

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN )  
 ) ss  
DEPARTMENT OF NATURAL RESOURCES )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. EL-42-95 was duly approved and adopted by this Department on February 28, 1996. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 6th day of May, 1996.

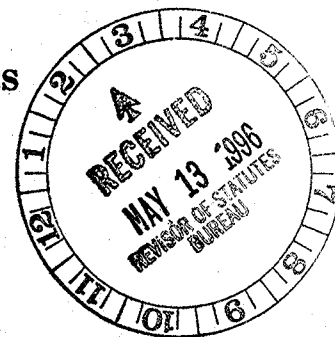
*George E. Meyer*  
George E. Meyer, Secretary

(SEAL)

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

The Wisconsin Natural Resources Board proposes an order to amend NR 161.01, 161.02(9) and (13), 161.03(1)(h), (2)(d)1. (intro.) and (3)(a), 161.06(3) and 161.07; and to repeal and recreate chs. NR 162, 163 and 165, relating to financial assistance under the Clean Water Fund Program.

EL-42-95



Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 144.241, 144.2415 and 227.11, Stats.  
Statutes interpreted: ss. 144.241 and 144.2415, Stats.

Chapter NR 161 relates to the priority system of the Clean Water Fund. The priority system is used to rank in environmental priority order the projects of municipalities requesting Clean Water Fund assistance by establishing a score for each municipality. NR 161 is amended to make the chapter consistent with ch. NR 162 and to make corrections in the code.

The proposed revisions to ch. NR 162 incorporate legislative changes enacted in 1995 Wisconsin Act 27 to the Clean Water Fund Program. In addition, the proposed revisions eliminate sections which are specific to the Financial Hardship Assistance Program, and amend and reorganize the sections of ch. NR 162 to make the code more useable and clear for customers. The funding list, application, notice of intent to apply, financial assistance agreement and pv subsidy allocation procedures are revised to be consistent with the changes in Act 27 and to help municipalities move through the funding process more quickly. Specifically, some of the changes include:

1. Intent to apply submittals are effective for two years;
2. The June 30 application deadline has been deleted for non-hardship projects. Financial assistance agreements must be signed within 8 months of application acceptance;
3. Notice of Financial Assistance Commitments are optional;
4. The Clean Water Fund may provide market rate financial assistance to violators; and,
5. The Department of Administration is responsible for auditing.

The revisions to ch. NR 163, the Financial Hardship Program, incorporate changes enacted in 1995 Wisconsin Act 27, eliminate duplication of applicable sections in ch. NR 162, and amend and reorganize the sections of ch. NR 163 into a more useable, clearer code for customers. Act 27 changed the criteria for qualifying for Financial Hardship Assistance to move the focus of the assistance to poorer, financially burdened communities which otherwise could not afford to construct their wastewater treatment projects. To qualify for hardship assistance, a municipality must have:

1. a median household income (MHI) which is 80% or less of the MHI in the state; and

2. estimated total annual wastewater treatment charges per residential user in the municipality which, without hardship assistance, would exceed 2% of the MHI in the municipality.

As a result of the change in criteria, the calculations used to determine eligibility for and amount of hardship assistance are revised in this chapter. Other changes to the hardship program include: unfunded hardship projects in the top 20% of the CWF funding list in a fiscal year will receive the highest hardship priority in the following fiscal year; a formula for estimating operation, maintenance and replacement costs is proposed; and hardship assistance will not be provided before construction for the facility planning and design phases of a project. All of these statutory changes are incorporated into ch. NR 163.

Chapter NR 165, Small Loan Program, is revised to make it consistent with ch. NR 162 and to incorporate changes made to the Clean Water Fund Program by 1995 Wisconsin Act 27.

SECTION 1. NR 161.01 is amended to read:

**NR 161.01 PURPOSE.** The purpose of this chapter is to establish a priority system for the distribution of clean water fund financial assistance as provided in s. 144.241, Stats., except for loans for transition projects as provided in ~~s. 144.241(20)~~ under s. 144.2415(13), Stats. Priority for transition projects shall be based on the system in ch. NR 160.

SECTION 2. NR 161.02(9) and (13) are amended to read:

NR 161.02(9) "~~Multipurpose~~ **Multi-tier project**" means a project that can be assigned to more than one of the project types listed in s. NR 161.03 (1).

(13) "Treatment work" has the meaning designated in ~~s. 147.015 (18),~~  
Stats. s. NR 162.03(61).

SECTION 3. NR 161.03(1)(h), (2)(d)1.(intro.) and (3)(a) are amended to read:

NR 161.03(1)(h) A ~~multipurpose~~ **multi-tier project** shall receive the project score for the project type which has the largest estimated cost as approved by the department.

(2)(d)1.(intro.) Projects necessary to eliminate pollution of groundwater where contaminant levels exceed or are projected to exceed safe drinking water standards in ch. NR ~~109 809~~, or to eliminate discharges from private sewage systems located within 3 feet of high groundwater or crevassed bedrock, shall be assigned a score based on the percentage of the water supplies that are affected or the percentage of the private sewage systems discharging to high groundwater or crevassed bedrock, as follows:

(3)(a) Projects necessary to achieve or maintain compliance with effluent limits based on a water quality standard contained in s. NR 102.04 (4) (a), (b), (c) or (e) ~~or (14)~~ shall receive 10 points.

SECTION 4. NR 161.05(1)(note) is amended to read:

Note: A PERF is available from the bureau of ~~community assistance management~~  
environmental loans of the department.

SECTION 5. NR 161.06(3) is amended to read:

NR 161.06(3) The project priority list shall be prepared ~~annually~~ by the department. ~~Subject to public hearing and natural resources board approval, It shall be used for allocating~~ prioritizing clean water fund assistance to eligible projects.

SECTION 6. NR 161.07 is amended to read:

NR 161.07 ANNUAL FUNDING POLICIES. The department shall establish annual funding policies under ch. NR 162 and in conjunction with the project priority list under s. NR 161.06. The funding policies shall be subject to public hearing ~~and endorsement by the natural resources board.~~

SECTION 7. Chapters NR 162, 163 and 165 are repealed and recreated to read:

Chapter NR 162  
CLEAN WATER FUND

SUBCHAPTER I

- NR 162.01 Purpose
- NR 162.02 Applicability and cross referencing
- NR 162.03 Definitions
- NR 162.04 Types of financial assistance available
- NR 162.05 Annual funding policy
- NR 162.06 Project eligibility
- NR 162.07 Cost eligibility
- NR 162.08 Intent to apply
- NR 162.09 Application
- NR 162.10 Financial assistance requirements
- NR 162.11 Requirements for a user charge system and sewer use ordinance
- NR 162.12 Procurement
- NR 162.13 Reimbursements and refinancing
- NR 162.14 Loan interest rate
- NR 162.15 Financial assistance agreement conditions
- NR 162.16 Financial management
- NR 162.17 Financial assistance disbursements
- NR 162.18 Amendments to financial assistance agreements
- NR 162.19 Disputes
- NR 162.20 Records and record retention
- NR 162.21 Breach of contract
- NR 162.22 Noncompliance
- NR 162.23 Variances
- NR 162.24 Administrative fees

SUBCHAPTER II Transition and capital cost loans projects

- NR 162.25 Transition projects
- NR 162.26 Capitol cost loans

**NR 162.01 PURPOSE.** (1) The purpose of this chapter is to establish rules under ss. 144.241 and 144.2415, Stats., for the implementation and administration of a financial assistance program for the planning, engineering design and construction of treatment works.

(2) All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

**NR 162.02 APPLICABILITY AND CROSS REFERENCING.** This chapter applies to all applicants and recipients of funding for the planning, design and construction of treatment works made pursuant to ss. 144.241 and 144.2415, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 144.241 and 144.2415, Stats.

**NR 162.03 DEFINITIONS.** In this chapter:

(1) "Allocable costs" means costs of items that can be assigned to at least one of the objectives within the scope of a project.

(2) "Applicant" means any municipality that applies for financial assistance under ss. 144.241 and 144.2415, Stats.

(3) "Approval" means the written approval of the department.

(4) "Assistance agreement end date" means the first day of the thirteenth month after substantial completion of the project.

(5) "Biennial finance plan" means the proposed plan described in s. 144.2415 (3), Stats.

(6) "Breach of contract" means the failure of the municipality to comply with:

1. The terms and conditions of the financial assistance agreement or financial hardship assistance agreement; or

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

(7) "Capital cost loan" means a loan to a municipality to finance its payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats.

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

(9) "Clean water fund" means the program established under ss. 25.43, 144.241 and 144.2415 Stats., for the purpose of providing financial assistance to municipalities for the planning, engineering design and construction of treatment works, and for projects for the treatment of nonpoint source pollution and urban stormwater runoff.

(10) "Compliance maintenance" means the program established and regulated under ch. NR 208, to prevent a permittee under ch. 147, Stats., from exceeding effluent limitations contained in a permit issued under ch. 147, Stats.

(11) "Compliance maintenance project" means a project that the department determines, under ch. NR 208, is necessary to prevent a municipality from exceeding an effluent limitation contained in a permit issued under ch. 147, Stats.

(12) "Connection lateral" means a sewer service line which connects a residence, commercial establishment, institutional or industrial user to a sewage collection system or individual wastewater system.

Note: This definition includes house service pipes and public lateral sewers regardless of ownership or whether located in the public right-of-way or on private property and which connect to the "Y" fitting of a public sanitary sewer main.

(13) "Construction" means any of the following activities:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a treatment works;

(b) Performing engineering, architectural, legal, fiscal or economic investigations or studies;

(c) Preparing surveys, designs, plans, working drawings or specifications;

(d) Erecting, building, altering, remodeling, improving or extending a wastewater treatment work, or purchasing a package wastewater treatment system.

(e) Inspecting or supervising any of the activities under pars. (a) to (d).

(14) "Contingency" means an amount in excess of the estimated project costs that are provided to fund cost overruns and amendments for a project.

(15) "Contractor" means a person or firm that agrees to furnish materials or perform services at a specified price for a project funded by the clean water fund.

(16) "Coverage" means the ratio of net revenue available for debt service to the average annual debt service requirements of an issue of revenue bonds.

(17) "Department" means the department of natural resources.

(18) "Design flow" means the flow specified in a WPDES permit or approved facilities plan.

(19) "Effluent limitation" has the meaning designated in s. 147.015 (6), Stats.

(20) "Enforceable requirements of the act" means those conditions or limitations included in permits issued under s. 147.02, Stats., which, if violated, could result in the initiation of legal action under s. 147.29, Stats., or those provisions of s. 144.025 (2) (r), Stats., which, if violated, could result in the issuance of department orders under s. 144.025 (2) (s), Stats. If a permit under ch. 147, Stats., has not been issued, this term shall include any requirement which, in the department's judgment, would be included in the permit when issued. Where no permit under ch. 147, Stats., applies, this term shall include any requirement which the department determines is necessary to comply with the provisions of ch. 147, Stats., and the federal water pollution control act, as amended.

