

Chapter NR 162

CLEAN WATER FUND PROGRAM

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Note: Chapter NR 162 as it existed on June 30, 1996, was repealed and a new chapter NR 162 was created, [Register, June, 1996, No. 486](#), eff. 7-1-96. Chapter NR 162 as it existed on February 28, 2001, was repealed and a new chapter NR 162 was created, [Register, February, 2001, No. 542](#), eff. 3-1-01. Chapter NR 162 as it existed on November 30, 2003, was repealed and a new chapter NR 162 was created, [Register November 2003 No. 575](#), eff. 12-1-03. Chapter NR 162 as it existed on June 30, 2015, was repealed and a new chapter NR 162 was created by [CR 14-043, Register June 2015 No. 714](#), eff. 7-1-15. Chapter NR 162 as it existed on October 31, 2023, was repealed and a new chapter NR 162 was created by [CR 22-045, Register October 2023 No. 814](#), effective November 1, 2023.

Subchapter I — General

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

c1d 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.

c2d 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.

c3d Establish rules under s. [281.58 c6d cbd 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 financial assistance under this chapter are available on the department[s] website. Paper forms may be acquired from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S.

Webster St., P.O. Box 7921, Madison, Wisconsin 53707]7921. Most information is required to be submitted through the department[s] online application system.

History: [CR 22-045](#); cr. [Register October 2023 No. 814](#), eff. 11-1-23.

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 under ss. [281.58](#) and [281.59](#), Stats. This rule first applies to financial assistance applications submitted to the department on November 1, 2023. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. [281.58](#) and [281.59](#), Stats.

History: [CR 22-045](#); cr. [Register October 2023 No. 814](#), eff. 11-1-23.

NR 162.003 Definitions. In this chapter:

c1d XAmendmentY means a formal, written change to an existing legal agreement or contract executed by all parties to the original agreement or contract.

c2d XAmerican Community SurveyY or XACSY 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.

c3d XApplicantY means any municipality that submits to the department any of the following for financial assistance under this chapter:

- cad Intent to apply form and priority evaluation and ranking information as required by the department.
- cbd A financial assistance application.

c4d XApprovalY means the written approval of the department.

c5d XBest management practicesY or XBMPsY has the meaning given in s. NR 151.002 c4d.

Note: Under s. NR 151.002 c4d, XBest management practicesY or XBMPsY means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.

c6d XBlock groupY means a subdivision of a census tract made up of a cluster of blocks having the same first digit of their 4-digit identifying numbers within the tract.

c7d XBoard of commissioners of public landsY or XBCPLY 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.

c7md XBODY means the pollutant parameter biochemical oxygen demand.

c8d XBreach of contractY means the failure of the municipality to comply with any of the following:

cad The terms and conditions of the financial assistance agreement or interest rate subsidy agreement.

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

c9d XCapital improvementY means construction resulting in improvements to real property or depreciable property, or both, and adding to the value or useful life of these assets, including structural improvements, or improvements that enhance usefulness or productivity. XCapital improvementY includes capital assets that are not structural but are necessary for water quality protection or improvement, such as trucks, street sweepers, land for buffer areas, and other tangible assets with a single item cost of greater than \$5,000.

Note: The following are examples of capital improvements: constructing permeable pavement or an infiltration pond to control runoff; constructing an entirely new treatment works, or new clarifiers, aeration tanks, or other major components of an existing treatment works or BMP; upgrading existing equipment or installing new, more efficient process equipment, such as equipment for pumping, 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; or purchasing an existing treatment facility, land on which a treatment facility will be constructed, land for buffer areas, agricultural or industrial land taken out of production in order to improve water quality in the area, or necessary mobile assets, such as a street sweeper. Replacing an old pump with a new pump that is the same size and efficiency as the old pump is not considered a capital improvement; rather, it is maintenance.

c9md XCBODY means the pollutant parameter carbonaceous biochemical oxygen demand.

c10d XCensus blockY means the smallest unit for which the U.S. bureau of the census collects and tabulates population information in the decennial census and income information in the ACS.

c11d XCensus designated placeY means a statistical area delineated for each decennial census according to U.S. bureau of the census guidelines for the purpose of presenting census data and ACS data for a concentration of population, housing, and commercial structures that is locally identifiable by name, but is not within an incorporated place.

c12d XCensus tractY 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.

c13d XChange orderY 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.

c14d XClean water fund programY or XCWFPY 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.

c15d XCompliance maintenanceY 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.

c16d XConstructionY means a set of actions taken to make a capital improvement, including any of the following actions:

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

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

ccd Purchasing a package wastewater treatment system or capacity in an existing treatment works.

cdd Altering, modifying, improving, upgrading, rehabilitating, or adding to existing treatment works facilities or BMPs.

ced Performing major repairs or replacing major components of existing facilities.

cfd Installing new piping or mechanical, electrical, or electronic equipment or facilities.

cgd Remediation of illicit discharges to an MS4 or runoff treatment works.

c17d XCustom tabulationY 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.

c18d XDepartmentY means the department of natural resources.

c19d XDesign flowY 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.

c20d XDisadvantaged business enterpriseY or XDBEY 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.

c21d XDischargeY has the meaning given in s. 283.01 c4d, Stats.

Note: Under s. 283.01 c4d, Stats., Xdischarge,Y when used without qualification, includes a discharge of any pollutant. Under s. 283.01 c5d, Stats., Xdischarge of pollutantY or Xdischarge of pollutantsY means any addition of any pollutant to the waters of this state from any point source.

c21md XDOY means the effluent parameter dissolved oxygen.

c22d XDOAY means the department of administration.

c23d XEffluent limitationY has the meaning given in s. 283.01 c6d, Stats.

Note: Under s. 283.01 c6d, Stats., Xeffluent limitationY 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.

c24d XEngineeringY includes all of the following:

cad 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.

cbd Performing engineering, architectural, geotechnical, hydrogeological, environmental, archaeological, biological, fiscal, or economic investigations or studies.

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

cdd Preparing surveys, designs, plans, bidding documentation, working drawings, specifications, or as-built drawings.

ced Coordinating, observing, inspecting, or supervising any of the activities under pars. cad to cdd or under sub. c16d.

c25d XEquipment replacement fundY means a separate fund established by a 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.

c26d XFinancial assistanceY includes one or more of the following actions taken by the department and DOA under ss. 281.58 and 281.59, Stats.:

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

cbd Refinancing a municipality's interim debt obtained for the scored project.

ccd Purchasing insurance for a municipality.

c27d XFinancial assistance agreementY 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.

c28d XFinancial assistance agreement amendmentY means a formal, written change to an existing financial assistance agreement executed by all parties to the original agreement.

c29d XForce account workY means engineering, construction, or other project-specific activities performed by a municipality's paid employees or use of equipment owned by the municipality in construction of the project, or both.

c30d XGroundwaterY has the meaning given in s. 160.01 c4d, Stats.

Note: Under s. 160.01 c4d, Stats., XgroundwaterY means any of the waters of the state, as defined in s. 281.01 c18d, occurring in a saturated subsurface geological formation of rock or soil.

c31d XIllicit dischargeY has the meaning given in s. NR 216.002 c11d.

Note: Under s. NR 216.002 c11d, Xillicit dischargeY means any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.

c32d XIndustrial userY has the meaning given in s. 281.58 c1d ccd, Stats.

Note: Under s. 281.58 c1d ccd, Stats., Xindustrial userY means any of the following:

1. Any nongovernmental, nonresidential user of a publicly owned treatment work which discharges more than the equivalent of 25,000 gallons per day of sanitary wastes, other than domestic wastes or discharges from sanitary conveniences, or discharges a volume that has the weight of biochemical oxygen demand or suspended solids at least as great as the weight found in 25,000 gallons per day of sanitary waste from residential users, and which is identified in the standard industrial classification manual, 1972, federal office of management and budget, as amended and supplemented as of October 1, 1978, under one of the following divisions:

a. Division A: agriculture, forestry, and fishing.

b. Division B: mining.

c. Division D: manufacturing.

d. Division E: transportation, communications, electric, gas, and sanitary services.

e. Division I: services.

2. Any nongovernmental user of a publicly owned treatment work which discharges wastewater to the treatment work which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals, to create a public nuisance, or to create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

3. All commercial users of an individual system constructed with grant assistance under s. 281.57.

c33d XInfiltrationY has the meaning given in s. NR 110.03 c16d.

Note: Under s. NR 110.03 c16d, XinfiltrationY means water other than wastewater that enters a sewerage system including sewer service connections from the ground through such sources as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

c33md XInfiltration systemY has the meaning given in s. NR 151.002 c20d.

Note: Under s. NR 151.002 c20d, Xinfiltration systemY means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

c34d XInflowY has the meaning given in s. NR 110.03 c17d.

Note: Under s. NR 110.03 c17d, XinflowY means water other than wastewater that enters a sewerage system including sewer service connections from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, sump pumps, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

c35d XInterest rate subsidyY means the subsidy 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.

c36d XInterest rate subsidy agreementY 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.

c37d XInterim debtY means a financial liability that is subject to repayment and incurred by an applicant to temporarily finance a scored project until permanent financing is obtained from the CWFP, including liabilities in the form of lines of credit, short-term bank or BCPL loans, bond anticipation notes, general obligation bonds, revenue bonds, general obligation promissory notes, and certificates of indebtedness.

c38d XInterim debt costsY means the net interest, fees, and charges associated with issuing interim debt, including municipal advisor fees, attorney fees, printing costs, bond rating charges, and trustee fees.

c39d XLateralY means a sewer service line that connects a residence, commercial establishment, institutional facility, or industrial user to a municipal sewage collection system or individual system.

c40d XMaintenanceY 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 all of the following types of maintenance:

cad 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.

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

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

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

ced 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.

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

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

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

cg 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.

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

c41d XMarket interest rateY has the meaning given in s. 281.59 c1d cbd, Stats.

Note: Under s. 281.59 c1d cbd, Stats., Xmarket interest rateY means the effective interest rate on a fixed-rate revenue obligation issued by the state to fund a loan made under this section or, if the DOA determines that there has been a significant change in interest rates after the fixed-rate revenue obligation has been issued or if a fixed-rate revenue obligation has not been issued by the state to fund a loan made under this section, the effective interest rate that the DOA determines would have been paid if a fixed-rate revenue obligation had been issued on the date financial assistance is allotted.

c42d XMedian household incomeY has the meaning given in s. 281.58 c1d ccmd, Stats.

Note: Under s. 281.58 c1d ccmd, Stats., Xmedian household incomeY 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.

c43d XMinor civil divisionY 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.

c44d XMinority business enterpriseY or XMBEY means a DBE that is owned or controlled on a daily basis by one or more minority group members.

c45d XMunicipal separate storm sewer systemY or XMS4Y means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, that meets all of the following criteria:

cad Is owned or operated by a municipality.

cbd Is designed or used for collecting or conveying storm water.

ccd Is not a combined sewer conveying both wastewater and storm water.

cdd Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

c46d XMunicipal WPDES storm water discharge permitY means any permit issued to a municipality by the department under s. 283.33 c3d, Stats., for the purpose of controlling storm water discharges from an MS4.

c47d XMunicipalityY has the meaning given in s. 281.59 c1d ccd, Stats.

Note: Under s. 281.59 c1d ccd, Stats., XmunicipalityY 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.

c48d XNew or changed WPDES permit limitsY means an effluent limitation in a municipality's most recent WPDES permit that is a completely new limit previously not included in the WPDES permit or is a change to a previous limit with which the municipality was already complying.

c49d XNonpoint sourceY has the meaning given in s. 281.65 c2d cbd, Stats.

Note: Under s. 281.65 c2d cbd, Stats., Xnonpoint sourceY 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 c12d, Stats.

c50d XOperationsY 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:

cad 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.

cbd 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.

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

cdd Snow and ice removal and activities to treat surfaces to eliminate unsafe weather-related conditions.

ced 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.

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

c51d XParallel cost percentageY means, for a scored project, the proportion of costs eligible for below-market rate financing, as delineated in s. NR 162.04 c1d, relative to the total costs eligible for CWFP financing.

Note: The calculation of the parallel cost percentage is described in s. NR 162.04 c1d ccd.

c52d XPerformance standardsY means nonagricultural performance standards established by the department in ch. NR 151, under s. 281.16 c2d, Stats.

c53d XPlaceY means a concentration of population either legally bounded as an incorporated place, such as a city or vil-

lage, or identified as a census designated place by the U.S. bureau of the census.

c54d XPlans and specificationsY means project drawings and specification manuals for all construction work to be included in the financial assistance for the scored project.

c55d XPopulationY means the most recent year[s] final population estimate published by the DOA demographic services center for the city, town, or village that submitted priority evaluation and ranking information as required by the department. For a municipality other than a city, town, or village, XpopulationY 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 or an estimate determined by multiplying the number of households served by the sanitary sewer system by the average household size in the area, as determined by the department.

c56d XPriority scoreY means the numerical value determined by the department that is assigned to each project in accordance with s. NR 162.50.

c57d XProfessional servicesY means non-construction work provided under contract for the project, including engineering, archaeological, legal, financial, or technical services provided by a higher education institution or a formally certified member of a professional body, such as a trade association or organized profession.

c58d XProjectY 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.

c59d XProject closeoutY means the procedures described in s. NR 162.13 c4d for projects funded under subchs. II and III, and in s. NR 162.46 c4d for projects funded under subch. IV.

c60d XProject completion dateY means the earliest date on which all of the following apply:

cad Construction of the scored project is complete.

cbd The department or its agents have certified that the scored project was constructed according to department-approved plans and specifications.

ccd The department or its agents have certified that the facilities are operating according to design.

cdd The project closeout is complete.

ced The department has notified the recipient that the scored project is complete.

c61d XProportional shareY 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.

c62d XReceiving municipalityY 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.

c63d XRecipientY means any municipality or group of municipalities that has been awarded or has received financial assistance under ss. 281.58 and 281.59, Stats.

c64d XReplacementY 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 CWFPP to maintain or improve the capacity and performance levels for which the treatment works or BMP was designed and constructed.

c65d XResidential userY means a structure or part of a structure, including a mobile home or individual apartment unit, 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. XResidential userY does not include an institutional, commercial, industrial, or governmental facility.

c66d XRunoffY has the meaning given in s. NR 151.002 c40d.

