related to the scored project.
- n. Preparing a user charge system, a sewer use ordinance, or an ordinance related to storm water management.
- o. Preparing environmental assessment reports and evaluations.
- p. Conducting archaeological surveys and gathering historical site information.
- q. Providing financial advisor or bond counsel services related to loan closing or the issuance of bonds.
- r. Preparing a water conservation plan.
- s. Producing record drawings.
- t. Updating or upgrading treatment works maps of the areas impacted by the scored project.
- u. Monitoring use of American iron and steel.
- v. Providing administration of activities related to Davis-Bacon and related acts or other wage requirements.
- w. Conducting research or energy audits for incorporation of energy and water efficiency and conservation into the planning and design of a project.

26. 'Project site.' Construction-related work activities at the project site of a scored project, including the following:

- a. Landscaping areas impacted by construction of the scored project.
- b. Reconnecting laterals due to the rehabilitation of a publicly-owned treatment works.
- c. Relocating watermains if necessary for construction, and replacing mains with the same size or required minimum size pipe if breakage from construction occurs.
- d. Erecting project and treatment works identification signs.
- e. Preparing a site for construction, including surveying, staking, and grading.
- f. Restoring the construction site to original condition or upgrading the site to meet state and local requirements.
- g. Removing, relocating or replacing utilities, providing temporary utilities, installing new utility equipment, or upgrading utilities, if the recipient is legally obligated to pay these costs.

27. 'Safety.' Purchasing and installing safety equipment to be used in the operation and maintenance of the treatment works or BMP.

28. 'Sanitary sewers.' Evaluation, new installation, replacement, and lining and other rehabilitation of sanitary sewer pipes.

29. 'Security.' Purchasing and installing security equipment and appurtenances for the treatment works, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.

30. 'Septage facilities.' Facilities for receiving, storing or treating septage.

**Note:** "Septage", under s. 281.58 (1) (cv), Stats., means the scum, liquid, sludge, or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system.

31. 'Sludge removal.' Removing sludge when necessary as part of a scored project, including treatment plant upgrades, lagoon abandonment, conversion of a lagoon into an equalization basin, or other capital improvements.

32. 'Special assessment fees.' Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments for repayment of its CWFP loan.

33. 'Staffing evaluations.' Conducting an evaluation of staffing needs to determine appropriate changes to staffing levels as a result of the scored project.

34. 'Startup.' Startup expenses for a treatment works or BMP incurred solely because of the scored project, including costs for any of the following:

- a. Preparing a startup curriculum and training materials.
- b. Initial training of operating personnel on new or modified equipment, laboratory procedures, computers, controls, records management, and treatment processes.
- c. Obtaining expert operational assistance for adjustments to the treatment process.
- d. Implementing a maintenance management system.
- e. Trucking seed sludge for start-up of the activated sludge process.
- f. Attending off-site formal training programs if necessary for the initial operation of the constructed treatment works.
- g. Purchasing the first fuel fill-up for new equipment, such as generators.

35. 'Storm sewers.' a. Storm sewers that carry storm water runoff to an eligible treatment device or facility.  
b. Storm sewers or BMPs for controlling on-site runoff at treatment facilities, lift stations, septage receiving facilities and other treatment works facilities and properties.

36. 'Street restoration.' Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and storm sewers necessary as a result of construction of the scored project. 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 CWFP-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 can be due to the other funding source covering a portion of costs that would otherwise be eligible for CWFP funding or because some of the project costs are not eligible, such as watermain costs being ineligible when the project purpose is to replace both watermains and sanitary sewers.

37. 'Watermains.' Relocating watermains if necessary for construction, and replacing watermains of the same size or required minimum size if breakage due to construction of a scored project occurs.

(b) *Eligible at market rate.* Costs eligible for market interest rate financing of a scored project include any of the following:

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

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

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

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

5. The cost of any portion of a project to correct violations of effluent limitations contained in a permit issued under ch. 283, Stats., or violations of performance standards.

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

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

8. Costs for providing sewers in a previously unsewered area in accordance with s. 281.58 (8) (c), Stats.

**Note:** A scored project in an unsewered area is eligible for below-market-rate financing if the department finds that at least two-thirds of the initial flow will be wastewater originating from residences in existence on October 17, 1972. If an unsewered project does not meet the two-thirds rule, s. 281.58 (8) (c), Stats., allows the CWFP to fund the project at market rate only.

9. The amount of project costs determined appropriate for a sanction under s. NR 162.09 (4) (b) for noncompliance with DBE good faith effort requirements established in s. NR 162.09 (4) (a).

(c) *Market rate cost calculation.* 1. The amount of the costs described in par. (b) 1. to 4. is determined using a parallel cost percentage, which is calculated as follows:

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

b. Calculate a reduced capacity condition by subtracting the flows and loadings associated with par. (b) 1. to 4. from the total design capacity.

c. Estimate the eligible project costs associated with each of the conditions in subd. 1. a. and b.

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

$$PC = RC/DC$$

Where:

PC . . . is the parallel cost percentage expressed as a decimal.

RC . . . is the cost associated with the reduced capacity condition.

DC . . . is the cost associated with the total design capacity.

2. The amount of market rate project costs in par. (b) 1. to 4. is calculated as follows:

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

Where:

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

TP . . . is the total project cost eligible for CWFP financing.

PC . . . is the parallel cost percentage expressed as a decimal.

3. If the department determines that the project includes other market rate costs as described in par. (b) 5. to 8., the amount of those costs shall be subtracted from the amount eligible for below-market rate financing and added to the amount of market rate costs calculated in subd. 2.

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

**(2) INELIGIBLE COSTS.** Costs 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. Ineligible items and activities include all of the following:

(a) *Allowances.* Any allowance or contingency 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) *BCPL ineligible.* For a project receiving interest rate subsidy under subch. IV, project costs determined to be ineligible for loan assistance from the BCPL.

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

(e) *Buying capacity.* Purchase cost of buying capacity in an existing treatment works that is not being expanded.

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

(g) *Conflict of interest.* Costs incurred in 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 CWFP 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.

(h) *Engineering.* Engineering costs attributable to ineligible construction costs when ineligible construction and equipment costs are 10% or more of total construction and equipment costs.

(i) *Grant administration.* Any costs for administering or applying for funding from sources other than the CWFP, 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-CWFP federal or state government loan or grant programs, or other types of financial assistance programs.

(j) *Hookup charges.* Hookup charges imposed by one municipality on another for hooking into a treatment works or BMP, or transport system to such a facility, unless the charges are based on identifiable capital improvement costs incurred by the municipality imposing the charge, and are included in an intermunicipal agreement meeting the requirements of s. NR 162.06 (2) (h).

(k) *Industrial facilities.* Costs associated with privately-owned pretreatment facilities and monitoring equipment used by industry for sampling discharges to a municipal treatment works.

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

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

(m) *Late fees.* Interest or late fees charged a municipality for delayed payments to engineers, construction contractors, financial advisors, and others providing services to the municipality.

(n) *Laterals.* Connection laterals that transport wastewater from structures to municipally–owned or privately–owned wastewater systems.

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

(p) *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.

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

(r) *No construction.* All costs of a project if the municipality does not finance some construction costs through the CFWP, unless another governmental agency is providing financing for the construction costs and the department receives acceptable documentation of the other agency’s commitment.

(s) *O&M.* Operation and maintenance expenses as defined in ss. NR 162.003 (60) and (50), respectively.

(t) *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.

(u) *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 CFWP financial assistance, unless the costs are considered ineligible under another paragraph in this subsection. This paragraph does not apply to a municipality receiving a loan from the BCPL for a scored project receiving interest subsidy under subch. IV.

(v) *Outside of scope.* Costs outside the scope of the scored project. The department may approve a de minimis amount of costs outside the scope if the extra work will improve the overall integrity, operation, or functionality of the treatment works or BMP.

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

(x) *Post-closeout.* Costs incurred after the project completion date of the scored project.

(y) *Private septic payments.* Credits or payments to private septic owners made as a result of complying with s. 60.726, Stats.

(z) *Sludge removal.* Removing sludge from a wastewater facility, unless it is part of the activities necessary for a scored project.

(zc) *Special devices.* Waste–generating fixtures and associated plumbing from a residence or commercial establishment to a treatment unit, and modifications to homes or other buildings for installation of special devices.

(zg) *Special districts.* Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, and joint commissions.

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

(zp) *Watermains.* Watermain construction, replacement, or repair, unless the watermain is needed to carry water to a part of the treatment works, or the watermain work is necessary as a direct result of work performed for a scored project, such as moving a watermain to allow appropriate distance between it and a sanitary sewer pipe being constructed in the scored project or repairing or replacing a watermain damaged during construction of the scored project.

(zt) *Wisconsin fund facilities.* The acquisition of a treatment works built with Wisconsin fund grant program monies.

**Note:** The Wisconsin fund grant program was created to fund municipal wastewater treatment facility projects required to achieve the federal goal of "fishable and swimmable" for the state's waters. The grant program was administered under ch. NR 128, which was created in 1978. Final grant closeouts of Wisconsin fund projects occurred during the 1990s. This grant program preceded the CWFP which was created in 1987 Wisconsin Act 399.

(zx) *WPDES permit fees.* The cost of a WPDES permit unless it is a special permit specific to the project construction.

