

## Chapter NR 163

## CLEAN WATER FUND - FINANCIAL HARDSHIP ASSISTANCE

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**Note:** Chapter NR 163 was created as an emergency rule effective March 1, 1991.

**NR 163.01 Purpose.** The purpose of this chapter is to establish rules under s. 144.241 (13), Stats., for the implementation and administration of a financial hardship assistance program for the planning, engineering design and construction of point source pollution abatement facilities.

**Note:** All forms necessary to apply for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, 201 East Washington Avenue, P. O. Box 7921, Madison, Wisconsin.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.02 Applicability and cross referencing.** This chapter applies to all applicants and recipients of financial hardship funding for planning, design and construction of point source pollution abatement facilities made pursuant to s. 144.241 (13), Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under s. 144.241 (13), Stats. This chapter does not apply to applications for financial assistance for nonpoint source pollution abatement facilities under ss. 144.241 and 144.2415, Stats.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.03 Definitions.** The following definitions are applicable to terms used in this chapter. Definitions of other terms are set forth in ch. NR 162.

(1) "Adjusted gross income" means the total income, as reported to the department of revenue, for all residents within the jurisdiction of a municipality or municipalities that will be served by a project funded under this chapter. For a town sanitary district, "adjusted gross income" means per capita income of the corresponding town multiplied by the population of the sanitary district within the town. For a federally recognized Indian tribe or band, "adjusted gross income" means the median household income from the most recent United States census data for the tribe or band to be served by the project, multiplied by the number of households of the tribe or band to be served by the project and adjusted by the ratio of statewide adjusted gross income for the latest year reported by the department of revenue, divided by the product of the median household income and the total number of house-

holds in the state, both from the most recent U.S. census data available.

(2) "Annual operation and maintenance costs" means the total of the actual costs of operation and maintenance, including replacement and excluding depreciation costs, computed on a 12-month basis.

(3) "Burden" means the annual operation and maintenance costs.

(4) "Equalized value" means the total equalized assessed value of all property in the municipality or municipalities to be served by the project for which one or more of the municipalities apply for financial hardship assistance.

(5) "Fiscal capacity" means 1.5% of the adjusted gross income of the municipality or municipalities which will be served by the project.

(6) "Hardship fundable range" means the range of projects on the funding list compiled under s. NR 163.07 which are projected to consume all available financial hardship present value subsidy for each fiscal year.

(7) "Hardship subsidy" means the amounts provided by the clean water fund to projects receiving financial assistance under ss. 144.241 and 144.2415, Stats., for financial hardship assistance, including grants.

(8) "Interim finance costs" means costs that an eligible municipality incurs to finance a project eligible for financial assistance under ss. 144.241 and 144.2415, Stats., before that financial assistance becomes available to the municipality.

(9) "Per capita income" means the adjusted gross income divided by the population of the municipality or municipalities to be served by the project.

(10) "Project costs" means the eligible costs allocated to a project. Project costs include, but are not limited to, construction, engineering and force account.

(11) "Residential revenues" means the total charges that relate to wastewater treatment levied on residential users in the municipality or municipalities as reported by the department of revenue. For those municipalities that do

not report information on wastewater charges to the department of revenue, "residential revenues" means the total charges that relate to wastewater treatment to be levied on residential users that are proposed in an approved facility plan submitted under ch. NR 110. For all step 3 projects, "residential revenues" mean the total costs for operation, maintenance and replacement charged to residents pursuant to the user charge system approved by the department.

(12) "Residential user" means any person who generates wastewater on property used for domestic purposes and discharges the wastewater to a publicly-owned treatment works.

(13) "Total adjusted fiscal capacity" means the capacity of a municipality to pay the capital costs of the proposed wastewater treatment project based on revenue from all user classes.

(14) "Total revenues" means the total charges that relate to wastewater treatment levied by a municipality or municipalities to all customers as reported by the department of revenue or for those municipalities that do not report information on wastewater charges to the department of revenue, "total revenues" means the total charges that relate to wastewater treatment that are proposed to be levied in an approved facility plan submitted under ch. NR 110. For all step 3 projects, "residential revenues" mean the total costs for operation, maintenance and replacement charged to residents pursuant to the user charge system approved by the department.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.04 Types of financial hardship assistance available.** The department may provide the following types of financial hardship assistance to eligible recipients:

(1) Financial assistance types described in s. NR 162.04 (1) to (4).

(2) Grants not to exceed 90% of the eligible costs of the project, combined with other nonlocal government assistance.

(3) Annual subsidies to finance the payment of principal for clean water fund loans authorized under ch. NR 162.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.05 Eligibility for financial hardship assistance. (1) GENERAL.** Municipalities are eligible to participate in the financial hardship assistance program established by this chapter for the construction of a point source pollution abatement facility. A project shall meet the cost effectiveness analysis criteria contained in ch. NR 110 to be eligible for financial hardship assistance.

(2) **ELIGIBLE PROJECTS FOR FINANCIAL HARDSHIP ASSISTANCE AT BELOW MARKET INTEREST RATE LOANS AND GRANTS.** The following projects are eligible for financial hardship assistance in the form of a below market interest rate loan or a grant:

(a) Those projects described in s. NR 162.05 (2), (5) and (6).

(b) Step 1 and step 2 projects which will result in the construction of projects described in s. NR 162.05 (2), (5) and (6).

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(c) Refinancing projects for which the recipient has remained eligible for financial hardship assistance under the criteria established in s. 144.241 (13) (a) and (am), Stats., since the date of the initiation of construction. No step 3 project may be refinanced with financial hardship assistance 5 years after the date of the initiation of construction. For step 3 projects where construction was initiated between May 17, 1988 and June 30, 1990, the 5-year period for refinancing shall begin on July 1, 1990.

