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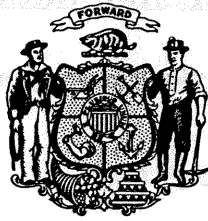
LCRC
FORM 2

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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-089

AN ORDER to repeal chapters NR 161 and 163; and to repeal and recreate chapter NR 162, relating to clean water fund program financial assistance

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-09-00 RECEIVED BY LEGISLATIVE COUNCIL.
06-05-00 REPORT SENT TO AGENCY.

RS:JES:jal;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

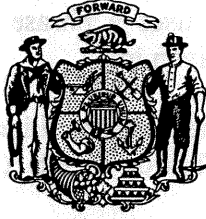
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CLEARINGHOUSE RULE 00-089

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

- a. Section NR 162.03 (3) (d) and (e) identify projects that are not eligible to receive financial assistance under ch. NR 162. Since the projects in pars. (d) and (e) are not listed in s. 281.58 (8) (a), Stats., the authority for the department to exclude these projects is not apparent.
- b. Under s. NR 162.08 (3) (j), a user charge system must be "based on actual or estimated use." If this requirement is not meant to conflict with the exemption for user charge systems authorized under s. 281.58 (14) (b) 7., Stats., a note describing the statutory exemption could be added to the rule.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. SECTION 1 should repeal chs. NR 161 to 163. SECTION 2 should create ch. NR 162.
- b. Since the department has divided ch. NR 162 into subchapters, the entire chapter should be placed in subchapters. Sections NR 162.001 to 162.003 are not in a subchapter.
- c. Notes should not include substantive requirements and are not part of the substantive provisions of the rule. [See s. 1.09 (1), Manual.] As such, the department should review all of the notes in the rule to ensure that they do not include substantive requirements. See, for example, the notes following ss. NR 162.003 (9) and (76), 162.04 (3) (c) 3. and 162.11 (2) (b) 3.

d. The definitions in s. NR 162.003 which are identical to statutory or other administrative code definitions should use a consistent format. For example, s. NR 162.003 (16) uses the phrase "has the meaning designated in;" s. NR 162.003 (27) uses the phrase "has the meaning in;" and s. NR 162.003 (29) uses a phrase "has the meaning specified in." The appropriate phrase is "has the meaning given in."

e. Since the definition of "median household income" in s. NR 162.003 (36) repeats the statutory definition of this term, the definition in sub. (36) should cross-reference the statutory definition.

f. The preferred drafting style is to avoid the use of "thereof." For example, in s. NR 162.003 (54) (b) and (c), the preferred style would be to refer to either "the department's agent" or "its agents." See also s. NR 162.32 (8).

g. To avoid ambiguity and facilitate any future amendments to the rule, lists of items should be drafted in the standard format that includes the use of "following" in the introductory clause to the list, delineation of whether the list is exclusive or inclusive through the use of terms such as "any of" versus "all of" in the introductory clause and ending each item in the list with a period. This format was not followed in numerous lists in the rule, including lists in ss. NR 162.001 (intro.), 162.003 (3) 1., (41) and (67), 162.01 (intro.), 162.15 (1), 162.18 (1), 162.19 and 162.30 (3) (b) 2.

h. Since the statutes use the phrase "storm water" rather than the single word "stormwater," the rule should also use "storm water." See s. NR 162.03 (1) (d) (intro.) and 1.

i. The department should review the entire rule and remove any redundant phrases. See, for example, the inclusion of "newly" before "established" in s. NR 162.003 (42) and "but are not limited to" after "include" in s. NR 162.04 (1) (a) (intro.) and (b) (intro.).

j. If the department uses an acronym in the rule, then the acronym must be defined and used consistently. [See s. 1.01 (8) Manual.] The rule uses the acronyms "IRS" and "BOD" which are not defined in s. NR 162.003. See s. NR 162.06 (4) and the note following s. NR 162.04 (3) (c) 3.

k. In s. NR 162.06 (3), par. (c) has a title and all other paragraphs in sub. (3) do not. Either all of the paragraphs in sub. (3) should have a title or none should. [See s. 1.05 (1), Manual.] Similarly, in s. NR 162.08, subs. (1) and (2) have titles, and subs. (3) to (11) do not.

l. In s. NR 162.08 (3) and (9), the paragraphs should begin with par. (a). [See also s. NR 162.31.]

m. In s. NR 162.09 (1), the phrase "is responsible for the administration and successful completion of" should be replaced by the phrase "shall administer and successfully complete."

n. The text preceding sub. (1) in s. NR 162.11 should be either redrafted to be an introduction or placed within a subsection. [See s. 1.03 (8), Manual.]

- o. Section NR 162.20 contains two subsections numbered as “sub. (1).”
- p. The references to pars. (a) to (c) in s. NR 162.31 (3) (intro.) do not conform to standard drafting style. [See s. 1.07 (2), Manual.] Also, since the text of sub. (3) is not an introduction to a list, it should not end with a colon. Also, par. (a) does not exist.
- q. The text of the rule should not contain parentheses. [See s. 1.01 (6), Manual.] See the use of parentheses in the definition of “interest-rate” in s. NR 162.47 (2) (a) 2. b.
- r. A rule should use “shall” to denote a mandatory or absolute duty or directive and “may” to denote an optional or permissive privilege, right or grant of discretionary authority. Use of “will” should be avoided. [See s. 1.01 (2), Manual.] This drafting style was not followed, for example, in ss. NR 162.003 (6) and 162.04 (3) (a) and (4).

4. Adequacy of References to Related Statutes, Rules and Forms

- a. The analysis accompanying the rule cites s. 281.58, Stats., as authorizing rule-making. This reference is unduly broad. The specific provisions within s. 281.58, Stats., that authorize rule-making, including s. 281.58 (2) and (13) (cm), Stats., should be cited.
- b. The analysis accompanying the rule cites s. 281.59, Stats., as being interpreted by the rule. This reference is unduly broad, as parts of s. 281.59 are administered by the Department of Administration and s. 281.59 (3m) and (3s), Stats., do not relate to the clean water fund program. Also, if the department is interpreting s. 1.13, Stats., under s. NR 162.04 (1) (b) 7., then s. 1.13, Stats., should be listed in the analysis as a statute being interpreted by the rule.
- c. The references in the last paragraph in the analysis accompanying the rule are broad. For example, the reference to “s. 281.58, Stats.” should be to “s. 281.58 (7) (b) 5., Stats.”
- d. Section NR 162.07 (1) should include a statutory citation.
- e. The rule incorporates standards by reference. See s. NR 162.12 (1) (m). If this standard was not included in the prior versions of ch. NR 161, 162 or 163 that are repealed by this rule, then consent for incorporation of the standard must be obtained from the Revisor of Statutes and the Attorney General pursuant to s. 227.21 (2) (a), Stats. In this case, the analysis accompanying the rule should, but does not, indicate that this consent has been given either prior to this rule promulgation or concurrently with this rule promulgation.
- f. The internal cross-reference at the end of s. NR 162.08 (1) should be to “this subsection” rather than “sub. (1).”
- g. The cross-reference to s. NR 162.12 (1) (k) in s. NR 162.07 (6) does not appear to relate to the content in sub. (6), as s. NR 162.12 (1) (k) does not relate to the operation or maintenance of a treatment works or structural urban BMP. Is this cross-reference correct?

h. Section NR 162.13 (3) refers to compliance with “any U.S. Treasury requirements for maintaining the tax-exempt status of the bonds sold to the clean water fund program.” Can the department provide a more specific reference to these requirements?

i. The reference in s. NR 162.14 (3) (b) to final project close-out requirements “outlined in the financial assistance agreement” is vague. Can the department provide a specific reference to a financial assistance agreement condition in s. NR 162.12?

j. The references to chs. 19 and 227, Stats., in ss. NR 162.16 (2) and 162.17 (1) are too broad, as these chapters contain substantive provisions not pertinent to the subject matter in the rule in which they are referenced. The department should provide more specific references.

k. The U.S. Code reference should be used for citations to a federal law. [See s. 1.07 (3) (a), Manual.] This style was not followed in the reference to the Federal Single Audit Act in s. NR 162.17 (4).

l. The reference to penalties provided in ch. 281, Stats., in s. NR 162.19 (2) is vague. The department should reference the specific penalty provisions that may apply under ch. 281, Stats.

m. In s. NR 162.30 (2) (c) 3. c., the notation “NR” should precede the cross-reference.

n. The department should identify where the reader of the rule may obtain the list of “303(d) listed waterbodies” referenced in s. NR 162.30 (4).

o. In s. NR 162.40 (1), the references “ch. NR 162” and subch. III” should be replaced by the references “this chapter” and “this subchapter,” respectively.

p. The reference in s. NR 162.42 (3) (b) 3. to “reimbursement regulations of the U.S. Treasury” is vague. The department should be more specific.

q. The reference in s. NR 162.43 (3) to s. NR 162.06 (2) (a) and (c) is in error as s. NR 162.06 (2) does not contain any paragraphs. Also, the reference in s. NR 162.43 (3) to s. 281.58 (9) (d) and (f), Stats., is in error as pars. (d) and (f) relate to the collection of administrative and service fees, and s. 281.58 (9) (d), Stats., exempts applicants for hardship financial assistance from these fees.