Note: In s. NR 151.002 c40d, XrunoffY means storm water or precipitation, including rain, snow, ice melt, or similar water that moves on the land surface via sheet or channelized flow.

c67d XScored projectY 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 CWFPP project number.

c68d XSeptageY has the meaning given in s. 281.58 c1d ccvd, Stats.

Note: Under s. 281.58 c1d ccvd, Stats., XseptageY 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 onsite wastewater treatment system.

c69d XSewage collection systemY has the meaning given under s. NR 110.03 c28d, 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 c2d.

Note: Under s. NR 110.03 c28d, Xsewage collection systemY means the common sanitary sewers, interceptor sewers, and appurtenant equipment, such as lift stations, within a sewerage system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection XYY fittings designed for connection with those facilities. The facilities which convey wastewater from individual structures, such as building sewers and private interceptor sewers, from private property to the public sanitary sewer, or its equivalent, are specifically excluded from the definition of Xsewage collection systemY; except that pumping units and pressurized lines for individual structures or groups of structures are included as part of a Xsewage collection systemY when such units are cost effective and are owned and maintained by the sewerage system owner.

c70d XSewerY means a sewage collection system or an MS4, a portion of a sewage collection system or MS4, or other pipes that carry water to a treatment facility.

c71d XSewer service areaY 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.

c72d XStorm waterY has the meaning given in s. NR 216.002 c33d.

Note: Under s. NR 216.002 c33d, Xstorm waterY means runoff from precipitation, including rain, snow, ice melt, or similar water that moves on the land surface via sheet or channelized flow.

c73d XSubscribing municipalityY 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.

c74d XSubsidyY means the amount provided by the environmental improvement fund to a recipient of CWFPP financial assistance under ss. 281.58 and 281.59, Stats., for any of the following purposes:

cad To reduce the interest rate of CWFPP loans from market interest rate to a lower subsidized rate.

cbd To reduce the interest payments on eligible loans or portions of loans made by the BCPL.

ccd To forgive a portion of the principal of a CWFPP loan.

c75d XSubstantial completionY 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.

c76d XTSSSY means total suspended solids.

c77d XTreatment workY has the meaning given in s. 283.01 c18d, Stats.

Note: Under s. 283.01 c18d, Stats., Xtreatment workY 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 work, 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, Xtreatment workY 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 Xtreatment workY includes storm water BMPs for municipalities that are required to obtain a municipal WPDES storm water discharge permit under ch. 283, Stats., and other department-approved projects to reduce wastewater and storm water pollutants entering our waterways. This definition does not apply to nonpoint source projects funded under the department[s] pilot projects program created under s. 281.58 c6d cbd 9, and c7d cbd 7., Stats.

c78d XTreatment facilityY means a structure or group of structures constructed and used for purposes of treating wastewater, including municipal biosolids, to reduce pollutants entering waters of the state.

c79d XUnsewered municipalityY means a municipality in which some or all of the residential areas lack a sewage collection system.

c80d XUseful lifeY means one of the following:

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

cbd The term of the financial assistance agreement for the project, if the treatment work was originally constructed partially or wholly with CFWP financing or financing other than that identified in par. cad.

c81d XUser chargeY means a charge levied on users of a treatment work or BMP for the user[s] proportional share of the cost of operation, maintenance, and replacement of the treatment work or BMP.

c82d XUser charge systemY means a system of charges meeting requirements established in s. NR 162.07, and s. 281.58 c14d cbd 1. and 7., Stats., for projects funded under subch. II, or a set of minimum control measure programs described in s. NR 216.031 c2d ccd to ced for projects funded under subch. III.

Note: User charge system requirements for storm water utility districts may include a requirement for a system of charges.

c83d XWastewaterY 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, or the sewage sludge or other byproducts of wastewater treatment trucked or discharged to another treatment facility, such as a biosolids facility, for additional treatment.

c84d XWomen business enterpriseY or XWBHEY means a DBE that is owned or controlled on a daily basis by a woman or women.

c85d XWPDES permitY means a Wisconsin pollution discharge elimination system permit issued under ch. 283, Stats.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

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 reaches substantial completion more than 3 years prior to the date the applicant submits a complete application for financial assistance under s. NR 162.05 c4d or the applicant already has long-term affordable debt

outstanding for a project that is already complete or has reached substantial completion prior to the application submittal date:

c1d Subject to the limits established in s. NR 162.04 c3d, the purchase or refinance of a municipality[s] interim debt.

c2d The guarantee of, or purchase of 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.

c3d Loans at or below the market interest rate.

c4d Interest rate subsidies under subch. IV.

c5d Using funds received as federal capitalization grants, any other type of assistance that is consistent with the federal program for state water pollution control revolving funds under 33 USC 1381 to 1387 or any other federal law providing funding for or otherwise relating to that program.

Note: The language under sub. c5d and under s. 281.58 c6d cbd 9., Stats., allows the department to provide principal forgiveness as part of a financial assistance agreement in accordance with 33 USC 1383 cid c1d, which states, XIn any case in which a State provides assistance to an eligible recipient under subsection cdd, the State may provide additional subsidization, including forgiveness of principal.Y

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.02 Annual funding policy, project priority list, and funding list. c1d FUNDING POLICY AND PROJECT PRIORITY LIST.

The department may produce an annual CFWP funding policy in conjunction with the fiscal year[s] priority list established under s. NR 162.52. The funding policy may be in the form of the intended use plan and may describe methods for making funding determinations and other policies related to the fiscal year. When the department publishes a funding policy for a given year, it shall provide an opportunity for public comment regarding the funding policy.

c2d FUNDING LIST. The department shall prepare a funding list of all CFWP-eligible applicants, including applications submitted under subchs. II to IV, when the amount available under s. 20.866 c2d ctcd or 281.59 c3ed cdd or c4d cfd, Stats., is insufficient in accordance with s. 281.58 c9md cfd, Stats., and, for municipalities wishing to compete for principal forgiveness funds, when the department has principal forgiveness funds available to distribute in a year during which s. 281.58 c9md cfd, Stats., does not apply.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.03 Project eligibility. c1d 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:

cad The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. All of the following types of projects are included under this paragraph:

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. The department may determine that a lift station pumping all of the wastewater flow directly to the wastewater treatment plant with no other influent pump at the plant site is part of a project that takes place inside the fence. The department may also determine, based on the layout and function of the treatment work, that other facilities, such as a septage receiving station that

conveys the septage directly into the wastewater treatment plant, are considered part of the work inside the fence.

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 serving the municipality, including sanitary sewer replacement or rehabilitation, sanitary sewer lining, publicly-owned lateral lining, lift station 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.

cbd 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.

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

cdd 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. All of the following types of projects are included under this paragraph:

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: The projects described under this subsection are considered Xtraditional wastewater treatment plant and collection system projectsY and 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 <https://www.epa.gov/sites/default/files/2015-09/documents/primer.pdf>.

c2d INDIVIDUAL WASTEWATER TREATMENT SYSTEMS. cad A project that is eligible under sub. c1d may consist of individual systems that serve one or more properties for the purpose of treating sanitary waste if the municipality meets all of the following criteria:

1. The municipality owns each individual system.
2. The municipality is responsible for the proper installation, operation, and maintenance of each individual system.
3. The municipality 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. The municipality 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. The municipality complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

cbd The access required under par. cad 3. shall be established through easements, covenants running with the land, or local ordinance. The department may require that the program estab-

lished under par. cad 4. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

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

c3d STORM WATER PROJECTS. A municipality may receive financial assistance under this chapter in accordance with subch. III or IV for a publicly owned project that is necessary to control storm water runoff pollution in order to achieve water quality standards.

c4d INELIGIBLE PROJECTS. The department may determine that an entire project or a portion of a project is ineligible for CFWP financial assistance. If the department determines that a portion of a project is ineligible, it shall specifically identify the ineligible portion and the associated costs, or prorate the amount of financial assistance provided to reflect the appropriate proportion of eligible to ineligible project costs, or both, in the financial assistance agreement. All of the following types of projects or portions of projects are not eligible for financial assistance under this chapter:

cad Projects of a municipality that is failing to substantially comply with conditions or requirements of s. 281.58 or 281.59, Stats., ch. Adm 35, ch. NR 162, an existing financial assistance agreement or interest rate subsidy 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.

cbd As specified in s. 281.58 c8d cad 2., Stats., privately-owned connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

ccd 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.

cdd 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, except if purchasing existing treatment works is the general scope of the project.

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

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

cgd Any project that includes 2 or more municipalities that utilize shared or interconnected treatment works or a BMP, unless the municipalities served by the project execute an intermunicipal agreement that meets the requirements described in s. NR 162.05 c4d chd. This paragraph does not apply to a metropolitan sewerage district in which all municipalities being served have been annexed into the sewerage district or to a situation in which the intermunicipal exception under s. NR 162.05 c5d has been met.

chd Projects that have been substantially complete for 3 years or longer.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c1d cad 1, made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.04 Cost eligibility. c1d ELIGIBLE COSTS. cad *Eligible at a subsidized rate.* Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include expenses incurred by the municipality for any of the following items and activities when specific to the scope of a scored project, or when approved by the department as necessary and reasonable for the efficient operation or integrity of the overall treatment works:

1. ZAbandonment.[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. ZAccess roads.[Construction of roadways necessary to provide appropriate access to facilities such as lift stations and treatment plants.

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

4. ZAdministrative 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. ZAdministrative 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. ZCompliance with state and federal requirements.[Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

Note: Federal and state requirements may include any of the following: Americans with Disabilities Act design and construction; green project reserve documentation; Davis-Bacon and Related Acts administration as required under Section 513 of the Federal Water Pollution Control Act 33 USC 1372 or other activities associated with wage rate requirements; DBE solicitation and documentation; activities associated with the use of products made in the United States; environmental review of project sites and other activities related to ch. NR 150 compliance, including costs of public notices and hearings; historical, architectural, archaeological, and cultural resources work identified during planning, design, or construction of the project and incurred prior to project closeout; signage requirements, including on a website or at a wastewater treatment 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. ZConstruction activities.[Activities defined in s. NR 162.003 c16d and included in construction contracts or performed as force account work, including any of the following:

a. Replacing, repairing, or rehabilitating a treatment works 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 direct 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 products made in the United States in CWFPP projects.

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

8. ZDemolition.[Demolishing existing structures if the demolition is part of a scored project and any of the following applies:

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

b. The demolition is necessary for site preparation.

c. 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.

d. The demolition entails removal of equipment or materials, or both, from inside an existing building or other structure that is part of the treatment works being modified or repurposed as part of the scored project.

9. ZDischarge 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.

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

11. ZEquipment.[Equipment related to the scored project, the costs of which the department may prorate if the municipality intends to use the equipment for multiple purposes rather than solely for the treatment works. Eligible equipment includes 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.

b. Spare parts if included in the plans and specifications or otherwise approved by the department.

c. Machinery for manufacturing or repairing necessary tools or equipment for the treatment works.

d. Computers, tablets, and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the treatment works. Equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, communications, geographic information, and supervisory control and data acquisition are included under this subd. 11. d.

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

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

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

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. ZGroundwater monitoring.[Installing groundwater monitoring equipment or facilities.

14. **ZInsurance.**[Purchasing insurance necessary during construction of the scored project, including property, liability, builder[s risk, and construction insurance.

15. **ZInterim debt.**[Costs associated with interim debt for the scored project as delineated in sub. c3d.

16. **ZLaboratories.**[Laboratory equipment related to initial setup or a significant upgrade or expansion of an on-site laboratory if requested in the financial assistance application.

17. **ZLand acquisition.**[Acquiring land, including purchase cost and administrative and legal expenses if any 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 wastewater treatment works, biosolids facility, or lift stations will be located.

d. The land will serve to isolate a treatment facility as required under s. NR 110.15 c3d cdd.

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.

18. **ZLines 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.

19. **ZManagement plans.**[Developing a detailed management plan related to a scored project.

20. **ZMunicipal staff, equipment, and materials.**[Municipal expenses incurred solely for the scored project and documented by the municipality as force account work, 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.

21. **ZMunicipally owned facilities on private property.**[Grinder pumps, sewer laterals, service connections, service branches, risers, and riser pipes if located on private property and municipally owned and municipally maintained or if located on municipally owned land.

22. **ZPretreatment or toxicity reduction.**[Developing a municipal pretreatment or toxicity reduction program and constructing facilities to be used by the municipal treatment works in the program, including monitoring equipment.

23. **ZProfessional 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. Developing, preparing, and submitting plans and specifications.

e. Preparing, printing, and distributing bidding documents.

f. Gathering documents and information for, completing, and submitting CFWP financial assistance applications or interest

rate subsidy applications 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 for services provided for the scored project.

n. Developing or updating a user charge system or a sewer use ordinance for wastewater treatment and the sewerage system in the municipality.

o. Preparing environmental assessment reports and evaluations.

p. Conducting archaeological surveys and gathering historical site information.

q. Providing municipal 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 required use of American-made products.

v. Providing administration of activities related to the federal Davis-Bacon and Related Acts or other wage requirements.

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

w. Conducting research or energy audits for incorporation of energy and water efficiency and conservation into the planning and design of a project.

Note: When 10 percent or more of the project[s construction and equipment costs are deemed ineligible for CFWP financial assistance, the costs associated with engineering for those ineligible construction and equipment costs are also ineligible under sub. c2d chd.

24. **ZProject site.**[Construction-related work activities at the project site of a scored project, including any of 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 or storm sewers if necessary for construction, and replacing pipes 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, when necessary, 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 necessary for construction of the scored project and the recipient is legally obligated to pay these costs. This subd. 24. g. does not apply to storm water pipes.

25. **ZSafety.**[Purchasing and installing safety equipment related to the scored project.

26. ZSanitary sewers.[Evaluation, new installation, replacement, and lining and other rehabilitation of sanitary sewer pipes.