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

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

(c) *Interim interest costs.* The period of time for which interest on interim financing is eligible for financial assistance shall run from no earlier than 12 months prior to the start of construction through 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 financing exceeds the limit in par. (c), the interim financing costs shall be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the debt used for interim financing is not exclusively for the CWFP 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 financing principal that may be refinanced with CWFP financial assistance may not exceed the total amount of the interim financing that was spent on eligible project costs.



**NR 162.05 Notice of intent to apply. (1)** A municipality shall submit notice of its intent to apply for financial assistance in the form required by the department by October 31 prior to the state fiscal year from which the municipality is requesting to receive financial assistance. In order for the notice of intent to apply to be valid, it shall include the signature of an elected official of the municipality, an employee of the municipality, or the municipality's authorized representative designated by resolution, and at least one of the following shall apply:

(a) The online intent to apply form is completed and submitted by October 31.

(b) An alternate method of delivery is used due to inability to access or electronically submit the online electronic form if appropriate justification accompanies the alternate submittal. Alternate methods include any of the following:

1. A paper copy of the intent to apply form is postmarked by October 31 or has a documented shipping or mailing date of October 31 or earlier.

2. The department receives the intent to apply form by October 31 via fax, e-mail, or other delivery methods. These methods are acceptable as long as it is clear that the notice arrived at the department by the October 31 deadline.

3. Hand-delivery and shipping without documentation of the shipping date are acceptable as long as they are received by the department prior to the close of business on October 31.

**Note:** An Intent to Apply form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707-7921.

(2) The department may waive the requirement in sub. (1) upon the written request of a municipality pursuant to s. 281.58 (8m) (c), Stats. A waiver shall be in the form of a variance to sub. (1) and shall be consistent with the rules established in s. NR 162.20 (1) for granting variances.

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

**NR 162.06 Application. (1) PROCEDURES.** A municipality shall apply for financial assistance in accordance with s. 281.58 (9), Stats., in the form required by the department.

**Note:** An application form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921. An interest rate subsidy application is a different form and must be submitted in accordance with s. NR 162.41.

(2) **CONTENTS OF APPLICATION.** The applicant shall submit a complete application. A complete application includes each of the following items, if applicable to the project:

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

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats.

(c) A completed financial assistance application form, including estimated or actual construction costs and information regarding assistance received or expected from another funding source.

**Note:** The CWFP shall not provide any financial assistance for a project if construction costs are not included as part of the project costs to be funded by the CWFP, with the exception of some situations in which other funding sources are also participating in the financing of the project.

(d) Items or information for compliance with federal regulations, identified by the department on the application form 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 buying American iron and steel.

(e) Copies of executed engineering contracts for planning and design if costs are requested for planning and design.

(f) A copy of the executed engineering contract for construction management if funds are requested for construction management and the contract is available at the time of application submittal.

(g) A resolution authorizing an elected official of the municipality or an employee of the municipality to act as the applicant's representative in connection with the application and with any additional information required for financial assistance.

(h) A proposed or an executed intermunicipal agreement when 2 or more municipalities discharge to or through the same treatment works or BMP. The intermunicipal agreement shall do each of the following that is applicable to the project:

1. Identify ownership for each individual portion of the treatment works or BMP, such as interceptors, sewage collection systems, MS4s, lift stations, and privately owned treatment works or BMPs.

2. Establish a term of agreement that is at least for the life of the loan.

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

4. Demonstrate the basis for generating revenue for operation, maintenance and replacement costs based on actual use, and state the parties that are responsible for paying these charges.

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

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

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

8. For runoff treatment works or BMP projects, require each municipality to adopt a storm water management zoning ordinance for new development and redevelopment, when required by the department.

(i) 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.

(j) A copy of the existing user charge system, if available, and information regarding the proposed user charge system and a sewer use or storm water management zoning ordinance, when required by the department, for the treatment works or BMP.

(k) Any existing or proposed contracts with users of the treatment works or BMP.

(L) Documentation applicable to U.S. internal revenue service tax information as indicated in the application form.

(m) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds, if required by U.S. treasury reimbursement regulations 26 CFR 1.150–2, and the local governmental unit passed a reimbursement resolution prior to the application submittal deadline.

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

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

(a) The department determines that it received all of the applicable items and information from par. (2) for the scored project, either in the application form or separately.

(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 CWFP.

**(4) 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 typical documentation for the project due to differences between agencies in items or procedures, including a project that is let with a group of projects by the Wisconsin department of transportation or a project for which the contents of a contract includes language specific to the other agency, the department may determine what documentation is appropriate to satisfy the application requirements.

**(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 a completed application form and required attachments by the application submittal deadline in order to be considered eligible for the funding for which the deadline is set. If the department determines an attachment or some information is missing from an application and is, therefore, incomplete, the department may allow a reasonable amount of additional time for an applicant to submit the missing items. The department may refuse an application if it is missing multiple attachments or a significant amount of information, or if the applicant fails to submit missing attachments or information by the extended deadline date set by the department in correspondence sent to the applicant.

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

**(7) DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT.** An applicant shall sign the financial assistance agreement within 8 months after the date the department determines in writing the application

is acceptable. An applicant shall time its submittal of the application accordingly. If a financial assistance agreement is not signed within 8 months of the department's determination of acceptance, the applicant's project shall lose its CWFP allocated subsidy. A municipality may not submit more than one application for any single project in any 12-month period, except for an application for additional costs for a scored project for which the department previously executed a financial assistance agreement.

**NR 162.07 Financial assistance requirements.** Before executing a financial assistance agreement for any project under subch. II or III, the department shall determine that all of the applicable requirements of s. NR 162.06 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 work as required by s. NR 162.09 (5).

(b) Initial flow documentation, if the scored project or a portion of the scored project is to construct a sewage collection system in or extend an interceptor to an unsewered area.

(c) Legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project.

(d) 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 a recommendation.

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

a. Written documentation of the reasons why the lowest bidder is considered nonresponsive or nonresponsible.

b. A legal opinion stating that the award to 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 appropriate wage rate language, 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 bound 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.

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

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

(e) A request for disbursement and required supporting invoices, payoff statements, 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.

(f) 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.

(g) Completed federal forms, if applicable, including federal forms related to compliance with DBE solicitation and utilization requirements.

(h) Parallel cost percentage information.

(i) An executed intermunicipal agreement, if 2 or more municipalities will discharge to or through the same treatment works or BMP.

(j) Proof that applicable ordinances required under s. NR 162.08 or s. NR 216.06 (2) (c) to (e) have been adopted by the municipality.

(k) A copy of the adopted user charge system and proof that the municipality adopted the user charge system.

(L) A copy of the executed construction management contract with an architectural or engineering firm, if costs are requested for this activity.

(m) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds, as described in U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(n) Documentation of compliance with federal requirements, when applicable, which may include certification of compliance with Davis-Bacon wage rate requirements, use of American iron and steel in the project, and cost, effectiveness, energy efficiency and water efficiency of the selected design.

**(2)** The department has approved the plans and specifications and the parallel cost percentage for the scored project, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.

**(3)** The scored project has met the priority requirements of subchs. III and V, as applicable.

**(4)** The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the treatment works or BMP 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 has applied for, permits required by the department for the scored project, including those under chs. 30 and 283, Stats.

**(7)** For an runoff treatment works or BMP, the applicant agrees to do the following: (a) Adopt local regulations for construction sites.

(b) Adopt a municipal storm water management plan for new development and redevelopment, consistent with performance standards developed by the department under s. 281.33 (3), Stats.

**Note:** The performance standards are established in ch. NR 151.

(c) Adopt a storm water management zoning ordinance for new development and redevelopment, when required by the department.

**NR 162.08 Requirements for a user charge system and sewer use ordinance. (1) GENERAL.** Any user charge system and applicable ordinances adopted by a recipient shall be maintained in accordance with s. 281.58 (14) (b) 7., Stats., or s. NR 216.06 (2) (c) to (e), for the useful life of a treatment works or BMP. The applicant shall submit user charge information to the department and shall certify to the department that the user charge system meets all of the applicable requirements in this subsection.

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

(b) A user charge system is required of any storm water project receiving a revenue pledge loan under this chapter.

(c) A user charge system is required of any storm water project that requires an intermunicipal agreement under s. NR 162.06 (2) (h). In this case, "users" means the municipalities covered by the agreement.

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

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

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

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

(d) Require that the recipient establish an equipment replacement fund, maintain the equipment replacement fund as a separate fund of the municipality, and make deposits to this fund on an annual basis or maintain a balance acceptable to the department. This fund is to be used for the costs of replacing equipment related to the treatment works or BMP, or conducting maintenance of a runoff treatment works or BMP. The municipality may also use the equipment replacement fund for unexpected unbudgeted costs incurred for continuing effective operations of the treatment works. The municipality shall periodically make appropriate adjustments to the equipment replacement fund deposit schedule or balance, including adjustments needed to bring the fund balance back up following an expenditure from the fund.

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

1. Revenues generated.

2. Costs of operation and maintenance of the treatment works or BMP, including an appropriate amount of money to be deposited annually into the equipment replacement fund.

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

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

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

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

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

**(4) MUNICIPAL RESPONSIBILITIES.** The municipality shall do all of the following:

(a) Incorporate the user charge system in one or more municipal ordinances or other legislative enactments, and into intermunicipal agreements if the project serves more than one municipality.

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

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

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

1. Prohibits any new connections from sources that will add substantial infiltration or inflow into the sanitary sewer system.