r. The reference to s. 281.58 (9) (a) to (d) and (f), Stats., in s. NR 162.43 (3) should include “Stats.” at the end of the reference.

s. The reference in s. NR 162.44 (2) (b) should be to s. NR 162.42 (1) (b) rather than s. NR 162.42 (1) (a).

t. The references to s. NR 162.45 (2) in s. NR 162.48 (1) and (2) are in error as s. NR 162.45 does not contain any subsections.

u. All references to provisions of ch. 66, Stats., should be reviewed in light of the enactment of 1999 Wisconsin Act 150.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis accompanying the rule needs to be more elaborate. It should contain sufficient details to enable the reader to understand the content of the rule. The format of the rule is to repeal and recreate existing chapters in the administrative code and the text of the rule does not reveal the changes made in existing code. The analysis should summarize the modifications that are made to existing rules to better reflect current policies and procedures and provide further clarity. The analysis should also identify if the rule is inconsistent with any federal requirement applicable to the clean water fund financial assistance program cited in s. 281.58 or 281.59, Stats.

b. In the second paragraph in the analysis accompanying the rule, "to" should be inserted after the second "related."

c. Since s. NR 162.001 establishes three purposes of ch. NR 162, the introduction to this section should be written in the plural, "The purposes of ch. NR 162 are to:".

d. The references to paragraphs in s. NR 162.003 (25) and (53) are missing the subsection in s. NR 162.11 that contains the cited paragraphs. Similarly, the reference to "an interest rate specified in s. NR 162.11" in s. NR 162.003 (26) is incomplete. Which of the five interest rate categories identified in s. NR 162.11 (1) does the department intend to reference in sub. (26)?

e. In s. NR 162.003 (37) (a), it appears that the word "resident" should be replaced by the word "residence."

f. The reference in s. NR 162.04 (4) should be to "sub. (3) (c)" rather than "sub. (3)."

g. In s. NR 162.003 (8), "an" should precede "effluent."

h. The list of activities identified in s. NR 162.003 (19) as "any activity listed in sub. . . (46)" is vague, as sub. (46) contains a definition of "performance standards" and does not list any activities. Can the department be more specific?

i. Definitions should be drafted in the singular rather than the plural, and a singular subject and singular predicate should be used in each sentence containing the definition. The department should review all of the definitions in s. NR 162.003 to ensure that the predicates in the definitions appropriately match the subject. See, for example, s. NR 162.003 (20), (28), (31) and (42).

j. Since under s. 281.58 (13) (d), Stats., the department must establish a financial hardship assistance funding list that ranks projects in municipalities that are eligible for state or

federal financial hardship assistance, should “and” in the reference to “s. 281.58 (13) (b) and (be), Stats.” in s. NR 162.003 (23) be replaced by “or”?

k. To improve the clarity of definitions that contain two sentences, the second sentence should repeat the term being defined rather than use a reference such as “the term” or “it.” See, for example, s. NR 162.003 (34) and (44).

l. The department should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule:

- (1) “Useful business function” in s. NR 162.003 (37) (b).
- (2) “Designed figure for total flow” in s. NR 162.003 (59). If this term is the same as the defined term “design flow,” then “design flow” should be used in sub. (59).
- (3) “Annual funding policy” in s. NR 162.02 (1). Does this policy cover hardship financial assistance under subch. III in ch. NR 162? Section NR 162.02 (1) does not reference any provision in subch. III but s. NR 162.44 (1) references this policy.
- (4) “Enforceable wastewater requirement” in s. NR 162.03 (1) (b) and “enforceable requirement” in s. NR 162.30 (1) (b).
- (5) “Indirect project costs” in s. NR 162.04 (1) (a) 30.
- (6) “Toxic pollutants” and “high strength waste” in s. NR 162.08 (3) (h).

m. Since the definition of “municipality” in s. NR 162.003 (40) is based upon identifying types of political entities and not their governing bodies, the last phrase in this definition should refer to “any federally recognized American Indian tribe or band” rather than “any federally recognized tribal governing body.” See also the use of “federally recognized tribal governing body” in s. NR 162.42 (1) (a).

n. The definition of “parallel cost ratio” in s. NR 162.003 (45) is not clear. A ratio implies specification of a numerator divided by a denominator. These terms are not evident in this definition.

o. The department should review the clarity of the definition of “project” in s. NR 162.003 (51). The article preceding “project assign” should be “a” rather than “the.”

p. Rules should be drafted in the active voice. [See s. 1.01 (1), Manual.] The department should review the entire rule and redraft provisions that are in the passive voice. For example, since the determination in s. NR 162.003 (65) is written in the passive voice, it is not clear if a municipality or the department will be making this determination. Furthermore, if these determinations are project specific, then this definition contains a substantive provision

that should be placed in the text of the rule and not in a definition. [See s. 1.01 (7) (b), Manual.] Other examples of provisions in the passive voice are ss. NR 162.43 (5) and 162.49 (3).

q. Section NR 162.02 (2) is not clear. This subsection refers to the Legislature authorizing present value below the percentage specified in s. 281.58 (9m), Stats., but sub. (9m) does not contain any provision relating to the Legislature specifying any percentage. Also, if "present value" in sub. (2) is the same as "present value subsidy," as defined in s. NR 162.003 (48), then the defined term should be used. Otherwise, "present value" should be clarified.

r. In s. NR 162.04 (2) (f), "or an" should be substituted for the last comma.

s. Under s. NR 162.04 (2) (m), operation expenses of the treatment works on structural urban BMP are ineligible costs. Section NR 162.04 (2) (intro.) states that "costs not directly associated with or not necessary for the construction or operation of an eligible project are not eligible for financial assistance." Subsection (2) (intro.) implies that operation costs that are directly associated with an eligible project are eligible for financial assistance which conflicts with the prohibition in sub. (2) (m). The department should review these provisions to ensure that they do not conflict.

t. The second sentence in s. NR 162.05 (1) could be read to *not* establish a deadline for the filing of a notice of intent to apply for funding if the application for financial assistance will be submitted at any time other than within the following fiscal year. If the department intends to require this notice by December 31 in the year preceding the fiscal year in which the application will be made, then this sentence should be redrafted. In addition, the sentence would be clearer if it was drafted in the active voice.

u. The reference to "this requirement" in s. NR 162.05 (2) and (3) is vague. Is "this requirement" the requirement to file a notice of intent to apply for funding specified in s. NR 162.05 (1), the requirement to file the notice by the date specified in s. NR 162.05 (1), the requirement to submit the notice on a form provided by the department specified in s. NR 162.05 (1) or a different requirement?

v. In s. NR 162.07 (9) (d), the word "A" should begin subd. 7.

w. In s. NR 162.08 (2) (c), the last sentence should begin with the phrase: "In this paragraph, "user" means."

x. In s. NR 162.07 (5) (d), a comma should be inserted after the word "bid."

y. The word "EFFICTIVE" in the title in s. NR 162.15 (4) should be "EFFECTIVE."

z. Section NR 162.18 (1) (intro.) refers to a breach of contract by the recipient but does not identify the contract that is being breached. Is this contract the financial assistance agreement? A similar ambiguity exists in the unqualified reference to a contract in s. NR 162.53.

aa. In s. NR 162.30 (7), "and" should be substituted for the last comma.

ab. Section NR 162.42 (1) (a) 1. refers to a municipality that is a "census designated place." Since the definition of "municipality" in s. NR 162.003 (40) does not include a "census designated place," for s. NR 162.42 (1) (a) 1. to be consistent with this definition, the definition should be modified to include this type of municipality. Also, as necessary to convey the plain meaning of subd. 1., "census designated place" should be defined.

ac. In the first sentence in s. NR 162.45, "the" should be inserted before the first "hardship."

ad. The formula for computing the total maximum hardship grant under s. NR 162.47 (2) (a) 1. b. is not clear. How is "H (20)" computed?

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

The Natural Resources Board proposes an order to repeal chs. NR 161, 162, and 163 and recreate ch. NR 162 relating to Clean Water Fund Program financial assistance.

CF-XX-XX

Analysis Prepared by Department of Natural Resources

Statutory Authority: ss. 227.11(2) and 281.58 Stats. *← Based + usin*

Statutes Interpreted: ss. 281.58 and 281.59 Stats. *← All of it? (w/ DOR)*

The department administers the Clean Water Fund Program under existing chapters NR 161, 162, 163, and 165. Chapter NR 161, 162, and 163 are proposed to be repealed and recreated as ch. NR 162. Currently, ch. NR 162 contains the general requirements for the Clean Water Fund Program, ch. NR 161 is the basis for scoring projects to establish a priority funding list, and ch. NR 163 is the basis for determining and implementing hardship financial assistance for eligible Clean Water Fund Program applicants. Combining these 3 chapters into one administrative chapter enhances clarity and convenience in locating the requirements for the Clean Water Fund financial assistance. Additionally, modifications have been made to better reflect current policies and procedures and to provide further clarity. Chapter NR 165 which deals with the Clean Water Fund Small Loan Program is not being changed.