27. ZSecurity.[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.

28. ZSeptage facilities.[Facilities for receiving, storing, or treating septage.

29. ZSludge 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.

30. ZSpecial assessment fees.[Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments toward repayment of its CWFPP loan.

31. ZStaffing evaluations.[Conducting an evaluation of staffing needs to determine appropriate changes to staffing levels as a result of the scored project.

32. ZStartup.[Startup expenses for a treatment works 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 startup 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.
- h. Obtaining necessary computers, upgrades, and software.

33. ZStorm sewers.[a. Replacing storm sewers of the same size or required minimum size if breakage occurs due to construction of a scored project and the existing storm sewers are in direct conflict with the installation of new sanitary sewer pipes in a new location.

b. Installing new or replacing existing storm sewers or BMPs for controlling on-site runoff at treatment facilities, lift stations, septage receiving facilities and other treatment works facilities and properties.

Note: Storm water control sewers or BMPs described in subd. 33. are considered wastewater treatment projects as they are designed for purposes of controlling storm water around wastewater treatment works facilities, and projects for these sewers or BMPs would be funded under subch. II rather than under subch. III for storm water projects.

34. ZStreet restoration.[Restoring streets and rights-of-way, and repairing items damaged during construction of the scored project, such as pavement, sidewalks, water mains, and storm sewers. Eligibility of costs may be prorated based on participation by one or more other funding sources, or on the percent of the project attributable to CWFPP-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 CWFPP 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.

35. ZWatermains.[Relocating watermains if necessary for

construction, and, if breakage due to construction of a scored project occurs, replacing watermains of the same size or required minimum size.

cbd 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 percent of the total flow to the treatment works.

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

6. Costs for providing sewers in a previously unsewered area in accordance with s. 281.58 c8d ccd, 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 at least 20 years prior to submittal of the financial assistance application. If an unsewered project does not meet the two-thirds rule, s. 281.58 c8d ccd, Stats., allows the CWFPP to fund the project at market rate only.

7. The amount of project costs determined appropriate for a sanction under s. NR 162.08 c4d cbd for noncompliance with DBE good faith effort requirements established in s. NR 162.08 c4d cad.

ccd Market rate cost calculation. 1. The amount of the costs described in par. cbd 1. to 4. is determined using a parallel cost percentage that 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. cbd 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. cbd 1. to 4. is calculated as follows:

$$EM = cTPdc \{ PCd$$

Where:

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

TP . . . is the total project cost eligible for CWFPP 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. cbd 5. and 6., the amount of those costs shall be subtracted from the amount eligi-

ble 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 162.15.

c2d INELIGIBLE COSTS. Costs for items and activities not directly associated with or not necessary for the construction or startup of a scored project are not eligible for financial assistance unless specifically approved by the department as necessary and reasonable for the efficient operation or integrity of the overall treatment works or BMP. Ineligible items and activities include all of the following:

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

cbd *Basin planning.* Basin or areawide planning not related to the scored project.

ccd *BCPL ineligibles.* For a project receiving interest rate subsidy under subch. IV, project costs determined to be ineligible for loan assistance from the BCPL.

cdd *Bonus payments.* Bonus payments not legally required for completion of construction before a contractual completion date.

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

cfid *Certification.* Fees for operator certification training.

cgd *Conflict of interest.* Costs incurred under a contract that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, award, or administration of a contract supported by the CWFPP and any of the following conditions exist:

1. The official or employee or the official[s or employee[s spouse 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.

chd *Engineering.* Engineering costs relating to ineligible construction costs when the ineligible construction and equipment costs are more than 10 percent of total construction and equipment costs.

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

cjd *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, proportional to the capacity to be used by the municipality hooking up, and included in an intermunicipal agreement meeting the requirements of s. NR 162.05 c4d chd.

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

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

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

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

cmmd *Laterals.* Privately-owned connection laterals that transport wastewater from structures to municipally]owned or privately]owned wastewater systems.

cmd *Leases.* Costs related to leasing land or buildings.

cnmd *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.

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

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

cpd *O&M.* Operations and maintenance expenses as defined in s. NR 162.003 c50d and c40d, respectively.

cpmd *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.

cqd *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 CWFPP 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.

cqmd *Outside of scope.* Costs outside the scope of the scored project unless the department approves the costs as necessary and reasonable to improve the overall integrity, operation, or functionality of the treatment works or BMP.

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

crmd *Post-closeout.* Expenses incurred after the project completion date of the scored project.

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

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

ctd *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.

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

cud *Storm water pipes.* Storm sewer pipes unless the pipes are carrying water to treatment. Portions of storm sewer pipe construction may be eligible in a scored project if the pipes need

repair or replacement due to breakage during construction of the scored project, as determined by the department.

cumd Violation penalties. Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

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

cvmd 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.

cwd 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 water 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.

cxid WPDES permit fees. The cost of a WPDES permit unless it is a special permit specific to the project construction.

c3d LIMITATION ON ELIGIBILITY OF INTERIM DEBT COSTS. *cad Net interest expense.* Interim debt interest expenses shall be offset with any interest earnings from the investment of the proceeds from the interim debt to determine the amount eligible for CWFP financial assistance.

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

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

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

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

ced Maximum principal. The amount of interim debt principal that may be refinanced with CWFP financial assistance shall not exceed the total amount of the interim debt that was spent on eligible project costs.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in 1d cad 11. d., 24. g. made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.05 Application process. c1d NOTICE OF INTENT TO APPLY SUBMITTAL. If required by the department, a municipality shall submit notice of its intent to apply for financial assistance via the department's online application systems by any applicable deadline set in the CWFP annual intended use plan under s. NR 162.02 c1d. The municipality or its designated representatives shall complete the requirements established by the department for gaining access to and submitting information

through the department's online application systems. The department may require the municipality to submit through the online systems any of the following:

Note: Instructions regarding the online application systems are available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](https://dnr.wisconsin.gov/Aid/EIF.html).

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

cbd Contact information.

ccd An estimate of the total project cost and what amount of the cost is likely to be requested from the CWFP.

cdd Estimated or actual dates related to the bidding and construction timeline of the project.

cdmd Date and number of the department approval of plans and specifications for each set of plans and specifications associated with the project, if available at time of intent to apply or priority evaluation and ranking information submittal.

ced Any other information required to complete the submission in the department's online application systems.

c2d FACILITIES PLAN. A municipality shall submit a facilities plan or other applicable plan to the department for approval. The municipality shall receive approval of the facilities plan or other applicable plan prior to submitting an application for financial assistance under this subchapter.

c3d APPLICATION PROCEDURES. A municipality shall apply for financial assistance in accordance with s. 281.58 c9d, Stats. All applicants must submit the required information and documentation through the department's online application system.

Note: Directions regarding online submittal are available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/EIF.html>. An interest rate subsidy application is a different form and must be submitted in accordance with s. NR 162.40.

c4d CONTENTS OF APPLICATION. The applicant shall submit a complete application, including each of the following items, if applicable to the project:

cad Evidence of compliance with sub. *c2d*.

cbd Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 that are approvable under ch. 281, Stats. An applicant may be denied funding if the applicant does not provide appropriately complete project plans and specifications to the department prior to or with the application. The applicant shall submit a copy of approvable plans and specifications with the application in addition to the plans and specifications submitted to the department for plan review under chs. NR 108 and 110.

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

1. A clear, concise, and comprehensive project description, including any modifications to the project description previously provided in the online application systems.
2. Estimated or actual construction costs.
3. Identification of known ineligible costs included within the total budget provided in the online application.
4. Information regarding assistance received or expected from another funding source.

Note: The project description may already be included in the online application as it should transfer over to the application if previously provided with intent to apply or priority evaluation and ranking information. When that transfer of informa-

tion is successful, the applicant must only provide information regarding any modifications to the project description that is already included in the application rather than providing an additional complete project description.

Note: Under s. NR 162.04 c2d comd, the CWFPP 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 CWFPP, with the exception of certain situations in which other funding sources are also participating in the financing of the project or the project is the purchase of a package wastewater treatment plant or solely the purchase of equipment in a phase of a multi-phase project.

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

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

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

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

chd A proposed or an executed intermunicipal agreement for each municipality served by the project when 2 or more municipalities utilize shared or interconnected wastewater treatment works. This paragraph does not apply to a metropolitan sewerage district in which all municipalities being served have been annexed into the sewerage district or to a situation in which the intermunicipal exception established in sub. c5d has been met. This paragraph does apply to biosolids or other treatment facilities when the applicant has ownership in the facility or has purchased capacity in the facility. Prior to receiving financial assistance, the applicant shall ensure that each required intermunicipal agreement does all of the following that are applicable to the project:

1. Identify ownership for each individual portion of the wastewater treatment works, including wastewater treatment plants, interceptors, sewage collection systems, lift stations, biosolids facilities, and privately-owned treatment works.

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

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

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

5. Indicate that the owner of the regional facility shall accept the applicant[s] wastewater and identify the boundary from which the applicant[s] discharge originates.

cid 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.

cjd A copy of the existing user charge system and sewer use ordinance, and information regarding the proposed user charge system and sewer use ordinance if they are new or if the existing user charge system or sewer use ordinance will be revised for the CWFPP project.

ckd Any existing or proposed contracts with users of the wastewater treatment works.

cLd Documentation applicable to U.S. internal revenue service tax information as indicated in the department[s] online application system.

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

cnd A copy of the debt instrument of any interim debt to be refinanced with CWFPP financial assistance.

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

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

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

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

c5d INTERMUNICIPAL EXCEPTION. The department may waive the requirement of an intermunicipal agreement if an order under s. 281.43 c1d, Stats., has been issued, or if the department has obtained executed intermunicipal agreements for subscribing municipalities and the receiving municipality whose annual debt payments, design flow capacities, design suspended solids capacities, and wastewater projects[design biochemical oxygen demand cBODD capacities total at least 90 percent of the total for the regional treatment works or BMP.

c6d APPLICATION SUBMITTAL DEADLINE. In fiscal years for which the department sets an application submittal deadline for all or a specific type of funding, the applicant shall submit the items and information required in the department[s] online application system by the application submittal deadline in order to be considered eligible to obtain financial assistance from funds available during the funding cycle for which the deadline is set. The department may set application submittal deadlines in the intended use plan.

c7d APPLICATION ACCEPTANCE. The department shall accept an application as complete after all of the following occur:

cad The department determines that it received all the applicable items and information required under sub. c4d for the scored project. The department may consider a submitted application complete for purposes of acceptability if the application is otherwise complete but a wrong document was uploaded to the department[s] online application system, the proper document existed at the time of application submittal, and the applicant uploads the proper document to the system within a timeframe specified by the department.

cbd 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.

c8d PROJECTS FUNDED JOINTLY WITH OTHER AGENCIES. If a project is receiving funding from another state or federal agency, and the department is unable to obtain the same type of documentation typically submitted for a specific project requirement due to differences between agencies in items or procedures, including a project that is let with a group of projects by the Wisconsin department of transportation or a project for which the contents of a contract includes language specific to another agency, the department may determine what documentation is appropriate to satisfy the application requirements.

c9d DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT. The department shall set in the CWFP annual intended use plan a deadline for signing a financial assistance agreement. An applicant shall sign the financial assistance agreement within the timeframe set by the department. An applicant shall time its submittal of the application accordingly. If a financial assistance agreement is not signed within the established timeframe, the applicant[s] project shall lose its CWFP allocated subsidy.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c4d cbd made under 35.17, Stats., Register October 2023 No. 814.

NR 162.055 Land ownership and easements documentation. c1d For projects for which an applicant requests financial assistance through the application process under s. NR 162.05 or 162.24, the applicant shall sign and submit a certification regarding ownership of the land or required easements and permits for access to the land, or both, on which the project takes place.

c2d The department may require the applicant in addition to or in lieu of a certification under sub. c1d to submit a legal opinion when it is necessary, as determined by the department, to establish land ownership or easement rights, or both, of the project site.

Note: Examples of when the department may require a legal opinion in addition to or in lieu of a certification include projects for which new land is being purchased by the applicant or the applicant is extending its facilities onto land on which no municipally owned infrastructure was previously located.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in numbering of c1d made under s. 13.92 c4d cbd 7., Stats., Register October 2023 No. 814.

NR 162.06 Financial assistance requirements. Before executing a financial assistance agreement for any project under this subchapter, the department shall determine that all of the applicable requirements of s. NR 162.05 are met and that all of the following are satisfied:

c1d All of the following documentation, if applicable to the scored project, is submitted to the department:

cad Certification for force account work as required by s. NR 162.08 c5d.

cbd 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.

ccd A certification or legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project. The certification or legal opinion must include all the applicable information required under s. NR 162.055.

cdd Items related to bids for each prime contract, including all of the following:

1. The proposal of the successful bidder.
2. An engineer[s] evaluation of the bids, including bid tabulation and an award recommendation.
3. If an applicant awards a construction or equipment con-

tract to a contractor other than the lowest bidder, any of the following:

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

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

4. Solicitation and utilization information regarding DBEs.

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

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

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

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

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

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

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

ced A request for disbursement and required supporting invoices, payoff statements for interim debt, and other applicable documentation of expenditures, including a copy of the title or deed for land purchased for the project if the applicant is requesting financial assistance for land purchase costs, and complete copies of any contract change orders for which costs are included in the request for disbursement, along with a copy of the department construction management engineer[s] change order approval.

cfđ 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.

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

chđ Parallel cost percentage information.

cid An executed intermunicipal agreement or multiple executed agreements described under s. NR 162.05 c4d chđ, if 2 or more municipalities utilize shared or interconnected wastewater treatment works.

cjd Proof that applicable ordinances required under s. NR 162.07 have been adopted by the municipality.

ckđ A copy of the adopted user charge system and proof that the municipality adopted the user charge system.