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

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

4. Defines normal domestic strength of the wastewater.

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

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

7. Defines violations and penalties for violators.

(e) For an runoff treatment works or BMP, demonstrate adequate legal authority established by statute, ordinance, or series of contracts to meet the provisions of s. NR 216.06 (2) (c) to (e).

**(5) DEPARTMENT REVIEW.** The department may annually review a recipient's user charge system to ensure that it continues to meet the requirements of this section.

**NR 162.09 Procurement. (1) APPLICABILITY.** Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law and federal law applicable to the 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) 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 or interest rate subsidy agreement.

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

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

**(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 CWFP financial assistance, they shall make good faith efforts to provide DBEs opportunities to compete for participation in the project. Recipients and their prime contractors shall comply with DBE regulations contained in s. 40 CFR part 33 in the manner determined by the CWFP. Failure to comply with DBE regulations and requirements may result in a sanction as defined in par. (b). Requirements may include any of the following activities:

1. Use 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 DNR 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 DNR.

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

2. Arrange timeframes for contracts and establish delivery schedules when possible 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. Divide total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by DBEs in the competitive process.

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

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

6. Use required federal forms when applicable.

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

8. Solicit 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 provide 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 <http://www.dot.wisconsin.gov/business/engrserv/dbe-firms.htm>.

9. Document any participation of DBEs, including MBEs and WBEs, and submit the documentation in the required form to the department.

(b) Failure to comply with par. (a) may result in a sanction of up to 8% of the construction costs eligible for subsidy being financed at the market interest rate. This paragraph does not apply to any recipient that awards contracts to MBEs or WBEs or both in an amount equal to or greater than the applicable fair share objectives. Fair share objectives means the percentage of participation in project costs by MBEs and WBEs that can be reasonably procured. Fair share objectives are determined by the department as negotiated with and agreed to by the U.S. environmental protection agency under 40 CFR part 33, subpart D, given the availability of qualified MBEs and WBEs in the state.

**(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 they can accomplish the required tasks more economically as force account work.

(b) Emergency circumstances make force account work necessary.

**(6) CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department shall only provide financial assistance for costs that are eligible and reasonable.

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

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

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

(b) *Type of contract.* The scored project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized by sub. (5). Each contract shall be a fixed or unit price contract, or a time and expense contract, unless the department gives advance written approval for the recipient to use some other acceptable type of contract. In any event, the cost-plus-a-percentage-of-cost type contract may not be used.

(c) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for each contract change order, and submit each change order and all associated backup documentation to the department construction management engineer within 90 days of execution of the change order, or, for change orders executed 90 days or more prior to submittal of the CWFP application, within 30 days of the date on which DNR receives the application.

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

**NR 162.10 Reimbursement and refinancing. (1) REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS.** The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150–2 and the criteria under s. NR 162.01 (intro.) are met.

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

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

**(1) INTEREST RATE CATEGORIES.** (a) Costs of projects or portions of projects described in ss. NR 162.03 (1) (a), (b), and (d), ss. NR 162.03 (2), (3), and (4), and s. NR 162.04(1) (b) shall be charged the interest rate specified for the applicable project type in s. 281.58 (12), Stats.

(b) For project costs sanctioned under s. NR 162.09 (4) (b) for noncompliance with requirements for solicitation of DBEs, the interest rate shall be the market interest rate.

(c) For project costs under s. NR 162.03 (1) (c), the department shall determine the appropriate interest rate in accordance with ss. 281.58 (8) (h) and 281.58 (12), Stats.

**(2) PROJECT INTEREST RATE CALCULATION.** (a) If all of the eligible costs of a scored project are classified under one category only in sub. (1), the interest rate shall be the rate stated in the applicable section of s. 281.58 (12), Stats. If a scored project contains eligible costs from more than one of the categories, and s. 281.58 (12), Stats., specifies interest rates for the categories that are different from each other, a composite interest rate shall be computed for the scored project in accordance with par. (b).

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

1. Each eligible cost that can be allocated, based on its purpose, exclusively to any one of the categories in sub. (1), shall be so allocated.
2. Each eligible cost that cannot be allocated to a particular category, shall be divided among the categories based on the portion of the design flow of the project that is attributable to each category.
3. The composite interest rate shall be computed as follows:

$$RC = (RT 1)(PR 1) + (RT 2)(PR 2) + (RT 3)(PR 3) + (RT 4)(PR 4) + (RT 5)(PR 5)$$

where:

RC . . . . is the composite interest rate for the project.

RT 1 . . . . is the interest rate for compliance maintenance and new or changed limits projects.

RT 2 . . . . is the interest rate for runoff treatment works and BMP projects.

RT 3 . . . . is the interest rate for unsewered projects.

RT 4 . . . . is the market interest rate.

RT 5 . . . . is the interest rate established under s. 281.58 (12) (a) 5., Stats., for projects providing facilities to receive or store septage, or treatment capacity for septage, as defined in s. 281.58 (1) (cv), Stats.

PR1 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. NR 162.03 (1) (a) and (b), and (c) if the municipality is not a violator of an effluent limitation as defined in s. 281.58 (1) (e), Stats.

PR2 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. NR 162.03 (3) and (4).

PR3 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. NR 162.03 (1) (d) and (2).

PR4 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. NR 162.04 (1) (b), and under s. NR 162.03 (c) if the municipality is a violator of an effluent limitation as defined in s. 281.58 (1) (e), Stats.

PR5 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. NR 162.03 (1) (a) 1. and s. 281.58 (12) (a) 5.

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

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

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

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

(c) For financial assistance provided directly from a federal capitalization grant, the recipient shall agree to comply with the requirements contained in 33 USC 1251 to 1274 and 33 USC 1381 to 1387, if required by the terms of the capitalization grant.

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

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

(f) The recipient shall provide department representatives access to the scored project, including all construction activities, while the project is in preparation or progress. The recipient shall allow department representatives access to records of contractors and subcontractors pertinent to the project for the purpose of inspections, examinations, excerpts, copies, and transcriptions. The recipient shall also allow DOA access to records for audits.

(g) The recipient shall expeditiously initiate and complete the project, including construction of and payments for the portions ineligible for financial assistance, in accordance with the financial assistance agreement

and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

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

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

(k) The recipient shall develop an operation and maintenance manual, if applicable to the project, and provide documentation to the department as follows:

1. Develop an operation and maintenance manual that addresses all of the following areas, as applicable to the collection system, including all treatment works facilities outside of the fence of the wastewater treatment plant, or to the wastewater treatment plant, including all treatment works facilities inside the fence of the wastewater treatment plant, or to the entire treatment works:

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

2. Provide a copy of the operations and maintenance manual to the department.

3. For projects or facilities that have an operation and maintenance manual that was submitted to the department in the past and addressed all of the items in subd. 1. a. to j., the requirements in subds. 1. and 2. may be met by developing and submitting an addendum to the previously submitted manual.

4. The project engineer and the authorized representative of the recipient shall certify, in the form required by the CWFPP, that the operation and maintenance manual meets or exceeds the requirements of this paragraph.

**Note:** Operation and maintenance manual certification checklists and additional information regarding operation and maintenance manual requirements are available on the environmental improvement fund website at <http://dnr.wi.gov/Aid/documents/EIF/Guide/Opmancwf.html> and in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

(L) The recipient shall comply with all applicable construction site performance standards and technical standards established in ch. NR 151 for controlling runoff pollution.

**Note:** Storm water technical standards, models, and BMPs are available online at <http://dnr.wi.gov/topic/stormwater/standards/>. Use the standards to plan, design, install, and maintain erosion and sediment control, and storm water management practices, to comply with ch. NR 151. This information on the web is also available in paper form and may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

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

(n) The recipient shall comply with requirements established under s. 281.49, Stats., regarding accepting septage to the wastewater treatment works from septic tanks or holding tanks within the recipient's sewer service area.

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

(p) The recipient shall develop a fiscal sustainability plan if required for the treatment works under 33 USC 1383.

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

**NR 162.13 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.

(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 sold to the CWFPP.

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

(2) ADJUSTMENT. Before the final disbursement under the financial assistance agreement, the department may recommend to 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 in writing that a recipient has failed to comply with project objectives, or the terms, conditions, or reporting requirements of the financial assistance agreement.

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

(c) The department may withhold payment of costs of a contract that fall outside of the beginning or end dates of the contract until the recipient amends the dates of the contract.

**(4) FINAL DISBURSEMENT AND PROJECT CLOSEOUT.** (a) The recipient shall submit the final request for disbursement within a reasonable amount of time after final completion of the project construction.

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

1. The department shall complete a final inspection and sign off on the scored project.

2. The recipient shall obtain department approval of all change orders and amendments for which disbursement is requested.

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 [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.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 [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

5. The recipient shall submit to the department a completed operation and maintenance manual certification checklist.

**Note:** O&M manual certification checklist forms are available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

5m. The recipient shall certify to the department that the recipient developed a fiscal sustainability plan, if applicable.

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

**NR 162.15 Amendments to a financial assistance agreement. (1) ALTERING THE PROJECT.** The recipient shall obtain a financial assistance agreement amendment or other approval from the CWFP before any of the following occur:

(a) The type of wastewater or runoff treatment is altered.

(b) The facilities plan, plans and specifications, or any major part of the project is substantially altered.

**(2) CHANGES CONSISTENT WITH OBJECTIVES.** The department may determine that a financial assistance agreement amendment is not required before the recipient implements changes in the project if the changes are consistent with the objectives of the project, within the scope of the financial assistance agreement, and do not require review under ch. NR 110.