In addition, pursuant to 1999 Wisconsin Act 9, language related to capital cost loans and language related planning and design only projects is being deleted.

Also, pursuant to 40 CFR Part 35 and s. 281.58, Stats., projects for the treatment of nonpoint source pollution and urban stormwater runoff are now eligible for financial assistance. The proposed changes to ch. NR 162 allow these projects to be ranked with other treatment works projects and to be considered for funding under the Clean Water Fund Program.

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1 Section 1. Chapters NR 161, 162, and 163 are repealed and ch. NR 162 is recreated
2 to read:

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5 **Chapter NR 162**
6 **CLEAN WATER FUND PROGRAM**
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- 8
9 NR 162.001 Purpose.
10 NR 162.002 Applicability.
11 NR 162.003 Definitions.

12
13 **SUBCHAPTER I – FINANCIAL ASSISTANCE**

- 14 NR 162.01 Types of financial assistance available.
15 NR 162.02 Annual funding policy, project priority list, and funding list.
16 NR 162.03 Project eligibility.
17 NR 162.04 Cost eligibility.
18 NR 162.05 Notice of intent to apply.
19 NR 162.06 Application.
20 NR 162.07 Financial assistance requirements.
21 NR 162.08 Requirements for a user charge system and sewer use ordinance.
22 NR 162.09 Procurement.
23 NR 162.10 Reimbursement and refinancing.
24 NR 162.11 Loan interest rate.
25 NR 162.12 Financial assistance agreement conditions.
26 NR 162.13 Financial management.
27 NR 162.14 Financial assistance disbursements.
28 NR 162.15 Amendments to a financial assistance agreement.
29 NR 162.16 Disputes.
30 NR 162.17 Records and record retention.
31 NR 162.18 Breach of contract.
32 NR 162.19 Noncompliance.
33 NR 162.20 Variances.
34 NR 162.21 Administrative fees.

35
36 **SUBCHAPTER II – PRIORITY SCORING AND RANKING SYSTEM**

- 37 NR 162.30 Project scoring system.
38 NR 162.31 Project priority score.
39 NR 162.32 Procedure for determination and reevaluation of project priority score.
40 NR 162.33 Project ranking system.

41
42 **SUBCHAPTER III – HARDSHIP FINANCIAL ASSISTANCE**

- 43 NR 162.40 Applicability.
44 NR 162.41 Types of hardship financial assistance.
45 NR 162.42 Eligibility for hardship financial assistance.
46 NR 162.43 Application.
47 NR 162.44 Funding list.
48 NR 162.45 Allocation of funds.

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- 1 NR 162.46 Requirements and conditions for receiving hardship financial assistance.
- 2 NR 162.47 Procedure for determining amount of hardship financial assistance.
- 3 NR 162.48 Operation, maintenance, and replacement cost estimates.
- 4 NR 162.49 Hardship financial assistance agreement.
- 5 NR 162.50 Hardship financial assistance disbursements.
- 6 NR 162.51 Funding additional project costs.
- 7 NR 162.52 Sale of hardship financed treatment works.
- 8 NR 162.53 Breach of contract and noncompliance.

2-9-2000
2-13

10 **NR 162.001 Purpose.** The purpose of ch. NR 162 is to:

- 11 (1) Establish rules under ss. 281.58 and 281.59, Stats., for the
- 12 implementation and administration of a financial assistance program for the
- 13 planning, engineering design, and construction of treatment works and structural
- 14 urban BMPs.
- 15 (2) Establish a priority system for the distribution of clean water fund
- 16 program financial assistance as provided in s. 281.58, Stats.
- 17 (3) Establish rules under s. 281.58 (13), Stats., for the implementation and
- 18 administration of hardship financial assistance.

19 **Note:** All forms necessary for funding under ch. NR 162 may be acquired, at
20 no charge, from the Department of Natural Resources, Bureau of Community
21 Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin
22 53707-7921.

23
24 **NR 162.002 Applicability.** Chapter NR 162 applies to all applicants and
25 recipients of funding for the planning, design and construction of treatment works
26 and structural urban BMPs made pursuant to ss. 281.58 and 281.59, Stats.
27 Compliance with the applicable requirements of ch. NR 162 is a prerequisite to
28 receiving financial assistance under ss. 281.58 and 281.59, Stats.

29
30 **NR 162.003 Definitions.** In ch. NR 162:

- 31 (1) "Applicant" means any municipality that applies for financial assistance
- 32 under ss. 281.58 and 281.59, Stats.
- 33 (2) "Approval" means the written approval of the department.
- 34 (3) "Breach of contract" means the failure of the municipality to comply
- 35 with:

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1 (a) The terms and conditions of the financial assistance agreement or
2 hardship financial assistance agreement.

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

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

7 (5) "Clean water fund program" means the program established under ss.
8 25.43, 281.58 and 281.59, Stats., for the purpose of providing financial assistance to
9 municipalities for the planning, engineering design and construction of treatment
10 works and structural urban BMPs.

11 (6) "Closeout date" means the date the department records the project as
12 being completed and after which no further disbursements will be made under the
13 financial assistance agreement.

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

17 (8) "Compliance maintenance" means the program established and
18 regulated under ch. NR 208, to prevent a permittee under ch. 283, Stats., from
19 exceeding ^{an} effluent limitation contained in a permit issued under ch. 283, Stats.

20 (9) "Connection lateral" means a sewer service line which connects a
21 residence, commercial establishment, institutional or industrial user to a municipal
22 sewage collection system or individual system.

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

26 (10) "Construction" means any of the following:

27 (a) Erecting, building, altering, remodeling, improving or extending a
28 treatment works or structural urban BMP.

29 (b) Purchasing a package wastewater treatment system.

30 (c) Remediation of illicit discharges to a portion of a municipal stormwater
31 conveyance system draining to an urban runoff project.

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

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

6 (13) "Department" means the department of natural resources.

7 (14) "Design flow" means the average annual flow or average daily flow
8 specified in an approved facilities plan, the flow specified in a WPDES permit, or
9 the flow required to meet performance standards.

10 (15) "Dilution ratio" means the quotient obtained by dividing the 7-day
11 Q10 of the surface waters receiving the wastewater discharge, in cubic feet per
12 second (cfs), by the design flow of the wastewater treatment works, in million
13 gallons per day (mgd).

14 Dilution ratio = $\frac{7\text{-day Q10 of receiving water in cfs}}{\text{design flow in mgd} \times 1.55 \text{ cfs per mgd}}$
15

16 (16) "Effluent limitation" has the meaning designated in s. 283.01 (6),
17 Stats.

18 **Note:** Flow rates and flow volumes are considered to be physical
19 constituents restricted by WPDES permits.

20 (17) "Financial assistance" means loans, refinancing, guarantees,
21 purchase of insurance, credit enhancement or grant funds provided to a
22 municipality under ss. 281.58 and 281.59, Stats.

23 (18) "Financial assistance agreement" means a written agreement between
24 a municipality, the department and the department of administration which
25 provides for financial assistance to the municipality and contains the terms and
26 conditions of the financial assistance.

27 (19) "Force account work" means the work a municipality performs using
28 its own employees or equipment for construction, construction-related activities,
29 repairs or improvements to a treatment works or structural urban BMP. The term
30 includes any activity listed in sub. (10) or (46) if the work is performed by a
31 municipality with its own employees or equipment.

5-March 2015 accepted

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

4 (21) "Groundwater" has the meaning in s. 160.01 (4), Stats.

5 (22) "Hardship financial assistance" means financial assistance authorized
6 under s. 281.58 (13), Stats.

7 (23) "Hardship financial assistance funding list" means a list established
8 each fiscal year that ranks in environmental priority order, based on the priority list
9 established under s. 281.58 (8e), Stats., projects eligible for hardship financial
10 assistance under s. 281.58 (13) (b) and (be), Stats.

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

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14 (25) "Hardship present value subsidy" or "hardship PV" means the present
15 value subsidy provided to municipalities to reduce loan interest rates below those
16 interest rates set forth in s. NR 162.11 (a) and (b), including 0% interest loans, and
17 to provide grants.

4-10-15

18 (26) "Hardship subsidy" means the amounts provided by the clean water
19 fund program under s. 281.58 (13), Stats., to reduce the interest rate of a clean
20 water fund program loan to a rate below an interest rate specified in s. NR 162.11,
21 and to provide grants.

22 (27) "Illicit discharge" has the meaning in s. NR 216.002 (10).

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23 (28) "Industrial facility" means non-governmental or nonresidential
24 facilities that are used for activities such as agriculture, forestry, fishing, mining,
25 manufacturing, transportation, communications or providing services including
26 electric, gas and sanitary services.

27 (29) "Industrial user" has the meaning specified in s. 281.58 (1) (c), Stats.

28 (30) "Inflow" means water other than wastewater that enters a sewage
29 system.