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

cmd A completed design life calculation worksheet with any backup documentation required by the department if, after the application submittal, the applicant requested a loan term greater

than 20 years. All of the following apply to applicants requesting a loan term greater than 20 years:

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

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

c2d The department has done all of the following, if applicable to the scored project:

- cad Complied with the Wisconsin environmental policy act requirements pursuant to the procedures in ch. NR 150.
- cbd Reviewed and approved the plans and specifications.
- ccd Reviewed and concurred with the parallel cost percentage provided by the applicant.
- cdd Reviewed and concurred with the design life calculation for the scored project if the applicant is requesting a loan term greater than 20 years.

c3d The scored project has met the priority requirements of subch. V.

c4d The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the wastewater treatment works throughout the applicant's jurisdiction.

c5d 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.

c6d The applicant has received or applied for permits required by the department for the scored project, including those under chs. 30 and 283, Stats.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c1d ccd made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.07 Requirements for a user charge system and sewer use ordinance. **c1d** GENERAL. Any user charge system and applicable ordinances adopted by a recipient shall be maintained in accordance with s. 281.58 c14d cbd 7., Stats., for the useful life of a wastewater treatment works. The applicant shall submit user charge information to the department and shall certify to the department that the user charge system meets all the applicable requirements in this section.

c2d APPLICABILITY. A user charge system and sewer use ordinance is required of the applicant receiving financial assistance under this subchapter for any wastewater treatment works project.

c3d USER CHARGE SYSTEM REQUIREMENTS. Any user charge system under this section shall do all of the following:

- cad Require that each user or user class pays its proportionate share of operation and maintenance costs, including replacement costs, of the wastewater treatment works within the recipient's service area.
- cbd 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 wastewater treatment works.
- ccd Require that the charges for users or user classes generate sufficient revenue to pay costs identified in par. ced 2. and 3.
- cdd Require that the recipient establish an equipment replace-

ment 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 wastewater treatment works. 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 restore the fund balance following an expenditure from the fund.

ced Establish a financial management system that accounts for all of the following:

1. Revenues generated.
2. Costs of operations and maintenance of the wastewater treatment works, 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. In this subdivision, Xdebt coverageY means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

cfđ Require the review, at least once every 2 years, of the wastewater contribution of users and user classes, the total costs of operations and maintenance of the wastewater treatment works, and the overall user charge system.

cgd 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.

chđ Provide that each user is notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to service provided by the wastewater treatment works.

cid Be based on actual or estimated use except as provided for under s. 281.58 c14d cbd 7., Stats.

c4d MUNICIPAL RESPONSIBILITIES. The municipality shall do all of the following:

cad Incorporate the user charge system in one or more municipal ordinances or other legislative enactments and make reference to the user charge system or systems in intermunicipal agreements if the project serves more than one municipality.

cbd 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.

ccd Maintain records to document compliance with this section.

cdd 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 do any of the following:
 - a. Endanger public safety or the environment.
 - b. Jeopardize the physical integrity of the treatment works.
 - c. Cause substantial upset to the treatment process.
 - d. 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. **c3d**. 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.

c5d 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.08 Procurement. c1d APPLICABILITY. Procurement of professional services and construction contracts by financial assistance recipients under this chapter shall be in accordance with local, state, and federal laws applicable to the CFWP 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.

c2d 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 received under this subchapter or subch. **III** or the interest rate subsidy agreement received under subch. **IV**.

Note: See ss. 60.47, 60.77 **c6d** cad, 61.54, 62.15, 66.0131, and 66.0901, Stats.

c3d PROFITS. Contractors may earn only fair and reasonable profits under contracts for projects receiving CFWP assistance. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

c4d SOLICITATION OF DISADVANTAGED BUSINESS ENTERPRISES. cad Whenever a recipient or its prime contractor is procuring construction, equipment, raw materials, or supplies for a project funded wholly or in part with CFWP financial assistance, the recipient or contractor shall make a good faith effort to provide DBEs opportunities to compete for participation in the project. Recipients and their prime contractors shall comply with DBE regulations contained in 40 CFR part 33, as modified by memoranda and exceptions, in the manner required by the department. Failure to comply with DBE regulations and requirements may result in a sanction as provided under par. **cbd**. Recipient and contractor efforts under this subsection may include any of the following activities:

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

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

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

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

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

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

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

6. Using required federal forms when applicable.

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

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

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

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

cbd Failure to comply with par. **cad** may result in a sanction of up to 8 percent of the construction costs eligible for subsidy being financed at the market interest rate. This paragraph does not apply to any recipient that awards at least one contract directly related to the project to at least one MBE or WBE selected through proper solicitation methods.

c5d 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:

cad The applicant[s] staff has the necessary competence required to accomplish the work and can accomplish the required tasks more economically as force account work.

cbd Emergency circumstances make force account work necessary.

c6d CONTRACTS FOR PROFESSIONAL SERVICES. cad The department may review professional services contracts and amendments for the eligibility and reasonableness of costs. The department shall only provide financial assistance for costs that are eligible, necessary, and reasonable for the scored project.

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

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

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

ced The recipient shall submit each professional services agreement amendment within 90 days of execution of the amendment, or, for amendments executed prior to submittal of the CFWP application, with the application submittal. The department may deny the costs included in the amendment if the recip-

ient does not submit the amendment within the timeframes specified in this paragraph.

c7d CONSTRUCTION CONTRACTS AND SUBCONTRACTS. *cad Applicability.* This subsection applies to construction contracts or subcontracts awarded by recipients for any construction activity. The department may only provide CWFPP financial assistance for costs of a construction contract if the municipality complies with all applicable procurement laws in obtaining the construction contractor.

cbd Type of contract. The scored project work shall be performed under one or more contracts awarded by the recipient to private firms except for force account work authorized under sub. **c5d**. Unless the department gives advance written approval for the recipient to use some other acceptable type of contract, each contract shall be one of the following types or a combination of these types: lump sum, unit price, or time and expense. A cost[plus]a[percentage]of]cost type contract may not be used in any circumstance.

ccd Contract change orders. 1. The recipient shall secure a fair and reasonable price for each contract change order.

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

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

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

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

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

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

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.09 Reimbursement and refinancing. **c1d REIMBURSEMENT OF PREVIOUSLY PAID DEBT.** 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**, the project does not reach substantial completion more than 3 years prior to the date the applicant submits a complete application for financial assistance under s. **NR 162.05 c4d**, and the applicant does not already have outstanding long-term affordable debt for its project that reached substantial completion more than 3 years prior to the date on which a complete application was submitted to the department.

c2d REFINANCING OF INTERIM DEBT. The department may

refinance the eligible portion of a municipality[s] interim debt subject to the limits established in s. **NR 162.04 c3d**.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.10 Loan interest rate. The department shall calculate interest rates in accordance with s. **281.58 c12d**, Stats., and all of the following:

c1d INTEREST RATES. *cad* For costs of projects or portions of projects described in ss. **NR 162.03 c1d cad, cbd, and cdd, 162.03 c2d and c3d, 162.04 c1d cbd, 162.22, and 162.23 c1d cad and cbd**, the interest rate shall be the interest rate specified in s. **281.58 c12d cad**, Stats.

cbd For project costs sanctioned under s. **NR 162.08 c4d cbd** for noncompliance with requirements for solicitation of DBEs, the interest rate shall be the market interest rate.

ccd For project costs under s. **NR 162.03 c1d ccd**, the department shall determine the appropriate interest rate in accordance with s. **281.58 c8d chd and c12d cad 4.**, Stats.

c2d PROJECT INTEREST RATE CALCULATION. *cad* If all of the eligible costs of a scored project are described under only one paragraph under sub. **c1d**, the interest rate shall be the rate stated in the applicable section of s. **281.58 c12d**, Stats. If a scored project contains eligible costs described under more than one paragraph under sub. **c1d** and s. **281.58 c12d**, Stats., specifies interest rates for the categories that are different from each other, a composite interest rate shall be computed for the scored project under par. **cbd**.

cbd The composite interest rate shall be computed as follows:

$$RC = cRT\ 1dcPR\ 1d + cRT\ 2dcPR\ 2d + cRT\ 3dcPR\ 3d$$

where:

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

RT 1 . . . is the interest rate stated under s. **281.58 c12d cad 1. a., b., or c.**, Stats., for the municipality based on its population as described in s. **NR 162.003 c55d** and median household income as determined under par. **cdd**.

RT 2 . . . is the market interest rate as defined under s. **281.58 c1d ccgd**, Stats.

RT 3 . . . is the interest rate established under s. **281.58 c12d cad 5.**, Stats., for projects that provide facilities to receive or store septage, or provide treatment capacity for septage, as defined in s. **281.58 c1d ccvd**, Stats.

PR1 . . . is the percentage of the project under s. **NR 162.03 c1d cad, cbd, and cdd** and **c2d** that is eligible for a subsidized rate and being financed by the CWFPP, and under s. **NR 162.03 c1d ccd** if the municipality is not a violator of an effluent limitation as defined in s. **281.58 c1d ced**, Stats.

PR2 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. **NR 162.04 c1d cbd**, and under s. **NR 162.03 ccd** if the municipality is a violator of an effluent limitation as defined in s. **281.58 c1d ced**, Stats.

PR3 . . . is the percentage of the project being financed by the CWFPP that is eligible under s. **NR 162.03 c1d cad 1.** and eligible for a zero percent interest rate under s. **281.58 c12d cad 5.**, Stats.

ccd The interest rate shall be based on the market rate in effect at the time the municipality passes a bond resolution to secure the loan from the CWFPP.

cdd The department shall determine median household income for purposes of determining the loan interest rate as established in s. **281.58 c12d cad 1. a. to c.**, Stats., as follows:

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

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

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

a. The number of residential users served by the municipality.

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

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

Note: To obtain a custom tabulation, the municipality will likely need to compare a map showing the boundaries of the municipality to a census block map and determine which census blocks contain any portion of the municipality. The municipality would then submit the appropriate census block numbers to the U.S. bureau of the census see <https://www.census.gov/programs-surveys/acs/data/custom-tables.html> with a request for a custom tabulation of a median household income figure for that set of identified blocks only.

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

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

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

4. 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 under subd. 3. a. and submit the result to the department to use in lieu of the median household income obtained by the department as described under subd. 1.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.11 Financial assistance agreement conditions. c1d Each financial assistance agreement shall require the recipient to do all of the following:

cad Maintain a system of user charges and a sewer use ordinance in accordance with s. NR 162.07 for the useful life of the treatment works or BMP.

cbd Comply with all pertinent requirements of federal, state, and local environmental laws and regulations.

ccd For financial assistance provided directly from a federal capitalization grant, 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.

cdd Provide timely sewerage service to all users of the treatment works within the delineated service area except in areas where annexation is refused under s. 281.43 c1md, Stats.

ced Comply with all state and local laws regarding procurement and public contracts.

cfđ Provide department representatives access to the scored project, including all construction activities, whenever the project is in preparation or progress. For purposes of providing access, the recipient shall do all of the following:

1. The recipient shall in each of its contracts for the project include a provision that requires the recipient and its contractors to allow the department access to records of contractors and sub-contractors pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions.

2. The recipient shall allow DOA or its agent access to records for audits.

cđđ Expediently initiate and complete the project in accordance with the financial assistance agreement and application, including construction of and payments for the portions ineligible for CWFPA financial assistance and any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

chđ 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.

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

cđđ Begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement, and make the final principal payment no later than 20 years after the date of the financial assistance agreement unless the financial assistance agreement term is greater than 20 years but not more than 30 years. If the loan term is greater than 20 years, the municipality shall make the final principal payment no later than 30 years after the date of the financial assistance agreement.

ckđ Make available an operations and maintenance manual for the treatment works. All of the following apply to the provision of an operations and maintenance manual:

1. A recipient shall develop a new or modify an existing op-

erations and maintenance manual that, based on the scored project, is applicable to any of the following:

- a. The entire wastewater treatment works.
- b. The collection system, including all wastewater treatment works facilities outside of the fence of the wastewater treatment plant.
- c. The wastewater treatment plant, including all wastewater treatment works facilities inside the fence of the wastewater treatment plant.

2. Address in the manual developed or modified under subd. 1. all of the following:

- 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.

3. Provide a copy of the operations and maintenance manual developed or modified under subd. 1. to the department. For projects or facilities that have an existing operations and maintenance manual that was submitted to the department in the past, the recipient may meet the requirements of subds. 1. to 3. by developing and submitting an addendum to the previously submitted manual.

4. Certify to the department, in the form required by the CWF, that the operations and maintenance manual developed or modified under subd. 1. meets or exceeds the requirements under subd. 2. The project engineer and a municipal official of the recipient municipality shall make the certification required under this paragraph.

Note: Operations and maintenance manual certification checklists and additional information regarding operations and maintenance manual requirements are available on the environmental improvement fund website at <https://dnr.wisconsin.gov/aid/documents/EIF/EIFGuide/Opmancwf.html>.

cLd Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

cmd Comply with requirements established under s. 281.49, Stats., regarding accepting septage into the wastewater treatment works from septic tanks or holding tanks within the recipient[s] sewer service area.

cnd Notify the department of the substantial completion of the project.

cod Maintain all required intermunicipal agreements throughout the term of the financial assistance agreement as described in s. NR 162.05 c4d chd 2.

cpd Comply with all applicable provisions of any outstanding CWF and safe drinking water loan program financial assistance agreements and CWF interest rate subsidy agreements.

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

1. If the municipality prior to signing a financial assistance agreement owns all of the land on which the project takes place, the municipality shall maintain ownership of the land on which the project is built for at least the term of the financial assistance agreement unless the municipality obtains approval from the de-

partment to discontinue operation of, sell, or otherwise dispose of the project.

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

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

c2d The financial assistance agreement is not effective until all parties to the financial assistance agreement have signed it.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.12 Financial management. The recipient shall do all of the following:

c1d Maintain project accounts in accordance with generally accepted accounting principles, governmental accounting standards board requirements, or other methods of accounting accepted by the department or required by the federal government.

c2d Maintain a financial management system that meets the requirements, terms, and conditions of the financial assistance agreement and ch. Adm 35.

c3d Comply with any U.S. treasury requirements for maintaining the tax-exempt status of the bonds sold to the CWF.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.13 Financial assistance disbursements.

c1d REQUESTS FOR DISBURSEMENT. The recipient shall submit to the department requests for disbursement for eligible costs in the format specified by the department.

c2d 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.

c3d WITHHOLDING OF FUNDS. The department may withhold funds on the basis of any of the following:

cad The department may direct DOA to withhold financial assistance disbursements if the department determines that a recipient has failed to comply with project objectives or the terms, conditions, or reporting requirements of the financial assistance agreement.

cbd The department may withhold 5 percent of the principal amount of a loan until all of the project closeout requirements under sub. c4d cbd are completed.