(3) **ELIGIBLE MARKET RATE INTEREST PROJECTS FOR FINANCIAL HARDSHIP ASSISTANCE.** Those portions of projects described in s. NR 162.05 (3) (a), (am), (b), (c) and (d) are eligible to receive financial hardship assistance in a form which is equal to the market interest rate only. The estimated cost of capacity for the portion of the project receiving the market interest rate shall be determined using the criteria described in s. NR 162.05 (3) (f).

(4) **INELIGIBLE PROJECTS FOR FINANCIAL HARDSHIP ASSISTANCE.** The following are not eligible for financial hardship assistance:

(a) Projects or portions of projects described in s. NR 162.05 (4).

(b) Projects or portions of projects to correct violations of effluent limitations contained in a permit issued under ch. 147, Stats.

(c) Projects for which a municipality applies for a capital cost loan.

(d) Projects that would otherwise be eligible but the municipality or municipalities served by the project do not achieve the criteria established in s. 144.241 (13) (a) and (am), Stats.

(e) Projects that received financial hardship assistance in a previous fiscal year for the entire cost of the project.

(f) Projects that received financial assistance under ss. 144.241 and 144.2415, Stats., and were previously determined by the department to be ineligible for financial hardship assistance under the criteria established in s. 144.241 (13) (a) and (am), Stats.

(5) **COST ELIGIBILITY** (a) *Eligible costs.* The recipient's allocable project costs which are reasonable and necessary are eligible for financial hardship assistance, except those expenditures which are found ineligible for refinancing under 26 USC 1 et seq. Eligible costs include, but are not limited to, those listed in s. NR 162.05 (7) (a).

(b) *Ineligible costs.* Costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for financial hardship assistance. Ineligible costs include, but are not limited to, those listed in s. NR 162.05 (7) (b).

(c) *Indirect costs.* The recipient's indirect costs shall be eligible in accordance with criteria described in s. NR 162.05 (7) (c).

(d) *Construction contract claims.* Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible in accordance with the requirements contained in s. NR 162.05 (7) (d).

(e) *Disputes concerning eligibility.* All questions relating to cost eligibility or allocation shall be resolved prior to the execution of the financial hardship assistance agreement. Disputes regarding eligible costs shall be resolved in accordance with s. NR 163.16.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.06 Certification of financial hardship. (1) PROCEDURE.** A certificate of financial hardship shall be submitted to the department by March 15, 1991 for fiscal year 1991 funding, by March 15, 1991 for fiscal year 1992 funding and by January 1 for all subsequent fiscal years for municipalities intending to apply for financial hardship assistance during the subsequent fiscal year. The certificate of financial hardship may be submitted for step 1, step 2 or step 3 projects.

**(2) CONTENTS OF THE CERTIFICATE OF HARDSHIP.** A certificate of financial hardship shall contain the following:

- (a) Adjusted gross income.
- (b) Estimated or actual annual operation and maintenance costs.
- (c) Equalized value.
- (d) Estimated or actual step 1, step 2 and step 3 project costs.
- (e) Residential revenues for wastewater treatment.
- (f) Outstanding wastewater debt not collected through user charges identified for residential user and all users of the system.
- (g) Total revenues for wastewater treatment.
- (h) Population.

**(3) PROPERTY VALUE LIST.** The department shall annually prepare a list, as described in s. 144.241 (13) (a) 2., Stats., which ranks all Wisconsin municipalities in the order of total charges levied by a municipality that relate to wastewater treatment as a percentage of the total equalized value of property in a municipality. The charges that relate to wastewater treatment and equalized property value shall be based upon information obtained from the department of revenue. This list shall be prepared on or before April 1 and shall be used in the determination of the financial hardship funding list under s. NR 163.07 (1) (c) 3.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.07 Distribution of funds. (1) GENERAL.** (a) Financial hardship assistance shall be allocated to those projects within the hardship fundable range and in the sequence specified in ch. NR 161.

(b) Between October 1 and December 31 of each year, each municipality intending to apply for financial hardship assistance for step 1, step 2 or step 3 projects during the following state fiscal year shall notify the department of its intent in writing. In addition, the municipality shall submit a certificate of financial hardship as described in s. NR 163.06 to be used by the department to determine whether the municipality qualifies for financial hardship assistance under the criteria established in s. 144.241 (13) (a) and (am), Stats. The department shall notify each municipality which makes a submittal under this paragraph

of the department's determination of hardship eligibility no later than March 31 of each year.

(c) Except as provided under ss. NR 163.20 and 163.22, a municipality is not eligible for financial hardship assistance if either of the following is determined by the department based upon the certificate of hardship submitted by the municipality:

1. The total residential revenues for the municipality or municipalities served by the project as a percentage of the total adjusted gross income of the municipality or municipalities served by the project is less than or equal to 1.5%.

2. The total revenues for the municipality or municipalities served by the project as a percentage of total equalized value of property in the municipality or municipalities served by the project places the municipality in the lower 75% of all municipalities on the list prepared by the department pursuant to s. NR 163.06 (3).

(d) 1. 'Step 1 and Step 2 projects'. Municipalities that are determined by the department to qualify under the criteria established in s. 144.241 (13) (a) and (am), Stats., and notify the department by January 1, shall submit a complete financial hardship assistance application by June 30.

2. 'Step 3 projects'. Municipalities that meet the conditions stated in subd. 1. shall submit complete approvable and biddable plans and specifications by June 30.

3. 'Funding list'. The department shall annually compile a financial hardship funding list which ranks those municipalities which meet the requirements and conditions of subd. 1. or 2. in the same order as they appear on the federal project priority list and specified in ch. NR 161. The financial hardship funding list shall be compiled no earlier than July 1 of the fiscal year for which it is effective. If sufficient present value financial hardship subsidies or bonding authority is not available to provide financial hardship subsidy to all requests in the fiscal year, the department shall allocate available present value financial hardship subsidy or bonding authority to projects in the order in which they appear on the funding list. The department shall provide "notice of financial hardship assistance commitment" to municipalities which appear in the hardship fundable range of the funding list and which fulfill the requirements of par. (c).