30 Note: This definition includes water entering the sewage system from
31 sources such as roof leaders, cellar drains, yard drains, area drains, foundation
32 drains, drains from springs and swampy areas, manhole covers, cross connections

1 between storm sewers and sanitary sewers, catch basins, cooling towers,
2 stormwaters, surface run-off, street wash waters or other drainage.

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

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

9 (33) "Interim financing costs" means the net interest, fees and charges
10 associated with issuing interim financing, such as underwriter discounts, financial
11 advisor fees, printing costs, bond rating charges, attorney fees and trustees fees.

12 (34) "Maintenance" means the preservation of the functional integrity and
13 efficiency of a treatment works or structural urban BMP, including its equipment
14 and structures. ^{"Maintenance"} The term includes preventive maintenance, correctional
15 maintenance and replacement of equipment.

16 (35) "Market interest rate" means the effective interest rate determined by
17 the department of administration for a revenue obligation issued by the state to
18 fund a project loan or a portion of a project loan under ss. 281.58 and 281.59, Stats.

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

22 (37) "Minority owned business" or "MBE" means a business, sole
23 proprietorship, partnership, joint venture or corporation that fulfills both of the
24 following requirements:

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

28 (b) Is currently performing a useful business function.

29 (38) "Multi-category project" means a project that can be assigned to more
30 than one of the project types listed in s. NR 162.30 (1).

31 (39) "Municipal WPDES stormwater discharge permit" means any permit
32 issued to a municipality by the department under s. 283.33 (2), Stats., for the

1 purpose of controlling stormwater discharges from a municipal separate storm
2 sewer system owned or operated by a municipality.

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

6 (41) "Municipal stormwater conveyance system" means a system of
7 conveyances including roads with drainage systems, municipal streets, catch basins,
8 curbs, gutters, ditches, constructed channels, or storm drains which meets the
9 following criteria:

- 10 (a) Owned or operated by a municipality.
11 (b) Designed or used for collecting or conveying stormwater.
12 (c) Is not a combined sewer conveying both sanitary wastewater and urban
13 runoff.
14 (d) Is not part of a publicly owned treatment works or structural urban BMP
15 which provides secondary or more stringent treatment.

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

18 (43) "Nonpoint source" means a land management activity which
19 contributes to runoff, seepage or percolation which adversely affects or threatens
20 the quality of waters of this state and which is not a point source under s. 283.01
21 (12), Stats.

22 (44) "Operation" means control of the unit processes and equipment which
23 make up a treatment works or structural urban BMP. The term includes financial
24 and personnel management, records, laboratory control, process control, safety and
25 emergency operation planning.

26 (45) "Parallel cost ratio" means the cost of a wastewater treatment works
27 at full design capacity minus cost of capacity to serve exclusively industrial users
28 and growth beyond 10 years where the remainder is divided by full capacity cost
29 and expressed as a percent.

30 (46) "Performance standards" means non-agricultural performance
31 standards established by the department under s. 281.16 (2), Stats.

32 (47) "Planning and design" means any of the following:

1 (a) Performing preliminary planning to determine the need for or the
2 feasibility of building or modifying a treatment works or structural urban BMP.

3 (b) Performing engineering, architectural, legal, fiscal or economic
4 investigations or studies.

5 (c) Identifying illicit discharges to a portion of a municipal stormwater
6 conveyance system draining to an urban runoff project.

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

8 (e) Inspecting or supervising any of the activities under pars. (a) to (c), or
9 construction.

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

14 (49) "Prior debt service" means the principal and interest of debt incurred
15 for a previous capital project which is related to the treatment works or structural
16 urban BMP and is documented as incurred in the past.

17 (50) "Priority score" means the numerical value, determined by the
18 department which is assigned to each project in accordance with s. NR 162.31.

19 (51) "Project" means the project assigned a state of Wisconsin clean water
20 fund program project number by the department and is further described in the
21 department approval letter for the plans and specifications, or portions thereof,
22 issued under s. 281.41, Stats., or other departmental approval.

23 (52) "Project closeout" means the process for reconciling costs between the
24 municipality and the department, and final steps that shall be taken by the
25 municipality and the department so that a final disbursement may be made.

26 (53) "Project commitment present value subsidy" or "project commitment
27 PV" means the present value subsidy provided to municipalities to reduce loan
28 interest rates from the market interest rate to the interest rates set forth in s. NR
29 162.11 (a), (b), and (c).

30 (54) "Project completion" means all of the following:

31 (a) The project construction is complete.

5
1 (b) The department or agents thereof have certified that the project was
2 constructed according to department approved plans and specifications.

3 (c) The department or agents thereof have certified that the facilities are
4 operating according to design.

5 (d) The department has completed all necessary project closeout procedures.

6 (e) The department has notified the municipality that the project is
7 complete.

8 (55) "Project ranking" means the ranking of eligible projects during a
9 funding year based on their priority score which is used to establish a funding list.

10 (56) "Proportional share" means that the costs of the operation and
11 maintenance of the treatment work or structural urban BMP is shared equitably
12 and proportionately among the users through a user charge system.

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

16 (58) "Replacement" means obtaining and installing mechanical, operating
17 equipment, accessories or appurtenances which are necessary during the useful life
18 of the treatment works or structural urban BMP to maintain the capacity and
19 performance for which the works or BMP were designed and constructed.

20 (59) "Residential percentage" means the design figure for residential flow
21 divided by the design figure for total flow.

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

27 (61) "7-day Q10" means the average 7 day low flow which occurs once in
28 10 years.

29 (62) "Sewage collection system" means the public sanitary sewer mains,
30 and associated pump stations, including service connection "Y" fittings, which are
31 primarily installed to receive wastewater directly from connection laterals.

1 (63) "Sewer" means either a sewage collection system or a municipal
2 stormwater conveyance system.

3 (64) "Sewer service area" means that area served or for which an
4 agreement has been reached for future service to be served by a wastewater
5 treatment works; or for which capacity is provided to allow disposal of septic tank or
6 holding tank wastes. *how relate to area, capacity of system*

7 (65) "Structural urban best management practice" or "structural urban
8 BMP" means a practice, which is determined to be an effective means of preventing
9 or reducing pollutants generated from nonpoint sources of urban runoff, including
10 land acquisition, storm sewer rerouting, and the removal of structures.

11 (66) "Subscribing municipality" means a municipality which discharges or
12 plans to discharge all or part of its wastewater or urban runoff to another
13 municipality for treatment and disposal.

14 (67) "Subsidy" means the amounts provided by the clean water fund
15 program to projects receiving financial assistance under ss. 281.58 and 281.59,
16 Stats., for the following purposes:

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

19 (b) To reduce the interest rate of eligible loans or portions of loans made by
20 the board of commissioners of public lands.

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

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

23 (68) "Substantial completion" means the point in time when project
24 construction has been completed and the treatment process operation has been
25 initiated or is capable of being put into operation.

26 (69) "Total annual charges" means the annual treatment works or
27 structural urban BMP costs, including operation, maintenance and replacement
28 costs, clean water fund program debt service, prior debt service, debt service for
29 project costs ineligible for clean water fund program assistance and hookup fees
30 owed another municipality.

31 (70) "Treatment works" has the meaning designated in s. 283.01 (18),
32 Stats.

2-16-15 460
2 **Note:** Treatment works includes urban runoff projects for municipalities
3 which are required to obtain a WPDES permit under ch. 283, Stats.

4 (71) "Unsewered municipality" means a municipality in which some or all
5 of the residential areas lack a sewage collection system.

6 (72) "Urban runoff" means snowmelt, ice-melt, precipitation, and surface
7 drainage conveyed from an urban land use in either a diffuse manner, as a nonpoint
8 source, or as a point source conveyance regulated under ch. NR 216.

9 (73) "User charge" means a charge levied on users of a treatment works or
10 structural urban BMP for the user's proportional share of the cost of operation,
11 maintenance and replacement of the works or practice.

12 (74) "User charge system" means a system of charges meeting the
13 requirements of s. NR 162.08, and the requirements of s. 281.58 (14) (b) 1. and 7.,
14 Stats., or s. NR 216.06 (1).

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15 **Note:** User charge systems may apply to stormwater utility districts.

16 (75) "Wastewater" means a waste stream conveyed to a treatment works
17 via a sewage collection system, including a combined sewer conveying both sanitary
18 wastewater and urban runoff.

19 (76) "Women owned business" or "WBE" means an independent business
20 concern which is at least 51% owned by a woman or women who also control and
21 operate it.

22 **Note:** Determination of whether a business is at least 51% owned by a
23 woman or women shall be made without regard to marital property laws.

24 (77) "WPDES permit" means a Wisconsin pollution discharge elimination
25 system permit issued under ch. 283, Stats.

26
27 **SUBCHAPTER I - FINANCIAL ASSISTANCE**

28
29 **NR 162.01 Types of financial assistance available.** The department
30 may, subject to applicable requirements of ss. 281.58 and 281.59, Stats., provide the
31 following types of financial assistance to eligible applicants:

1 (1) Purchase or refinance the debt obligation of a municipality if the debt
2 was incurred to finance the cost of constructing an eligible treatment works or
3 structural urban BMP project located in the state and the project has not been
4 substantially complete for more than 5 years.