(21) "Financial assistance" means loans, refinancing, guarantees, purchase of insurance, credit enhancement or grant funds provided to a municipality under ss. 144.241 and 144.2415, Stats.

(22) "Financial hardship assistance" means financial assistance authorized under s. 144.241 (13), Stats.

(23) "Force account work" means the work a municipality performs using its own employees or equipment for construction, construction-related activities, repairs or improvements to a treatment works. The term includes any activity listed in sub. (13) if the work is performed by a municipality with its own employees or equipment.

(24) "High groundwater" means zones of soil saturation which include: perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated.

(25) "Individual system" means a publicly owned wastewater treatment works which is operated and maintained by a municipality and serves one or more residences.

(26) "Industrial user" has the meaning specified in s. 144.241(1)(c), Stats.

(27) "Inflow" means water other than wastewater that enters a sewage system.

Note: This definition includes water entering the sewage system from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters or other drainage.

(28) "Initiation of construction" means:

(a) For step 2 activities, the approval of a facility plan and other wastewater management decision documents.

(b) For step 3 activities, execution of the construction contract.

(29) "Interceptor sewer" means a sewer and associated pump stations whose primary purpose is to transport wastewaters from collector sewers to a treatment facility, or which is designed for one or more of the following purposes:

(a) To intercept wastewater from a final point in a sewage collection system and convey the wastes to a sewage treatment plant or to another interceptor.

(b) To replace an existing wastewater treatment facility and transport the wastes to an adjoining sewage collection system or interceptor sewer for conveyance to a sewage treatment plant.

(c) To transport wastewater from one or more municipal sewage collection systems to another municipality or to a regional plant for treatment.

(d) To intercept an existing major discharge of raw or inadequately treated wastewater for transport to another interceptor or to a sewage treatment plant.

(30) "Interim financing" means a debt necessary to temporarily finance a project until permanent financing can be obtained from the clean water fund.

(31) "Interim financing costs" means the net interest, fees and charges associated with issuing interim financing. Examples include underwriter's discount, financial advisor fees, printing costs, bond rating charge, attorney's fees and trustees fees.

(32) "Maintenance" means the preservation of the functional integrity and efficiency of a wastewater treatment facility, including its equipment and structures. The term includes preventive maintenance, correctional maintenance and replacement of equipment.

(33) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by the state to fund a project loan or a portion of a project loan under ss. 144.241 and 144.2415, Stats.

(34) "Minority business enterprise" or "MBE" means a minority-owned business, sole proprietorship, partnership, joint venture or corporation that fulfills both of the following requirements:

(a) Is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101(a)(20), and

(b) Is currently performing a useful business function.

(35) "Multi-tier project" means a project that can be assigned to more than one of the project tiers listed in s. NR 161.03 (1).

(36) "Municipality" means any city, town, village, county, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or any federally recognized tribal governing body.

(37) "New or changed limits" means an effluent limitation in a WPDES permit which was newly established or modified after May 17, 1988.

(38) "Nonlocal share of a project" means costs for a project or a portion of a project that receives funding under s. 144.2415(13), Stats., is eligible for financial assistance under 33 USC 1251 et seq. or s. 144.24 or 144.242, Stats., and did not receive financial assistance under 33 USC 1251 et seq. or s. 144.24 or 144.242, Stats., because there were insufficient funds.

(39) "Operation" means control of the unit processes and equipment which make up a treatment works. The term includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

(40) "Parallel cost estimate" means a ratio developed by using as the numerator the cost of a project exclusive of costs added for those items under s. NR 162.07(1)(b)1., 2., 4 and 5, and as the denominator the cost of the project inclusive of those items.

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

(42) "Priority value" means the score assigned to a project by the department pursuant to ch. NR 161.

(43) "Progress payments" means:

(a) Payments for work in place.



(b) Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract when conditional or final acceptance is made by or for the recipient.

(c) Payments for undelivered specifically manufactured items or equipment, excluding off-the-shelf or catalog items, if provisions for the payments are included in the bid and contract documents, and

1. The equipment is so designated in the project specification;
2. The equipment to be specifically manufactured for the project could not be readily utilized or diverted to another job; and
3. A fabrication period of more than 6 months is anticipated.

(44) "Project" means any step 1, step 2 or step 3 activities under this chapter.

(45) "Project completion" means the point in time when substantial completion has been achieved.

(46) "Recipient" means any municipality or group of municipalities that has been awarded or received financial assistance under ss. 144.241 and 144.2415, Stats.

(47) "Replacement" means obtaining and installing mechanical, operating equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which the works were designed and constructed.

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

(49) "Sanitary sewer" means a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants and institutions.

(50) "7-day Q10" means the average 7 day low flow which occurs once in 10 years.

(51) "Sewage collection system" means the public sanitary sewer mains, and associated pump stations, including service connection "Y" fittings, which are primarily installed to receive wastewater directly from connection laterals. Pumping units and pressurized lines from the pumping units to the public sanitary sewer main may be included as part of a sewage collection system when they are cost-effective and owned and maintained by the applicant municipality. Holding tanks and septic tanks which serve one or more residences and their sewer lines to a public sanitary sewer main may also be included as part of a sewage collection system when they are cost-effective and owned and maintained by the applicant municipality.

(52) "Sewage treatment plant" means treatment works as defined in sub. (61), exclusive of interceptor sewers and sewage collection systems.

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

(54) "Step 1" means the preparation of plans, studies and related information for a determination of the wastewater management needs of a municipality, community or area in accordance with the requirements of ss. NR 110.08 and 110.09.

(55) "Step 2" means the preparation of engineering plans and specifications for the construction of a proposed treatment works project in accordance with the requirements of chs. NR 108 and 110.

(56) "Step 3" means any construction activity identified in sub. (13)(d), and any inspection or supervision of those activities when the activity being inspected or supervised is in accordance with an approved facility plan and engineering plans and specifications.

(57) "Subscribing community" means a municipality which discharges or plans to discharge its wastewater or a part of its wastewater to another municipality for treatment and disposal.

(58) "Subsidy" means the amounts provided by the clean water fund to projects receiving financial assistance under ss. 144.241 and 144.2415, Stats., for the following purposes:

(a) To reduce the interest rate of clean water fund loans from market rate to a subsidized rate.

(b) To reduce the interest rate of eligible loans or portions of loans made by the board of public lands trust to a tier rate.

(c) To provide financial hardship assistance, including grants.

(d) To provide financial assistance for additional eligible project costs.

(59) "Substantial completion" means the point in time at which the project can be utilized for the purposes for which it is intended.

(60) "Transition project" means a treatment works project that is eligible for financial assistance under s. 144.241 (7) (b), Stats., and which meets the requirements of s. 144.2415 (13), Stats.

(61) "Treatment works" means any devices and systems for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes used to meet applicable effluent limitations or necessary to recycle or reuse water at the most economical cost over the useful life of the works. These systems may include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping equipment and stations, power and other equipment and their appurtenances; extensions, improvements, 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 on which the components of the treatment process are located, except for sewers and individual systems, or is used for ultimate disposal of residues resulting from treatment, including land for composting sludge, temporary storage of the compost and land used for the storage of treated wastewater in land treatment systems before land application; or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined stormwater and sanitary sewer systems.

(62) "Unsewered municipality" means a municipality which is wholly or partially unsewered.

(63) "User charge" means a charge levied on users of a treatment works for the user's proportional share of the cost of operation, maintenance and replacement of the works.

(64) "Violator" means a person or municipality which cannot receive approval of an application for sanitary sewers under s. NR 110.05 (3), or is not in substantial compliance with the terms, conditions, requirements and schedules of compliance of an applicable ch. 147, Stats., discharge permit, for a reason that the department determines is or has been within the control of the person or municipality.

(65) "Waste load allocation" has the meaning designated in s. NR 121.03 (17).

(66) "Women business enterprise" means a woman-owned business as an independent business concern which is at least 51% owned by a woman or women who also control and operate it. Determination of whether a business is at least 51% owned by a woman or women shall be made without regard to marital property laws.

(67) "WPDES permit" means a Wisconsin pollution discharge elimination system permit issued under ch. 147, Stats.

**NR 162.04 TYPES OF FINANCIAL ASSISTANCE AVAILABLE.** The department and the department of administration may, subject to applicable requirements of ss. 144.241 and 144.2415, Stats., and ch. Adm 35, provide the following types of financial assistance to eligible applicants:

(1) Purchase or refinance the debt obligation of a municipality if the debt was incurred to finance the cost of constructing an eligible treatment works project located in the state and the project was substantially completed within the previous 5 years.

(2) Guarantee, or purchase insurance for, municipal obligations for the construction of treatment works if the guarantee or insurance would improve credit market access or reduce interest rates.

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

(4) Provide financial hardship assistance to eligible applicants.

(5) Provide interest rate subsidies pursuant to ch. NR 165.

**NR 162.05 ANNUAL FUNDING POLICY AND FUNDING LIST.** (1) **FUNDING POLICY.** Each year, the department shall prepare an annual funding policy for the fiscal year. The funding policy shall be subject to public hearing.

(2) **FUNDING LIST.** The department shall prepare a funding list when the legislature authorizes present value below the percentage specified in s. 144.241(9m), Stats.

**NR 162.06 PROJECT ELIGIBILITY.** (1) **ELIGIBLE PROJECTS.** A municipality may receive financial assistance under this chapter for a project which is:

(a) A compliance maintenance project.

(b) Necessary to achieve substantial compliance with an enforceable requirement which was new or changed after May 17, 1988.

(c) Necessary for the replacement or major rehabilitation of an existing sewer collection system and is necessary to maintain the total integrity and performance of the treatment works serving the community.

(d) Necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered areas within a municipality. Financial assistance may be provided at a subsidized rate only if the department determines that:

1. At least two-thirds of the initial flow for collection system, interceptor and individual system projects will be for wastewater originating from residences in existence on October 17, 1972;

2. There is a facility plan or other planning document for the project approved by the department; and

3. The unsewered municipality has executed an agreement under s. 66.30, Stats., with another municipality to receive, treat and dispose of wastewater if the unsewered municipality will be disposing of wastewater in the treatment works of another municipality.

(2) **INDIVIDUAL SYSTEMS.** (a) A project which is eligible under sub. (1) may consist of individual systems serving one or more residences if the municipality will:

1. Own each individual system;

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

3. Have 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. Establish a comprehensive program for the regulation, inspection, operation and maintenance of individual systems and for monitoring the impact of the systems on the groundwater;

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

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

(c) The department may grant a variance to allow the individual system to be privately owned if the municipality can show that public ownership of the system is not feasible and that private ownership will not adversely affect the tax status of the clean water fund.

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

(a) Projects of a municipality that has failed to substantially comply with any of the conditions or requirements of the clean water fund program or a financial assistance agreement, or the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works.

(b) Connection laterals that transport wastewater from structures to municipally-owned or privately-owned wastewater systems.

(c) Hook up charges imposed by one municipality on another for hooking into a treatment plant or transport system to a treatment plant.

(d) Public sanitary sewer mains, individual systems and interceptors which exclusively serve development not in existence as of the date of the application.