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

(b) *Applicability.* Additional financial assistance for a scored project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

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

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

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

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

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

1. 'Request by letter.' If par. (b) 1. is applicable, the municipality shall submit a letter to the department that justifies the need for the additional financial assistance and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in another

column the total project costs. If there are other funding sources participating in the project, the revised budget sheet shall indicate all funding changes applicable to the additional financial assistance being requested. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. 'Request by application.' If par. (b) 2. or 3. is applicable, the municipality shall submit a CWFP notice of intent to apply as described in s. NR 162.05, and a financial assistance application as described in s. NR 162.06, requesting a loan for additional project costs. The department may waive specific application requirements for the financial assistance agreement amendment request if submittals made with the initial application are still acceptable to the department. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original financial assistance agreement. If par. (b) 3. is applicable, the application shall be postmarked by the June 30 prior to the fiscal year from which the funds for the additional costs are requested.

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

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

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

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

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

**(3) 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 that the project closeout is complete, whichever is later.

(d) All other files and records relating to the scored project shall be retained so long as this FAA remains in effect. As-built plans for the project shall be retained for the useful life of the project.

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

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

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

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

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

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

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

(f) Seek any other appropriate administrative remedy.

**(2)** 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 162.19 Noncompliance.** Upon failure of the recipient to comply with ss. 281.58 and 281.59, 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 s. 281.59 or s. 281.98, Stats.

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

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

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

(3) **REQUEST FOR VARIANCE.** An applicant shall submit a 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 CWFPP 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 that 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.

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

(2) Hardship financial assistance provided under subch. III is not subject to an administrative fee.

### **SUBCHAPTER III — HARDSHIP FINANCIAL ASSISTANCE**

**NR 162.22 Applicability.** (1) **GENERAL.** This subchapter applies to all applicants for and recipients of hardship financial assistance pursuant to s. 281.58 (13), Stats. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving financial assistance under s. 281.58 (13), Stats. This subchapter does not apply to financial assistance for BMPs under subch. II or to interest rate subsidy provided under subch. IV.

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

**NR 162.23 Types of hardship financial assistance.** The department may provide any of the following types of hardship financial assistance:

(1) Loans with interest rates lower than the interest rates specified in s. NR 162.11.

(2) Grants not to exceed 70% of the eligible costs of the project.

**NR 162.24 Eligibility for hardship financial assistance.** (1) **ELIGIBLE MUNICIPALITIES.** A municipality that meets all of the following criteria is eligible for hardship financial assistance:

(a) The median household income in the municipality is 80% or less of the median household income in this state. The department shall determine median household income as follows:

1. If the municipality is a place, including a city, village, or census designated place, or the municipality is a county or a minor civil division, such as a town, the department shall obtain the most recent median household income figure published for the municipality by the U.S. bureau of the census prior to the department's publishing of the project priority list.

**Note:** The department uses the U.S. census bureau's municipal incomes as derived from the ACS and published annually in the 5-year survey data. At the time of writing of this administrative code, the U.S. census bureau is not collecting income data during the decennial census. The U.S. census bureau does not publish data for all types of municipalities eligible for CWFPA financial assistance. A municipality for which the U.S. census bureau does not publish median household income data is responsible for obtaining a median household income and supplying it to the department.

2. If the municipality is a town sanitary district or public inland lake protection and rehabilitation district, the municipality shall 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. This median household income of the municipality shall be one of the following:

a. A median household income derived by requesting a custom tabulation of income data at the census block level from the ACS most recently published with 5-year data.

**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 with a request for a custom tabulation of a median household income figure for that set of identified blocks only.

b. The median household income of the census tract, block numbering area, or block group that encompasses the municipality. If the municipality falls within two 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.

c. The median household income of the minor civil division, such as a town, within which the municipality is located. If the municipality falls within two 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.

3. If the sewer service area of the treatment works 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 in par. 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 par. 1.

(b) The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2% of the median household income in the municipality without assistance under s. 281.58 (13), Stats.

**(2) PROJECT ELIGIBILITY.** (a) Wastewater projects described in s. NR 162.03 (1) (a), (b), and (d), and (2) are eligible for hardship financial assistance.

(b) Projects or portions of projects described in s. NR 162.03 (1) (c) are not eligible for hardship financial assistance.

(c) Projects described in s. NR 162.03 (3), (4), and (5) are not eligible for hardship financial assistance.

**(3) COST ELIGIBILITY.** Eligible and ineligible costs described in s. NR 162.04 apply to hardship financial assistance projects.

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

1. The municipality started or completed construction of the project prior to receiving hardship financial assistance and received a loan for the project from a source other than the department.
2. The municipality received a financial assistance agreement for a CWFP loan at an interest rate specified in s. NR 162.11 for the project and all of the following apply:
  - a. The municipality was on a hardship financial assistance funding list and did not receive hardship financial assistance for the entire project due to insufficient hardship present value subsidy.
  - b. At the time of each application submittal for the project, the municipality met the criteria described in sub. (1).
  - (b) A financial assistance agreement to refinance an existing project debt shall be executed before the project has been substantially complete for more than 3 years.
  - (c) An applicant for refinancing shall meet the planning and design criteria and application requirements as established in subch. II.
  - (d) Refinancing shall be subject to the limitations of issuance and interim financing costs established in s. NR 162.04 (3).

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

**NR 162.25 Application. (1) NOTICE OF INTENT TO APPLY.** Each municipality intending to apply for hardship financial assistance shall inform the department of its intent by the October 31 prior to the hardship application deadline specified in sub. (2). Section NR 162.05 (1) and (2) apply to hardship financial assistance projects.

**Note:** A Notice of Intent to Apply form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707-7921.

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

**Note:** An application form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921. An interest subsidy application is a different form and must be submitted in accordance with s. NR 162.41.

**(3) PROCEDURES.** Subject to sub. (2), hardship financial assistance applicants shall follow the procedures described in s. NR 162.06 (1) and s. 281.58 (9) (a) to (c), Stats.

**(4) CONTENTS OF APPLICATION.** An application for hardship financial assistance shall comply with the requirements of s. NR 162.06 (2).

(5) APPLICATION ACCEPTANCE. The rules for accepting an application for hardship financial assistance are the same as those described in s. NR 162.06 (3).

(6) PROJECTS FUNDED JOINTLY WITH OTHER AGENCIES. Section NR 162.06 (4) applies to hardship financial assistance projects.

(7) MISSING ITEMS. The applicant shall submit a completed application form and required attachments by the application submittal deadline identified in sub. (2). If the department determines an attachment or some information is missing from the application and is, therefore, incomplete, the department may allow a reasonable amount of additional time for an applicant to submit the missing items. The department may refuse an application if it is missing multiple attachments or a significant amount of information, or if the applicant fails to submit missing attachments or information by the extended deadline date set by the department in correspondence sent to the applicant.

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

**NR 162.26 Funding list. (1) GENERAL.** The department shall establish a hardship financial assistance funding list in accordance with s. 281.58 (13) (d), Stats.

**Note:** Hardship financial assistance projects are included in the project priority list established annually under s. NR 162.53.

(2) ELIGIBILITY CALCULATION. (a) The department shall determine eligibility for hardship financial assistance using the following method:

$$S = \frac{(AT+M+O+W) R}{(MHI)(N)}$$

where:

S . . . is the estimated total annual charges per residential user as a percentage of the median household income in the municipality.

AT . . is the annual principal and interest costs, based upon a 20-year repayment schedule at the appropriate interest rate, for that portion of the project that is eligible for the below market interest rate, if the municipality did not receive hardship financial assistance for the project.

M . . is the annual principal and interest costs, based upon a 20-year repayment schedule at the market interest rate, for that portion of the project that is eligible for the market interest rate.

O . . is the annual operation, maintenance, and replacement costs of the treatment works to be paid by the recipient of the hardship financial assistance.

W . . is the total remaining prior wastewater debt service of the municipality plus the estimated debt service for project costs ineligible for CWFPP funding, such as hook-up fees owed another municipality and debt for lateral sewers, divided by 20 years. If the prior wastewater debt has more than 20 years remaining, the total debt service on that portion of "W" shall be divided by the actual number of years remaining on the debt. In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

R . . . is the residential percentage. Residential percentage is determined by dividing the residential design flow by the total design flow from the applicant municipality.

MHI is the median household income in the municipality.

N . . . is the number of residential users in the municipality.

(b) If S is greater than 2% and the municipality meets the criterion listed in s. NR 162.24 (1) (a), the municipality is eligible for hardship subsidy and the department shall place the project on the hardship financial assistance funding list. If S is 2% or less, the municipality is not eligible for hardship subsidy and may request a non-hardship loan unless the municipality has already received a CWFP loan for the project.

**NR 162.27 Allocation of funds.** At the time of publication of the funding list, the hardship present value subsidy shall be allocated to those projects within the hardship fundable range in the order specified in s. 281.58 (13) (e), Stats. The department shall base the amount allocated on figures in the municipality's current application and additional information provided to the department prior to publication of the funding list.

**NR 162.28 Requirements and conditions for receiving hardship financial assistance.**

(1) REQUIREMENTS. Before awarding hardship financial assistance for any project, the department shall determine that all of the applicable requirements established in s. NR 162.07, and the user charge and sewer use ordinance requirements of s. NR 162.08, the procurement requirements of s. NR 162.09 and the application requirements of s. NR 162.25 have been met.