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

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

9 (4) Provide hardship financial assistance to eligible applicants.

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

11
12 **NR 162.02 Annual funding policy, project priority list, and funding**
13 **list. (1) FUNDING POLICY AND PROJECT PRIORITY LIST.** Each year, the
14 department shall prepare an annual funding policy for the fiscal year in conjunction
15 with the project priority list under s. NR 162.33. The funding policy shall be subject
16 to public hearing.

17 (2) FUNDING LIST. The department shall prepare a funding list when the
18 legislature authorizes present value below the percentage specified in s. 281.58
19 (9m), Stats.

20 (3) HARDSHIP FINANCIAL ASSISTANCE FUNDING LIST. The
21 department shall prepare an annual funding list for all applicants requesting
22 hardship financial assistance.

23
24 **NR 162.03 Project eligibility. (1) ELIGIBLE PROJECTS.** A municipality
25 may receive financial assistance under ch. NR 162 for a publicly owned project
26 which meets any of the following:

27 (a) Is necessary to prevent a municipality from significantly exceeding a
28 wastewater effluent limitation contained in a permit issued under ch. 283, Stats.
29 This includes projects necessary for the replacement or major rehabilitation of an
30 existing sewage collection system and is necessary to maintain the total integrity
31 and performance of the wastewater treatment works serving the municipality.

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

4 (c) Is necessary to correct violations of effluent limitation contained in a
5 permit issued under ch. 283, Stats.

6 (d) Is necessary to control stormwater runoff rates, volumes, and discharge
7 quality, including projects necessary for the replacement or major rehabilitation of
8 an existing municipal stormwater conveyance system and is necessary to maintain
9 the total integrity and performance of the urban runoff treatment works or
10 structural urban BMP serving the municipality, as required by any of the following:

- 11 1. A WPDES stormwater permit issued under subch. I of NR 216.
12 2. A performance standard.
13 3. A plan approved by the department.

14 (e) Is necessary to eliminate actual or imminent pollution of groundwater or
15 surface water or threat to human health in unsewered areas within a municipality.

16 (2) INDIVIDUAL SYSTEMS. (a) A project which is eligible under sub. (1)
17 may consist of individual systems for the purpose of treating sanitary waste or
18 urban runoff that serve one or more properties if the municipality will:

- 19 1. Own each individual system.
20 2. Be responsible for the proper installation, operation and maintenance of
21 each individual system.
22 3. Have unlimited access to each individual system at all reasonable times
23 for the purposes of inspection, monitoring, construction, maintenance, operation,
24 rehabilitation and replacement of the system.
25 4. Establish a comprehensive program for the regulation, inspection,
26 operation and maintenance of individual systems, and for monitoring the impact of
27 the systems on the groundwater where required by the department.
28 5. Comply with all other applicable requirements, limitations and
29 conditions for projects funded under ch. NR 162.

30 (b) The access required in par. (a) 3. shall be evidenced by easements,
31 covenants running with the land or ordinance. The department may require that

1 the program established under par. (a) 4. include periodic testing of water from
2 existing potable water wells and monitoring of aquifers in the area.

3 (c) The department may grant a variance to allow the individual system to
4 be privately owned if the municipality can show that public ownership of the system
5 is not feasible and that private ownership will not adversely affect the tax-exempt
6 status of the municipal obligations that the municipality sells to the clean water
7 fund program.

8 **(3) INELIGIBLE PROJECTS.** The following projects or portions of projects
9 are not eligible to receive financial assistance under ch. NR 162:

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

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

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

18 (d) Projects solely for planning and design.

19 (e) Dams, pipes, conveyance systems and urban structural best management
20 practices, including storm sewer rerouting and land acquisition, when intended
21 solely for drainage and flood control.

22
23 **NR 162.04 Cost eligibility. (1) ELIGIBLE COSTS.**

24 (a) *Eligible at a subsidized rate.* Allocable project costs which are reasonable
25 and necessary are eligible for financial assistance. Eligible costs include, but are
26 not limited to, any of the following.

- 27 1. Municipal expenses incurred solely for the project.
- 28 2. Planning work directly related to the treatment works or structural
29 urban BMP, including information, education, and citizen participation.
- 30 3. Sanitary sewer system evaluation and rehabilitation.
- 31 4. Costs of complying with ch. NR 150 including costs of public notices and
32 hearings.

- 1 5. Preparation of construction drawings, specifications, estimates and
2 construction contract documents.
- 3 6. Pumping units and pressurized lines from the pumping units to the
4 public sanitary sewer main, or holding and septic tanks and their sewer lines to a
5 public sanitary sewer main, that are included in a sewage collection system, are
6 cost-effective, and owned and maintained by the applicant municipality.
- 7 7. Landscaping.
- 8 8. Removal, relocation, replacement or temporary provision of utilities, for
9 which the recipient is legally obligated to pay.
- 10 9. Materials acquired, consumed or expended specifically for the project.
- 11 10. An inventory of laboratory chemicals and supplies.
- 12 11. Development and preparation of an operation and maintenance manual.
- 13 12. Costs for the development of water conservation plans, user charge
14 systems, sewer use ordinances, and stormwater utility ordinances under s. NR
15 162.08 (1).
- 16 13. Project identification signs.
- 17 14. Start-up services for new treatment works or structural urban BMPs,
18 including the training of operating personnel and the preparation of curriculum and
19 training material for operating personnel on the new equipment or processes funded
20 under ch. NR 162.
- 21 15. Development and preparation of a plan of operation.
- 22 16. Development of a municipal pretreatment or toxicity reduction program
23 and construction of facilities to be used by the municipal treatment works or
24 structural urban BMP in the programs, including monitoring equipment.
- 25 17. Costs necessary to mitigate demonstrated direct, adverse physical
26 impacts resulting from construction of the treatment works or structural urban
27 BMP.
- 28 18. The cost of safety equipment.
- 29 19. Inspection fees related to construction.
- 30 20. Acquisition of land that will be used for storage of treated wastewater in
31 land treatment systems before land application.

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

4 22. Acquisition of land on which the structural urban BMP, treatment works,
5 biosolids facility, or lift stations will be located, including urban corridors needed to
6 support integrated systems of treatment works or structural urban BMPs for urban
7 runoff.

8 23. Acquisition of easements and rights-of-way, including administrative and
9 legal costs.

10 24. The cost of equipment used for sampling and analysis of industrial
11 discharges to municipal wastewater treatment works, or illicit discharges to an
12 urban runoff treatment works or structural urban BMP that is owned by the
13 municipality.

14 25. Costs for value engineering studies or analyses performed during the
15 design phase.

16 26. Professional, consultant and engineering services.

17 27. Ordinary operating expenses that were incurred solely because of the
18 project, including computers, upgrades, software and training necessary to operate
19 the treatment works or structural urban BMP.

20 28. Interim financing costs as per s. NR 162.04 (3)

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

23 30. Indirect project costs.

24 (b) *Eligible at market rate.* Costs eligible for market interest rate financing
25 include, but are not limited to:

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

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

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

1 4. The costs of any portion of a project to correct violations of effluent
2 limitation contained in a permit issued under ch. 283, Stats., or violations of
3 performance standards.

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

7 6. The costs for any portion of a project designed solely for flood control and
8 not required to meet WPDES stormwater permit requirements or performance
9 standards.

10 7. The costs for any portion of an urban runoff project which exclusively
11 serve development not in existence as of the date of the application. These costs are
12 eligible for funding only if the project furthers the local comprehensive planning
13 goals identified in s. 1.13 (2), Stats., and, beginning January 1, 2010, is consistent
14 with a comprehensive plan prepared pursuant to s. 66.0295, Stats.

15 8. The applicable portion of costs of projects which are in non compliance of
16 the utilization of minority- and women-owned businesses criteria in s. NR 162.09
17 (3). (e)

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

21
22 **(2) INELIGIBLE COSTS.** Costs not directly associated with or not necessary
23 for the construction or operation of an eligible project are not eligible for financial
24 assistance. Ineligible costs include, but are not limited to:

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

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

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

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

32 (e) Costs outside the scope of the approved project.

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

3 (g) Costs for which payment has been or will be received under another
4 federal or state program.

5 (h) Costs of claims resulting from mismanagement or caused by the
6 recipient's vicarious liability for the improper action of others.

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

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

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

15 (j) Project costs incurred after the closeout date.

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

18 (l) Hook up charges imposed by one municipality on another for hooking into
19 a treatment works or structural urban BMP, or transport system to such a facility.

20 (m) Operation and maintenance expenses of the treatment works or
21 structural urban BMP.

22 (3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS. (a)

23 *Net interest expense.* Interim financing interest expense will be offset with any
24 interest earnings from the investment of the proceeds from the interim financing to
25 determine the amount eligible for clean water fund program funding.

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

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

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

- 7 1. The closeout date of the clean water fund program loan.
- 8 2. One year following substantial completion of construction.
- 9 3. September 30th in the year after the project's listing on the clean water
10 fund program funding list.