(e) Municipalities which meet the January 1 notification date and fail to submit complete, approvable and biddable plans and specifications for step 3 projects or a financial hardship assistance application before July 1, but submit both on or before June 30 of the subsequent year may be placed on a supplemental funding list. Projects may be funded if present value financial hardship subsidy remains after municipalities meeting both the January 1 and June 30 submission dates have received an allocation of financial hardship subsidy. The order of funding for the supplemental funding list shall be based on the date the department receives complete approvable and biddable plans and specifications for step 3 projects and the date the department receives the complete application for the project.

(f) The lists established under pars. (d) and (e) are effective for the fiscal year beginning on July 1. The department may allocate financial hardship assistance to a mu-

municipality on the lists after the expiration of each list if a municipality received a notice of financial hardship assistance commitment before the expiration of each list and the requirements of sub. (2) are met.

(2) **ALLOCATION PROCEDURE.** (a) *Step 1 financial hardship assistance.* The department shall issue a notice of financial hardship assistance commitment and a financial hardship agreement to a municipality on the lists compiled under sub. (1) upon the submittal of the following:

1. A financial hardship assistance application which meets the requirements of s. NR 163.10 and ch. Adm 35 or an application which, in the opinion of the department and the department of administration, can be completed by the submission of minor additional information.

2. Written certification from the department of administration that the municipality has the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay debt service on the obligation that the municipality issues for the project.

(b) *Step 2 financial hardship assistance.* The department shall issue a notice of financial hardship assistance commitment and a financial hardship agreement to a municipality on the lists compiled under sub. (1) upon the submittal of the following:

1. An approved facilities plan which has been adopted by the governing body of the recipient.

2. A financial hardship assistance application which meets the requirements of s. NR 163.10 and ch. Adm 35 or an application which, in the opinion of the department and the department of administration, can be completed by the submission of minor additional information.

3. Written certification from the department of administration that the municipality has the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligation that the municipality issues for the project.

(c) *Step 3 financial hardship assistance.* 1. The department shall issue a notice of financial hardship assistance commitment to a municipality on the lists compiled under sub. (1) within 90 days of the department's approval of the financial assistance application and upon the submittal of the following:

a. Approved detailed plans and specifications which are capable of being bid;

b. A certified statement assuring that the proposed site will be available for project use prior to the start of construction;

c. A financial hardship assistance application which meets the requirements of s. NR 163.10 and ch. Adm 35 or an application which, in the opinion of the department and the department of administration, can be completed by the submission of minor additional information; and

d. Written certification from the department of administration that the municipality has the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligation that the municipality issues for the project.

2. The department may enter into a financial hardship assistance agreement with a municipality on the funding lists compiled under sub. (1) if the municipality has submitted a bid tabulation with a recommendation to the department for review and concurrence within 3 months of the department's notice given under subd. 1. and the department of administration has certified in writing that the municipality meets the conditions of receiving financial assistance established in ss. 144.241 and 144.2415, Stats., and ch. Adm 35, as appropriate.

3. Upon departmental concurrence with bid tabulations and the recipient's compliance with all applicable financial hardship assistance conditions and other provisions of this chapter and ch. Adm 35, the department may give notice to the recipient to proceed with construction.

4. The department shall specify the type of financial hardship assistance to be provided for each application that it approves.

5. The date the financial hardship assistance agreement is signed by the department shall be deemed the date the financial hardship assistance is awarded for purposes of determining the market rate for that portion of the project that is eligible for market rate financing.

(d) *Combined step 1 and step 2 financial hardship assistance.* The department may issue a notice of financial hardship assistance commitment and a financial hardship assistance agreement for combined step 1 and step 2 financial hardship assistance to a municipality on the list compiled under sub. (1) if a combined step 1 and step 2 application meeting the requirements contained in par. (a) is submitted and a condition is contained in the notice of financial hardship assistance commitment and financial assistance agreement that the award of financial hardship assistance for step 2 activities may not occur until the requirements contained in par. (b) are met.

(3) **ADDITIONAL COSTS AND AMENDMENTS.** (a) The department shall allocate present value subsidy under s. 144.2415 (3) (g) 1., Stats., to projects within the hardship fundable range based on the date an applicant submits approved bid tabulations or requests for amendments not funded from contingency. The determination of the type and amount of financial hardship assistance provided for additional costs or amendments not funded from contingency shall be based on ss. NR 163.09 and 163.14, as appropriate. The department may not allocate additional financial hardship assistance in the form of a grant or loan at less than market interest rate to a project for additional costs or amendments not funded from contingency if the municipality's allocation of present value subsidy for additional costs and amendments not from contingency exceeds 0.8% of the amount specified in s. 144.2415 (3) (d), Stats.

(b) If additional present value subsidy under s. 144.2415 (3) (g) 1., Stats., has been allocated or is not available to a municipality under par. (a), the municipality may receive additional financial assistance in the form of a loan at market interest rate for additional costs or amendments not funded from contingency provided the appropriate requirements under sub. (2) are met after the additional assistance is extended.

(c) Refinancing of a market interest rate loan for additional costs or amendments not funded from contingency shall conform with the requirements of s. NR 163.15 (2). A municipality that has been allocated 0.8% of the present value subsidy established in a previous biennium under s. 144.2415 (3) (g)1., Stats., is not eligible for refinancing of market rate interest loan assistance for additional costs or amendments not funded from contingency.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.08 Funding policies.** (1) **GENERAL.** Each year, the department shall prepare an annual hardship funding policy for that fiscal year as part of the annual funding policy developed pursuant to s. NR 162.17. The annual hardship funding policy shall be subject to public hearing and shall be submitted to the natural resources board for approval. In developing the annual hardship funding policy, the department shall consider factors described in s. NR 162.17.