(2) CONDITIONS. The conditions in s. NR 162.12 shall be included in financial assistance agreements that provide hardship financial assistance.

(3) FINANCIAL MANAGEMENT. Section NR 162.13 applies to recipients of hardship financial assistance.

(4) RECORDS AND RECORD RETENTION. Section NR 162.17 applies to recipients of hardship financial assistance.

**NR 162.29 Procedure for determining type and amount of hardship financial assistance.**

(1) GENERAL. (a) The department shall determine the type and amount of hardship financial assistance at the time the hardship financial assistance agreement is being prepared for the meeting at which the municipality shall sign the agreement.

(b) The department may provide financial assistance in the form of a loan or a combination of loan and grant for eligible project costs for the amount specified in s. 281.58 (13) (c), Stats. The municipality shall pay at least 30% of the project costs eligible for the below-market interest rate.

(c) If another funding source is participating in the project, the department shall adjust the hardship financial assistance accordingly after calculating the amount of hardship financial assistance for which the municipality is eligible using the steps described in sub. (2) assuming no participation from other funding sources. In accordance with s. 281.58 (13) (c), Stats., the department may provide grant-only funding or another form of hardship financial assistance to supplement funding from another source if the other funding does not bring the municipality's

residential wastewater user charges down to 2% of the municipality's median household income without the CWFP's participation in the project.

**(2) CALCULATION OF HARDSHIP FINANCIAL ASSISTANCE AMOUNT.** (a) The interest rate for a hardship financial assistance loan on eligible below-market project costs shall be no greater than a rate specified in s. NR 162.11. The department may provide grant funding to a municipality only if it is necessary in order to bring the total annual charges per household down to 2% of the median household income. The department shall determine the amount of financial assistance to be provided for a project as follows:

1. 'Determining the grant amount.' a. To determine whether or not a municipality is eligible for a grant and to determine the amount of grant needed to keep total annual charges at 2% of the median household income in the municipality, the department shall use the following method:

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

$$A / R = B$$

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

$$P / 20 = D$$

$$D - C = H$$

where:

MHI is the median household income in the municipality.

N . . . is the number of residential users in the municipality.

A . . . is the estimated amount the residential users can afford annually for wastewater treatment.

R . . . is the residential percentage. Residential percentage is determined by dividing the residential design flow by the total design flow from the applicant municipality.

B . . . is the estimated amount the residential and nonresidential users can afford for all wastewater treatment costs annually.

O . . . is the annual operation, maintenance, and replacement costs of the treatment works to be paid by the recipient of the hardship financial assistance.

W . . . is the total remaining prior wastewater debt service of the municipality plus the estimated total municipal debt service for project costs ineligible for CWFP funding, such as hook-up fees owed another municipality and debt for lateral sewers, divided by 20 years. If the prior wastewater debt has more than 20 years remaining, the total debt service on that portion of "W" shall be divided by the actual number of years remaining on the debt. In order to include ineligible project costs in the total amount for "W," the municipality shall incur debt for the ineligible costs for a term of at least 10 years.

M . . . is the annual principal and interest costs based upon a 20-year repayment schedule at the market interest rate for that portion of the project that is eligible for the market interest rate.

C . . . is the estimated amount the residential and nonresidential users can afford annually to pay for debt service on the CWFP project loan.

P . . . is the project costs eligible for below market interest rate.

D . . . is the annual debt service for a zero percent interest rate loan for below market eligible project costs.

H . . . if positive, is the annual grant amount a municipality needs to keep total annual charges per household at 2% of the municipality's median household income. If H is negative, the municipality is not eligible for a grant and the interest rate for a loan shall be determined in accordance with subd. 2. and par. (b).

b. H (20) equals the total maximum grant the municipality is eligible to receive, subject to the 70% grant limit with the remainder at a zero percent loan for eligible project costs.

2. 'Determining the interest rate for a loan.' a. If H is zero, the municipality is eligible for a zero percent interest rate loan with no grant portion.

b. If H is negative, the municipality is eligible for a below market interest rate loan with no grant portion. The department shall determine the interest rate by entering figures from the calculation in subd. 1. a. as the following into a financial calculator, such as the Hewlett Packard HP-12C or equal, and solving for the interest rate:

-C = payment

P = principal or present value

20 = term

i = interest rate

**Note:** "Interest rate" means the discount rate at which the present value of CWFP loan payments equals the CWFP loan amount.

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

(b) If portions of the project costs are only eligible for funding at the market interest rate, pursuant to s. NR 162.04 (1) (b), then the department shall calculate a composite interest rate for the project. The department shall compute the composite interest rate for a hardship project as follows:

$$\text{HRC} = \frac{(i)(P) + (im)(CT\ 3)}{P + CT\ 3}$$

where:

HRC is the composite interest rate.

i . . . is the interest rate calculated in par. (a), if any; otherwise it is zero.

P . . . is the project costs eligible for below market interest rate.

im . . . is the CWFP market interest rate.

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

**NR 162.30 Operation, maintenance, and replacement cost estimates. (1)** The department shall determine the maximum amount allowable for operation, maintenance, and replacement cost estimates used in



ss. NR 162.26 (2) and 162.29 (2) using formulas derived from the results of regression analyses of the operations, maintenance, and replacement costs of previously funded CWFP projects. The determination of the maximum for each specific project shall be based on population size, treatment type, and whether the treatment plant is a regional facility.

(2) The estimated operations, maintenance and replacement costs used for "O" under ss. NR 162.26 (2) and 162.29 (2) (a) 1. shall be the lesser of the operations, maintenance, and replacement costs contained in the application and the approved user charge, respectively, or the maximum allowable amount derived under sub. (1).

(3) The department shall update the operations, maintenance, and replacement costs used under sub. (1) to reflect new data and inflation as needed for review of scored projects.

**NR 162.31 Hardship financial assistance agreement. (1) NOTICE OF HARDSHIP FINANCIAL ASSISTANCE COMMITMENT.** The department may issue a notice of hardship financial assistance commitment to a municipality in the hardship fundable range upon the municipality's request if the municipality has complied with the requirements of s. NR 162.25 and has submitted sufficient documentation to show that it has complied or will comply with the financial assistance requirements of s. NR 162.07.

(2) EXECUTION OF HARDSHIP FINANCIAL ASSISTANCE AGREEMENT. (a) The department may enter into a hardship financial assistance agreement with a municipality in the hardship fundable range if the requirements under s. NR 162.28 (1) are met.

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

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

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

**NR 162.32 Hardship financial assistance disbursements. (1) GENERAL.** Disbursements of financial assistance shall be made in accordance with s. NR 162.14.

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

**NR 162.33 Funding additional project costs. (1) APPLICABILITY.** The department may provide additional financial assistance in the form of a loan or grant for eligible project costs incurred beyond the amount specified in the hardship financial assistance agreement. The department may not process a request to provide additional financial assistance for a project until the time the total remaining costs to complete the project can be reasonably determined. Additional financial assistance for a project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

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

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

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

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

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

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

2. 'Partial hardship PV available.' If there is hardship present value subsidy available to only partially fund the additional costs, the municipality may receive financial assistance from the current biennium's project commitment present value subsidy for any eligible costs beyond the amount funded with the available hardship present value subsidy. The financial assistance shall be provided in a financial assistance agreement in the form of a loan or a combination of grant and loan for up to 20 years with an interest rate determined by the department and DOA based on the proportion of hardship and non-hardship funding.

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

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

(a) *Request by letter.* If sub. (1) (a) or (b) is applicable, the municipality shall submit a letter to the department that justifies the need for the additional CWFP financial assistance and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in another column the total project costs. If there are other funding sources participating in the project, the revised budget sheet shall indicate all funding changes applicable to the additional financial assistance being requested. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

(b) *Request by application.* If sub. (1) (c) or (e) is applicable, the municipality shall submit a CWFP intent to apply form as described in s. NR 162.05 and a financial assistance application as described in s. NR 162.06, requesting CWFP financial assistance for additional project costs. The department may waive specific application requirements for the financial assistance agreement amendment request if submittals made with the initial application are still acceptable to the department. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement. If the municipality submits its application for additional CWFP financial assistance as part of the continuous funding cycle and intends to later apply for hardship financial assistance for these same project costs, the municipality shall inform the department in writing that waiting to obtain hardship financial assistance to pay those costs would have negative impacts on the municipality.

(c) *Request by application, hardship.* If sub. (1) (d) is applicable, the municipality shall submit a CWFP intent to apply form and a financial assistance application as described in s. NR 162.25, requesting hardship financial assistance for additional project costs. The application shall be postmarked by the June 30 prior to the fiscal year from which the additional hardship financial assistance is requested. The application may be submitted through the second fiscal year of the biennium following the biennium that contains the substantial completion date of the project written in the original hardship financial assistance agreement.

**NR 162.34 Sale of hardship financed treatment works.** A municipality may not sell a treatment works or a portion of a treatment works that received hardship financial assistance under this subchapter unless the municipality receives prior written approval from the department.

**NR 162.35 Breach of contract and noncompliance.** Sections NR 162.18 and 162.19 apply upon breach of contract or noncompliance by the recipient.

**NR 162.36 Variances.** Section NR 162.20 applies to hardship financial assistance projects.

**NR 162.37 Disputes.** (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this subchapter prior to the execution of a hardship financial assistance agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the applicant personally or by mail.