11 **Note:** Interest payments or principal payments on interim financing, paid
12 by the municipality out of its internal funds rather than capitalized, are not eligible
13 for clean water fund program funding under IRS reimbursement regulations.

14 (4) **COST PRORATION.** If the term of the interim financing exceeds the
15 limit in sub. (3), the interim financing costs will be prorated using the length of the
16 eligible term divided by the total time that the interim financing is outstanding. If
17 the debt used for interim financing is not exclusively for the clean water fund
18 program treatment works or structural urban BMP project, costs will be prorated
19 according to the proportion of the total debt that is for the department approved
20 treatment works or structural urban BMP project.

21
22 **NR 162.05 Notice of intent to apply.** (1) A municipality shall submit to
23 the department a notice of its intent to apply for funding. The notice shall be filed
24 with the department by December 31, if the application for financial assistance will
25 be submitted within the following fiscal year. The notice shall be submitted on a
26 form provided by the department. The notice will be valid for 1 fiscal year.

27 **Note:** A Notice of Intent to Apply form is available from the Bureau of
28 Community Financial Assistance, Department of Natural Resources, Box 7921,
29 Madison, WI 53707.

30 (2) The department may waive this requirement upon the written request of
31 a municipality pursuant to s. 281.58 (8m) (c), Stats.

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

4
5 **NR 162.06 Application. (1) DEADLINE FOR SIGNING FINANCIAL**
6 **ASSISTANCE AGREEMENT.** An applicant shall sign the financial assistance
7 agreement within 8 months after the date the department determines in writing the
8 application is acceptable. An applicant shall time its submittal of the application
9 accordingly. If a financial assistance agreement is not signed within 8 months of the
10 department's determination of acceptance, the applicant's project will lose its
11 allocated subsidy. A municipality may not submit more than one application for a
12 project in any 12 month period, except for an application for additional costs for the
13 approved project.

14 **(2) PROCEDURES.** Municipalities shall apply in accordance with s. 281.58
15 (9), Stats., on forms provided by the department.

16 **Note:** An application form is available from the Bureau of Community
17 Financial Assistance, Department of Natural Resources, Box 7921, Madison WI
18 53707.

19 **(3) CONTENTS OF APPLICATION.** The applicant shall submit a complete
20 application. The department shall accept an application as complete when each of
21 the following items, when applicable, is received from the applicant or included in
22 the application form:

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

24 (b) A completed financial assistance application form.

25 (c) Construction costs Construction costs shall be included as a project cost
26 in order to receive loan funds for planning or design costs, or both.

27 (d) A copy of biddable construction plans and specifications which are
28 approvable by the department.

29 (e) Copies of executed engineering contracts for planning and design, and a
30 proposed or executed engineering contract for construction, if funds are requested
31 for the activity.

1 (f) A resolution authorizing one individual to act as the applicant's
2 representative in connection with the application and with any additional
3 information required for financial assistance.

4 (g) A proposed or an executed intermunicipal agreement when two or more
5 municipalities discharge to or through the same treatment works or structural
6 urban BMP. The intermunicipal agreement shall:

7 1. Identify ownership for each individual portion of the treatment works or
8 structural urban BMP, such as interceptors, sewage collection systems, municipal
9 stormwater conveyance systems, lift stations, and privately owned treatment works
10 or structural urban BMP.

11 2. Establish the term of agreement.

12 3. For urban runoff treatment works or structural urban BMP projects,
13 require each municipality to adopt local regulations for construction sites, and adopt
14 a municipal stormwater management plan and ordinance for new development and
15 redevelopment, both consistent with performance standards and with model
16 ordinances developed by the department under s. 281.33 (4), Stats.

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

20 5. Indicate the method for generating revenue for capital costs and indicate
21 who will be responsible for payment.

22 6. Indicate that the owner of the regional facility will accept the applicant's
23 wastewater or urban runoff and identify the boundary from which the applicant's
24 discharge originates.

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

27 (h) Financial information required by the department of administration
28 necessary to determine the affordability of the proposed project, the financial
29 capability of the municipality, and the adequacy of the pledge of revenues to repay
30 the obligation securing the proposed clean water fund program loan.

31 (i) The proposed user charge system and information on a sewer use or
32 stormwater utility ordinance for treatment works or structural urban BMPs.

1 (j) Any existing contracts with users of the treatment works or structural
2 urban BMP.

3 (k) Documentation applicable to internal revenue service tax information.

4 (l) A resolution declaring intent to reimburse municipal accounts with debt
5 proceeds if required by U.S. Department of Treasury reimbursement regulations 26
6 CFR 1.150-2.

7 (4) INTERMUNICIPAL EXCEPTION. The department may waive the
8 requirement of an executed intermunicipal agreement if an order under s. 281.43
9 (1), Stats., has been issued, or if the department has obtained executed
10 intermunicipal agreements for subscribers whose design flows, design suspended
11 solids capacities, annual debt payments, and wastewater projects' designed BOD
12 capacities total at least 90% of the total for the regional treatment works or
13 structural urban BMP.

14
15 **NR 162.07 Financial assistance requirements.** Before awarding
16 financial assistance for any project, the department shall determine that all of the
17 applicable requirements of s. NR 162.06 have been met and that:

18 (1) The department has approved the plans and specifications for the project
19 and the parallel cost ratio, and complied with the Wisconsin environmental policy
20 act requirements.

21 (2) The project is entitled to priority in accordance with subchs. II and III, as
22 applicable.

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

26 (4) The department of administration has determined that the municipality
27 can meet the terms and conditions for receiving financial assistance under ch. Adm
28 35 and s. 281.59, Stats.

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

1 (6) The applicant has made satisfactory provision to assure the efficient
2 operation and maintenance of the treatment works or structural urban BMP, in
3 accordance with s. NR 162.12 (1) (k). pg 34

4 (7) The applicant has adopted and implemented a user charge system and
5 sewer use ordinance for a treatment works or structural urban BMP in accordance
6 with s. NR 162.08.

7 (8) For an urban runoff treatment works or structural urban BMP, the
8 applicant agrees to adopt local regulations for construction sites, and adopt a
9 municipal stormwater management plan and ordinance for new development and
10 redevelopment, both consistent with performance standards and with model
11 ordinances developed by the department under s. 281.33 (4), Stats.

12 (9) The following documentation, if applicable to the project, is submitted to
13 the department:

14 (a) Certification as required by s. NR 162.09 (4). pg 30

15 (b) Marked plan sheets and flow documentation, if the project is for an
16 unsewered municipality.

17 (c) Legal opinion on land ownership, and acquisition of easements and right-
18 of-ways necessary for the project.

19 (d) Items related to bids:

20 1. The proposal of the successful bidder.

21 2. An engineer's evaluation of the bids, including bid tabulation, and a
22 recommendation.

23 3. If a contract is awarded to other than the low bidder, a legal opinion that
24 the award is in compliance with state statutes.

25 4. Contract and utilization information regarding minority- and women-
26 owned businesses and, if applicable, small businesses in rural areas.

27 5. Any addenda to plans and specifications.

28 6. Evidence of bid advertisement.

29 7. Copy of the bid bond.

30 8. Evidence of a resolution awarding the construction contract.

31 9. A copy of the executed construction contract.

1 10. A construction start date and expected substantial and final completion
2 dates.

- 3 (e) Request for disbursement and supporting invoices.
- 4 (f) Draft legal documents related to the authorization and issuance of bonds.
- 5 (g) The title for land purchased for the project, if land purchase costs are
6 requested.
- 7 (h) An executed copy of the construction engineering contract.
- 8 (i) A plan of operation for the treatment works or structural urban BMP.

9 The plan of operation shall include necessary actions and an implementation
10 schedule to assure the timely start-up and efficient operation of the facilities for the
11 following:

- 12 1. A summary of implementation dates in chronological order.
- 13 2. Staffing and training.
- 14 3. Records, reports and laboratory control for wastewater projects.
- 15 4. Process control and start-up procedures.
- 16 5. Safety procedures.
- 17 6. Sludge management.
- 18 7. An emergency operating plan.
- 19 8. Maintenance management.
- 20 9. An operation and maintenance budget.

21
22 **NR 162.08 Requirements for a user charge system and sewer use**
23 **ordinance. (1) GENERAL.** Any user charge system and sewer use ordinance
24 adopted by a recipient shall be maintained in accordance with the provisions of s.
25 281.58 (14) (b) 7., Stats. or s. NR 216.06 (1), and this section, for the design life of a
26 treatment works or structural urban BMP project. The applicant shall submit user
27 charge information to the department and shall certify to the department that the
28 user charge system meets all of the requirements in sub. (1). ^{the jurisdiction}

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

1 (b) A user charge system and sewer use ordinance is required of any urban
2 runoff project receiving a revenue pledge loan under this chapter.

3 (c) A user charge system and sewer use ordinance is required of any urban
4 runoff project which requires an intermunicipal agreement under s. NR 162.06 (3)

5 (g). The "users" in this case means the municipalities covered by the agreement.