**NR 162.07 COST ELIGIBILITY.** (1) **ELIGIBLE COSTS.** (a) Allocable project costs which are reasonable and necessary are eligible for financial assistance. Eligible costs include, but are not limited to, any of the following.

1. Costs of salaries, benefits and expendable material the recipient incurs for the project.
2. Planning work directly related to the treatment works.
3. Sewer system evaluation and rehabilitation.
4. Costs of complying with ch. NR 150 including costs of public notices and hearings.
5. Preparation of construction drawings, specifications, estimates and construction contract documents.
6. Landscaping.
7. Removal, relocation, replacement or temporary provision of utilities, for which the recipient is legally obligated to pay.
8. Materials acquired, consumed or expended specifically for the project.
9. An inventory of laboratory chemicals and supplies.
10. Development and preparation of an operation and maintenance manual.
11. Costs for the development of water conservation plans, user charge system plans and sewer use ordinances under s. NR 162.11 (1).
12. Project identification signs.
13. Start-up services for new treatment works, including the training of operating personnel and the preparation of curriculum and training material for operating personnel on the new equipment or processes funded under this chapter. The cost of routine and entry level training and training for operators to meet state certification requirements under ch. NR 114 is not an eligible cost.
14. A plan of operation.
15. Development of a municipal pretreatment or toxicity reduction program and construction of facilities to be used by the municipal treatment works in the programs, including monitoring equipment.

16. Costs necessary to mitigate demonstrated direct, adverse physical impacts resulting from construction of the treatment works.

17. The cost of safety equipment.

18. On-site inspection during construction and to complete punch list items.

19. Acquisition of land that will be used for storage of treated wastewater in land treatment systems before land application.

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

21. Acquisition of land on which the treatment plant, biosolids facility or lift stations will be located.

22. The cost of equipment used for sampling and analysis of industrial discharges to municipal treatment works that is owned by the municipality.

23. Costs for value engineering studies or analyses performed during step 2.

24. Professional, consultant and engineering services.

25. Ordinary operating expenses that were incurred solely because of the project.

26. Costs associated with financial audits.

27. Interim financing costs.

28. Costs of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application.

29. Issuance costs.

30. Indirect costs.

(b) Costs eligible for market rate financing include, but are not limited to:

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 projected completion date.

2. Planning, design and construction costs related to public sanitary sewer mains, interceptors and individual systems in unsewered municipalities for projects which the department determines that less than two-thirds of the initial flow will be from wastewater originating from residences constructed prior to October 17, 1972.

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

4. The cost of capacity for present and future flows from industrial users.

5. The costs of any portion of a project to correct violations of effluent limitations contained in a permit issued under ch. 147, Stats.

6. The cost for the flow from state and federal facilities if the flow from these facilities exceeds 5% of the total flow to the treatment plant.

7. Costs associated with capital cost projects.

(c) Total estimated market rate costs shall be based on:

1. The parallel cost estimates contained in the facility plan.

2. The total design capacity determined with ss. NR 110.09 (2) (j) and 110.10 (2). This estimate may be revised, if necessary, at the time the financial assistance application is submitted, based on the final approved engineering design.

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 162.19.

(2) **INELIGIBLE COSTS.** Costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for financial assistance. Ineligible costs include, but are not limited to:

(a) Basin or areawide planning not related to the project;

(b) Bonus payments not legally required for completion of construction before a contractual completion date;

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

(d) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws;

(e) Costs outside the scope of the approved project;

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

(g) Site acquisition expenses, other than administrative and legal costs, for rights-of-way and easements;

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

(i) Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others;

(j) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a recipient participates in the selection, awarding or administration of a contract supported by the clean water fund and:

1. The official or employe, the official or employe's spouse or the official or employe's partner has an ownership interest in the firm selected for the contract; or

2. Any person identified in subd. 1. receives any contract, gratuity or favor from the award of the contract.

(m) Project costs incurred after the assistance agreement end date.

(3) **LIMITATIONS ON ELIGIBILITY OF INTERIM FINANCING COSTS IN REFINANCING PROJECTS.** (a) Net costs. Interim financing costs will be offset with any interest earnings from the investment of the proceeds from the interim financing.

(b) Interim issuance costs. The amount of interim issuance costs eligible for tier rate funding is limited to \$7,500 plus 1/2 percent of the total eligible face amount of the interim financing. The total eligible face amount of interim financing may not exceed the face amount of the financial assistance agreement.

Note: If interim financing is rolled-over or renewed, the balance will not be counted multiple times in calculating the eligible face amount of interim financing for purposes of this limit.

(c) Interim interest costs. The period of time for which interest on interim financing is eligible for tier rate funding shall run from no earlier than 6 months prior to the start of construction through the earliest of:

1. The closing date of the clean water fund loan; or
2. One year following substantial completion of construction; or
3. September 30th in the year after the project's listing on the clean water fund funding list.

(4) **COST PRORATION.** If the term of the interim financing exceeds the limit in sub. (3), the interim financing costs will be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the interim financing is not exclusively for the clean water fund treatment works project, then costs will be prorated according to the proportion of the total debt that is for the department approved treatment works project.

**NR 162.08 NOTICE OF INTENT TO APPLY.** (1) A municipality shall submit to the department a notice of its intent to apply for funding. The notice shall be filed with the department by December 31, if funding will be requested within the following 2 fiscal years. The notice shall be submitted on a form provided by the department. The notice will be valid for 2 calendar years.

(2) The department may waive this requirement upon the written request of a municipality pursuant to s. 144.241 (8m)(c), Stats.

**NR 162.09 APPLICATION.** (1) **DEADLINE FOR SIGNING FINANCIAL ASSISTANCE AGREEMENT.** An applicant shall sign the assistance agreement within 8 months after the date the department determines the application is acceptable. An applicant should time its submittal of the application accordingly. If an assistance agreement is not signed within 8 months of the department's determination of acceptance, the applicant's project will lose its allocated subsidy. A municipality may not submit more than one application for a project in any 12 month period, except for an application for additional costs for the approved project.



(2) PROCEDURES. (a) Municipalities shall apply in accordance with s. 144.241 (9), Stats., on forms provided by the department.

(b) Applicants shall apply for step 1 and 2 financial assistance at the time they apply for step 3 financial assistance.

(3) CONTENTS OF APPLICATION. The applicant shall submit with the application:

(a) An approved facility plan or other evidence of department approval;

(b) Copies of any executed contracts for performance of any portion of steps 1 and 2 of the project, and a proposed or executed copy of a step 3 contract;

(c) A copy of biddable construction drawings and specifications which are approvable by the department;

(d) Financial information required by the department of administration necessary to determine 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 clean water fund loan;

(e) A statement of the types of financial assistance being applied for and the reasons for each type being requested;

(f) A schedule for or evidence of compliance with ss. NR 162.10(6) and 162.15(1)(L);

(g) Information on the proposed user charge system and sewer use ordinance on a form provided by the department;

(h) A proposed or an executed intermunicipal agreement, if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality. The intermunicipal agreement shall:

1. Identify ownership for each individual portion of the treatment works, such as interceptor, collection systems, lift stations and privately owned treatment works;

2. Establish the term of contract;

3. Demonstrate the basis for generating revenue for operation, maintenance and replacement costs based on actual use and state who will be responsible for paying for these charges;

4. Indicate the method for generating revenue for capital costs and indicate who will be responsible for payment;

5. Indicate that the owner of the facility will accept the applicant's wastewater and identify the boundary from which the discharge originates; and

6. Require each entity to adopt a user charge and sewer use ordinance which is consistent with the requirements of s. NR 162.11.

(4) INTERMUNICIPAL EXCEPTION. The department may waive the requirement of an executed intermunicipal agreement if an order under s. 144.07 (1), Stats., has been issued or if the department has obtained executed intermunicipal agreements for subscribers whose design flows,

design BOD capacities, design suspended solids capacities and annual debt payments total at least 90% of the total for the regional treatment works.

**NR 162.10 FINANCIAL ASSISTANCE REQUIREMENTS.** Before awarding financial assistance for any project, the department shall determine that all of the applicable requirements of s. NR 162.09 have been met and that:

(1) The department has approved the plans and specifications for the project, and complied with the Wisconsin environmental policy act requirements.

(2) The project is entitled to priority in accordance with chs. NR 160 and 161, as applicable.

(3) The applicant has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works throughout the applicant's jurisdiction.

(4) The department of administration has determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm 35. and s. 144.2415, Stats.

(5) The applicant has, or has applied for, any permit required by ch. 147, Stats.

(6) The applicant has made satisfactory provision to assure the efficient operation and maintenance of the treatment works, in accordance with s. NR 162.15(1)(L).

(7) The applicant has adopted and implemented a user charge system and sewer use ordinance in compliance with s. NR 162.11.

(8) The applicant has submitted an approvable plan and schedule for implementing the flow reduction measures deemed to be cost-effective in accordance with s. NR 110.09 (2) (k).

**NR 162.11 REQUIREMENTS FOR A USER CHARGE SYSTEM AND SEWER USE ORDINANCE.** Any user charge system and sewer use ordinance adopted by a recipient shall be maintained in accordance with the provisions of s. 144.241 (14) (b) 7., Stats., and this section, for the design life of the treatment works. The applicant shall submit user charge information on a form prescribed by the department.

(1) Any user charge system shall:

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

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

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

Note: A recipient who received a federal or state wastewater treatment grant under s. 144.24, Stats., or under 33 USC 1251 to 1376 should have established and be implementing a replacement fund according to s. NR 128.13 (2) (c) or 40 CFR Part 35. The requirement for a

replacement fund under s. NR 128.13 (2) (c) or 40 CFR Part 35 is not superseded by this chapter and remains in effect for the design life of the facility which was funded with federal or state grant assistance under 33 USC 1251 to 1376 or s. 144.24, Stats.

(d) Establish a financial management system that accounts for:

1. Revenues generated,
2. Costs of operation and maintenance of the treatment system, including replacement of equipment, and
3. Debt service costs, including debt service reserves, and coverage requirements.

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

(f) Require that each user which discharges any toxic pollutants or high strength wastes pay for any increased costs associated with the discharge.

(g) Provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate of charge attributable to wastewater treatment service.

(h) Be based on actual or estimated use.

(2) A recipient 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, subject to the approval of the department.

(3) The municipality shall incorporate the user charge system in one or more municipal ordinances or other legislative enactments.

(4) The recipient shall terminate any term or condition of any pre-existing agreement or contract between the recipient and user which is inconsistent with the requirements of this section.

(5)(a) The recipient shall maintain records as are necessary to document compliance with this section.

(b) The department may review, no more often than annually, a recipient's user charge system to assure that it continues to meet the requirements of this section.

(6) Each applicant for financial assistance shall enact and enforce a sewer use ordinance that:

(a) Prohibits any new connections from sources which include substantial inflow into the sanitary sewer system.

(b) Requires that new sewers and connections to the sewer system be properly designed and constructed.

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

- (d) Defines normal domestic strength of the wastewater.
- (e) Controls and monitors industrial discharges by requiring control manholes, pretreatment, and grease, oil and sand interceptors.
- (f) Provides a methodology for establishing sewer use rates that complies with sub. (1).
- (g) Defines violations and penalties for violators.