(2) **STEP 1 AND STEP 2 LIMITS.** Municipalities applying for step 1 and step 2 costs shall be limited for each biennium to 10% of the amount specified in s. 144.241 (13) (e), Stats.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.09 Procedure for determining amount of hardship assistance.** (1) **GENERAL.** (a) The type and amount of financial hardship assistance shall be determined at the time the step 3 financial hardship assistance agreement is awarded.

(b) 1. Step 1 and step 2 financial hardship assistance participation levels shall be at 100% of the eligible architectural and engineering costs as described in the scope of the subagreement. The financial hardship assistance shall be disbursed on a cost incurred basis. Step 1 and step 2 costs may be refinanced with financial hardship assistance before financial assistance is awarded for the step 3 project if invoices are submitted verifying that costs have been incurred and fully paid.

2. Costs for which financial hardship assistance has been received for step 1 and step 2 projects shall be adjusted at the step 3 phase based on actual bid costs for construction. The costs for step 1 and step 2 are added to the step 3 costs in determining the total cost of the project when calculating the amount of financial hardship assistance as described in sub. (2).

**Note:** For example, if the step 3 financial hardship determination is a zero percent loan, the municipality will be required to repay 100% of the step 1 and step 2 funds disbursed to the municipality as a 0% loan.

3. Step 1 and step 2 costs may be refinanced with financial hardship assistance at the step 3 phase. Step 1 and step 2 projects shall receive the same type of financial hardship assistance as the step 3 project. The department shall follow the procedures for refinancing as described in s. NR 163.15 (2).

4. Recipients that received an advance commitment for reimbursement under s. 144.24, Stats., shall receive the financial hardship assistance amount in effect at the time the advance commitment is converted to a step 3 financial hardship agreement.

(2) **CALCULATION OF FINANCIAL HARDSHIP ASSISTANCE AMOUNT.** (a) **General.** The department shall provide sufficient financial hardship assistance, up to a 90% grant as

specified in s. 144.241 (8) (g), Stats., to enable total residential revenues for a municipality or municipalities served by the project, as a percentage of the total adjusted gross income of the municipality or municipalities served by the project, to be equal to 1.5%. In determining the amount and type of financial hardship assistance that each recipient will receive, the following method shall be used:

$$H = Z + 20B + D - \frac{.3 \times AGI \times T}{R}$$

where H is the hardship factor to be used in par. (b).

Z is the sum of the estimated or actual project costs eligible for below market rate financing under s. NR 162.05 (2) and the total principal and interest costs of a loan based upon a 20 year repayment schedule at the actual or estimated market rate for that portion of the project that is eligible for the market interest rate under s. NR 162.05 (3).

B is the current and projected burden of the municipality or municipalities to be served by the project, as calculated using current data and cost information contained in an approved facilities plan, engineering estimate certified by the recipient and the certificate of hardship.

D is the total principal and interest costs of outstanding prior debt relating to wastewater treatment other than costs being refinanced under this chapter.

AGI is the adjusted gross income.

T is the total revenues.

R is the residential revenues.

**Note:** The department may use information contained in the approved facilities plan for the foregoing calculations if the information is not available from the department of revenue.

(b) **Determination of loan and grant percentages.** 1. If H equals zero, the financial hardship assistance shall be in the form of a zero percent loan for project costs eligible for a below market interest rate loan under s. NR 162.05 (2).

2. If H is greater than zero, the financial hardship assistance shall be in the form of a grant to be equal to H or an amount not to exceed 90% of the total eligible project costs, whichever is less, and a zero percent loan for the remaining eligible project costs eligible for below market interest rate financing under s. NR 162.05 (2).

3. If H is less than zero, the total project shall be eligible for a less than market rate loan at an interest rate calculated under pars. (c) and (d).

(c) **Determination of interest rate.** 1. The interest rate for that portion of the project costs eligible for below market rate financing under s. NR 162.05 (2) shall be determined by dividing the eligible below market rate costs by the total adjusted fiscal capacity and applying the result to Table 1. The total adjusted fiscal capacity shall be calculated as:

$$C = T \times (0.015 \times AGI) - \frac{(B + A + M)(R)}{R}$$

where C is the adjusted fiscal capacity;

A is the total principal and interest costs of outstanding prior debt relating to wastewater treatment other than costs being refinanced under this chapter divided by the number of years remaining over which these costs are to be repaid;

M is the annual principal and interest costs based upon a 20 year repayment schedule at the actual or estimated market rate for that portion of the project that is eligible for the market interest rate under s. NR 162.05 (3); and

T, AGI, B and R are as defined in par. (b).

**Table 1**  
Calculation of the Interest Rate  
(If the eligible below market interest rate costs for the project divided by the adjusted fiscal capacity is greater than column A but less than or equal to column B, the interest rate from column C shall be applied)

Column A Greater Than	Column B Less Than or Equal to	Column C Interest Rate
19.74		0.00
19.24	19.74	0.25
18.75	19.24	0.50
18.28	18.75	0.75
17.83	18.28	1.00
17.39	17.83	1.25
16.96	17.39	1.50
16.55	16.96	1.75
16.16	16.55	2.00
15.78	16.16	2.25
15.41	15.78	2.50
15.06	15.41	2.75
14.71	15.06	3.00
14.38	14.71	3.25
14.06	14.38	3.50
13.75	14.06	3.75
13.44	13.75	4.00
13.15	13.44	4.25
12.87	13.15	4.50
12.60	12.87	4.75
12.33	12.60	5.00
12.08	12.33	5.25
11.83	12.08	5.50
11.59	11.83	5.75
11.36	11.59	6.00
11.13	11.36	6.25
10.91	11.13	6.50
10.70	10.91	6.75
10.49	10.70	7.00
10.29	10.49	7.25
10.10	10.29	7.50
9.91	10.10	7.75

2. If the total actual and estimated project costs eligible for below market rate financing under s. NR 162.05 (2) divided by the total adjusted fiscal capacity is 9.91 or less, the interest rate shall be determined by using the following formula:

$$P \div C = \frac{1 - (1 + i)^{-20}}{i}$$

Note: The foregoing calculation should be performed by substituting interest rates for "i" until the value of  $1 - (1 + i)^{-20}$  divided by i is as close to  $P \div C$  as mathematically possible.