6 (3) Any user charge system shall:

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

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

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

15 (e) Require that the recipient establish a replacement fund and make
16 deposits to this fund on an annual basis. This fund is to be used only for the
17 replacement of equipment related to the wastewater treatment works, or for
18 periodic maintenance of an urban runoff treatment works or structural urban BMP.

19 (f) Establish a financial management system that accounts for:

20 1. Revenues generated.

21 2. Costs of operation and maintenance of the treatment works or structural
22 urban BMP, including replacement of equipment.

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

27 (g) Require the review, at least every 2 years, of the wastewater or urban
28 runoff contribution of users and user classes, the total costs of operation and
29 maintenance of the treatment works or structural urban BMP, and the user charge
30 system.

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

4 (i) Provide that each user be notified, at least annually, in conjunction with
5 a regular bill, of the rate of charge attributable to service provided by the treatment
6 works or structural urban BMPs.

7 (j) Be based on actual or estimated use.

8 (4) A recipient may include an optional class of low income residential users,
9 with incomes below a level established by the municipality, who are charged at a
10 lower rate than other residential users.

11 (5) The municipality shall incorporate the user charge system in one or more
12 municipal ordinances or other legislative enactments:

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

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

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

20 (9) Each applicant for financial assistance for a wastewater treatment works
21 shall enact and enforce a sewer use ordinance that:

22 (b) Prohibits any new connections from sources which include substantial
23 infiltration or inflow into the sanitary sewer system.

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

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

30 (e) Defines normal domestic strength of the wastewater.

31 (f) Controls and monitors industrial discharges by requiring control
32 manholes, pretreatment, and grease, oil and sand interceptors.

1 (g) Provides a methodology for establishing sewer use rates that complies
2 with sub. (1).

3 (h) Defines violations and penalties for violators.

4 (10) Each applicant for financial assistance for an urban runoff treatment
5 works or structural urban BMP shall demonstrate adequate legal authority
6 established by statute, ordinance, or series of contracts to meet the provisions of s.
7 NR 216.06 (1).

8 (11) The department may not approve the user charge systems and sewer
9 use ordinance for an applicant owning a regional treatment works or structural
10 BMP until the department has given final approval to user charge systems and
11 sewer use ordinances for subscribers whose design flows, design suspended solids
12 capacities, annual debt payments, and wastewater projects' designed BOD
13 capacities total at least 90% of the total for the regional treatment works or
14 structural urban BMP.

15
16 **NR 162.09 Procurement. (1) APPLICABILITY.** Procurement of
17 professional services and construction contracts by recipients under ch. NR 162
18 shall be in accordance with state and local law. No contract may be awarded to any
19 person or organization which does not operate in conformance with state and
20 federal civil rights, equal opportunity and affirmative action laws. The recipient is
21 responsible for the administration and successful completion of the project as well
22 as acceptance of the terms of the financial assistance agreement.

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

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

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

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

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

5 1. Soliciting bids from qualified, minority-owned businesses certified by the
6 department of commerce and qualified women-owned businesses whenever
7 contracts and subcontracts are awarded. Solicited businesses shall be provided a
8 reasonable time to respond to requests for bids.

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

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

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

16 5. Using the assistance of the department as appropriate.

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

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

23 (e) Failure to comply with pars. (b) to (d) shall result in a sanction of up to
24 8% of the project costs eligible for subsidy being financed at the market interest
25 rate. This paragraph does not apply to any recipient that awards contracts to
26 minority- or women-owned businesses or both in an amount equal to or greater than
27 the applicable fair share objectives. Fair share objectives means the percentage of
28 participation in project costs by minority- and women-owned businesses which can
29 be reasonably procured, as determined by the department as negotiated with and
30 agreed to by EPA under 40 CFR part 35, subpart K, given the availability of
31 qualified minority- and women-owned businesses in the state.

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

3 (a) The applicant's staff has the necessary competence required to
4 accomplish the work and that the work can be accomplished more economically by
5 the use of the force account method.

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

7 (5) CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.

8 (a) The department may review architectural or engineering service contracts and
9 amendments for the eligibility and reasonableness of costs. The department may
10 not provide financial assistance for costs which are not eligible or reasonable.

11 (b) Reasonableness reviews may include a comparison of architectural or
12 engineering fees for the project to the range of architectural or engineering fees for
13 other similar projects undertaken within the state. Consideration shall be given to
14 completeness of scope of work, the recipient's procurement and negotiation process
15 associated with the costs, any conditions unique to the project and any other factors
16 affecting costs.

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

20 (6) CONSTRUCTION CONTRACTS AND SUBCONTRACTS. (a)

21 *Applicability.* This subsection applies to construction contracts or subcontracts
22 awarded by recipients for any construction activity.

23 (b) *Type of contract.* The project work shall be performed under one or more
24 contracts awarded by the recipient to private firms except for force account work
25 authorized by sub. (4). Each contract shall be a fixed or unit price contract, unless
26 the department gives advance written approval for the recipient to use some other
27 acceptable type of contract. In any event, the cost-plus-a-percentage-of-cost type
28 contract may not be used.

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

31 2. The department may require that change orders for projects funded
32 under ch. NR 162 be approved by the department.

1
2 **NR 162.10 Reimbursement and refinancing.** (1) REIMBURSEMENT
3 OF PREVIOUSLY PAID PROJECT COSTS. The department may reimburse
4 eligible project costs previously paid by the municipality from its internal funds, if
5 the reimbursement is in compliance with applicable federal internal revenue service
6 reimbursement regulations.

7 (2) REFINANCING OF INTERIM FINANCING. The department may
8 refinance the eligible portion of the municipality's interim financing subject to the
9 limits established in s. NR 162.04 (3).
10

11 **NR 162.11 Loan interest rate.** Interest rates for projects shall be set in
12 accordance with s. 281.58 (12), Stats., and this section.

13 (1) INTEREST RATE CATEGORIES. Costs of projects or portions of
14 projects shall be charged the following interest rates:

15 (a) For costs of compliance maintenance or new or changed limits projects as
16 described in s. NR 162.03 (1) (a) and (b), the interest rate shall be 55% of the
17 market interest rate.

18 (b) For costs of unsewered projects, including individual systems, as
19 described in s. NR 162.03 (1) (e) and (2), the interest rate shall be 70% of the market
20 interest rate.

21 (c) For costs of urban runoff treatment works and structural urban BMP
22 projects as described in s. NR 162.03 (1) (d), the interest rate shall be 65% of the
23 market interest rate.

24 (d) For costs, identified in s. NR 162.04 (1) (b) the interest rate shall be the
25 market interest rate.

26 (e) For the applicable portion of costs of projects which are in noncompliance
27 of the utilization of minority- and women-owned businesses criteria in s. NR 162.09
28 (3), the interest rate shall be the market interest rate.

29 (2) PROJECT INTEREST RATE CALCULATION. (a) If all of the eligible
30 costs of a project are classified under one of the categories in sub. (1) above, the
31 interest rate shall be the rate stated. If a project contains eligible costs from one or
32 more of the categories, a composite rate shall be computed for the project in

1 accordance with par. (b) 3. Project costs shall be based on the final approved
2 engineering design.

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

5 1. Each eligible cost which can be allocated, based on its purpose,
6 exclusively to any one of the categories in sub. (1), shall be so allocated.

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

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

11
$$RC = (RT\ 1)(PR\ 1) + (RT\ 2)(PR\ 2) + (RT\ 3)(PR\ 3) + (RT\ 4)(PR\ 4)$$

12 Where:

13 RC is the composite interest rate for the project.

14 RT1 is the interest rate at 55% of market interest rate.

15 RT2 is the interest rate at 65% of market interest rate.

16 RT3 is the interest rate at 70% of market interest rate.

17 RT4 is the market interest rate.

18 PR1 is the percentage of the project being financed by the clean water fund
19 program that is eligible under s. NR 162.03 (1) (a) and (b).

20 PR2 is the percentage of the project being financed by the clean water fund
21 program that is eligible under s. NR 162.03 (1) (d).

22 PR3 is the percentage of the project being financed by the clean water fund
23 program that is eligible under s. NR 162.03 (1) (e) and s. NR 162.03 (2).

24 PR4 is the percentage of the project being financed by the clean water fund
25 program that is eligible under s. NR 162.04 (1) (b).

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

29

30 **NR 162.12 Financial assistance agreement conditions. (1)** Each
31 financial assistance agreement shall bind the recipient to the following conditions:

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

4 (b) The treatment works or structural urban BMP shall comply with all
5 pertinent requirements of federal, state and local environmental laws and
6 regulations. *- include 2011*

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

11 (d) If an unsewered municipality will be disposing of wastewater in the
12 wastewater treatment works of another municipality, financial assistance may be
13 provided at a subsidized rate only if the department determines that the unsewered
14 municipality has executed an agreement under s. 66.30, Stats., with another
15 municipality to receive, treat and dispose of wastewater.

16 (e) The recipient shall provide timely sewerage service to all users within the
17 delineated service area except in areas where annexation is refused, pursuant to s.
18 281.43 (1m), Stats. for wastewater treatment works.