(7) The department may waive the requirements of s. NR 162.11 for an applicant owning a regional treatment works if the department has given final approval to user charge systems and sewer use ordinances for subscribers whose design flows, design BOD capacities, design suspended solids capacities and annual debt payments total at least 90% of the total for the regional treatment work.

**NR 162.12 PROCUREMENT.** (1) **APPLICABILITY.** Procurement of professional services and construction contracts by recipients under this chapter shall be in accordance with state and local law. No contract may be awarded to any person or organization which does not operate in conformance with state and federal civil rights, equal opportunity and affirmative action laws.

Note: See ss. 60.47, 60.77 (6) (a), 61.54, 61.55, 62.15 and 66.29, Stats.

(2) **PROFITS.** Only fair and reasonable profits may be earned by contractors under financial assistance agreements. Profit included in a formally advertised, competitively bid, fixed price or unit price construction contract is presumed to be reasonable.

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

(4) **UTILIZATION OF MINORITY- AND WOMEN-OWNED BUSINESSES.** In order to provide minority- and women-owned businesses with an opportunity to compete for work related to the project:

(a) Recipients of financial assistance, contractors and subcontractors shall use minority- and women-owned businesses to the extent possible.

(b) Recipients, contractors and subcontractors shall make good faith efforts to provide minority- and women-owned businesses the maximum feasible opportunity to compete for contracts and subcontracts. Good faith efforts include but are not limited to:

1. Soliciting bids from qualified, minority-owned businesses certified by the department of development and qualified women-owned businesses whenever contracts and subcontracts are awarded.

2. Providing to minority- and women-owned businesses, upon request, a list of individuals and firms in possession of plans, specifications and other information relevant to the project.

3. Breaking down work into smaller projects to maximize the opportunity of minority- and women-owned businesses to compete for contracts and subcontracts.

4. Establishing work schedules which will enable minority- and women-owned businesses to compete for contracts and subcontracts.

5. Using the assistance of the department as appropriate.

(c) The recipient shall document the efforts made to provide minority- and women-owned businesses with the opportunity to compete for contracts and subcontracts.

(d) If requested, a recipient shall explain to a minority- or women-owned business which bid but did not receive a contract, why the contract was not awarded to it.

(e) Failure to comply with pars. (b) to (d) shall result in 8% of the project costs eligible for subsidy being financed at market rate interest. This paragraph does not apply to any recipient which awards contracts to minority- or women-owned businesses or both in an amount equal to or greater than 8% of the total project cost or to any recipient who makes good faith efforts in accordance with pars.(b)-(d).

(f) This subsection applies to each recipient of financial assistance and those employed by the recipient to plan, design or construct the project. It applies to contracts for services, equipment, raw materials and supplies.

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

(a) The applicant has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of the force account method; or

(b) Emergency circumstances dictate the use of the force account method.

(6) **CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department may not provide financial assistance for costs which are not eligible or reasonable.

(b) Reasonableness reviews shall, at a minimum, consist of a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. Consideration shall be given to completeness of scope of work, the recipient's procurement and negotiation process associated with the costs, any conditions unique to the project and any other factors impacting costs.

(c) Architectural or engineering services contracts shall indicate a maximum estimated cost for a defined scope work which cannot be exceeded without a negotiated contract amendment prior to incurring additional costs.

(7) **CONSTRUCTION CONTRACTS AND SUBCONTRACTS.** (a) Applicability. This subsection applies to construction contracts or subcontracts awarded by recipients for any step 3 activity.

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

(c) Contract change orders. 1. The recipient shall secure a fair and reasonable price for the required work.

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

**NR 162.13 REIMBURSEMENTS AND REFINANCING.** (1) **REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS.** The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable federal internal revenue service reimbursement regulations.

(2) **REFINANCING OF INTERIM FINANCING.** The department may refinance the eligible portion of the municipality's interim financing subject to the limits established in s. NR 162.07(3).

**NR 162.14 LOAN INTEREST RATE.** Interest rates for projects shall be set in accordance with s. 144.241(12), Stats., and this section.

(1) **PROJECT COST TIERS.** Costs of projects or portions of projects shall be classified according to the following tier system:

(a) Tier 1 costs are costs of compliance maintenance or new or changed limit projects in s. NR 162.06 (1)(a), (b) and (c).

(b) Tier 2 costs are costs of unsewered projects, including individual systems, that satisfy the criteria in s. NR 162.06(1)(d) and (2).

(c) Tier 3 costs are costs of unsewered projects listed in s. NR 162.07(1)(b), violator projects, future growth and reserve capacity, industrial capacity and capital cost projects.

(2) **TIER INTEREST RATES.** The following interest rates are established for each tier:

(a) The interest rate for Tier 1 costs is 55% of the market rate.

(b) The interest rate for Tier 2 costs is 70% of the market rate.

(c) The interest rate for Tier 3 costs is the market rate.

(3) **PROJECT INTEREST RATE.** (a) If all of the eligible costs of a project are classified under one of the tiers, the interest rate shall be the rate established in sub. (2) for that tier. If a project contains eligible costs from one or more of the tiers, a composite rate shall be computed for the project in accordance with par. (b)3. Project costs shall be based on the final approved engineering design.

(b) The following methods, in the order listed, shall be used to estimate the total eligible costs associated with each tier:

1. Each eligible cost which can be allocated, based on its purpose, exclusively to any one of the tiers, shall be so allocated.

2. Each eligible cost which cannot be allocated to a particular tier, shall be divided among the tiers based on the portion of the design flow of the project that is attributable to each tier.

3. The composite interest rate shall be computed as follows:

$$RC = (RT_1) (TP_1) + (RT_2) (TP_2) + (RT_3) (TP_3)$$

Where:

RC is the composite interest rate for the project.

RT<sub>1</sub> is the tier 1 interest rate.

RT<sub>2</sub> is the tier 2 interest rate.

RT<sub>3</sub> is the tier 3 interest rate.

TP<sub>1</sub> is the percentage of the project being financed by the clean water fund that is eligible for the tier 1 rate under s. NR 162.06(1)(a), (b) and (c).

TP<sub>2</sub> is the percentage of the project being financed by the clean water fund that is eligible for the tier 2 rate under s. NR 162.06 (1) (d) and s. NR 162.06(2).

TP<sub>3</sub> is the percentage of the project being financed by the clean water fund that is eligible for the tier 3 rate under s. NR 162.07 (1) (b).

Note: Except as provided in s. 144.2415 (13), Stats., the interest rate shall be based on the market rate and tier rates in effect at the time the financial assistance agreement is executed. This also applies to notices of financial assistance commitment that were converted to financial assistance agreements.

**NR 162.15 FINANCIAL ASSISTANCE AGREEMENT CONDITIONS.** (1) Each financial assistance agreement shall bind the recipient to the following conditions:

(a) The recipient shall agree to maintain a system of user charges and a sewer use ordinance in accordance with s. NR 162.11 for the design life of the treatment works.

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

(c) For financial assistance provided directly from a federal capitalization grant, the recipient shall agree to comply with the requirements contained in 33 USC 1251 to 1266 and 33 USC 1381 to 1387, if required by the terms of the capitalization grant.

(d) The recipient shall pay the costs of treatment works construction which are ineligible for financial assistance under this chapter.

(e) The recipient shall provide timely sewerage service to all users within the delineated service area except in areas where annexation is refused, pursuant to s. 144.07 (1m), Stats.

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

(g) The recipient shall provide department representatives access to the project, including construction activities, whenever it is in preparation or progress.. The recipient shall allow the department access to records of the contractor and subcontractor which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(h) The recipient shall expeditiously initiate and complete the project in accordance with the assistance agreement and application, including any project schedule approved by the department. Failure of the recipient to promptly initiate project work may be deemed a breach of the assistance agreement.

(i) The recipient shall promptly notify the department of changes to the project.

(j) The recipient shall promptly submit to the department a copy of any prime contract or modification of it and of revisions to plans and specifications.

(k) The recipient shall begin repayment of principal no later than 12 months after the expected substantial completion date of the project and shall make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(L) The recipient shall provide the department with a plan of operation for the wastewater treatment facilities. The plan of operation shall include necessary actions and an implementation schedule to assure the timely start-up and efficient operation of the facilities for the following:

1. A summary of implementation dates in chronological order;
2. Staffing and training;
3. Records, reports and laboratory control;
4. Process control and start-up procedures;
5. Safety procedures;
6. Sludge management;
7. An emergency operating plan;
8. Maintenance management;
9. An operation budget.

(m) 1. The recipient shall submit an operations and maintenance manual to the department. For projects or facilities which have an approved operation and maintenance manual, this requirement may be met by the submission of an addendum to the original manual. For projects in unsewered communities, this requirement may be met by the submission of information stating the date the operations and maintenance manual will be completed and certified to the department.

2. The project engineer and the authorized representative of the recipient shall certify that the operation and maintenance manual meets or exceeds the requirements of this chapter. The operations and maintenance manual shall address the following areas:

- 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; and
- j. Manufacturer's information.

(n) The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specification outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November, 1993 Revision. WDNR publication WR-222 is incorporated by reference for this chapter.

Note: Copies of the WDNR publication WR-222, Wisconsin Construction Site Best Management Practice Handbook, November 1993 revision, are available for inspection in the offices of the department of natural resources, secretary of state and revisor of statutes, Madison, Wisconsin.

(o) The recipient shall provide and maintain adequate construction inspection for conformance with the approved plans and specifications.

(p) The recipient shall accept septage from septic tanks or holding tanks within the recipient's service area to the treatment facility, subject to s. 144.08, Stats. The recipient may regulate the time, rate, location and quantity of the discharges.

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

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

**NR 162.16 FINANCIAL MANAGEMENT.** The recipient shall:

(1) Maintain project accounts in accordance with generally accepted government accounting standards.

(2) Maintain a financial management system which conforms with the requirements, terms and conditions of the financial assistance agreement and ch. Adm 35.

(3) Comply with any U.S treasury requirements for maintaining the tax-exempt status of the bonds sold to the clean water fund.

**NR 162.17 FINANCIAL ASSISTANCE DISBURSEMENTS.** (1) **REQUESTS FOR DISBURSEMENT.** The recipient shall submit to the department requests for disbursements for eligible costs, including progress payments to contractors in the form specified by the department.

(2) **ADJUSTMENT.** Before the final disbursement under the financial assistance agreement, the department may recommend to the department of administration that any request for disbursement be reviewed or audited.

(3) **WITHHOLDING OF FUNDS.** It is department policy that full and prompt disbursement be made to the recipient for properly documented eligible project costs. The

department may direct the department of administration to withhold financial assistance disbursements where the department determines in writing that a recipient has failed to comply with project objectives, or the terms, conditions or reporting requirements of the financial assistance agreement.

(4) **FINAL DISBURSEMENT.** (a) The recipient shall promptly submit the final request for disbursement after completion of the project. The recipient shall include written certification that it has accepted the project from its contractors in the final disbursement request.