(d) *Composite interest rate.* The composite interest rate for a hardship project shall be computed as follows:

$$HRC = \frac{(i) (P) + (im) (CT_3)}{P + CT_3}$$

where:

HRC is the composite interest rate.

i is the interest rate calculated in par. (b) or (c).

P is the total project costs as described in par. (c) 1.

im is the market interest rate.

CT<sub>3</sub> is the eligible project costs for portions of a project under s. NR 162.05 (3).

(3) **ADMINISTRATIVE OR SERVICE FEES** Administrative or service fees under s. NR 162.23 may not be charged to recipients.

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.10 Financial assistance application.** (1) **PROCEDURE.** An application for a step 1, a step 2, or a combined step 1 and step 2 project shall be submitted if the municipality is applying for direct financial assistance and qualifies for financial hardship assistance under s. 144.241 (13), Stats. A separate application shall be submitted for each step 3 project. Applicants may apply for refinancing of step 1 and step 2 projects with financial hardship assistance when applying for assistance for a step 3 project. If the municipality does not qualify for financial hardship assistance at step 1 or step 2, the application for a step 1 or step 2 project shall be returned to the applicant.

(2) **CONTENTS OF APPLICATION - FINANCIAL HARDSHIP.** The contents of the application for financial hardship assistance shall include the information listed in s. NR 162.08 (2) and (4).

History: Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.11 Financial hardship conditions and requirements.** (1) **CONDITIONS.** Before awarding financial hardship assistance for any project, the department shall determine that all of the applicable requirements of s. NR 163.10 have been met and that sufficient documentation has been submitted to show that the recipient has complied or will comply with the conditions listed in s. NR 162.09.

(2) **REQUIREMENTS.** Each financial hardship assistance agreement shall bind the recipient to the requirements listed in s. NR 162.10.

(3) **ADDITIONAL REQUIREMENTS** (a) *No action alternatives.* Recipients that receive financial hardship assistance for step 1 projects that have submitted facilities plans for which the department has approved a no action alternative as described in s. NR 110.09 (3) (b) shall repay 25% of the step 1 costs based upon interest rates determined under s. NR 162.07.

(b) *Actual costs less than estimated costs.* Municipalities that have received financial hardship assistance for step 1 and step 2 projects, and the cost of step 3 project is less

than estimated and the municipality no longer qualifies under s. 144.241 (13) (a) and (am), Stats., for financial hardship assistance, shall repay 100% of the step 1 and step 2 costs at the interest rate determined under s. NR 162.07 for the step 3 project.

(4) **REQUIREMENTS FOR A USER CHARGE SYSTEM AND SEWER USE ORDINANCE.** (a) Any user charge system and sewer use ordinance adopted by a recipient to comply with s. 144.241 (14) (b) 7., Stats., shall meet the requirements of s. NR 162.11.

(b) For a step 3 project, the recipient shall demonstrate that an approvable plan and a schedule of implementation for a system of user charges in accordance with s. NR 162.11 have been developed. The recipient shall agree that a system of user charges in accordance with s. NR 162.11 will be adequately maintained for the design life of the treatment works.

(5) **PROCUREMENT.** Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law and s. NR 162.12 and is subject to review for eligibility, allowability, allocability and reasonableness.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.12 Financial hardship assistance grant and loan disbursements and loan repayment.** (1) **GENERAL.** The department of administration may pay the recipient all project costs incurred within the scope of an approved project that are due and payable by the recipient, excluding withheld or deferred amounts up to the amount in the financial hardship assistance agreement and any approved amendments. The department shall initially determine conformance with the terms and conditions of the financial hardship assistance agreement.

(2) **INTERIM REQUESTS FOR DISBURSEMENT.** (a) *Step 1 and step 2 projects.* The recipient shall submit to the department and the department of administration requests for disbursements for eligible architectural or engineering costs in accordance with the amount included in the financial hardship assistance agreement. Upon receipt of the certification from the department, subject to the withholding limitations in s. NR 162.13 (6) and ch. Adm 35, the department of administration shall disburse necessary amounts from available funds. The total amount of disbursements shall be equal to the actual eligible costs incurred to date.

(b) *Step 3 projects.* The recipient shall submit to the department and the department of administration requests for disbursements for eligible project costs in accordance with the disbursement schedule included in the financial hardship assistance agreement. Upon receipt of the disbursement request, the department shall certify to the department of administration whether the recipient is in conformance with appropriate terms and conditions of the financial hardship assistance agreement. Upon receipt of the certification from the department, subject to the withholding limitations in s. NR 162.13 (6) and ch. Adm 35, the department of administration shall cause to be disbursed from available funds such amounts as are necessary. The total amount of disbursements shall be equal to the actual eligible costs incurred to date, as the recipient certified in its most recent request for disbursement. Disbursement of financial hardship assistance shall be

made in the form of a loan, up to the amount identified in the financial hardship assistance agreement, which is calculated using the procedure for determining the loan percentage described in s. NR 162.09. Grant disbursements, if any, shall be made after all hardship loan disbursements are issued.

(3) **ADJUSTMENTS AND REFUNDS, REBATES AND CREDITS.**

(a) *Adjustments.* At any time before final disbursement for a step 1, step 2 or step 3 project under a financial hardship assistance agreement, the department may recommend to the department of administration that any request for disbursement be reviewed or audited. Based on the review or audit, the department of administration may reduce any disbursement for prior overpayment or may increase any disbursement for prior underpayment.