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

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

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

c4d FINAL DISBURSEMENT AND PROJECT CLOSEOUT. cad The recipient shall submit the final request for disbursement as soon as is practicable after final completion of project construction.

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

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

2. The recipient shall submit to the department for review all change orders and amendments for all contracts associated with the project that the recipient did not submit before or during construction of the project.

3. The recipient shall certify its acceptance of the project from its contractors and engineers on a form provided by the department.

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

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

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

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

6. The recipient shall submit to the department a completed operations and maintenance manual certification checklist.

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

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

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

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

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

History: CR 22-045; cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.14 Amendments to a financial assistance agreement. c1d ADDITIONAL FUNDING. cad *General.* 1. ZAdditional assistance at end of project.[The department may issue an amendment to a financial assistance agreement to pro-

vide additional financial assistance for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may process a request to provide additional financial assistance for a project only after the total remaining costs to complete the project can be reasonably determined.

2. ZConsistent with scope.[To be eligible for additional financial assistance, any changes in the project necessitating the amendment must be consistent with the objectives and scope of the project as described in the original financial assistance agreement.

3. ZPlans and specifications approval.[If there are changes in the project that require department approval of plans and specifications, the municipality shall obtain department approval prior to the amendment loan closing. Changes that necessitate an amendment must be due to unforeseen circumstances or approvable change orders to a project construction contract.

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

5. ZDebt coverage requirements.[The municipality must meet debt coverage requirements for the additional financial assistance.

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

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

2. ZNo principal forgiveness.[The department shall not provide additional principal forgiveness funds in the amendment to the financial assistance agreement.

ccd *Requesting funds.* A municipality may request financial assistance for additional project costs using any of the following options:

1. ZRequest in writing.[The municipality shall submit a written request to the department that justifies the need for additional financial assistance and details the additional eligible costs. A revised budget shall be submitted with the request indicating in one column the line item totals in the financial assistance agreement, in a second column the requested additional costs, and in a third column the total project costs requested to be funded through the CWFPP via an amendment to the original financial assistance agreement. If there are other funding sources participating in the project, the revised budget shall indicate all funding changes applicable to the additional financial assistance being requested. All costs in the revised budget shall be assigned to the appropriate budget line items from which disbursement will be requested.

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

cdd *Plans and specifications.* A municipality shall submit to the department any plans and specifications required for changes in the project that necessitate the amendment to the financial as-

sistance agreement. The department shall issue an amendment for the additional project costs only after the department approves any facilities plans or plans and specifications required for the work related to the additional costs.

ced *Notice of intent to apply.* A new notice of intent to apply for funding as described under s. [NR 162.05 c1d](#) is not required for purposes of requesting a financial assistance agreement amendment.

c2d EFFECTIVE DATE. A financial assistance agreement amendment is effective when executed by all parties to the agreement.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.15 Disputes. c1d DECISION OF THE DEPARTMENT. Except as otherwise provided by law, any dispute arising under subch. [II](#), [III](#), [IV](#), or [V](#) prior to the execution of a financial assistance agreement or interest rate subsidy 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.

c2d REVIEW OF THE DECISION. A final decision of the department may be reviewed under subch. [III](#) of ch. [227](#), Stats., and ch. [NR 2](#).

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.16 Records and record retention. c1d REQUIREMENTS. The recipient shall maintain CWFP project-related books, documents, papers, records, and accounting procedures in accordance with generally accepted accounting principles, governmental accounting standards board requirements, or another method of accounting accepted by the department or required by the federal government and authorized under the financial assistance agreement and ch. [Adm 35](#), and retain them in accordance with subch. [II](#) of ch. [19](#), Stats. The recipient shall require contractors, including contractors for professional services, to maintain CWFP project-related books, documents, papers, and records that are necessary for the recipient[s] compliance with this section.

c2d INSPECTION. The department or its agents may, during normal business hours, inspect and copy the recipient[s] CWFP project-related records and the project-related records of its contractors.

c3d RECORDS RETENTION. cad 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.

cbd 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.

ccd Records that relate to appeals, disputes, or litigation arising out of the performance of the project shall be retained until any appeals, disputes, or litigation have been finally resolved or for a period of 3 years from the date the department notifies the recipient under s. [NR 162.13 c4d cbd 8](#), that the project closeout is complete, whichever is later.

ccd All other files and records relating to the scored project shall be retained so long as the financial assistance agreement for the project remains in effect. As-built plans for the project shall be retained for at least the useful life of the project.

c4d FEDERAL SINGLE AUDIT. Recipients of financial assistance provided directly from the federal capitalization grant shall

comply with federal single audit requirements established in [31 USC 7501](#) to [7506](#), [2 CFR part 200](#) subpart F, and ch. [Adm 35](#).

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.17 Breach of contract. c1d Upon breach of contract by the recipient, the department may do any of the following:

cad Declare the unpaid loan balance due and immediately payable.

cbd 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.

ccd Rescind any grant and convert the grant amount to a loan.

cdd Immediately terminate the financial assistance agreement and disburse no additional funds if the financial assistance has not been fully disbursed.

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

cfid Seek any other appropriate administrative remedy.

c2d 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 c11d cbd](#), 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.18 Noncompliance. Upon failure of the recipient to comply with s. [281.58](#) or [281.59](#), Stats., or with provisions of this chapter, the department may do any of the following:

c1d Refuse to enter into a financial assistance agreement.

c2d Seek penalties as provided in s. [281.59](#) or [281.98](#), Stats.

c3d Seek any other appropriate remedy, relief, or penalty.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.19 Variances. c1d 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.

c2d APPLICABILITY. The department may only approve a variance from a non-statutory requirement of this chapter.

c3d 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:

cad The name of the applicant and CWFP project number.

cbd The section of this chapter from which the applicant seeks a variance and a statement explaining why the variance is necessary.

ccd An adequate description of the variance desired, and the facts that the recipient believes warrant the department[s] approving the variance.

cdd 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.20 Administrative fees. An administrative fee, if one is imposed, shall be included in the biennial finance plan established under s. [281.59 c3d](#), Stats., which is approved by the building commission under s. [13.48](#), Stats.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

Subchapter III — Storm Water Projects

NR 162.21 Applicability. This subchapter applies to applicants for and recipients of financial assistance for urban nonpoint source water pollution abatement or storm water runoff BMPs. Compliance with the applicable requirements of this subchapter is a prerequisite to receiving a financial assistance agreement under the CFWP for urban runoff and storm water BMP projects. In addition to the sections of this subchapter, all of the following sections in subchs. **I**, **II**, and **V** apply to projects receiving a financial assistance agreement from the CFWP for urban runoff and storm water BMP projects: ss. [NR 162.001](#), [162.003](#), [162.01](#), [162.02](#), [162.055](#), [162.49 c3d](#), and [162.50 to 162.52](#).

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.22 Project eligibility. c1d A municipality may receive financial assistance under this subchapter for a publicly owned project necessary to control storm water runoff pollution in order to achieve water quality standards, including publicly-owned storm water management projects on public or private land that are required by any of the following:

cad A WPDES storm water permit issued under subch. **I** of ch. [NR 216](#).

cbd A performance standard delineated under ch. [NR 151](#).

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

c2d A project that is eligible under sub. **c1d** may consist of individual BMPs on private land that treat runoff and serve one or more private properties if the municipality satisfies all of the following:

cad Owns each individual BMP.

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

ccd 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.

cdd 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.

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

c3d The access required under sub. **c2d** shall be established through easements, ordinance, or covenants running with the land.

c4d The department may require that the program established under sub. **c2d cdd** includes periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.23 Cost eligibility. c1d ELIGIBLE COSTS. cad *Eligible at a subsidized rate.* Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include expenses incurred by the municipality for any of the following items and activities when specific to the scope of a scored project, or when approved by the department as necessary or reasonable for the efficient operation or integrity of the storm water treatment works or BMP:

1. ZAbandonment.[Abandonment of storm water treatment works or BMPs 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. ZAccess roads.[Construction of roadways necessary to provide appropriate access to urban runoff facilities or BMPs.

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

4. ZAdministrative 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.

5. ZCompliance with state and federal requirements.[Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

Note: State and federal requirements may include any of the following: Americans with Disabilities Act design and construction; green project reserve documentation; Davis-Bacon and related acts administration or other activities associated with wage rate requirements; DBE solicitation and documentation; activities associated with the use of American-made products; 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 project site; or audit activities related to the federal single audit act portion of the municipality's annual audit report until the project is complete.

6. ZConstruction activities.[Activities defined in s. [NR 162.003 c16d](#) and included in construction contracts or performed as force account work, including any of the following:

a. Replacing, repairing, or rehabilitating a storm water 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, and water mains 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-made products in CFWP projects.

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

7. ZDemolition.[Demolishing existing structures if the demolition is part of a scored project and any of the following apply:

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

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

c. The demolition is necessary for site preparation.

d. The demolition is included in abandonment procedures as approved in the plans and specifications of the scored project or otherwise approved by department staff.

e. The demolition entails removal of equipment or materials, or both, from inside an existing building or other structure that is part of the treatment works being modified or repurposed as part of the scored project.

8. ZDischarge monitoring.[The cost of equipment owned or to be owned by the municipality for illicit discharge monitoring of a storm water treatment works or BMP.

9. ZEasements and rights-of-way.[Acquisition of easements and rights[of]way, including purchase cost, and administrative and legal expenses.

10. ZEquipment.[Equipment, the costs of which the department may prorate if the municipality intends to use these items for multiple purposes rather than solely for the storm water treat-

ment works or BMP. Eligible equipment includes 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 storm water treatment works or BMP.
- b. Spare parts, if included in the plans and specifications or otherwise approved by the department.
- c. Machinery for manufacturing or repairing necessary tools or equipment for the storm water treatment works or BMP.
- d. Computers, tablets, and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the storm water treatment works or BMP. Equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, communications, geographic information, and supervisory control and data acquisition are included under this subd. 10. d.

11. ZFees.[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 CFWP loan.

12. ZGroundwater monitoring.[Installing groundwater monitoring equipment or facilities.

13. ZInsurance.[Purchasing insurance necessary during construction of the scored project, including property, liability, builder[s risk, and construction insurance.

14. ZInterim debt.[Costs associated with interim debt for the scored project as delineated in s. NR 162.04 c3d.

15. ZLand Acquisition.[Acquiring land, including purchase cost and administrative and legal expenses if any of the following applies:

- a. The land is property on which the storm water treatment works or BMP will be located, including urban corridors needed to support integrated systems of a storm water treatment works or BMP for urban runoff.
- b. The land is the property on which individual systems are or will be located if the systems are publicly-owned and maintained.

16. ZManagement plans.[Developing a detailed management plan for a scored project.

17. ZMunicipal staff, equipment, and materials.[Municipal expenses incurred solely for the scored project and documented by the municipality as force account work, 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.

18. ZPretreatment or toxicity reduction.[Developing a municipal pretreatment or toxicity reduction program and construct-

ing facilities to be used by the storm water treatment works or BMP in the program, including monitoring equipment.

19. ZProfessional 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 CFWP financial assistance application, and other forms required for financial assistance.
- g. Developing or revising an operations and maintenance manual.
- h. Advertising for and conducting bid lettings.
- i. Analyzing bids, preparing award recommendations, and preparing contracts.
- j. Providing construction management, observation, and inspection.
- k. Preparing for and facilitating public education and participation opportunities.
- L. Travel, indirect costs, and labor included in contracts for services related to the scored project.
- m. Preparing a user charge system or an ordinance related to storm water management.
- n. Preparing environmental assessment reports and evaluations.
- o. Conducting archaeological surveys and gathering historical site information.
- p. Providing municipal advisor or bond counsel services related to loan closing or the issuance of bonds.
- q. Producing record drawings.
- r. Updating or upgrading storm water treatment works maps of the areas impacted by the scored project.
- s. Monitoring use of American-made products.
- t. Providing administration of activities related to Davis-Bacon and related acts or other wage requirements.
- u. Conducting research or energy audits for incorporation of energy and water efficiency and conservation into the planning and design of a project.

20. ZProject site.[Construction-related work activities at the project site of a scored project, including any of the following:

- a. Landscaping areas impacted by construction of the scored project.
- b. Relocating sanitary sewers or watermains if necessary for construction and replacing mains with the same size or required minimum size pipe if breakage from construction occurs.
- c. Erecting project and storm water treatment works or BMP identification signs.
- d. Preparing a site for construction, including surveying, staking, and grading.
- e. Restoring the construction site to original condition or upgrading the site to meet state and local requirements.
- f. 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.

21. ZSafety.[Purchasing and installing safety equipment to be used in the operation and maintenance of the storm water treatment works or BMP.

22. ZStorm sewers that lead to treatment.[Evaluation, new installation, replacement, and lining and other rehabilitation of storm water conveyance that leads to treatment.

23. ZSecurity.[Purchasing and installing security equipment for the treatment works or BMP, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.

24. ZSpecial assessment fees.[Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments as part of repayment of its CWFPP loan.

25. ZStartup.[Startup expenses for a storm water 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 related to the scored project.
- c. Implementing a maintenance management system.
- d. Purchasing the first fuel fill-up for new equipment, such as generators.

26. ZStorm sewers and other conveyance.[Storm water conveyance that carries storm water runoff to an eligible treatment device or facility.

27. ZStreet restoration.[Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and sanitary 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 CWFPP-eligible or project-specific 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 CWFPP funding or because some of the project costs are not eligible.