(b) Prior to the final disbursement, the department shall complete a final inspection of the project and certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

**NR 162.18 AMENDMENTS TO FINANCIAL ASSISTANCE AGREEMENT.** (1) The recipient shall obtain an amendment to the financial assistance agreement before:

(a) Altering the type of wastewater treatment; or

(b) Substantially altering the facilities plan, plans and specifications, or any major part of the project.

(2) Changes in the project that are consistent with the objectives of the project, within the scope of the financial assistance agreement and which do not require review under ch. NR 110 will not require the execution of an amendment before the recipient implements the change.

(a) The amount of financial assistance in the financial assistance agreement may only be increased by an amendment and can only be made upon department review and acceptance of any cost increases as eligible, reasonable and necessary for the accomplishment of project objectives.

(b) Assistance agreement amendments which increase the amount of financial assistance shall be subject to the availability of bonding authority or present value subsidy as determined in s. 144.241, Stats.

(c) The interest rate for loan funds advanced in accordance with an amended financial assistance agreement shall be the same as the interest rate of the original financial assistance agreement. The loan maturity shall also be the same.

(3) A financial assistance agreement amendment shall be effective on the date it is executed by the department.

**NR 162.19 DISPUTES.** (1) **DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this chapter, ch. NR 163 or 165 prior to the execution of a financial assistance agreement shall be decided in writing by the department. The department shall serve a copy of the decision on the recipient personally or by mail.

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

**NR 162.20 RECORDS AND RECORD RETENTION.** (1) **REQUIREMENTS.** The recipient shall maintain books, documents, papers and records and accounting procedures in accordance with generally accepted government accounting standards, the financial assistance agreement and ch. Adm 35 and retain them in accordance with ch. 19, Stats. The recipient shall require

contractors, including contractors for professional services, to maintain books, documents, papers and records to the project which are necessary for the recipients' compliance with this section.

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

(3) **RECORD RETENTION.** The recipient and contractors of recipients shall preserve and make their records available to the department until expiration of 3 years from the date of project completion.

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

(b) Records which 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 of project completion, whichever is later.

(4) **FEDERAL SINGLE AUDIT.** Recipients of financial assistance provided directly from the federal capitalization grant shall comply with the Federal Single Audit Act and OMB circular A-128 and ch. Adm 35.

**NR 162.21 BREACH OF CONTRACT.** (1) Upon breach of contract by the recipient, the department may:

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

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

(c) Increase the loan portion of a hardship assistance agreement by an amount equal to the grant portion.

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

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

(f) Seek any other appropriate administrative remedy.

(2) The department of administration'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: The department of administration may under s. 144.2415(11)(b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

**NR 162.22 NONCOMPLIANCE.** Upon failure of the recipient to comply with ss. 144.241 and 144.2415, Stats., or with provisions of this chapter or chs. NR 163 or 165, the department may:

- (1) Refuse to enter into a financial assistance agreement.
- (2) Seek penalties as provided in ch. 144, Stats.
- (3) Seek any other appropriate remedy, relief or penalty.

**NR 162.23 VARIANCES.** (1) **GENERAL.** The department may approve a variance from a requirement of this chapter or chs. NR 163 or 165 when it determines that a variance is essential to effect necessary financial assistance actions or department objectives where special circumstances make a variance in the best interest of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient and financial hardship.

(2) **APPLICABILITY.** A recipient may request a variance from any nonstatutory requirement of this chapter, ch. NR 163 or 165.

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

- (a) The name of the applicant or the financial assistance agreement number and the dollar value;
- (b) The section of this chapter, ch. NR 163 or 165 from which a variance is sought and a statement explaining why the variance is necessary;
- (c) An adequate description of the variance desired, and the facts which the recipient believes warrant the department's approving the variance;
- (d) A statement as to whether the same or a similar variance has been requested previously by the recipient, and if so, the circumstances of the previous request.

**NR 162.24 ADMINISTRATIVE FEES.** (1) An administrative fee, if one is imposed, shall be included in the biennial finance plan approved by the building commission under s. 13.48, Stats. The administrative fee shall be placed in a separate administrative account.

(2) Assistance provided for financial hardship under ch. NR 163 is not subject to an administrative fee.

(3) Assistance provided for transition projects under subch. 2 is not subject to an administrative fee.

Subchapter 2  
Transition projects and capital cost loans.

**NR 162.25 TRANSITION PROJECTS.** (1) **APPLICABILITY.** This section applies to financial assistance agreements issued pursuant to s. 144.2415 (13), Stats.

(2) **ELIGIBILITY.** (a) To become eligible for financial assistance under this section, a municipality shall comply with the submission date, approvability and other requirements contained in s. 144.2415 (13), Stats., and shall meet the requirements for submittal of an intent to apply notice, plans and specifications and a grant application in accordance with s. NR 128.09 (1) (a) and (b).

(b) Funding shall be allocated to transition projects in accordance with s. 144.2415 (13), Stats., using the priority list as established under s. 144.24 (6) (a), Stats.

(c) Step 2 costs approved through an advance commitment for reimbursement may be awarded with the step 3 loan subject to s. 144.24 (9m) (a), Stats. These costs shall be added to the step 3 application costs for the purpose of determining the fundable range on the intent to apply list.

(d) The application requirements of s. NR 162.09 shall be met in order to receive a loan.

(e) Transition projects shall comply with all other applicable limitations and conditions as required under this chapter.

(f) Additional step 1 planning work necessary for step 3 projects is not eligible for financial assistance under this section.

(g) Eligible costs shall be determined in accordance with s. 144.24, Stats., and ch. NR 128 where applicable.

(h) Financial assistance for projects which receive funding under 33 USC 1251 et seq., or s. 144.24, Stats., may include the nonlocal share of a project.

(i) Eligible costs shall be determined in accordance with s. 144.24, Stats.

(3) **REFINANCING.** (a) Refinancing may be provided for step 3 projects and associated step 2 costs only if sufficient funds are not available in any fiscal year to give notices of financial assistance commitment to all recipients.

(b) Eligible costs shall be determined in accordance with s. 144.24, Stats., and ch. NR 162 where applicable.

(c) Refinancing may not be provided for the local share of project costs for projects which received financial assistance under 33 USC 1251 et seq., or s. 144.24, Stats.

(4) **LIMITATIONS.** (a) The eligibility of specific costs for projects funded under this section is subject to the requirements of s. 144.241(8), Stats.

(b) A municipality which rejects a ready to allocate notice or grant award for a project issued under s. 144.24, Stats., or 33 USC 1251 et seq. as amended, may not receive a loan for that project under the provisions of s. 144.2415 (13), Stats.

**NR 162.26 CAPITAL COST LOANS.** (1) **APPLICABILITY.** This section applies to capital cost loans.

(2) **APPLICATION REQUIREMENTS.** (a) **Deadline.** Applications for funding under this section shall be submitted by March 31 of the fiscal year that funding is requested.

(b) Contents. The applicant shall submit a certification that the municipality possesses the ability to repay the financial assistance. This certification shall be supported by documentation of the applicant's financial capability, including calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage and financial reserves.

(3) **ELIGIBLE COSTS**. Only those costs to finance a municipality's payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918, Stats., shall be eligible for financial assistance under this section.

(4) **FINANCIAL ASSISTANCE CONDITIONS**. Each financial assistance agreement shall conform to the requirements contained in s. NR 162.10 (3) and ch. Adm 35.

(5) **FINANCIAL ASSISTANCE REQUIREMENTS**. Each financial assistance agreement shall bind the recipient to the following conditions:

(a) The recipient shall comply with all applicable requirements of the state's clean water fund revenue bond issuance. Compliance with these requirements shall be a condition of the financial assistance agreement.

(b) The recipient shall comply with any other terms, conditions or restrictions contained in the financial assistance agreement.

(6) **REFINANCING PROHIBITION**. The department may not refinance a capital cost loan which is issued under ss. 144.241 and 144.2415, Stats.

Chapter NR 163  
CLEAN WATER FUND - FINANCIAL HARDSHIP ASSISTANCE

- NR 163.01 Purpose
- NR 163.02 Applicability and cross referencing
- NR 163.03 Definitions
- NR 163.04 Types of financial hardship assistance
- NR 163.05 Eligibility for financial hardship assistance
- NR 163.06 Application
- NR 163.07 Funding list
- NR 163.08 Allocation of funds
- NR 163.09 Requirements and conditions for receiving financial hardship assistance
- NR 163.10 Procedure for determining amount of financial hardship assistance
- NR 163.11 Operation, maintenance and replacement cost estimates
- NR 163.12 Financial hardship assistance agreement
- NR 163.13 Financial hardship assistance disbursements and loan repayments
- NR 163.14 Amending financial hardship assistance agreements
- NR 163.15 Breach of contract and noncompliance

**NR 163.01 PURPOSE.** (1) **PURPOSE.** This chapter establishes rules under s. 144.241(13), Stats., for the implementation and administration of the financial hardship assistance program.

(2) **FORMS.** All forms necessary for funding under this chapter may be acquired, at no charge, from the Department of Natural Resources, 101 South Webster Street, P. O. Box 7921, Madison, Wisconsin 53707-7921.

**NR 163.02 APPLICABILITY AND CROSS REFERENCING.** (1) **GENERAL.** This chapter applies to all applicants for and recipients of financial hardship assistance pursuant to s. 144.241(13), Stats. Compliance with the applicable requirements of this chapter and ch. NR 162 is a prerequisite to receiving financial assistance under s. 144.241(13), Stats. This chapter does not apply to assistance for stormwater or nonpoint source pollution abatement facilities under ss. 144.241 and 144.2415, Stats.

(2) **ADMINISTRATIVE OR SERVICE FEES.** Administrative or service fees under s. NR 162.24 may not be charged to hardship assistance recipients.

**NR 163.03 DEFINITIONS.** Definitions of terms used in ch. NR 162 apply to terms used in this chapter. In addition:

(1) "Commercial facility" means facilities that are used for retail stores, restaurants, office buildings, laundries and other private business and service establishments or similar enterprises.

(2) "Debt" means a liability for a capital project. It includes general obligation bonds, revenue bonds, promissory notes and special assessment bonds.

(3) "Financial hardship assistance funding list" means a list established each fiscal year that ranks in environmental priority order, based on the priority list established under s. 144.241(8e), Stats., projects eligible for financial hardship assistance under s. 144.241(13)(b), Stats.

(4) "Governmental facility" means public facilities, including facilities used for legislative, judicial, administrative and regulatory activities of federal, state and local governments.

(5) "Hardship fundable range" means those projects on the financial hardship assistance funding list which are projected to consume all available financial hardship present value subsidy for each fiscal year.

(6) "Hardship subsidy" means the amounts provided by the clean water fund under s. 144.241(13), Stats., to reduce the interest rate of a clean water fund loan to a rate below the tier rate and to provide grants.

(7) "Industrial facility" means nongovernmental or nonresidential facilities that are used for activities such as agriculture, forestry, fishing, mining, manufacturing, transportation, communications or providing services including electric, gas and sanitary services.