(b) *Refunds, rebates and credits.* Any refunds, rebates, credits or other amounts, including any interest, that accrue to or are received by the recipient for the project, and that are properly allocable to costs for which the recipient has been paid under the financial hardship assistance agreement, shall be used to reduce the amount of the financial hardship assistance received. Reasonable expenses incurred by the recipient while securing refunds, rebates, credits or other amounts may be eligible costs under the financial hardship assistance agreement.

(4) **FINAL DISBURSEMENT.** Before the department of administration makes a final disbursement under the financial hardship assistance agreement, the recipient shall meet the following requirements:

(a) *Step 1 projects.* 1. Submit an executed assignment to the state of Wisconsin for any refunds, rebates, credits or other amounts, including any interest, properly allocable to costs for which the recipient has been paid under the financial hardship assistance agreement.

2. Have received final approval of a facilities plan for the project.

(b) *Step 2 projects.* 1. Submit an executed assignment to the state of Wisconsin, of the refunds, rebates, credits or other amounts, including any interest, properly allocable to costs for which the recipient has been paid under the financial hardship assistance agreement.

2. Have received final approval of construction drawings and specifications for the project.

(c) *Step 3 projects.* Prior to the final disbursement of financial hardship funds, the department shall complete a final inspection under s. NR 162.10 (13) for the project and certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter, ch. NR 162 and the financial hardship assistance agreement. The final request for disbursement shall be submitted by the recipient promptly after completion of the project and final inspection. Before the department of administration makes a final disbursement under the financial hardship assistance agreement, the recipient shall conform with the requirements of s. NR 162.13 (5).

(5) **LOAN REPAYMENT.** (a) The recipient shall repay the department of administration in accordance with the repayment schedule included in the step 3 financial hard-

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ship assistance agreement. The repayment schedule shall include the costs for step 1, step 2 and step 3 projects.

(b) Financial hardship loans issued under this chapter shall accrue interest beginning on the day the funds for step 3 projects are disbursed to a recipient.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.13 Recipient accountability. (1) FINANCIAL CAPABILITY.** The department of administration shall evaluate a municipality's financial capability to repay its hardship loan for conformance with s. 144.2415 (9), Stats., and ch. Adm 35 and shall certify in writing to the department the municipality's financial capability. The department may not issue a notice of financial hardship assistance commitment for a project unless the department of administration has notified the department in writing that the municipality has satisfied the department of administration requirements under ss. 144.241 and 144.2415, Stats., and ch. Adm 35.

(2) **MUNICIPAL OBLIGATION.** The department of administration, in consultation with the department, may determine the type of municipal obligation in s. 66.36, Stats., which is required for the repayment of the financial hardship assistance. Upon written notification by the department of administration of the conditions regarding municipal obligation, the department shall include the conditions in the notice of financial hardship assistance commitment and the financial hardship assistance agreement.

(3) **FINANCIAL MANAGEMENT.** The recipient shall comply with all requirements contained in s. NR 162.14 (3).

(4) **RECORDS AND RECORDS RETENTION.** Recordkeeping requirements, as contained in s. NR 162.14 (4), shall be applicable to all financial hardship assistance recipients.

(5) **AUDIT.** (a) The department or the department of administration may perform or require the municipality to commission an audit prior to execution of the financial hardship assistance agreement, during project development, prior to project completion, or at any time during the term of the project financing. Recipients and subcontractors of recipients shall preserve and make their records available pursuant to sub. (4). Disbursements made under the financial hardship assistance agreement may be adjusted based on underpayment or overpayment identified by audit.

(b) Recipients may commission a single audit in accordance with the single audit act, OMB circular A-128, and state of Wisconsin single audit guidelines. All reasonable, allocable costs of single audits are eligible costs under the project.

(c) The department shall rely on commissioned audits to the extent feasible once it satisfies itself of the quality of the audit by appropriate tests or other acceptable methods as described in government auditing standards issued by the comptroller general of the United States. The department shall rely on and not duplicate single audits performed in accordance with the federal and state auditing standards. The department may perform additional audits to supplement work done in single audits to the extent it deems necessary to carry out its responsibility under the program.

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(6) **RECIPIENT RESPONSIBILITY.** The recipient is responsible for the administration and successful completion of the project for which financial hardship assistance is awarded in accordance with sound business judgment and good administrative practice under state and local laws. Review or approval of facilities plans or other planning documents, design drawings and specifications or other documents by or for the department is for administrative purposes only and does not relieve the recipient of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works described in the financial hardship assistance agreement as required by law, regulations, permits and good management practices. The department is not responsible for added costs resulting from defects in the approved plans, design drawings and specifications or other subagreement documents.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.14 Financial hardship assistance agreement amendments. (1)** Changes in the project that are consistent with the objectives of the project, within the scope of the financial hardship assistance agreement and which do not require review under ch. NR 110 will not require the execution of an amendment before the recipient implements the change. However, the amount of financial assistance in the financial assistance agreement may be increased by an amendment only and can be made only upon department review and acceptance of the cost increase as eligible, reasonable and necessary for the accomplishment of project objectives. Except for estimated payment schedules under agreements for construction of treatment works, the recipient shall receive prior approval or a formal amendment from the department before implementing changes which:

- (a) Alter the project performance standards;
- (b) Alter the type of wastewater treatment provided by the project; or
- (c) Substantially alter the facilities plan, design drawings and specifications or the location, size, capacity or quality of any major part of the project.

(2) A financial hardship assistance agreement amendment shall become effective after it has been executed by the department and the authorized representative of the recipient.

(3) Approval of financial hardship assistance agreement amendment requests which increase the amount of financial assistance shall be subject to the availability of bonding authority or present value subsidy as determined in s. NR 162.06 (3) (b).