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

#### **SUBCHAPTER IV — INTEREST RATE SUBSIDIES FOR SMALL LOANS**

**NR 162.38 Applicability.** This subchapter applies to any applicant for and recipient of interest rate subsidy provided pursuant to ss. 281.58 and 281.59, Stats., for reducing interest costs on a loan made to the recipient by the BCPL for engineering and construction of treatment works and BMPs with total estimated project costs, after awarding all contracts, of \$2,000,000 or less. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving interest rate subsidy under ss. 281.58 and 281.59, Stats. The following sections in subchs. I, II, and V apply to projects receiving an interest rate subsidy under this subchapter: ss. NR 162.001 to 162.003, 162.01, 162.02, 162.04 (1) (a) and (2), 162.05, 162.09 (1) to (3) and (5) to (7), 162.11 (1) (a) and (2), 162.16, 162.20, 162.21, and 162.50 to 162.53.

**NR 162.39 Project eligibility. ELIGIBLE PROJECTS.** An eligible applicant may receive financial assistance under this subchapter for a publicly owned project with total estimated project costs of \$2,000,000 or less that meets any of the following criteria and has not been substantially complete for 3 years or longer:

**(1) TRADITIONAL WASTEWATER TREATMENT PLANT AND COLLECTION SYSTEM PROJECTS.** A municipality may receive financial assistance under this subchapter for a publicly-owned wastewater treatment works scored project that meets any of the following criteria:

(a) The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. This includes the following types of projects:

1. Projects for which construction will completely take place inside the fence or on site of a wastewater treatment plant, such as projects to build or modify headworks, clarifiers, aeration basins, stabilization ponds, sludge processing equipment, sludge storage facilities, or on-site administrative buildings, and projects to build or modify facilities for the receiving, storage, or treatment of septage, as defined in s. 281.58 (1) (cv), Stats..

2. Projects for which construction takes place outside of the fence of the wastewater treatment plant that are necessary to maintain the integrity and performance of wastewater treatment works facilities serving the municipality, including sanitary sewer replacement, lift station or headworks upgrades, and construction of new interceptors, lift stations, pretreatment facilities, septage receiving stations, and other treatment works facilities outside of the fence of the wastewater treatment plant.

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

(c) The project is necessary to eliminate actual or imminent pollution of groundwater or surface water or a threat to human health in unsewered areas within a municipality. This includes the following types of projects:

1. Projects for construction of a new wastewater treatment plant or upgrade of an existing plant to accept and treat wastewater from a previously unsewered area, such as projects to build or add capacity to clarifiers, aeration basins, stabilization ponds, or sludge facilities.

2. Sewage collection system projects to install sewer pipes where there were none and interceptors to carry wastewater to a new or existing wastewater treatment plant.

**(2) INDIVIDUAL WASTEWATER TREATMENT SYSTEMS.** (a) A project that is eligible under sub. (1) may consist of individual systems for the purpose of treating sanitary waste that serve one or more properties if the municipality:

1. Owns each individual system.

2. Is responsible for the proper installation, operation and maintenance of each individual system.

3. Has unlimited access to each individual system at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement of the system.

4. Establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual systems, and for monitoring the impact of the systems on the groundwater where required by the department.

5. Complies with all other applicable requirements, limitations and conditions for projects funded under this subchapter.

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

**(3) AREA-WIDE STORM WATER PROJECTS.** A municipality may receive financial assistance under this subchapter for a publicly owned project that is necessary to control storm water runoff rates, volumes, and discharge quality. This includes projects to install new infiltration practices, meet performance standards contained in a permit issued under ch. NR 216, or construct an MS4 project that is necessary to maintain the integrity and performance of the runoff treatment works or BMP serving the municipality, or storm water projects eligible under s. 281.58, Stats., and required by any of the following:

(a) A WPDES storm water permit issued under subch. I of ch. NR 216.

(b) A performance standard.

(c) A storm water management plan or other applicable plan approved by the department for purposes of managing runoff.

**(4) INDIVIDUAL STORM WATER PROJECTS.** (a) A project that is eligible under sub. (3) may consist of individual systems that treat runoff and serve one or more properties if the municipality:

1. Owns each individual BMP.

2. Is responsible for the proper installation, operation and maintenance of each individual BMP.

3. Has unlimited access to each individual BMP at all reasonable times for the purposes of inspection, monitoring, construction, maintenance, operation, rehabilitation, and replacement of the BMP.

4. Establishes a comprehensive program for the regulation, inspection, operation, and maintenance of individual BMPs, and for monitoring the impact of the BMPs on the groundwater where required by the department.

5. Complies with all other applicable requirements, limitations, and conditions for projects funded under this subchapter.

(b) The access required in par. (a) 3. shall be established through easements, covenants running with the land, or ordinance.

(c) The department may require that the program established under par. (a) 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

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

(a) Projects that are found ineligible for financing by the BCPL.

(b) Projects of a municipality that is failing to substantially comply with applicable conditions or requirements of s. 281.58 or s. 281.59, ch. Adm 35, this chapter, an existing financial assistance agreement with the CWFP or Wisconsin's safe drinking water loan program under s. 281.61, Stats., or an interest rate subsidy

agreement, or with the terms of a federal or state grant used to pay the costs to plan, design, or construct a treatment works or BMP.

(c) As specified in s. 281.58 (8) (a) 2., Stats., connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(d) Public sanitary sewer mains, interceptors, and individual systems that exclusively serve development not in existence as of the date the department receives an interest rate subsidy application submitted by a municipality under this subchapter.

(e) Any project from which no construction costs are to be funded through the CWFPP, 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.

(f) Dams, pipes, conveyance systems, and BMPs, including storm sewer rerouting and land acquisition, when intended solely for drainage and flood control.

(g) Projects in an unsewered municipality that will be disposing of wastewater in the treatment works of another municipality and has not executed an intermunicipal agreement under s. 66.0301, Stats., with the other municipality to receive, treat and dispose of the wastewater.

(h) Projects that have been substantially complete for 3 years or longer.

**NR 162.40 Cost eligibility. (1) ELIGIBLE COSTS.** Project costs described in s. NR 162.04 (1) (a) are eligible for interest rate subsidy.

**(2) INELIGIBLE COSTS.** Project costs described in s. NR 162.04 (1) (b) and (2) are not eligible for interest rate subsidy.

**NR 162.41 Notice of intent to apply and application. (1) NOTICE OF INTENT TO APPLY.** A municipality that intends to apply for an interest rate subsidy shall submit to the department a notice of its intent to apply in accordance with s. NR 162.05.

**Note:** An Intent to Apply form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707-7921.

**(2) PROCEDURES.** A municipality shall apply for an interest rate subsidy in accordance with s. 281.58 (9), Stats., in the form required by the department.

**Note:** An application form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

**(3) CONTENTS OF APPLICATION.** The applicant shall submit a complete application. The department shall accept an application as complete after all of the following items, if applicable, are submitted to the department either in the application form or separately:

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

(b) Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats.

(c) A completed interest subsidy application form, including estimated or actual construction costs and replacement fund information.

(d) A proposed or an executed intermunicipal agreement, in accordance with s. NR 162.06 (2) (h), in cases where 2 or more municipalities discharge to or through the same treatment works or BMP.

**(4) APPLICATION SUBMITTAL DEADLINE.** Section NR 162.06 (5) applies to applications under this subchapter.

**(5) DEADLINE FOR SIGNING INTEREST RATE SUBSIDY AGREEMENT.** An applicant shall sign an interest rate subsidy agreement within 8 months after the date the department notifies the applicant, in writing, that the application is acceptable. An applicant shall time its submittal of the application accordingly. If an interest subsidy agreement is not signed within 8 months of the department's notification of acceptance, the applicant's project shall lose its allocated subsidy. A municipality may not submit more than one application for any single scored project in any 12-month period.

**NR 162.42 Interest rate subsidy requirements.** Before awarding interest rate subsidy for any project, the department shall determine that all of the applicable requirements of s. NR 162.41 are met and that all of the following are satisfied:

**(1)** The department received the following information pertaining to the applicant's BCPL loan:

(a) A copy of the loan application.

(b) A copy of the application review letter from the attorney general's office.

(c) A signed copy of the certificate of indebtedness.

**(2)** The project has met the priority requirements of subch. V.

**(3)** If requested by the department, the municipality submitted copies of executed engineering contracts for planning, design and construction.

**(4)** If requested by the department, the municipality submitted information related to bids and construction contracts.

**(5)** The department determined the parallel cost percentage, provided plans and specifications approval to the municipality, and complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150 for the scored project.

**(6)** The applicant has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of the treatment work or BMP throughout the applicant's jurisdiction.

**(7)** DOA determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

**(8)** If requested by the department, the municipality submitted additional financial information required by DOA.

**(9)** The applicant received, or applied for, any state permits required by the department, including those under chs. 30 and 283, Stats.



(10) If requested by the department, the municipality submitted information regarding its user charge system and sewer use or storm water utility ordinance in addition to that required under s. NR 162.41 (3) (c).

(11) If requested by the department, the municipality submitted other documentation or certification in support of the application.

**NR 162.43 Procurement. (1) APPLICABILITY.** Procurement of professional services and construction contracts by recipients under this subchapter shall be in accordance with the requirements of s. NR 162.09 (1) to (3) and (5) to (7).