(8) "Institutional facility" means facilities that are used for social, charitable, religious and educational activities such as schools, churches, hospitals, nursing homes, penal institutions and similar uses.

(9) "Median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(10) "Prior wastewater debt service" means the principal and interest of debt incurred for a previous capital project which is related to the treatment works and is documented as incurred in the past.

(11) "Residential percentage" means the design for existing residential flow and loadings divided by the design for existing total flow and loadings. For initial determination of eligibility

for financial hardship assistance, the residential percentage will be based on application information and submitted plans and specifications. For final determination of eligibility for and amount of financial hardship assistance, the residential percentage will be based on approved plans and specifications and application information verified by the department.

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

(13) "Total annual charges" means the annual wastewater system costs, including operation, maintenance and replacement costs, clean water fund debt service, prior wastewater debt service, debt service for project costs ineligible for clean water fund funding and hookup fees owed another municipality.

**NR 163.04 TYPES OF FINANCIAL HARDSHIP ASSISTANCE.** The department may provide the following types of financial hardship assistance:

- (1) Loans with interest rates lower than the tier interest rates;
- (2) Grants not to exceed 70% of the eligible costs of the project.

**NR 163.05 ELIGIBILITY FOR FINANCIAL HARDSHIP ASSISTANCE.** (1) **ELIGIBLE MUNICIPALITIES.** Municipalities which meet the following criteria are eligible for financial hardship assistance:

(a) The median household income in the municipality is 80% or less of the median household income in this state.

(b) The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2% of the median household income in the municipality without assistance under s. 144.241(13), Stats.

(2) **ELIGIBLE PROJECTS.** Those projects described in s. NR 162.06 (1) are eligible for financial hardship assistance.

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

1. The municipality started or completed construction of the project prior to receiving financial hardship assistance and received a loan for the project from a source other than the department.

2. The municipality received a financial assistance agreement for a clean water fund loan at the tier rate for the project and:

a. The municipality was on a hardship funding list and did not receive financial hardship assistance for the entire project due to insufficient financial hardship present value subsidy, and

b. At the time of each application submittal, the municipality met the criteria described in sub. (1).



(b) A refinancing financial assistance agreement shall be executed within 5 years of the substantial completion of the project.

(c) 1. An applicant for refinancing shall meet the planning and design criteria and application requirements as established in this chapter and ch. NR 162 for clean water fund financing.

2. The department's annual funding policy and ch. NR 161 shall establish the funding priority for refinancing projects.

3. Refinancing shall be subject to the limitations of issuance and interim financing costs established in s. NR 162.07(3).

4. Reimbursement of previously paid project costs shall be in accordance with s. NR 162.13(1).

**NR 163.06 APPLICATION. (1) PROCEDURE.** Subject to sub. (3), financial hardship assistance applicants shall follow the procedure described in s. NR 162.09(1).

(2) **NOTICE OF INTENT TO APPLY.** Each municipality intending to apply for financial hardship assistance shall inform the department of its intent in accordance with s. NR 162.08.

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

(4) **CONTENTS OF APPLICATION.** An application for financial hardship assistance shall comply with the requirements of s. NR 162.09(3).

**NR 163.07 FUNDING LIST. (1) GENERAL.** The department shall establish a financial hardship assistance funding list in accordance with s. 144.241(13)(d), Stats., and the funding policy established in s. NR 162.05(1).

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

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

where:

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

AT is the annual debt service for a tier rate loan for below market eligible project costs.

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

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

W is the total remaining prior wastewater debt service of the municipality divided by 20 years, and the estimated annual debt service amortized over 20 years for project costs ineligible for clean water fund funding, such as hook-up fees owed another municipality and debt for lateral sewers.

R is the residential percentage.

MHI is the median household income in the municipality.

N is the number of residential users in the municipality.

(b) If S is greater than 2% and the municipality meets the criterion listed in s. NR 163.05(1)(a), the municipality is eligible for hardship subsidy and the project will be placed on the financial hardship assistance funding list. If S is 2% or less, the municipality is not eligible for hardship subsidy and may request a tier rate loan unless the municipality has already received a clean water fund loan for the project.

(3) **FUNDING LIST EFFECTIVE DATE.** The list established under sub. (1) is effective for the fiscal year beginning on July 1. If a municipality received a notice of financial hardship assistance commitment before the expiration of the list, and the requirements of s. NR 163.12(2) are met, the department may enter into a financial hardship assistance agreement with a municipality on the list after the expiration of the list.

**NR 163.08 ALLOCATION OF FUNDS.** Financial hardship assistance shall be allocated to those projects within the hardship fundable range in the order specified in s. 144.241(13)(e), Stats.

**NR 163.09 REQUIREMENTS AND CONDITIONS FOR RECEIVING FINANCIAL HARDSHIP ASSISTANCE.** (1) **REQUIREMENTS.** Before awarding financial hardship assistance for any project, the department shall determine that all of the applicable application requirements of s. NR 162.09 have been met and that sufficient documentation has been submitted to show that the applicant has complied, or will comply, with the financial assistance requirements listed in s. NR 162.10.

(2) **CONDITIONS.** Each financial hardship assistance agreement shall bind the recipient to the conditions listed in s. NR 162.15.

**NR 163.10 PROCEDURE FOR DETERMINING AMOUNT OF HARDSHIP ASSISTANCE.** (1) **GENERAL.** The type and amount of financial hardship assistance shall be determined at the time the financial hardship assistance agreement is awarded.

(2) **CALCULATION OF FINANCIAL HARDSHIP ASSISTANCE AMOUNT.** (a) The department may provide financial assistance in the form of a loan or a combination of loan and grant for eligible project costs for the amount specified in s. 144.241(13)(c), Stats. The municipality shall pay at least 30% of the project costs eligible for below-market interest rate. The interest rate for a financial hardship assistance loan on eligible tier project costs shall be no greater than the tier rate. The department may only provide grant funding to a municipality if it is necessary in order to bring the total annual charges per household down to 2% of the median household income.

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

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

$$A \div R = B$$

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

$$P \div 20 = D$$

$$D - C = H$$

where:

MHI is the median household income in the municipality.

N is the number of residential users in the municipality.

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

R is the residential percentage.

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

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

W is the total remaining prior wastewater debt service of the municipality divided by 20 years, and the estimated annual debt service amortized over 20 years for project costs ineligible for clean water fund funding, such as hook-up fees owed another municipality and debt for lateral sewers.

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

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

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

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

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

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

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

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

$$-C = \text{payment}$$

P = principal or present value  
20 = term

"Interest rate" means the discount rate at which the present value of the periodic payments (the Clean Water Fund loan payments) equals the Clean Water Fund loan amount.

c. If it is determined that the affordable interest rate for financial hardship assistance is greater than the appropriate tier rate, the tier rate shall apply.

(b) If portions of the project costs are only eligible for funding at the market interest rate, pursuant to s. NR 162.07(1)(b), then a composite interest rate shall be calculated for the project. The composite interest rate for a hardship project shall be computed as follows:

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

where:

HRC is the composite interest rate.

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

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

im is the clean water fund market interest rate.

$CT_3$  is the project costs eligible for clean water fund market rate funding under s. NR 162.07(1)(b).

**NR 163.11 OPERATION, MAINTENANCE AND REPLACEMENT COST ESTIMATES.** (1)

The maximum amount allowable for operation, maintenance and replacement cost estimates used in ss. NR 163.07(2) and 163.10(2) shall be the mean operation, maintenance and replacement costs, as obtained from a regression analysis of the operation, maintenance and replacement costs of previously funded clean water fund projects on population size, segregated by project type.

(2) The estimated operation, maintenance and replacement costs used for "O" under ss. NR 163.07(2) and 163.10(2)(a)1. shall be the operation, maintenance and replacement costs contained in the application and the approved user charge, respectively, or the maximum allowable amount derived under sub. (1), whichever is less.

(3) The department shall periodically update the operation, maintenance and replacement costs used under sub. (1) to reflect new data and inflation.

**NR 163.12 FINANCIAL HARDSHIP ASSISTANCE AGREEMENT.** (1) **NOTICE OF FINANCIAL HARDSHIP ASSISTANCE COMMITMENT.** The department may issue a notice of financial hardship assistance commitment to a municipality in the hardship fundable range upon the municipality's request and its compliance with the requirements in ss. NR 162.09 and 162.10.

(2) **EXECUTION OF FINANCIAL HARDSHIP ASSISTANCE AGREEMENT.** (a) The department may enter into a financial hardship assistance agreement with a municipality in the hardship fundable range if:

1. The requirements and conditions under s. NR 163.09 are met; and

2. The municipality has submitted a bid tabulation with a recommendation to the department for review and concurrence after the department's notice given under sub. (1).

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

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

**NR 163.13 FINANCIAL HARDSHIP ASSISTANCE DISBURSEMENTS.** (1) **GENERAL.** Disbursements shall be made in accordance with s. NR 162.17.

(2) **FORM OF DISBURSEMENTS.** Disbursements of financial hardship assistance shall first be made in the form of a loan, up to the amount identified in the financial hardship assistance agreement. Grant disbursements, if any, shall be made after all hardship loan disbursements are issued.

**NR 163.14 AMENDING FINANCIAL HARDSHIP ASSISTANCE AGREEMENTS.** (1) **ADDITIONAL FUNDING.** The department may provide additional funding in the form of a loan or grant for eligible costs incurred beyond the amount specified in the financial hardship assistance agreement. Subject to availability of hardship present value subsidy, the proportion of loan to grant in the original financial hardship assistance agreement shall be maintained for the amendment. If there is not sufficient hardship present value subsidy available, the loan shall be at the appropriate tier rate. Financial hardship assistance agreement amendments for additional project costs shall be implemented in accordance with s. NR 162.18.

(2) **REFINANCING.** Refinancing of a market interest rate loan for additional costs or amendments shall conform with the refinancing requirements of s. NR 163.05(3).

(3) **SALE OF HARDSHIP FINANCED TREATMENT WORKS.** The sale of clean water fund hardship financed treatment works may not take place without prior written approval from the department.

**NR 163.15 BREACH OF CONTRACT AND NONCOMPLIANCE.** The rules established in ss. NR 162.21 and 162.22 shall apply upon breach of contract or noncompliance by the recipient.

## Chapter NR 165

### CLEAN WATER FUND SMALL LOAN PROGRAM-INTEREST RATE SUBSIDIES

- NR 165.01 Purpose
- NR 165.02 Applicability and cross referencing
- NR 165.03 Definitions
- NR 165.04 Project eligibility
- NR 165.05 Cost eligibility
- NR 165.06 Interest rate subsidy
- NR 165.07 Intent to apply and application
- NR 165.08 Interest rate subsidy requirements
- NR 165.09 Interest rate subsidy agreement conditions
- NR 165.10 Requirements for a user charge system

- NR 165.11 Procurement
- NR 165.12 Interest rate subsidy payments
- NR 165.13 Financial management
- NR 165.14 Breach of contract and noncompliance
- NR 165.15 Termination

**NR 165.01 PURPOSE.** The purpose of this chapter is to establish rules under s. 144.241 (6) (b) 8., Stats., for the implementation and administration of the small loan program for an interest rate subsidy on loans issued by the board of commissioners of public lands for the planning, design and construction of treatment works with estimated costs of \$750,000 or less.