(4) If sufficient bonding authority or present value subsidy is available, the additional financial hardship assistance provided under an approved assistance agreement amendment may, based on the determination of the department, vary between the market interest rate loan and a grant at the percentage of participation and loan at the overall project composite interest rate established in the financial hardship assistance agreement. The determination of the type and amount of additional financial hardship assistance shall be based on the following criteria:



(a) If the factors or circumstances which led to the requested increase could reasonably have been predicted by the recipient in the original design or most recent amended design approved by the department, the type of financial assistance shall be a loan at the market interest rate.

(b) If the factors or circumstances which led to the requested increase were caused by the department or could not have reasonably been predicted by the recipient, the interest rate for the increased financial assistance shall be the most recent approved composite rate for the project.

(c) If the factors or circumstances which led to the requested increase contain elements of pars. (a) and (b), the department may establish an interest rate between the market interest rate and the most recent project composite interest rate or provide grant participation at a percentage less than that established in the financial hardship assistance agreement.

(d) The recipient may appeal an amendment interest rate determination pursuant to s. NR 163.16.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.15 Advance commitments and refinancing. (1) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS** Advance commitments for reimbursement issued under s. 144.24, Stats., may be converted to financial hardship assistance agreements and awarded with step 3 financial hardship assistance agreements.

(2) **REFINANCING** (a) *General.* Refinancing may be provided for step 1, step 2 or step 3 projects if sufficient hardship funds are not available in any fiscal year.

(b) *Eligibility.* 1. Requests to refinance after step 3. A municipality which did not receive a notice of financial hardship assistance commitment prior to the start of a step 3 project due to insufficient financial hardship subsidy shall be eligible for refinancing if a notice of financial hardship assistance commitment under s. NR 163.07 is issued within 5 years of the date of the initiation of construction for the step 3 project. For step 3 projects where construction was initiated between May 17, 1988 and June 30, 1990, the 5 year period for refinancing shall begin on July 1, 1990.

2. Requests to refinance step 1 and step 2 projects before step 3. A municipality which did not receive a step 1 notice of financial hardship assistance commitment prior to the start of the step 1 project shall be eligible for refinancing if a notice of financial hardship assistance commitment under s. NR 163.07 is issued within 2 years of the facility plan approval. A municipality which did not receive a step 2 notice of financial hardship assistance commitment prior to the start of the step 2 project shall be eligible for refinancing if a notice of financial hardship assistance commitment under s. NR 163.07 is issued within 2 years of the plans and specifications approval.

3. Requests to refinance step 1 and step 2 projects at step 3. A municipality which did not receive a step 1 or step 2 notice of financial hardship assistance commitment prior to the start of the step 3 project shall be eligible for refinancing if a notice of financial hardship assistance commitment under s. NR 163.07 is issued within 9 years

of the facilities plan approval and 7 years of the plans and specifications approval.

(c) *Refinancing process - step 3.* 1. An applicant for refinancing shall meet the planning and design criteria and application requirements as established in this chapter for other recipients.

2. The department's annual funding policy shall establish the funding priority for refinancing projects.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.16 Disputes. (1) DISPUTES.** Except as otherwise provided by law, any dispute arising under a financial hardship assistance agreement shall be decided in writing by the department which will serve personally or by certified mail, return receipt requested, a copy of the decision on the recipient.

(2) **REVIEW OF THE DECISION.** A decision of the department made pursuant to this section shall be final unless, within 30 days from the date of receipt of the decision, the recipient submits a written petition by certified mail, return receipt requested, or otherwise delivers to the department a written petition specifically stating the facts or law which warrant a modification or reversal of the decision. Any review of a department decision filed pursuant to this section shall be treated as a class 2 contested case and shall be adjudicated in accordance with ch. 227, Stats., and ch. NR 2.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.17 Suspension or termination of financial hardship assistance. (1) SUSPENSION OF ASSISTANCE - STOP-WORK ORDERS** In accordance with the provisions of s. NR 162.20 (1), the department may, for good cause, suspend state liability for work done under a step 1, step 2 or step 3 financial hardship assistance agreement and to stop construction on a project after notification is given to the recipient.

(2) **TERMINATION OF FINANCIAL HARDSHIP ASSISTANCE.** Financial hardship assistance may be terminated in whole or in part by the department pursuant to one or more of the procedures outlined in s. NR 162.20 (2).

(3) **RESCISSION OF FINANCIAL ASSISTANCE.** The department may rescind the financial agreement if it determines that:

(a) There has been substantial non-performance of the project work by the recipient without acceptable justification under the circumstances;

(b) There is substantial evidence the financial hardship assistance agreement was obtained by fraud;

(c) There is substantial evidence of gross abuse or corrupt practices in the administration of the project;

(d) The recipient of a step 1 or step 2 financial hardship assistance has not proceeded with construction or implementation of the cost-effective alternative within 4 years of the first payment of financial hardship assistance for step 1 costs or within 2 years of payment of step 2 costs. This provision may be waived only upon the department's determination that progress is being made by the municipality to implement the cost-effective solution under s. NR 110.09. If this provision is waived, the municipality shall

initiate loan repayment. The interest rates on the loans shall conform with the requirements of s. NR 162.07; or

(e) The recipient has failed to comply with the terms or conditions of the financial hardship assistance agreement.

(4) **PROCEDURES FOR TERMINATION AND RESCISSION** Financial hardship assistance may be terminated or rescinded by the department in accordance with the procedures in s. NR 162.20 (4).

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.18 Enforcement.** (1) Noncompliance with the provisions of this chapter or any financial hardship assistance agreement or amendment made under this chapter which jeopardizes timely completion of a project or the interests of the state in administering the clean water fund shall be cause for the imposition of one or more of the sanctions listed in s. NR 162.21 (1) at the discretion of the department.