**(2) UTILIZATION OF MINORITY-BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES.** Recipients are encouraged to provide DBEs, including MBEs and WBEs, the maximum feasible opportunity to compete for contracts and subcontracts and to utilize DBEs, including MBEs and WBEs, for their projects. Recipients shall provide documentation of any MBE or WBE utilization to the department.

**NR 162.44 Determination of interest rate subsidy. (1) GENERAL.** Interest rate subsidies shall be set in accordance with s. 281.58 (8) (j) and (12) (a), Stats., and this section. Subsidies are not available for interest payments that were due the BCPL prior to the execution of an interest rate subsidy agreement with the department.

**(2) PROJECT COST CATEGORIES.** (a) The department shall classify eligible costs of projects and portions of projects according to s. NR 162.11 (1) (a) and (c).

(b) Costs described in s. NR 162.04 (1) (b) are not eligible for interest rate subsidy.

**(3) PROJECT INTEREST RATE CALCULATION.** The department shall calculate the project interest rate according to s. NR 162.11 (2).

**Note:** Section NR 162.11 (1) (b) does not apply to projects subsidized under this subchapter.

**(4) CALCULATION OF INTEREST RATE SUBSIDY.** (a) Only that portion of the recipient's BCPL loan that is used for a scored project is eligible for interest rate subsidy.

(b) The maximum amount of project costs eligible for interest rate subsidy is the total eligible costs of the scored project multiplied by the parallel cost percentage as determined under the applicable requirements of s. NR 162.04 (1) (c).

(c) The interest rate subsidy shall be based on the market interest rate in effect at the time the interest rate subsidy agreement is executed.

(d) The department shall calculate the interest rate subsidy as follows:

1. If the interest rate charged for the loan by the BCPL is greater than or equal to the CWFP market interest rate, the interest rate subsidy is calculated as follows:

$$SB = RT4 - RC$$

where:

SB . . is the interest rate subsidy for which the scored project is eligible under this subchapter.

RT4 . . is the market interest rate.

RC . . . is the project interest rate, as calculated under s. NR 162.11 (2) (b).

2. If the interest rate charged for the loan by the BCPL is less than the CWFP market interest rate, the interest rate subsidy is calculated as follows:

$$SB = RF - RC$$

where:

SB . . . is the interest rate subsidy for which the scored project is eligible under this subchapter.

RF . . . is the interest rate established for the project by the BCPL.

RC . . . is the project interest rate, as calculated under s. NR 162.11 (2) (b).

**Note:** Annually, DOA will calculate the interest subsidy payment to a recipient based on the interest charged by the BCPL on the principal balance outstanding on the recipient's loan and as established in the interest rate subsidy agreement. The payment will be calculated as follows:

$$IS = (I)(E)(SB/RF)$$

where:

IS . . . is the subsidy payment provided in a given year to the recipient, in dollars.

I . . . . is the amount of interest on a recipient's loan due the BCPL in a given year.

E . . . . is the percentage that results from dividing the eligible loan amount by the total loan amount, as determined by DOA.

SB . . . is the interest rate subsidy for which the scored project is eligible under this subchapter.

RF . . . is the interest rate established for the project by the board of commissioners of public lands.

**Note:** The BCPL shall determine the type of municipal obligation that is required for the repayment of its loan.

**NR 162.45 Interest rate subsidy agreement conditions. (1)** The interest rate subsidy agreement shall require the recipient to do all of the following:

(a) *Compliance with laws and regulations.* The recipient and the treatment works or BMP shall comply with all pertinent requirements of federal, state and local laws and regulations.

(b) *Access.* The recipient shall provide department representatives access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow department representatives access to records of contractors and subcontractors that are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow DOA access to records for audits.

(c) *Operation and maintenance.* The recipient shall develop and adopt a program of system-wide operation and maintenance of the treatment works, including the training of personnel.

(d) *Erosion and sediment control.* The recipient shall comply with all applicable construction site performance standards and technical standards established in ch. NR 151 for controlling runoff pollution.

**Note:** Storm water technical standards, models, and BMPs are available online at <http://dnr.wi.gov/topic/stormwater/standards/>. Use the standards to plan, design, install, and maintain erosion and sediment control, and storm water management practices, to comply with ch. NR 151. This information on the web is also available in paper form and may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

(e) *Construction inspection.* The recipient shall provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(f) *Substantial completion.* The recipient shall notify the department of the substantial completion of the project.

(g) *Minority business enterprise and women business enterprise utilization reporting requirements.* The recipient shall document any utilization of minority- and women-owned businesses on the project.

(2) The interest rate subsidy agreement is not effective until executed by all parties to the agreement.

(3) If requested pursuant to s. 281.58 (14) (b) 7., Stats., the recipient shall adopt and maintain a user charge system that generates sufficient revenue to cover the cost of debt service and equipment replacement.

**NR 162.46 Financial management.** The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department.

(2) Maintain a financial management system that meets the requirements, terms, and conditions of the interest rate subsidy agreement.

(3) Comply with any requirements of the BCPL.

**NR 162.47 Interest rate subsidy disbursements and project closeout.** (1) GENERAL. After execution of the interest rate subsidy agreement, DOA may provide interest rate subsidy for the eligible portion of project costs incurred within the scope of a scored project. The department shall determine compliance with the terms and conditions of the interest rate subsidy agreement before interest rate subsidy payments are made.

(2) APPLICATION OF SUBSIDY PAYMENTS. Subsidy payments shall be applied to the interest due on the BCPL loan.

(3) AMENDMENTS AND CHANGE ORDERS. (a) The eligible costs established in the interest rate subsidy agreement that were used to calculate the subsidy payment may not be increased by amendment or change order.

(b) An executed interest rate subsidy agreement may be amended only if the department or DOA determines that an amendment is needed to correct an error or errors in the agreement.

(4) PROJECT CLOSEOUT. All of the following project closeout procedures shall be completed:

(a) *Final inspection.* The recipient shall notify the department of the final completion of the project. The department may complete a final inspection of the project.

(b) *Documentation of minority business enterprise and women business enterprise utilization.* The recipient shall document any utilization of MBEs and WBEs in the form required by the department.

**Note:** An MBE/WBE utilization form is available on the Environmental Improvement Fund website or from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

(c) *Operation and maintenance.* The municipality shall submit to the department evidence that its operation and maintenance manual has been updated as required by the department.

(d) *DNR certification of recipient's compliance.* The department shall certify in writing to DOA the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

**NR 162.48 Breach of contract and noncompliance.** The department may rescind an interest rate subsidy agreement or seek any other appropriate administrative remedy upon breach of contract by the recipient, or if the recipient fails to comply with ss. 281.58 and 281.59, Stats., or with provisions of this chapter.

**NR 162.49 Termination.** The department shall terminate the interest rate subsidy agreement if the recipient terminates its loan agreement with the BCPL or prepays all of the principal of the loan prior to the end of the term of the loan agreement. No subsidy payment may be made for a year in which the loan is paid off early or the interest rate subsidy agreement is terminated early.

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

**NR 162.50 Project scoring system.** Projects shall be scored under one of the following three categories: sewage collection systems, wastewater treatment plants, or storm water projects. **(1) COLLECTION SYSTEM PROJECTS.** The following factors, when applied to sewage collection system projects in accordance with s. NR 162.51, shall determine the priority scoring for clean water fund program financial assistance pursuant to s. 281.58, Stats.:

(a) *Project type score.* The following points shall be awarded to each sewage collection system project:

1. Fifty points for a project that the department determines is necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats. This includes eligible projects identified under s. NR 162.03 (1) (a) 2.

2. Twenty-five points for a project that installs sewers in a previously unsewered area. This includes eligible projects identified under s. NR 162.03 (1) (d) 2.

3. Five points for a project to improve a sewage collection system that contributes to violations of a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., related to a performance standard. This includes eligible projects or costs identified under s. NR 162.03 (1) (c).

(b) *Human health score.* A sewage collection system project may be awarded points for human health only if the project is necessary to eliminate a health hazard.

1. 'Replacing failing septic systems.' A project that reduces the percentage of failing private systems shall be awarded the following points:

a. Thirty points if 70% or more of the systems included in the project are failing systems.

b. Twenty-five points if 50% to 69% of the systems included in the project are failing systems.

c. Twenty points if 30% to 49% of the systems included in the project are failing systems.

d. Fifteen points if 15% to 29% of the systems included in the project are failing systems.

e. Ten points if 5% to 14% of the systems included in the project are failing systems.

f. Five points if less than 5% but greater than 0% of the systems included in the project are failing systems.

**Note:** Failing septic systems include those with surface water ponding, discharge of sewage to the ground, or high groundwater or crevassed bedrock.

2. 'Elimination or prevention of bypasses and overflows.' A project that reduces or prevents bypasses and overflows that have occurred within the past 5 years shall be awarded 15 points. If more than 5 years have passed since the most recent bypass or overflow, the department shall award 15 points under this subdivision if the project is part of a larger phased collection system improvement plan required by a court-stipulated action, a consent order, a compliance schedule in a permit, or another type of legal document.

3. 'Collection-system related backups.' A project that is necessary to reduce the number of basement backups related to the sewage collection system from the number of backups that have occurred in the last 5 years shall be awarded the following points:

- a. Fifteen points if the project is necessary to eliminate 50 or more documented basement backups.
- b. Ten points if the project is necessary to eliminate 15 to 49 documented basement backups.
- c. Five points if the project is necessary to eliminate 1 to 14 documented basement backups.