**NR 165.02 APPLICABILITY AND CROSS REFERENCING.** This chapter applies to all applicants for and recipients of an interest rate subsidy for planning, design and construction of treatment works with estimated costs of \$750,000 or less made pursuant to ss. 144.241 and 144.2415, Stats. Compliance with the requirements of this chapter and applicable provisions of ch. NR 162 is a prerequisite to receiving an interest rate subsidy under ss. 144.241 and 144.2415, Stats.

**NR 165.03 DEFINITIONS.** The following definitions are applicable to terms used in this chapter. Definitions of other terms are in ch. NR 162.

(1) "Amendment" means a change in the scope of the project resulting in an increase or decrease of project costs.

(2) "Board of commissioners of public lands" means the organization comprised of the secretary of state, state treasurer and the attorney general that operates under the authority of ch. 24, Stats.

(3) "Contractor" means a person or firm that agrees to furnish materials or performs services at a specified price.

(4) "Interest rate subsidy" means the amounts provided by the clean water fund under ss. 144.241 and 144.2415, Stats., to reduce the interest cost of loans provided by the board of commissioners of public lands.

**NR 165.04 PROJECT ELIGIBILITY. (1) ELIGIBLE PROJECTS.** A municipality may receive an interest rate subsidy for a project which is:

(a) A compliance maintenance project.

(b) Necessary to achieve substantial compliance with an enforceable requirement which was new or changed after May 17, 1988.

(c) Necessary to eliminate actual or imminent pollution of groundwater or surface water or threat to human health in unsewered areas within a municipality. Financial assistance may be provided only if the department determines that:

1. At least two-thirds of the initial flow for collection system, interceptor and individual system projects will be for wastewater originating from residences in existence on October 17, 1972;

2. There is a facility plan or other planning document for the project approved by the department; and

3. The unsewered municipality has executed an agreement under s. 66.30, Stats., with another municipality to receive, treat and dispose of wastewater if the unsewered municipality will be disposing of wastewater in the treatment works of another municipality.

(d) Necessary for the replacement or major rehabilitation of an existing sewer collection system and is necessary to maintain the total integrity and performance of the treatment works serving the community.

(e) The construction of individual systems serving one or more residences if the municipality will:

1. Own each individual system;
2. Be responsible for the proper installation, operation and maintenance of each individual system;
3. Have 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; access shall be evidenced by easements or covenants running with the land;
4. Establish a comprehensive program for the regulation, inspection, operation and maintenance of individual systems and for monitoring the impact of the systems on the groundwater. The department may require that the program include periodic testing of water from existing potable water wells and monitoring of aquifers in the area;
5. Comply with all other applicable requirements, limitations and conditions for publicly-owned treatment works projects funded under this chapter and ch. NR 162.

Note: The department may grant a variance to allow the individual system to be privately owned if the municipality can show that public ownership of the system is not feasible and that private ownership will not adversely affect the tax exempt status of clean water fund revenue bonds.

(2) **INELIGIBLE PROJECTS.** The following projects or portions thereof are not eligible to receive financial assistance under this chapter:

(a) Projects which are found ineligible for financing by the board of commissioners of public lands.

(b) Projects for a municipality that has failed to substantially comply with any of the conditions or requirements of the clean water fund program or a financial assistance agreement, or the terms of a federal or state grant used to pay the costs to plan, design or construct a treatment works.

(c) Connection laterals that transport wastewater from structures to municipally owned or individually owned wastewater systems.

(d) Hook up charges imposed by one municipality on another for hooking into a treatment plant or transport system to a treatment plant.

(e) Public sanitary sewers mains, individual systems and interceptors in unsewered communities which exclusively save development not in existence as of the date of the application.

NR 165.05 COST ELIGIBILITY. (1) **ELIGIBLE COSTS.** Allocable project costs which are reasonable and necessary are eligible for an interest rate subsidy. Eligible costs may include, but are not limited to:

- (a) Costs of salaries, benefits and expendable material the recipient incurs for the project;
- (b) Planning work directly related to the treatment works;
- (c) Sewer system evaluation and rehabilitation;
- (d) Costs of complying with ch. NR 150, including costs of public notices and hearings;
- (e) Preparation of construction drawings, specifications, estimates and construction contract documents;
- (f) Landscaping;
- (g) Removal, relocation, replacement or temporary provision of utilities, for which the recipient is legally obligated to pay;
- (h) Materials acquired, consumed or expended specifically for the project;
- (i) An inventory of laboratory chemicals and supplies;
- (j) Development and preparation of an operation and maintenance manual;
- (k) Costs for the development of water conservation plans, user charge system plans and sewer use ordinances under s. NR 162.11;
- (l) Project identification signs;
- (m) Start-up services for new treatment works, including the training of operating personnel and the preparation of curriculum and training material for operating personnel on the new equipment or processes funded under this chapter. The cost of routine and entry level training and training for operators to meet state certification requirements under ch. NR 114 is not an eligible cost;
- (n) A plan of operation;
- (o) Development of a municipal pretreatment or toxicity reduction program and construction of facilities to be used by the municipal treatment works in the programs, including monitoring equipment;

**Note:** This paragraph is intended to include any steps taken by a municipality to require the reduction or treatment of high strength, toxic or hazardous waste prior to discharge into the municipal wastewater treatment plant.

(p) Costs necessary to mitigate demonstrated direct, adverse physical impacts resulting from construction of the treatment works;

(q) The cost of safety equipment;



(r) On-site inspection during construction;

(s) Acquisition of land that will be used for storage of treated wastewater in land treatment systems before land application;

(t) Acquisition of land that will be used for composting or temporary storage of compost residues which result from wastewater treatment if the department has approved a program for use of the compost;

(u) Acquisition of land on which the treatment plant or lift stations will be located;

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

(w) The cost of equipment used for sampling and analysis of industrial discharges to municipal treatment works;

(x) Costs for value engineering studies or analyses performed during step 2;

(y) Professional, consultant and engineering services;

(z) Costs associated with financial audits;

(za) Costs of preparing the financial assistance application, including costs to conduct studies or investigations necessary to complete the application;

(zb) Indirect costs, only if the board of commissioners of public lands approves these costs for inclusion in the loan agreement.

(2) **INELIGIBLE COSTS.** Costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for an interest rate subsidy. Ineligible costs include, but are not limited to:

(a) Basin or areawide planning not related to the project;

(b) Bonus payments not legally required for completion of construction before a contractual completion date;

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

(d) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws;

(e) Costs outside the scope of the approved project;

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

(g) Site acquisition expenses, other than administrative and legal costs, for rights-of-way and easements;

(h) Costs for which payment has been or will be received under another federal or state program other than the board of commissioners of public lands;

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

(k) Costs of claims resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others;

(l) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a recipient participates in the selection, awarding or administration of a contract supported by the clean water fund and:

1. The official or employe, the official or employe's spouse or the official or employe's partner has an ownership interest in the firm selected for the contract; or

2. Any person identified in subd 1. who receives any contract, gratuity or favor from the award of the contract.

(m) Project costs incurred after the assistance agreement end date.

(n) Project costs determined to be ineligible for loan assistance by the board of commissioners of public lands.

**NR 165.06 INTEREST RATE SUBSIDY.** Interest rate subsidies shall be set in accordance with s. 144.241 (12) (c), Stats., and this section. Subsidies are not available for interest payments that were due the board of commissioners of public lands prior to the execution of an interest rate subsidy agreement with the department.

(1) **PROJECT COST TIERS.** Interest rate subsidies for projects or portions of projects shall be classified according to the following tier system:

(a) Tier 1 projects include compliance maintenance projects, new or changed limits projects, and sewage collection system replacement or rehabilitation projects.

(b) Tier 2 projects include unsewered projects meeting the requirements of s. NR 165.04(1)(c) and (e).

(2) **ESTIMATED MARKET INTEREST RATE.** Each year the department, in consultation with the department of administration, shall establish an estimated market interest rate as part of an annual funding policy established under ch. NR 162 for the fiscal year.

(3) **PROJECT INTEREST RATE.** (a) If all of the eligible costs of a project are classified under one of the tiers, the interest rate shall be the rate established in s. NR 162.14(2) for that tier. If a project contains eligible costs from one or more of the tiers, a composite rate shall be computed in accordance with sub. (4). Project costs shall be based on the final approved engineering design.

(a) The following methods, in the order listed, shall be used to estimate the total eligible costs associated with each tier:

1. If each eligible cost of the project can be allocated, based on its purpose, exclusively to any one of the tiers, the sum of the treatment costs allocable to each tier shall be used.

2. If all of the eligible costs of a project cannot be allocated to a particular tier, the cost of the eligible costs of the project shall be divided among the tiers based on the portion of the design flow of the project that is attributable to a tier.

(4) **COMPOSITE INTEREST RATE.** The composite interest rate shall be computed as follows:

$$RC = (RT_1)(TP_1) + (RT_2)(TP_2)$$

Where:

RC is the composite interest rate used to calculate the interest rate subsidy for the project.

RT<sub>1</sub> is the tier 1 interest rate.

TP<sub>1</sub> is the percentage of the project being subsidized by the clean water fund that is eligible for tier 1 rate under s. NR 165.04(1)(a), (b) and (d).

RT<sub>2</sub> is the tier 2 interest rate.

TP<sub>2</sub> is the percentage of the project being subsidized by the clean water fund that is eligible for the tier 2 rate under s. NR 165.04(1)(c) and (e).

Note: The RT<sub>1</sub> and RT<sub>2</sub> interest rates shall be based on the tier rates in effect at the time the Interest Rate Subsidy Agreement is executed.

(5) **DETERMINATION OF THE INTEREST RATE SUBSIDY AMOUNT.** (a) The project interest rate subsidy shall be annually calculated as follows:

$$IRS = I * E * ((RF - RC) / RF)$$

Where:

IRS is the interest rate subsidy provided in a given year to the recipient.

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

I is the amount of interest due on a recipient's state trust fund loan to the board of commissioners of public lands in a given year.

E is the percentage of loan disbursements made by the board of commissioners of public lands which are eligible for an interest rate subsidy under this chapter compared to the total amount of loan disbursements made by the board of commissioners of public lands.

(b) The department shall determine an estimated interest rate subsidy for a project at the time of the notice of interest rate subsidy commitment. The estimated project interest rate subsidy shall be based on the estimated market interest rate in effect at the time of the notice of interest rate subsidy commitment.

(c) Recipients that received a notice of interest rate subsidy commitment shall receive the interest rate subsidy based on the market interest rate in effect at the time the commitment is converted to an interest rate subsidy agreement.

**NR 165.07 INTENT TO APPLY AND APPLICATION.** (1) An intent to apply shall be filed in accordance with s. NR 162.08.

(2) An interest rate subsidy application shall be submitted to the department for each step 3 project. Step 3 applications submitted under this chapter may include step 1 and step 2 project costs which the applicant has previously incurred. If any information required has been furnished with an earlier application, the applicant may incorporate the information by reference and, if necessary, revise the information utilizing the previous application.