28. ZWatermains.[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.

cbd Eligible at market rate. Costs eligible for market interest rate financing of a scored project include any of the following:

1. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5 percent of the total flow to a storm water treatment works or BMP.
2. 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.
3. 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.
4. 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 c2d, Stats., and, beginning January 1, 2010, is consistent with a comprehensive plan prepared pursuant to s. 66.1001, Stats.

5. The amount of project costs determined appropriate for a sanction under s. NR 162.08 c4d *cbd* for noncompliance with DBE good faith effort requirements established in s. NR 162.08 c4d *cad*.

ccd Market rate cost calculation. 1. The amount of the costs

described in par. *cbd* 1. to 4. is determined using a parallel cost percentage that 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. *cbd* 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. *cbd* 1. to 4. is calculated as follows:

$$EM = cTPdc1]PCd$$

Where:

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

TP . . . is the total project cost eligible for CWFPP 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. *cbd* 5., 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 162.15.

c2d INELIGIBLE COSTS. Costs for items and activities not directly associated with or not necessary for the construction or startup of a scored project are not eligible for financial assistance unless specifically approved by the department as necessary and reasonable for the efficient operation or integrity of the overall storm water treatment works or BMP. Ineligible items and activities include all of the following:

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

cbd Basin planning. Basin or areawide planning not related to the scored project.

ccd BCPL ineligibles. For a project receiving interest rate subsidy under subch. IV, project costs determined to be ineligible for loan assistance from the BCPL.

cdd Bonus payments. Bonus payments not legally required for completion of construction before a contractual completion date.

ced Buying capacity. Purchase cost of buying capacity in an existing storm water treatment works or BMP that is not being expanded.

cfd 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 CWFPP and any of the following conditions exist:

1. The official or employee or the official[s or employee[s spouse 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.

cgd Engineering. Engineering costs relating to ineligible construction costs when the ineligible construction and equipment costs are more than 10 percent of total construction and equipment costs.

chd Grant administration. Any costs for administering or applying for funding from sources other than the CWFPP, 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-CWFPP federal or state government loan or grant programs, or other types of financial assistance programs.

cid Hookup charges. Hookup charges imposed by one municipality on another for hooking into a storm water 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 162.05 c4d chd.

cjd Interim financing. Interest or principal payments on interim debt paid by the municipality out of its internal funds rather than capitalized funds.

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

ckd Late fees. Interest or late fees charged to a municipality for delayed payments related to the project.

cLd Leases. Costs related to leasing land.

cmd 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.

cnd Negligence. Costs incurred due to negligence or error of a party contracted by the municipality.

cod No construction. All costs of a project if the municipality does not finance some construction costs through the CWFPP, unless another governmental agency or another program in the department is providing financing for the construction costs and department CWFPP staff receive acceptable documentation of the other agency[s] or other program[s] commitment.

cpd Operations and maintenance. Operations and maintenance expenses as defined in s. NR 162.003 c50d and c40d, respectively.

cqđ 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.

crđ 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 CWFPP 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.

csđ Outside of scope. Costs outside the scope of the scored project unless the department approves the costs as necessary to

improve the overall integrity, operation, or functionality of the storm water treatment works or BMP.

ctđ Personal injury. Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise.

cud Post-closeout. Costs incurred after the project completion date of the scored project.

cvd Special districts. Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, and joint commissions.

cwd Violation penalties. Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

cxđ Watermains. Watermain construction, replacement, or repair unless the watermain is needed to carry water to a part of the storm water treatment works or BMP or the watermain work is necessary as a direct result of work performed for a scored project, such as repairing or replacing a watermain damaged during construction of the scored project.

cyđ WPDES permit fees. The cost of a WPDES permit unless it is a WPDES construction site permit specific to the project construction.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c1d cad 10. d., ccd 1. c. made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.24 Application process. c1d NOTICE OF INTENT TO APPLY. The notice of intent requirements described in s. NR 162.05 c1d are applicable to any urban runoff or storm water project for which a municipality is applying for financial assistance under this subchapter or for interest rate subsidy under subch. IV.

c2d APPLICATION PROCEDURES. A municipality shall apply for financial assistance in accordance with s. 281.58 c9d, Stats. All applicants must submit the required information and documentation through the department[s] online application system.

Note: Directions regarding online submittal are available on the Environmental Improvement Fund website at <https://dnr.wisconsin.gov/aid/EIF.html>. An interest rate subsidy application is a different form and must be submitted in accordance with s. NR 162.40 c5d and c6d.

c3d CONTENTS OF APPLICATION. The applicant shall submit a complete application, including all of the following items that are applicable to the project:

cad Evidence of a department-approved plan applicable to the scored project.

cbd Construction plans and specifications submitted to the department in accordance with ch. NR 151 that are approvable under ch. 281, Stats. An applicant may be denied funding if the applicant does not provide appropriately complete plans and specifications to the department prior to or with the application. The applicant shall submit a copy of approvable plans and specifications with the application in addition to the plans and specifications submitted to the department for plan review under ch. NR 151.

ccd Completion of the required fields in and upload of required documentation to the department[s] online application system, including all of the following:

1. Provision of a clear, concise, and comprehensive project description, including any modifications to the project description previously provided in the online application systems.

2. Estimated or actual construction costs.

3. Identification of known ineligible costs included within the total budget provided in the online application.

4. Information regarding assistance received or expected from another funding source.

Note: The project description may already be included in the online application

as it should transfer over to the application if previously provided with intent to apply or priority evaluation and ranking information. When that transfer of information is successful, the applicant must only provide information regarding any modifications to the project description that is already included in the application rather than providing an additional complete project description.

cdd Items or information for compliance with federal regulations identified by the department in the online application system as required for a complete application; these items may include any of the following:

1. Documentation of compliance with wage rate laws.
2. Completed federal forms.
3. Information regarding green project components, cost and effectiveness of the project, or procuring American-made products for use in the project.

ced Copies of executed engineering contracts and any associated contract amendments for planning and design if funds are requested for planning and design.

cfđ A copy of the executed engineering contract and any associated contract amendments for construction management if funds are requested for construction management and the contract is available at the time of application submittal.

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

chđ A proposed or an executed intermunicipal agreement for each municipality served by the project when 2 or more municipalities utilize shared or interconnected treatment works or a BMP. Prior to receiving financial assistance, the applicant shall ensure that each required intermunicipal agreement shall do each of the following that is applicable to the project:

1. Identify ownership for each individual portion of the storm water treatment works or BMP, including interceptors or other conveyance, lift stations, drainage systems, catch basins, constructed channels, specific practices or devices, and privately-owned storm water treatment works or BMPs.

2. Establish the term of the intermunicipal agreement, unless it is effective in perpetuity, subject to all of the following:

- a. If the intermunicipal agreement is new or being negotiated specifically for the project for which financial assistance is being requested, the term shall be for at least the term of the financial assistance agreement.

- b. If there is an existing intermunicipal agreement in place that meets the requirements of this section but expires during the loan term, the municipality shall renegotiate or extend the existing agreement prior to the end of its term and maintain the intermunicipal agreement throughout the term of the financial assistance agreement.

3. 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 c3d, Stats.

4. Demonstrate the basis for generating revenue for operation, maintenance, and replacement costs based on actual use or another equitable method 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] runoff and identify the boundary from which the applicant[s] discharge originates.

cid Financial information required by DOA to be used in de-

termining 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.

cjd A copy of the existing user charge system and information regarding the proposed user charge system and a storm water management zoning ordinance, when required by the department.

ckđ Any existing or proposed contracts with users of the storm water treatment works or BMP.

cLđ Documentation applicable to U.S. internal revenue service tax information as indicated in the online application system.

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

cnd A copy of the debt instrument of any interim debt to be refinanced with CWFPA financial assistance.

cod A completed design life worksheet if the applicant at the time of application requests a loan term that is greater than 20 years.

c4đ APPLICATION SUBMITTAL DEADLINE AND APPLICATION ACCEPTANCE. Section NR 162.05 c6đ and c7đ are applicable to storm water treatment works projects and BMPs.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c4đ made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.25 Financial assistance requirements. Before executing a financial assistance agreement for any project under this subchapter, the department shall determine that all of the applicable requirements of s. NR 162.24 are met, and that all of the following are satisfied:

c1đ All of the following documentation, if applicable to the scored project, is submitted to the department:

cad Certification for force account work as required by s. NR 162.08 c5đ.

cbd A certification or legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project. The certification or legal opinion shall be in accordance with s. NR 162.055.

ccd 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 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 not responsible.

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

4. Solicitation and utilization information regarding DBEs.

5. Evidence of bid advertisement, which should include appropriate language regarding DBEs submitting bid proposals, American-made product requirements, and wage rates, when applicable.

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

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

8. A complete copy of the executed construction contract

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

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

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

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

cdd 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, along with a copy of the department construction management engineer[s] change order approval.

ced 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.

cfid Parallel cost percentage information.

cgd An executed intermunicipal agreement or multiple executed agreements described under s. NR 162.24 c3d cgd, if 2 or more municipalities utilize shared or interconnected storm water treatment works or a BMP.

chd Proof that applicable ordinances or other regulatory mechanisms have been adopted by the municipality as required under s. NR 216.07 c3d cad to effectively prohibit non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions.

cid A copy of the adopted user charge system and proof that the municipality adopted the user charge system.

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

ckd Documentation of compliance with federal requirements, when applicable, which may include federal or state forms, certification of compliance with Davis-Bacon wage rate requirements, certification of use of American-made products in the project, and the cost, effectiveness, energy efficiency, and water efficiency of the selected design.

c2d The department has done all of the following, if applicable to the scored project:

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

cbd Reviewed and approved the plans and specifications.

ccd Reviewed and concurred with the parallel cost percentage provided by the applicant.

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

c3d The scored project has met the priority requirements of subch. V.

c4d The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operations, and maintenance of the storm water treatment works or BMP throughout the applicant[s] jurisdiction.

c5d 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.

c6d The applicant has received or applied for permits re-

quired by the department for the scored project, including those under chs. 30 and 283, Stats.

c7d The applicant agrees to do all of the following:

cad Adopt local ordinances for construction site erosion and sediment control and post-construction storm water management as required under s. NR 216.07 c4d and c5d.

cbd Adopt a municipal storm water management plan for new development and redevelopment, consistent with performance standards delineated in ch. NR 151 developed by the department under s. 281.33 c3d, Stats.

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

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.26 Requirements for a user charge system.

c1d GENERAL. Any user charge system and applicable ordinances adopted by a recipient under s. NR 216.07 c3d cad shall be maintained for the useful life of a storm water treatment works or BMP. The applicant shall submit user charge information, if applicable as described in sub. c2d, to the department and shall certify to the department that the user charge system meets all of the applicable requirements in this section.

c2d APPLICABILITY. **cad** A user charge system is required under this chapter for any storm water project for which the applicant is securing the loan with a pledge of utility revenues.

cbd A user charge system is required of the applicant for any storm water project that requires an intermunicipal agreement under s. NR 162.24 c3d chd.

c3d USER CHARGE SYSTEM REQUIREMENTS. Any user charge system under this section shall do all of the following:

cad Require that each user or user class pays its proportionate share of operation and maintenance costs, including replacement costs, of the storm water treatment works or BMP within the recipient[s] service area.

cbd 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] storm water treatment works or BMP.

ccd Require that the charges for users or user classes generate sufficient revenue to pay costs identified in par. ced 2. and 3.

cdd 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 storm water 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 or BMP. 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.

ced Establish a financial management system that accounts for all of the following:

1. Revenues generated.

2. Costs of operations and maintenance of the storm water 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, if applicable. In this subdivision, Xdebt coverageY means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

cfd Require the review, at least once every 2 years, of the runoff contribution of users and user classes, the total costs of operations and maintenance of the storm water treatment works or BMP, and the user charge system.

cgd Provide that each user is notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to service provided by the storm water treatment works or BMP.

chd Be based on actual or estimated use except as provided for under s. 281.58 c14d cbd 7., Stats.

c4d MUNICIPAL RESPONSIBILITIES. The municipality shall do all of the following:

cad Incorporate the user charge system, if applicable, in one or more municipal ordinances or other legislative enactments, and make reference to the user charge system or systems in inter-municipal agreements if the project serves more than one municipality.

cbd 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.

ccd Maintain records to document compliance with this section.

cdd For a runoff treatment works or BMP, demonstrate adequate legal authority established by statute, ordinance, or series of contracts to meet the provisions of s. NR 216.07 c6d.

c5d 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.27 Procurement. Procurement requirements included in s. NR 162.08 are applicable to storm water projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.28 Reimbursement and refinancing. Section NR 162.09 is applicable to storm water projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.29 Loan interest rate. Section NR 162.10 is applicable to storm water projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.30 Financial assistance agreement conditions. c1d Each financial assistance agreement shall require the recipient to do all of the following:

cad Maintain a system of user charges in accordance with s. NR 162.26, if applicable as described in s. NR 162.26 c2d, and maintain ordinances and other legal authorities in accordance with ch. NR 216, for the useful life of the treatment works or BMP.

cbd Comply with all pertinent requirements of federal, state, and local environmental laws and regulations.

ccd For financial assistance provided directly from a federal capitalization grant, 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.

cdd Comply with all state and local laws regarding procurement and public contracts.

ced Provide department representatives access to the scored project, including all construction activities, whenever the project is in preparation or progress. For purposes of providing access, the recipient shall do all of the following:

1. The recipient shall in each of its contracts for the project include a provision that requires the recipient and its contractors to allow the department access to records of contractors and sub-contractors pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions.