(2) If the recipient fails to make timely payments to the department of administration when due under a financial hardship assistance agreement or amendment and fails to cure the nonpayment within 10 days of the department of administration's written notice, or is in substantial non-compliance with the provisions of this chapter or any financial hardship assistance agreement or amendment and fails to cure matters within 20 days of the department's written notice, the department shall have cause for the imposition of one or more of the sanctions listed in s. NR 162.21 (2) at the discretion of the department.

(3) Notwithstanding subs. (1) and (2) and ch. Adm 35, in the event of any material noncompliance with the provisions of this chapter or any financial hardship assistance agreement or amendment made under this chapter, project costs directly related to the noncompliance may be declared ineligible for financial hardship assistance.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.19 Variances.** (1) **GENERAL.** The department may approve a variance from requirements of this chapter when it is determined that a variance is essential to effect necessary financial assistance actions or department objectives where special circumstances make a variance in the best interest of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient and financial hardship.

(2) **APPLICABILITY.** A recipient may request a variance from any nonstatutory requirement of this chapter.

(3) **REQUEST FOR VARIANCE.** A request for a variance shall be submitted in writing to the department, as far in advance as the situation will permit. Each request for a variance shall contain the following:

(a) The name of the applicant or the financial hardship assistance agreement number and the dollar value;

(b) The section of this chapter from which a variance is sought and a statement explaining why the variance is necessary;

(c) An adequate description of the variance and the circumstance in which it will be used, including any pertinent background information which is relevant to making

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a determination on the justification of granting the variance; and

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

(4) **APPROVAL OF VARIANCE.** A copy of each approval of a variance request shall be retained in the department financial assistance file.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.20 Request for criteria reevaluation.** (1) **GENERAL.** The department may reevaluate a recipient's financial hardship standing at the request of the recipient being evaluated. The reevaluation shall occur after the submission of the financial hardship assistance application and prior to execution of a financial assistance agreement. The reevaluation shall be based upon current user charge revenues, adjusted gross income, equalized assessed valuations, project costs, population and other factors deemed to be significant by the department.

(2) **SANITARY DISTRICTS AND INDIAN TRIBES.** A sanitary district or a federally recognized Indian tribe or band may submit to the department the social security numbers of all residents or tribal or band members. The social security numbers shall be submitted by the department to the department of revenue to obtain adjusted gross income to determine whether the sanitary district or federally recognized Indian tribe or band qualifies for financial hardship assistance under the criteria established in s. 144.241 (13) (a) and (am), Stats, as appropriate.

**Note:** It is recommended that sanitary districts or federally recognized Indian tribes or bands use an independent survey to obtain the social security numbers. The social security numbers should be submitted to the department without the associated names.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.21 Interim finance cost reimbursement.** (1) A recipient may be reimbursed for eligible interim finance costs if the recipient has been issued a notice of financial assistance commitment under ss. 144.241 and 144.2415, Stats.

(2) A recipient's interim finance costs shall meet all of the following conditions to be eligible for reimbursement under this section:

(a) The recipient incurred the costs over a period of no greater than 6 months.

(b) The recipient incurred the costs of financing or refinancing that the recipient obtained on or after April 1, 1990, but no later than September 30, 1990.

(c) The recipient obtained the financing or refinancing from a source other than the clean water fund.

(3) (a) The department shall determine eligible interim finance costs by subtracting the result obtained under par. (c) from the result obtained under par. (b).

(b) 1. The actual interest costs incurred by a recipient on project financing or refinancing which qualifies under sub. (2); and

2. Any issuance costs incurred by the recipient to obtain that financing or refinancing on or after April 1, 1990 but no later than September 30, 1990.

(c) 1. The interest costs that a recipient would have incurred, over the period for which it seeks reimbursement of interim finance costs, on the amount of financial assistance specified in the recipient's notice of financial assistance commitment, if the recipient had received financial assistance under ss. 144.241 and 144.2415, Stats., for that period;

2. Any costs to the recipient of receiving financial assistance under ss. 144.241 and 144.2415, Stats.; and

3. Interest earned by the recipient, over the period for which it seeks reimbursement of interim finance costs, on that portion of the financing or refinancing obtained by the recipient under sub. (2) that equals the amount of financial assistance that would have been received during that period, as specified in the recipient's notice of financial assistance commitment.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.

**NR 163.22 Alternative criteria for Indian tribes. (1) GENERAL.** Federally recognized Indian tribes or bands are eligible for financial hardship assistance if the tribe or band qualifies under the income criteria specified under s. 144.241 (13) (a) and (am), Stats. Federally recognized Indian tribes or bands are exempt from meeting the property value criteria as specified under s. 144.241 (13) (bm), Stats.

**(2) CALCULATION OF ADJUSTED GROSS INCOME.** When calculating the adjusted gross income of a federally recognized Indian tribe or band or a federally recognized Indian

tribe or band with nontribal property contained within the boundary or sewer service area, the following procedure shall be used to determine adjusted gross income.

$$AGI = AGI_N + \frac{(MHI_T) (U_T) (AGI_{wis})}{(MHI_{wis}) (U_{wis})}$$

where:

(a)  $AGI_N$  is the adjusted gross income or sum of adjusted gross incomes reported most recently by the department of revenue for the nontribal residences to be served by the project.

(b)  $MHI_T$  is the median household income obtained from the most recent U.S. census data for the Indian tribe or band to be served by the project.

(c)  $U_T$  is the number of households obtained from the most recent U.S. census data for the Indian tribe or band to be served by the project.

(d)  $AGI_{wis}$  is the total adjusted gross income for the state of Wisconsin as most recently reported by the department of revenue.

(e)  $MHI_{wis}$  is the median household income for the state of Wisconsin from the most recent U.S. census data.

(f)  $U_{wis}$  is the total number of state of Wisconsin households from the most recent U.S. census data.

**History:** Cr. Register, November, 1991, No. 431, eff. 12-1-91.