(3) Applicants shall submit the following as part of the interest rate subsidy application:

(a) If requested, copies of any executed engineering contracts for performance of any step 1, 2 or 3 portion of the project.

(b) A written statement from the receiving municipality accepting the discharge of wastewater from the applicant if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality.

(c) If requested, the municipality shall submit certification or other supporting documentation including audited financial statements.

(d) A copy of current plans and specifications.

(e) A copy of the facility plan approval letter.

(f) A listing of equipment and balance of cost covered by the replacement fund.

(4) The municipality shall sign an interest rate subsidy agreement for the project within 6 months after application submittal.

**NR 165.08 INTEREST RATE SUBSIDY REQUIREMENTS.** Before granting an interest rate subsidy, the department shall determine that all of the following requirements have been met:

(1) **FACILITIES PLANNING AND DESIGN REQUIREMENTS.** (a) Facilities planning and design requirements of chs. NR 110, 150 and 208 have been met.

(b) The environmental reviews applicable to the project have been met.

(2) **PRIORITY DETERMINATION.** The project is entitled to priority in accordance with ch. NR 161, as applicable.

(3) **FUNDING CAPABILITY.** The applicant has the legal, institutional, managerial and financial capability to insure adequate construction, operation and maintenance of the treatment works throughout the applicant's jurisdiction.

(4) **PERMITS.** The applicant has or has applied for, the permit or permits as required by ch. 147, Stats.

(5) **OPERATION AND MAINTENANCE PROGRAM.** The applicant has made satisfactory provision to assure the efficient operation and maintenance of the treatment works.

(6) **USER CHARGE SYSTEMS AND SEWER USE ORDINANCES.** If, after bidding the step 3 project, the entire project costs are greater than \$750,000, a user charge system and sewer use ordinance shall be approved by the department as outlined in s. NR 162.11 before an interest rate subsidy agreement will be awarded for project costs up to \$750,000.

(7) **WATER CONSERVATION PROGRAM.** The applicant has submitted an approvable plan and schedule for implementing the flow reduction measures deemed to be cost-effective in accordance with s. NR 110.09 (2) (k).

(8) **DEPARTMENT OF ADMINISTRATION REQUIREMENTS.** The department of administration has determined that the municipality can meet the terms and conditions for receiving financial assistance under ch. Adm. 35 and s. 144.2415, Stats.

(9) APPLICATION. The applicant shall submit an application to the board of commissioners of public lands and receive application approval from the attorney general's office for the costs associated with the project.

NR 165.09 INTEREST RATE SUBSIDY AGREEMENT CONDITIONS. Each interest rate subsidy agreement shall bind the recipient to the following conditions:

(1) MUNICIPAL OBLIGATION. The board of commissioners of public lands shall determine the type of municipal obligation which is required for the repayment of their financial assistance.

(2) INELIGIBLE CONSTRUCTION COST. The recipient shall pay the costs of planning, design and construction which are ineligible for a loan from the board of commissioners of public lands.

(3) EROSION CONTROL DURING CONSTRUCTION. The recipient shall provide construction site erosion control in accordance with the design criteria, standards and specification outlined in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November, 1993 Revision. WDNR publication WR-222 is incorporated by reference in ch. NR 162.

(4) CONSTRUCTION INSPECTION. The recipient shall provide and maintain adequate construction inspection of the project to insure that the construction conforms with the approved plans and specifications.

(5) SEPTIC TANK HAULERS. The recipient may not prohibit the hauling and discharge of septage from septic tanks or holding tanks within the recipient's service area to the treatment facility, except as provided under s. 144.08, Stats. The recipient may regulate the time, rate, location and quantity of septage discharges. The disposal of septage and leachate and other wastes at the treatment works facility shall be subject to equitable user charges.

(6) ACCESS. The recipient shall insure that department representatives will have access to the project, including construction activities, whenever it is in preparation or progress. The recipient shall allow the department access to records of the contractor and subcontractors which are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies and transcriptions. The recipient shall also allow the department of administration access to records for audits.

(7) FINAL INSPECTIONS. The recipient shall notify the department of the completion of the project. The department shall cause final inspection to be made within 60 days of the receipt of the notice.

(8) PROJECT CHANGES. No approval of a project change shall obligate the state of Wisconsin to increase the amount of the interest rate subsidy payments made under an interest rate subsidy agreement.

(9) REDUCED PAYMENTS. The department of administration shall reduce interest rate subsidy payments to a recipient based on the interest charged by the board of commissioners of public lands on the principal balance outstanding on the recipient's loan and as established in the interest rate subsidy agreement.

(10) MBE/WBE REPORTING REQUIREMENTS. The recipient shall supply the department with documentation of any MBE/WBE utilization of the project.

**NR 165.10 REQUIREMENTS FOR A USER CHARGE SYSTEM.** (1) Each recipient shall establish a financial management system that accounts for revenues generated and expenditures for equipment replacement.

(2) Each recipient shall establish a user charge system that generates sufficient revenue to pay for equipment replacement.

(3) The user charge system shall be incorporated in one or more municipal official enactments or other appropriate authority.

(4) Implementation of the user charge system.

(a) The recipient shall maintain records as are necessary to document compliance with this section.

(b) The department may review a recipient's user charge system to assure that it continues to meet the requirements of this section.

(5) If, after bidding the step 3 project, the entire project costs exceed \$750,000, the recipient shall meet the user charge requirements contained in s. NR 162.11.

**NR 165.11 PROCUREMENT.** (1) **APPLICABILITY.** Procurement of professional services and planning, design or construction contracts by recipients under this chapter shall be in accordance with state and local law.

(2) **PROFITS.** Only fair and reasonable profits may be earned by contractors under an interest rate subsidy agreement. Profits are presumed to be reasonable if either the board of commissioners of public lands has committed or disbursed funds or if they are included in a formally advertised, competitively bid contract.

(3) **RECIPIENT RESPONSIBILITY.** The recipient is responsible for the administration and successful completion of the project for which an interest rate subsidy is awarded in accordance with sound business judgment and good administrative practice under state and local laws. The department is not responsible for the subsidy of added costs resulting from defects in the approved plans, design drawings and specifications or other subagreement documents.

(4) **UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.** Recipients are encouraged to utilize minority-owned and women-owned businesses to allow these sources the maximum feasible opportunity to compete for engineering contracts and construction contracts to be performed utilizing assistance from the clean water fund. Minority- and women-owned businesses should be utilized to the extent possible as sources for supplies and services. The recipient shall report any minority- or women-owned business utilization to the department.

Note: Municipalities receiving funding from the clean water fund under ch. NR 162, other than interest rate subsidies, must comply with different minority- and women-owned business requirements. Refer to ch. NR 162 for guidance.

(5) **FORCE ACCOUNT WORK.** An interest subsidy may be approved for force account work if the work is directly related to the project and is approved by the board of commissioners of public lands.

(6) **LIMITATION ON SUBAGREEMENT AWARD.** No subagreement may be awarded to any person or organization which does not operate in conformance with state and federal civil rights, equal opportunity and affirmative action laws.

(7) **CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs.

(b) Reasonableness reviews shall, at a minimum, consist of a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. Consideration shall be given to completeness of scope of work, the recipient's procurement and negotiation process associated with the costs, any conditions unique to the project and all other factors impacting costs.

(c) Architectural or engineering services contracts shall indicate a maximum estimated cost for a defined scope of work which cannot be exceeded without a negotiated contract amendment prior to incurring additional costs.

(8) **CONSTRUCTION CONTRACTS OF RECIPIENTS.** (a) Applicability. This subsection applies to construction contracts awarded by recipients for any step 3 activity.

(b) Negotiation of contract change orders. Recipients are responsible for the negotiation of construction contract change orders. During negotiation with the contractor the recipient shall secure a fair and reasonable price for the required work.

**NR 165.12 INTEREST RATE SUBSIDY PAYMENTS.** (1) **GENERAL.** Upon the department's approval, the department of administration may provide an interest rate subsidy for the eligible portion of project costs incurred within the scope of an approved project. The department shall determine conformance with the terms and conditions of the interest rate subsidy agreement before interest rate subsidy payments are made.

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

(3) **FINAL SUBSIDY PAYMENT.** Prior to the final subsidy payment established in the interest rate subsidy agreement, the department may complete a final inspection of the project and shall certify in writing to the department of administration the recipient's compliance with all applicable requirements of this chapter and the interest rate subsidy agreement.

(4) **SUBSIDY PAYMENT ADJUSTMENTS DUE TO PREPAYMENTS.** An adjustment of the interest rate subsidy may be made by the department of administration if the recipient prepays all or a portion of the principal established in the loan agreement issued by the board of commissioners of public lands for the project.

**NR 165.13 FINANCIAL MANAGEMENT.** The recipient is responsible for:

(1) The maintenance of project accounts in accordance with generally accepted government accounting standards.

(2) The maintenance of a financial management system which conforms with the requirements, terms and conditions of the interest rate subsidy agreement.

- (3) Compliance with any federal requirements for cash management and arbitrage.
- (4) Any other requirements of the board of commissioners of public lands.

**NR 165.14 BREACH OF CONTRACT AND NONCOMPLIANCE.** The department may rescind an interest rate subsidy agreement or take other actions pursuant to s. NR 162.21 if the municipality fails to comply with the terms and conditions of the agreement or the department may seek relief in the event of noncompliance pursuant to s. NR 162.22.

Note: The department of administration may under s. 144.2415(11)(b), Stats., seek recovery of some or all financial assistance payments by deducting those amounts from any state payments due to a municipality, or by adding a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60, Stats.

**NR 165.15 TERMINATION.** The department shall terminate the interest rate subsidy agreement, if the recipient terminates its loan agreement with the board of commissioners of public lands or prepays all of the principal of the loan prior to the end of the term of the loan agreement. The department of administration shall determine the amount and date of payment of any subsidy due either party.



The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 28, 1996.

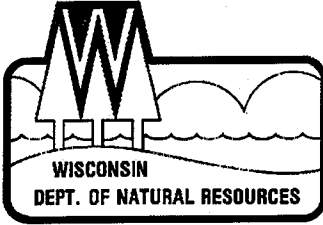
The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin May 6, 1996

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)



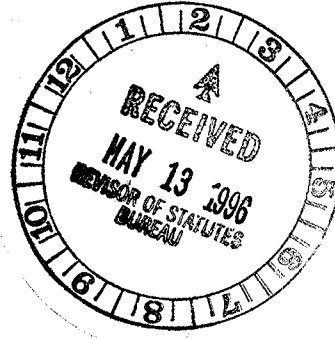
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
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May 6, 1996

Mr. Gary L. Poulson  
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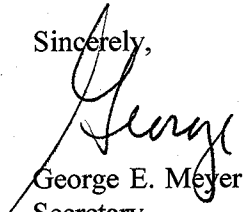


Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. EL-42-95. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

  
George E. Meyer  
Secretary

Enc.