2. The recipient shall allow DOA or its agent access to records for audits.

cfd Expediently initiate and complete the project in accordance with the financial assistance agreement and application, including construction of and payments for the portions ineligible for CWFPA financial assistance and any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the financial assistance agreement.

cgd 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.

chd Promptly submit to the department a copy of any prime professional services or construction contract or modification to a contract and any revisions to plans and specifications.

cid Begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement and make the final principal payment no later than 20 years after the date of the financial assistance agreement unless the financial assistance agreement term is greater than 20 years but not more than 30 years. If the loan term is greater than 20 years, the municipality shall make the final principal payment no later than 30 years after the date of the financial assistance agreement.

cjd 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 <https://dnr.wisconsin.gov/topic/Stormwaterstandards>. 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.

ckd Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

cLd Notify the department of the substantial completion of the project.

cmd Maintain all required intermunicipal agreements throughout the term of the financial assistance agreement as described in s. NR 162.24 c3d chd 2.

cnd Comply with all applicable provisions of any outstanding CWFPA and safe drinking water loan program financial assistance agreements and CWFPA interest rate subsidy agreements.

c2d The financial assistance agreement is effective when all parties to the financial assistance agreement have signed it.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.31 Financial management. The requirements for financial management established in s. NR 162.12 are applicable to storm water treatment works and BMP projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.32 Financial assistance disbursements. Section NR 162.13 regarding requests for disbursement of financial assistance is applicable to storm water treatment works and BMP projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.33 Amendments to a financial assistance agreement. Section NR 162.14 regarding amending financial

assistance agreements is applicable to storm water treatment works and BMP projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.34 Disputes. Section NR 162.15 regarding disputes is applicable to storm water treatment works and BMP projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.35 Records and record retention. Section NR 162.16 regarding records and their retention is applicable to storm water treatment works and BMP projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.36 Breach of contract, noncompliance, variances, and administrative fees. Sections NR 162.17, 162.18, 162.19, and 162.20 are applicable to storm water treatment works and BMP projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

Subchapter IV — Interest Rate Subsidies for Small Loans

NR 162.37 Applicability. This subchapter applies to any applicant for and recipient of interest rate subsidy provided under 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, III, and V apply to projects receiving interest rate subsidy under this subchapter: ss. NR 162.001 to 162.003, 162.01, 162.02, 162.04 c1d cad and c2d, 162.08 c1d to c3d and c5d to c7d, 162.10 c1d cad and c2d, 162.15, 162.19, 162.20, and 162.49 to 162.52. The department will continue to accept applications for funding under this subchapter unless availability of funds for interest rate subsidies becomes a limiting factor for the department[s ability to continue this portion of the CWF.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.38 Project eligibility. c1d 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 if the project did not reach substantial completion more than 3 years prior to the date on which the applicant submits a complete application for financial assistance under s. NR 162.40 c5d:

cad *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:

1. The project is necessary to prevent a municipality from significantly exceeding a wastewater effluent limitation contained in a permit issued under ch. 283, Stats. All of the following types of projects are included under this paragraph:

a. 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. NR 162.003 c68d. The department may determine that a lift station pumping all of the wastewater flow di-

rectly to the wastewater treatment plant with no other influent pump at the plant site is part of a project that takes place inside the fence. The department may also determine that other facilities, such as a septage receiving station that conveys the septage directly into the wastewater treatment plant, are considered part of the work inside the fence.

b. 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 or rehabilitation, sanitary sewer lining, publicly-owned 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.

2. 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.

3. 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. All of the following types of projects are included under this subdivision:

a. 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.

b. 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: <https://www.epa.gov/sites/default/files/2015-09/documents/primer.pdf>.

cbd *Individual wastewater treatment systems.* 1. A municipality may receive interest rate subsidy under this subchapter for a project that consists of individual systems that serve one or more properties for the purpose of treating sanitary waste if all of the following apply:

a. The municipality owns each individual system.

b. The municipality is responsible for the proper installation, operation, and maintenance of each individual system.

c. The municipality 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.

d. The municipality 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.

e. The municipality complies with all other applicable requirements, limitations, and conditions for projects funded under this subchapter.

2. The access required under subd. 1. c. shall be established through easements, covenants running with the land, or ordinance. The department may require that the program established

under subd. 1. d. include periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

ccd *Storm water projects.* 1. A municipality may receive interest rate subsidy under this subchapter for a publicly owned project necessary to control storm water runoff pollution in order to achieve water quality standards, including publicly-owned storm water management projects on public or private land that are required by any of the following:

a. A WPDES storm water permit issued under subch. 1 of ch. NR 216.

b. A performance standard delineated in ch. NR 151.

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

2. A project that is eligible under subd. 1. may consist of individual BMPs on private land that treat runoff and serve one or more private properties if all of the following apply:

a. The municipality owns each individual BMP.

b. The municipality is responsible for the proper installation, operation, and maintenance of each individual BMP.

c. The municipality 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.

d. The municipality 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.

e. The municipality complies with all other applicable requirements, limitations, and conditions for projects funded under this chapter.

3. The access required under subd. 2. c. shall be established through easements, ordinance, or covenants running with the land.

4. The department may require that the program established under subd. 2. d. includes periodic testing of water from existing potable water wells and monitoring of aquifers in the area.

c2d INELIGIBLE PROJECTS. The department may determine that an entire project or a portion of a project is ineligible for CWFPS interest rate subsidy. If the department determines that a portion of a project is ineligible, it shall specifically identify the ineligible portion and the associated costs, or prorate the amount of interest rate subsidy to be provided to reflect the appropriate proportion of eligible to ineligible project costs, or both, in the interest rate subsidy agreement. All of the following projects or portions of projects are not eligible to receive financial assistance under this subchapter:

cad Projects that are found ineligible for financing by the BCPL.

cbd Projects of a municipality that is failing to substantially comply with applicable conditions or requirements of s. 281.58 or 281.59, Stats., ch. Adm 35, this chapter, an existing financial assistance agreement with the CWFPS 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.

ccd As specified in s. 281.58 c8d cad 2., Stats., privately-owned connection laterals and sewer lines that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

cdd 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.

ced Any project from which no construction costs are to be funded through the CWFPS, unless another governmental agency is providing financing for the construction costs and the department receives acceptable documentation of the other agency[s commitment, as determined by the department, except if purchasing existing treatment works is the general scope of the project.

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

egd Any project 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.

chd Projects that have been substantially complete for 3 years or longer.

cid Any project that includes 2 or more municipalities that utilize shared or interconnected treatment works or a BMP, unless the municipalities served by the project execute an intermunicipal agreement that meets the requirements described in s. NR 162.05 c4d chd for a wastewater project or s. NR 162.24 c3d chd for a storm water project. This paragraph does not apply to a metropolitan sewerage district in which all municipalities being served have been annexed into the sewerage district or to a situation in which the intermunicipal exception under s. NR 162.05 c5d has been met.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c1d cintro.d, cbd, ccd 2. made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.39 Cost eligibility. c1d ELIGIBLE COSTS. Project costs described in ss. NR 162.04 c1d cad and 162.23 c1d cad are eligible for interest rate subsidy.

c2d INELIGIBLE COSTS. Project costs described in ss. NR 162.04 c1d cbd and c2d and 162.23 c1d cbd and c2d are not eligible for interest rate subsidy.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.40 Application process. c1d NOTICE OF INTENT TO APPLY SUBMITTAL. A municipality that intends to apply for interest rate subsidy shall submit to the department a notice of its intent to apply in accordance with s. NR 162.05 c1d.

Note: Instructions regarding the online application systems are available on the Environmental Improvement Fund website at dnr.wi.gov/Aid{EIF.html.

c2d NOTICE OF INTENT TO APPLY DEADLINE. The department may set a notice of intent to apply submittal deadline by publishing the deadline date in the annual intended use plan.

c3d FACILITIES PLAN. A municipality requesting interest rate subsidy for a wastewater or storm water project shall submit a facilities plan or other applicable plan to the department for approval. The municipality shall receive approval of the facilities plan or other applicable plan prior to submitting an application for financial assistance.

c4d APPLICATION PROCEDURES. A municipality shall apply for interest rate subsidy in accordance with s. 281.58 c9d cad to ccd, 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 and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

c5d CONTENTS OF APPLICATION. The applicant shall submit a complete interest rate subsidy application. A complete application includes the following items:

cad Evidence of an approved facility plan or other department-approved plan.

cbd Construction plans and specifications submitted to the department in accordance with chs. NR 108 and 110 or ch. NR 151 that are approvable under ch. 281, Stats. An applicant may be denied funding if the applicant does not provide appropriately complete plans and specifications to the department prior to or with the application. The applicant shall submit a copy of approvable plans and specifications with the application in addition to the plans and specifications submitted to the department for plan review under chs. NR 108 and 110 or ch. NR 151.

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

cdd A proposed or an executed intermunicipal agreement in accordance with s. NR 162.05 c4d chd for a wastewater project or s. NR 162.24 c3d chd for a storm water project when 2 or more municipalities utilize shared or interconnected treatment works or a BMP.

c6d APPLICATION SUBMITTAL DEADLINE. In fiscal years for which the department sets an application submittal deadline for all or a specific type of funding, the applicant shall submit the items and information required under sub. c5d by the application submittal deadline in order to be considered eligible to obtain financial assistance from funds available during the funding cycle for which the deadline is set. The department may set application submittal deadlines in the intended use plan.

c7d APPLICATION ACCEPTANCE. The department shall accept an interest rate subsidy application as complete after all of the following occur:

cad The department determines that it received all the applicable items and information required under sub. c5d for the scored project.

cbd The project is placed on the CWFPP funding list.

c8d DEADLINE FOR SIGNING INTEREST RATE SUBSIDY AGREEMENT. The department shall set in the CWFPP annual intended use plan a deadline for signing an interest rate subsidy agreement. An applicant shall sign an interest rate subsidy agreement within the timeframe set by the department. An applicant shall time its submittal of the application accordingly. If an interest rate subsidy agreement is not signed within the established timeframe, the applicant[s] project shall lose its allocated subsidy.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c1d, c4d made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.41 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 162.40 are met, and that all of the following are satisfied:

c1d The department received all of the following information pertaining to the applicant[s] BCPL loan:

cad A copy of the loan application.

cbd A copy of the application review letter from the attorney general[s] office.

ccd A signed copy of the certificate of indebtedness.

c2d The project has met the priority requirements of subch. V.

c3d If requested by the department, the municipality submitted copies of executed engineering contracts for planning, design, and construction.

c4d If requested by the department, the municipality submitted information related to bids and construction contracts.

c5d The department determined the parallel cost percentage,

provided plans and specifications approval to the municipality, and complied with the Wisconsin environmental policy act requirements under the procedures in ch. NR 150 for the scored project.

c6d 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.

c7d DOA determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

c8d If requested by the department, the municipality submitted additional financial information required by DOA.

c9d The applicant received, or applied for, any state permits required by the department, including those under chs. 30 and 283, Stats.

c10d 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 162.40 c5d ccd.

c11d If requested by the department, the municipality submitted other documentation or certifications in support of the application.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c10d made under s. 13.92 c4d cbd 7., Stats., Register October 2023 No. 814.

NR 162.42 Procurement. c1d APPLICABILITY. Procurement of professional services and construction contracts by recipients under this subchapter shall be in accordance with the requirements of s. NR 162.08 c1d to c3d and c5d to c7d.

Note: Once an interest rate subsidy agreement is executed by the municipality and the CWFPP, no further amendments to professional services contracts or change orders for construction contracts can be considered for subsidy.

c2d UTILIZATION OF MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES. Applicants 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. The Wisconsin department of transportation unified certification program[s] list of certified DBEs is available online. Applicants are encouraged to use this list when soliciting DBEs for participation in the project. Recipients shall provide documentation of any MBE or WBE utilization to the department.

Note: The unified certification list is online at <https://wisconsin-dot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.43 Determination of interest rate subsidy.

c1d GENERAL. Interest rate subsidies shall be set in accordance with s. 281.58 c8d cjd and c12d cad, Stats., and this section. Subsidies are not available for interest payments that were due to the BCPL prior to the execution of an interest rate subsidy agreement with the department.

c2d PROJECT COST CATEGORIES. cad The department shall classify eligible costs of projects and portions of projects according to s. NR 162.10 c1d cad and ccd.

cbd Costs described in ss. NR 162.04 c1d cbd, 162.22, and 162.23 c1d cad and cbd are not eligible for interest rate subsidy.

c3d PROJECT INTEREST RATE CALCULATION. The department shall calculate the project interest rate according to s. NR 162.10 c2d.

Note: Section NR 162.10 c1d cbd does not apply to projects subsidized under this subchapter.

c4d CALCULATION OF INTEREST RATE SUBSIDY. cad Only that portion of the recipient[s] BCPL loan that is used for a scored project is eligible for interest rate subsidy.

cbd 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 c1d ccd.

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

cdd The department shall calculate the interest rate subsidy as follows:

1. Loan ratio = Eligible principal ÷ Loan principal

Where:

Loan ratio . . . is the percentage of the BCPL loan principal that is eligible for interest rate subsidy.

Eligible principal . . . is the lesser of the BCPL loan amount eligible for interest rate subsidy under par. cad or the CFWP project costs eligible for subsidy under par. cbd.

Loan principal . . . is the original total BCPL loan amount.

2. Interest ratio = Interest rate ÷ Project rate

Where:

Interest ratio . . . is the interest rate subsidy as a percentage applicable interest rate, before adjusting for the eligible share of BCPL loan principal.

Interest rate . . . is the lesser of the market interest rate or the interest rate on the BCPL loan.

Project rate . . . is the project interest rate calculated under s. NR 162.10 c2d cbd.

3. Subsidy ratio = Interest ratio * Loan ratio.

4. Annual interest rate subsidy = Interest charged on BCPL loan * Subsidy ratio.

Where:

Annual interest rate subsidy . . . is the dollar amount of the subsidy provided to the municipal recipient in a given year, based on the interest amount billed to the municipality that year for the BCPL loan.

Interest charged on BCPL loan . . . is the amount of interest charged by the BCPL for the applicable loan in a given year.

Subsidy ratio . . . is the subsidy ratio calculated in subd. 3., which is the percentage to be applied to interest charged on a BCPL loan in a given year to calculate the appropriate amount of interest rate subsidy to provide the municipality in that year. The subsidy ratio shall not be less than zero percent or greater than 100 percent.