4. 'New collection system and new wastewater treatment plant.' A project eligible under s. NR 162.03 (1) (d) in which one municipality is constructing both a new wastewater treatment plant and a new collection system to serve only one new sewer service area that includes customers within the applicant's municipal boundaries shall be awarded 10 points.

(c) *Regionalization score.* Sewage collection system projects that result in increased regionalization of wastewater treatment shall be awarded the following points:

1. Twenty points if the project results in the transport of wastewater previously treated in individual septic systems to an existing municipal wastewater treatment plant that has sufficient capacity to accept the additional wastewater flow and loadings or septage from the area in which the individual septic systems are located. This includes projects eligible under s. NR 162.03 (2).

2. Fifty points if the project results in the transport of wastewater from more than one municipality into a new treatment plant being constructed to accommodate those municipalities in a joint facility.

3. If a sewage collection system project will result in increased flow or loadings of more than 10% at an existing wastewater treatment plant for which the municipality that owns the treatment plant is also seeking funding from the CWFP, each of the two projects shall be awarded the same total score. The department shall award the highest score from each scoring section, including project type, human health, water quality, regionalization, and population, to each of the projects.

**(2) WASTEWATER TREATMENT PLANT PROJECTS.** The following factors, when applied to wastewater treatment plant projects in accordance with s. NR 162.51, shall determine the priority scoring for CWFP financial assistance pursuant to s. 281.58, Stats.:

(a) *Project type score.* The following points shall be awarded to each wastewater treatment plant project:

1. Fifty points to a project meeting the criteria of s. NR 162.03 (1) (a) 1., necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, Stats.

2. Fifty points to a project eligible under s. NR 162.03 (1) (b), required to meet new or changed WPDES permit limits.

3. Five points to a project meeting the criteria under s. NR 162.03 (1) (c), necessary to correct violations of an effluent limit contained in a permit issued under ch. 283, Stats.

(b) *Human health criteria.* Projects that directly affect human health shall be awarded points based on the following criteria:

1. Ten points if the project is necessary to prevent bypasses and overflows at a wastewater treatment plant that has had at least one occurrence of bypass or overflow, as defined in s. NR 210.21, in the past 5 years.

2. Five points if the project is necessary to eliminate documented system-related backups within the past 5 years caused by conditions at the wastewater treatment plant. This does not include backups caused by problems in the sewage collection system or backups due to excessive infiltration and inflow.

3. Ten points if the wastewater treatment works discharges to groundwater.

4. Ten points if the wastewater treatment works has a groundwater discharge and an effluent limit for total nitrogen.

5. Five points if the wastewater treatment works has a groundwater discharge and an effluent limit for any compounds other than nitrogen, such as a limit for chlorides. The maximum number of points under this subdivision is 5.

**Note:** Example – If a treatment works has a groundwater discharge and an effluent limit for chlorides and an effluent limit for phosphorus, DNR shall award only 5 points in this subdivision, even though there are two compounds for which the permit includes effluent limits.

6. Five points if the wastewater treatment works' permit requires annual disinfection prior to discharge.

7. Three points if the wastewater treatment works' permit requires disinfection but on a less than annual basis prior to discharge.

(c) *Water quality criteria.* 1. The department shall establish criteria and associated points for various water quality parameters in the CWFP intended use plan.

2. The department shall use the current facility permit limit for calculating the points assigned to the water quality criteria category.

**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 CWFP.

**Note:** The parameters to be included in the intended use plan include BOD/CBOD, TSS, DO, ammonia, phosphorus, chlorides, and metals, including copper, nickel, zinc, mercury, cadmium, and arsenic.

(d) *Regionalization.* If the project is necessary because of a greater than 10% increase in flow or loadings from a new subscribing municipality, 20 points shall be awarded. If a treatment plant is being upgraded to accommodate increased flow or loadings of more than 10% due to a sewage collection system project and the municipality constructing the sewage collection system project is seeking funding from the CWFP, each of the two projects shall be awarded the same total score. The department shall award the highest score from each scoring section, including project type, human health, water quality, regionalization, and population, to each of the projects.

**(3) STORM WATER MANAGEMENT PROJECTS.** The following factors, when applied to storm water projects in accordance with s. NR 162.51, shall determine the priority scoring for CWFP financial assistance pursuant to s. 281.58, Stats.

(a) *Project type score.* The following points shall be awarded to each storm water project:

1. Fifty points shall be awarded to a project if the municipality has a municipal storm water discharge permit under subch. I of ch. NR 216.
2. Twenty-five points shall be awarded to an storm water project in a non-permitted municipality.
3. Five points shall be awarded for a project for construction or replacement of runoff treatment works that violate a permit issued under ch. 283, Stats., or that has been the subject of an enforcement action pursuant to s. 281.98, Stats., for violation of a performance standard. This includes eligible projects or costs identified under s. NR 162.03 (3) and (4).

(b) *Human health score.* Ten points shall be awarded to a storm water project that includes pretreatment of contaminants before discharging to groundwater through a seepage cell.

(c) *Water quality score.* Storm water projects may be awarded water quality points based on data from the use of models as approved by the department.

1. Connected drainage areas associated with storm water projects shall be awarded the following points:

a. Ten points for projects for which the overall percentage of the drainage area connected to high density impervious surfaces, such as commercial strip malls, commercial downtowns, or shopping centers, is greater than 80%.

b. Five points for projects for which the overall percentage of the drainage area connected to medium density impervious surfaces, such as schools, high density residential, mobile homes, freeways, multifamily housing, light industrial, hospitals, or office parks, is 40% to 79% impervious.

c. One point for projects for which the overall percentage of the drainage area connected to low density impervious surfaces, such as open spaces, suburban areas, parks, cemeteries, and low or medium density residential areas, is less than 40% impervious.

2. Storm water projects that provide TSS removal shall be awarded the following points:

a. Ten points for greater than 80% TSS removal.

b. Five points for 60% to 79% TSS removal.

c. One point for 40% to 59% TSS removal.

3. Storm water projects that include the following features shall be awarded the following points:

a. Three points for greater than 55% phosphorus removal.

b. Three points for mechanical nutrient removal technology or other green technology.

c. Three points for infiltration.

**(4) POPULATION.** The department shall add a population score to projects that have the same score as other projects within their project category. The population score is the logarithm to the base 10 of the residential population of the municipality served by the project, divided by 10.

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

10

**(5) INTENDED USE PLAN.** The department may add additional or modify existing scoring criteria in the annual 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 CWFP.

**NR 162.51 Project priority score. (1)** A project priority score shall be assigned to each project for which a completed priority evaluation and ranking form is submitted pursuant to s. NR 162.52. The project priority score is based on the additive of each criteria within the project category for the project. Each project shall be scored under only one of s. NR 162.50 (1), (2), or (3).

**(2)** The municipality shall submit documentation as determined by the department to support the points claimed in the priority evaluation and ranking form. If documentation to support points awarded for a particular factor is not submitted at the time of submittal of the priority evaluation and ranking form, zero points shall be awarded for that particular factor.

**NR 162.52 Procedure for determination and reevaluation of project priority score. (1)** An applicant intending to apply for clean water fund program assistance for a project shall submit to the department a priority evaluation and ranking form in the form required by the department by the October 31 prior to the state fiscal year from which the municipality will request funding. The department may require online or other electronic submittal. The priority evaluation and ranking form is valid for one state fiscal year if at least one of the following applies:

(a) An online priority evaluation and ranking form is completed and submitted by October 31.

(b) An alternate method of delivery is used due to unavailability of an online form. Alternate methods include the following:

1. A paper copy of the priority evaluation and ranking form is postmarked by October 31 or has a documented shipping or mailing date of October 31 or earlier.

2. The department receives the priority evaluation and ranking form by October 31 via fax, e-mail, or other delivery methods. These methods are acceptable as long as it is clear that the form arrived at the department by the October 31 deadline.

3. Hand-delivery and shipping without documentation of the shipping date are acceptable methods as long as the form is received by the department prior to the close of business on October 31.

**Note:** A priority evaluation and ranking form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707-7921.

**(2)** Upon completion of the review and determination of a priority score, the department shall notify the applicant in writing that the determination is available.

**Note:** Email notification by the department of the availability of project priority scores on the web meets this requirement.



(3) The department may review and, if necessary under the requirements of this chapter, recalculate priority scores to ensure accuracy and timeliness of information. The department shall notify an applicant in writing if the department changes the priority score of any of the applicant's projects.

(4) If the applicant objects to the department's determination of the priority score in sub. (2) or (3), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (2) or (3). The notice shall state the specifics of the objection. The applicant shall submit any information that supports the objection and was not available at the time of the original submittal, and provide the priority score which the applicant believes should be awarded to the project based on this new information.

(5) Upon receipt of a notice under sub. (4), the department shall reevaluate its determination of the project priority score and shall notify the applicant. If the department denies the requested priority score, it shall state the reasons in writing.

(6) Notwithstanding sub. (4), an applicant may submit a new priority evaluation and ranking form within 30 days of the application deadline. The department shall notify the applicant of the results of the reevaluation in the same manner as required in sub. (2).

(7) If the scope of a project changes after the department notifies the applicant of its priority score determination, the department may reevaluate the project and revise the priority score.

**NR 162.53 Project ranking system.** (1) The department shall maintain a project priority list that ranks the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first.

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

(3) The department shall prepare a project priority list and shall use it for prioritizing clean water fund program financial assistance to eligible projects.

**SECTION 3. 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 4. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 10, 2014.