Note: DOA annually calculates the interest rate subsidy amount for each CFWP interest rate subsidy agreement still in effect. The amount provided to the municipality in a given year is based on information supplied by the BCPL regarding the amount of interest charged during that year on each outstanding BCPL loan associated with a CFWP interest rate subsidy agreement. The BCPL determines the type of municipal obligation that is required for the repayment of its loan.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.44 Interest rate subsidy agreement conditions. c1d COMPLY WITH LAWS. The interest rate subsidy agreement shall require the recipient and the treatment works or BMP to comply with all pertinent requirements of federal, state, and local laws and regulations and outstanding CFWP and safe drinking water loan program financial assistance agreements.

c2d RECIPIENT REQUIREMENTS. The interest rate subsidy agreement shall require the recipient to do all of the following:

cad **Access.** 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.

cbd **Operations and maintenance.** Develop and adopt a program of system-wide operations and maintenance of the treatment works, including the training of personnel.

ccd **Erosion and sediment control.** 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.

cdd **Construction inspection.** Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

ced **Substantial completion.** Notify the department of the substantial completion of the project.

cfid **Minority business enterprise and women business enterprise utilization reporting requirements.** Document all utilization of MBEs and WBEs on the project.

c3d EFFECTIVE DATE. The interest rate subsidy agreement is not effective until executed by all parties to the agreement.

c4d DEBT SERVICE AND EQUIPMENT REPLACEMENT FUND. If required under s. 281.58 c14d cbd 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.45 Financial management. The recipient shall do all of the following:

c1d Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department or required by the federal government.

c2d Maintain a financial management system that meets the requirements, terms, and conditions of the interest rate subsidy agreement.

c3d Comply with any requirements of the BCPL.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.46 Interest rate subsidy disbursements and project closeout. c1d 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.

c2d APPLICATION OF SUBSIDY PAYMENTS. Subsidy payments shall be applied to the interest due on the BCPL loan.

c3d AMENDMENTS AND CHANGE ORDERS. cad 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.

cbd 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.

c4d PROJECT CLOSEOUT. All of the following project closeout procedures shall be completed as soon as is practicable after the final completion of project construction:

cad **Final inspection.** The recipient shall notify the depart-

ment of the final completion of the project. The department may complete a final inspection of the project.

cbd Documentation of minority business enterprise and women business enterprise utilization. The recipient shall document and submit information regarding 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 at <https://dnr.wisconsin.gov/aid/documents/EIF/Forms/forms.html> or from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707-7921.

ccd Operations and maintenance. The municipality shall submit to the department evidence that its operations and maintenance manual has been updated as required by the department.

cdd Department confirmation of recipient[s] compliance. The department shall inform DOA of the recipient[s] compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

ced Closeout of completed projects. If the recipient does not provide the required documents for project closeout of a completed project to the department for any CWF interest rate subsidy agreement or other financial assistance from the environmental improvement fund and applies for funding from the environmental improvement fund for another project, the department may deny financial assistance for the new project until the previous project is closed out according to requirements in this chapter.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.47 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.48 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 financial assistance 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

Subchapter V — Priority Scoring and Ranking System

NR 162.49 Project scoring system. Projects shall be scored under one of the following three categories: sewage collection systems, wastewater treatment plants, or storm water projects.

c1d COLLECTION SYSTEM PROJECTS. The following factors, when applied to sewage collection system projects in accordance with s. NR 162.50, shall determine the priority scoring for clean water fund program financial assistance pursuant to s. 281.58, Stats.:

cad 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., including eligible projects identified under s. NR 162.03 c1d cad 2.

2. Twenty-five points for a project that installs sewers in a previously unsewered area, including eligible projects identified under s. NR 162.03 c1d cdd 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, including eligible projects or costs identified under s. NR 162.03 c1d ccd.

cbd 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, subject to all of the following:

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

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

b. Twenty-five points if 50 percent to less than 70 percent of the systems included in the project are failing systems.

c. Twenty points if 30 percent to less than 50 percent of the systems included in the project are failing systems.

d. Fifteen points if 15 percent to less than 30 percent of the systems included in the project are failing systems.

e. Ten points if 5 percent to less than 15 percent of the systems included in the project are failing systems.

f. Five points if less than 5 percent but greater than 0 percent 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. ZElimination or prevention of bypasses and overflows.[A project that reduces or prevents bypasses and overflows that have occurred within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information shall be awarded 15 points. If the most recent bypass or overflow occurred more than 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information, the department shall award 15 points under this subdivision only 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. ZCollection-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 within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information shall be awarded the following points:

a. Fifteen points if the project is necessary to eliminate documented basement backups at 50 or more different municipal addresses.

b. Ten points if the project is necessary to eliminate documented basement backups at 15 to 49 different municipal addresses.

c. Five points if the project is necessary to eliminate documented basement backups at 1 to 14 different municipal addresses.

4. ZNew collection system and new wastewater treatment plant.[A project eligible under s. NR 162.03 c1d cdd, 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.

ccd Regionalization score. This section does not apply to sanitary sewer extensions within a municipality[s] sewer service area. Sewage collection system projects that result in increased regionalization of wastewater treatment and a reduction in the number of locations at which effluent from wastewater treatment plants

or individual septic systems is discharged into waters of the state shall be awarded the following points:

1. Fifty points if the recipient[s] project results in elimination of individual septic systems and the recipient becomes a new subscribing municipality to another municipality[s] wastewater treatment plant.

2. One hundred points for either of the following situations:

a. The recipient will abandon its existing treatment facility and construct new infrastructure to convey its wastewater to a new treatment facility being constructed to accommodate 2 or more municipalities.

b. The recipient will abandon its own existing treatment facility and construct new infrastructure to convey its wastewater to an existing treatment facility owned by another municipality.

c2d WASTEWATER TREATMENT PLANT PROJECTS. The following factors, when applied to wastewater treatment plant projects in accordance with s. NR 162.50, shall determine the priority scoring for CWFPA financial assistance under s. 281.58, Stats.:

cad 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 c1d cad 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 c1d cbd, required to meet new or changed WPDES permit limits.

3. Five points to a project meeting the criteria under s. NR 162.03 c1d ccd, necessary to correct violations of an effluent limit contained in a permit issued under ch. 283, Stats.

cbd 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, within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information.

2. Five points if the project is necessary to eliminate documented system-related backups that occurred within the 5 years prior to the most recent submittal deadline for priority evaluation and ranking form information caused by conditions at the wastewater treatment plant but not including 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.

Example] If a treatment works has a groundwater discharge and an effluent limit for chlorides and an effluent limit for phosphorus, the department shall award only 5 points in this subdivision, even though there are 2 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.

ccd Water quality criteria. The department shall award points for water quality parameters, based on the facility[s]

WPDES permit limits. The department shall use surface water effluent limits in the current WPDES permit when determining the appropriate points to assign in the water quality criteria category as follows:

1. For BOD limits, the department shall assign points as follows, unless the permit includes a CBOD limit that provides a higher number of points:

a. Sixteen points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is less than 10 mg{l.

b. Twelve points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 10 or more mg{l but less than 15 mg{l.

c. Eight points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 15 or more mg{l but less than 20 mg{l.

d. Five points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 20 or more mg{l but less than 30 mg{l.

e. Two points if the monthly permit limit for BOD, or the most stringent seasonal limit for BOD in the permit, is 30 or more mg{l.

2. For CBOD limits, the department shall assign points as follows, unless the permit includes a BOD limit that provides a higher number of points:

a. Sixteen points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is less than 10 mg{l.

b. Twelve points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 10 or more mg{l but less than 15 mg{l.

c. Eight points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 15 or more mg{l but less than 20 mg{l.

d. Five points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 20 or more mg{l but less than 25 mg{l.

e. Two points if the monthly permit limit for CBOD, or the most stringent seasonal limit for CBOD in the permit, is 25 or more mg{l.

3. For TSS limits, the department shall assign points as follows:

a. Sixteen points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is less than 10 mg{l.

b. Twelve points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 10 or more mg{l but less than 15 mg{l.

c. Eight points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 15 or more mg{l but less than 20 mg{l.

d. Five points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 20 or more mg{l but less than 30 mg{l.

e. Two points if the monthly permit limit for TSS, or the most stringent seasonal limit for TSS in the permit, is 30 or more mg{l.

4. For DO limits, the department shall assign points as follows:

a. Three points if the monthly permit limit for DO is greater than 6.99 mg{l.

b. One point if the monthly permit limit for DO is 4 or more mg{l but less than or equal to 6.99 mg{l.

5. For ammonia limits, the department shall assign points for either a chronic limit or an acute limit, whichever provides the highest points, as follows:

a. Five points if the monthly permit limit is for acute ammonia.

b. Fifteen points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is less than 5 mg/l.

c. Ten points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is 5 or more mg/l but less than 10 mg/l.

d. Six points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is 10 or more mg/l but less than 15 mg/l.

e. Two points if the monthly permit limit for chronic ammonia, or the most stringent seasonal limit for chronic ammonia in the permit, is 15 or more mg/l.

6. For phosphorus limits, the department shall assign points as follows:

a. Twenty points if the monthly permit limit for phosphorus is less than 0.2 mg/l.

b. Fifteen points if the monthly permit limit for phosphorus is 0.2 or more mg/l but less than 0.4 mg/l.

c. Ten points if the monthly permit limit for phosphorus is 0.4 or more mg/l but less than 0.6 mg/l.

d. Five points if the monthly permit limit for phosphorus is 0.6 or more mg/l but less than 0.9 mg/l.

e. Two points if the monthly permit limit for phosphorus is 0.9 or more mg/l but less than 2.5 mg/l.

f. One point if the monthly permit limit for phosphorus is 2.5 or more mg/l.

7. The department shall assign points as follows if the WPDES permit includes a limit for the specific element:

a. One point if the permit includes a chloride limit.

b. One point if the permit includes a copper limit.

c. One point if the permit includes a nickel limit.

d. One point if the permit includes a zinc limit.

e. One point if the permit includes a mercury limit.

f. One point if the permit includes a cadmium limit.

g. One point if the permit includes an arsenic limit.

cdd Regionalization score. This section does not apply to sanitary sewer extensions within the municipality's sewer service area. Treatment works projects that result in new or expanded regionalization of wastewater treatment shall be awarded the following points:

1. Fifty points if the project results in the recipient's full or partial ownership of a new treatment facility being constructed to treat wastewater conveyed from 2 or more municipalities. This excludes a situation in which the owner or owners of an existing regional treatment facility will abandon the existing treatment facility and construct a new treatment facility with no new subscribers.

2. Fifty points if the recipient is upgrading its existing treatment facility to accept and treat increased flows or loadings, or both, conveyed to the plant by one or more new subscribing municipalities, and the increase in flows or loadings is expected to be more than 10 percent of the pre-project design flows or loadings.

c3d STORM WATER MANAGEMENT PROJECTS. The following factors, when applied to storm water projects in accordance with s. NR 162.50, shall determine the priority scoring for CWFP financial assistance pursuant to s. 281.58, Stats.:

cad 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 a 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 162.22 c1d and c2d.

cbd Human health score. Ten points shall be awarded to a storm water project that includes pretreatment of contaminants before discharging to groundwater through an infiltration system.

ccd 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 as follows:

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 80 percent or greater.

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 percent to 79 percent 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 percent impervious.

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

a. Ten points for 80 percent or more TSS removal.

b. Five points for 60 percent to less than 80 percent TSS removal.

c. One point for 40 percent to less than 60 percent TSS removal.

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

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

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

c. Three points for infiltration.

c4d 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 one minus the logarithm to the base 10 of the residential population of the municipality served by the project, divided by 10.

$$\text{Population score} = 1 - \frac{\log_{10} \text{residential population}}{10}$$

c5d INTENDED USE PLAN. The department may include additional or modify existing scoring criteria in the annual CWFP intended use plan.

Note: The intended use plan is required of the department by the U.S. environ-

mental protection agency as part of the application package for the federal capitalization grant for the CWFPP.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23; correction in c3d ccd cintro.d, l. a. made under s. 35.17, Stats., Register October 2023 No. 814.

NR 162.50 Project priority score. c1d A project priority score shall be assigned to each project for which a completed priority evaluation and ranking form is submitted under s. NR 162.51. The project priority score is based on the additive of each criterion within the project category for the project. Each project shall be scored under only one of s. NR 162.49 c1d, c2d, or c3d.

c2d 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 that may be 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.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.51 Procedure for determination and reevaluation of project priority score. c1d A municipality intending to apply for clean water fund program assistance for a project shall submit to the department project priority evaluation and ranking information, including supporting documentation, in the department[s online format and by the date required by the department.

c2d 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.

c3d The department may review and, if necessary under the requirements of this chapter, recalculate priority scores to ensure accuracy and timeliness of information. This includes reviewing a priority score when an applicant determines it will not construct the full scope of the project described in an intent to apply submittal or described through the points requested with the priority evaluation and ranking form information originally submitted for the project for the applicable state fiscal year. If the department finds an error made by the applicant or the department in a priority evaluation and ranking form, the department may re-

view the project priority score to correct the error at any time during which the priority evaluation and ranking form is valid. The department shall notify an applicant in writing if the department changes the priority score of any of the applicant[s projects.

c4d If the applicant objects to the department[s determination of the priority score in sub. c2d or c3d, the applicant may request a reevaluation of the priority score with its application submittal for the state fiscal year for which the priority evaluation and ranking form is valid. The reevaluation request shall state the specifics of the objection. The applicant shall submit any new information that supports the objection and shall provide the priority score the applicant believes should be awarded the project based on this new information. When reevaluating the project priority score, the department shall consider new information only if the new information did not exist at the time of the original submittal.

c5d Upon receipt of a reevaluation request under sub. c4d, the department shall reevaluate its determination of the project priority score and shall notify the applicant of the results of the reevaluation. If the department denies the requested priority score, it shall state the reasons in writing.

c6d If the scope of a project changes after the department notifies the applicant of the reevaluation results, the department may recalculate the priority score based on the revised scope of the project.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.

NR 162.52 Project ranking system. c1d 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.

c2d If 2 or more projects have the same whole number priority score, the project serving the smaller population, as based on the population factor score, shall be considered to have the higher priority.

c3d The department shall prepare a project priority list and shall use it for prioritizing clean water fund program financial assistance to eligible projects.

History: CR 22-045: cr. Register October 2023 No. 814, eff. 11-1-23.