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

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

27 (h) The recipient shall expeditiously initiate and complete the project,
28 including construction of and payments for the portions which are ineligible for
29 financial assistance, in accordance with the financial assistance agreement and
30 application, including any project schedule approved by the department. Failure of
31 the recipient to promptly initiate project work may be deemed a breach of the
32 financial assistance agreement.

1 (i) The recipient shall promptly notify the department of changes to the
2 project, including revisions to the plans and specifications.

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

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

9 (l) The recipient shall submit an operation and maintenance manual to the
10 department.

11 1. The project engineer and the authorized representative of the recipient
12 shall certify that the operation and maintenance manual meets or exceeds the
13 requirements of ch. NR 162. The operation and maintenance manual shall address
14 the following areas:

- 15 a. General information.
- 16 b. Staffing.
- 17 c. Records and recordkeeping.
- 18 d. Laboratory.
- 19 e. Safety.
- 20 f. Utility systems.
- 21 g. A description of the process, operations and controls.
- 22 h. Maintenance.
- 23 i. Sludge management.
- 24 j. Manufacturer's information.

25 2. For projects or facilities which have an approved operation and
26 maintenance manual, this requirement may be met by the submission of an
27 addendum to the original manual.

28 (m) The recipient shall provide construction site erosion control in accordance
29 with the design criteria, standards and specifications outlined in the Wisconsin
30 Construction Site Best Management Practice Handbook, WDNR Pub. WR-222,
31 November 1993 Revision. WDNR publication WR-222 is incorporated by reference
32 for ch. NR 162.

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

5 (n) The recipient shall provide and maintain adequate construction
6 inspection to assure conformance with the approved plans and specifications.

7 (o) The recipient shall accept septage to the wastewater treatment works
8 from septic tanks or holding tanks within the recipient's sewer service area, subject
9 to s. 281.49, Stats. The recipient may regulate the time, rate, location and quantity
10 of the septage contributions.

11 (p) The recipient shall notify the department of the substantial completion of
12 the project.

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

15
16 **NR 162.13 Financial management.** The recipient shall:

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

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

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

24
25 **NR 162.14 Financial assistance disbursements. (1) REQUESTS FOR**
26 **DISBURSEMENT.** The recipient shall submit to the department requests for
27 disbursement for eligible costs in the format specified by the department.

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

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

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

8 (b) The department may withhold 5% of the principal amount of the loan
9 until the requirements of the final project closeout, as outlined in the financial
10 assistance agreement, have been completed.

11 (4) FINAL DISBURSEMENT AND PROJECT CLOSEOUT. (a) The
12 recipient shall submit the final request for disbursement after completion of the
13 project. The recipient shall include written certification that it has accepted the
14 project from its contractors in the final disbursement request.

15 (b) Prior to the final disbursement:

16 1. The department shall complete a final inspection and sign-off of the
17 project.

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

20 3. The municipality shall document final utilization of minority- and
21 women-owned businesses on a form provided by the department.

22 **Note:** A utilization form is available from the Bureau of Community
23 Financial Assistance, Department of Natural Resources, Box 7921, Madison WI
24 53707.

25 (c) The department shall certify in writing to the department of
26 administration the recipient's compliance with all applicable requirements of ch. NR
27 162 and the financial assistance agreement.

28
29 **NR 162.15 Amendments to a financial assistance agreement. (1)**
30 **ALTERING THE PROJECT.** The recipient shall obtain an amendment to the
31 financial assistance agreement before:

32 (a) Altering the type of wastewater or urban runoff treatment.

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

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

8 (3) ADDITIONAL FUNDING. The department may provide additional
9 funding in the form of a loan for eligible project costs incurred beyond the amount
10 specified in the original financial assistance agreement. The department will not
11 process a request to provide additional funding for a project until such time as the
12 total remaining costs to complete the project can be reasonably determined.

13 (a) *Applicability.* Additional funding for a project is subject to the
14 availability of funds and present value subsidy as determined in s. 281.59, Stats.

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

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

24 2. 'Continuous funding cycle loan, new biennium.' If there is not sufficient
25 project commitment present value subsidy available from the biennium in which the
26 original financial assistance agreement was funded, and the clean water fund
27 program is accepting applications on a continuous funding cycle basis during the
28 fiscal year in which the additional costs are to be funded, the municipality may
29 receive funding for the additional costs from the current biennium's project
30 commitment present value subsidy. If the interest rate and loan maturity dates for
31 the additional funding are the same as in the original financial assistance
32 agreement, the funds may be provided by amending the original financial assistance

1 agreement. If the loan interest rate or loan maturity date for the additional funding
2 is different than those contained in the original financial assistance agreement, the
3 funds shall be provided by a new financial assistance agreement in the form of a
4 loan for up to 20 years at the current interest rate corresponding to the project type
5 as defined in s. NR 162.11.

6 3. 'Compete for PV, new biennium.' If a municipality is not able to obtain
7 clean water fund program assistance for its additional project costs through the
8 methods described in subd. 1. or 2., and a funding list for all clean water fund
9 program projects is published for the fiscal year in which the additional costs are to
10 be funded, a municipality may compete through the application process to receive
11 clean water fund program project commitment present value subsidy to finance the
12 additional costs. If a municipality is successful in obtaining project commitment
13 present value subsidy for the additional costs, and the interest rate and loan
14 maturity date for the additional funding are the same as in the original financial
15 assistance agreement, the funds may be provided by amending the original financial
16 assistance agreement. If the loan interest rate or loan maturity date for the
17 additional funding is different than those established in the original financial
18 assistance agreement, the funds shall be provided in a new financial assistance
19 agreement in the form of a loan for up to 20 years at the current interest rate
20 corresponding to the project type as defined in s. NR 162.11. The application for
21 additional costs will be ranked on the clean water fund program funding list based
22 on the priority score the project received in the fiscal year in which the original
23 financial assistance agreement was funded.

24 (b) *Requesting funds.* A municipality may request funding for additional
25 project costs using one of the following options:

26 1. 'Letter, sufficient PV, original biennium.' If par. (a) 1. is applicable, the
27 municipality shall submit a letter to the department that justifies the need for the
28 additional funding and details the additional eligible costs. A revised budget sheet
29 shall be attached to the letter, indicating in one column the requested additional
30 costs and in a second column the total project costs. All costs in the revised budget
31 sheet shall be assigned to the appropriate budget line items from which
32 disbursement will be requested.

1 2. 'Application, competing for PV.' If par. (a) 2. or 3. is applicable, the
2 municipality shall submit a clean water fund program application, requesting a loan
3 for additional project costs. The application may be submitted through the second
4 fiscal year of the biennium following the biennium that contains the substantial
5 completion date of the project written in the original financial assistance
6 agreement. If par. (a) 3. is applicable, the application shall be postmarked by the
7 June 30 prior to the fiscal year from which the funds for the additional costs are
8 requested.

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

11
12 **NR 162.16 Disputes. (1) DECISION OF THE DEPARTMENT.** Except as
13 otherwise provided by law, any dispute arising under ch. NR 162 or 165 prior to the
14 execution of a financial assistance agreement shall be decided in writing by the
15 department. The department shall serve a copy of the decision on the applicant
16 personally or by mail.

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

19
20 **NR 162.17 Records and record retention. (1) REQUIREMENTS.** The
21 recipient shall maintain books, documents, papers and records, and accounting
22 procedures in accordance with generally accepted government accounting
23 standards, the financial assistance agreement, and ch. Adm 35, and retain them in
24 accordance with ch. 19, Stats. The recipient shall require contractors, including
25 contractors for professional services, to maintain books, documents, papers and
26 records related to the project which are necessary for the recipients' compliance
27 with this section.

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

31 (3) **RECORD RETENTION.** The recipient and contractors of recipients shall
32 preserve and make their records available to the department for a minimum of 3

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1 years from the date that the department notifies the recipient that the project is
2 closed out.

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

6 (b) Records which relate to appeals, disputes or litigation arising out of the
7 performance of the project, shall be retained until any appeals, disputes or litigation
8 have been finally resolved or for a period of 3 years from the date that the
9 department notifies the recipient that the project is closed out, whichever is later.

10 (4) FEDERAL SINGLE AUDIT. Recipients of financial assistance provided
11 directly from the federal capitalization grant shall comply with the federal single
12 audit act and OMB circular A-133 and ch. Adm 35.

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14 **NR 162.18 Breach of contract.** (1) Upon breach of contract by the recipient, the
15 department may:

- 16 (a) Declare the unpaid loan balance due and immediately payable.
- 17 (b) Increase the interest rate on the unpaid balance of the loan to the market
18 interest rate in effect on the date the financial assistance agreement was executed.
- 19 (c) Rescind the grant and convert the grant amount to a loan.
- 20 (d) Immediately terminate the financial assistance agreement and disburse
21 no additional funds, if the financial assistance has not been fully disbursed.
- 22 (e) Seek an injunction or any other equitable or judicial relief from a court of
23 appropriate jurisdiction.
- 24 (f) Seek any other appropriate administrative remedy.

25 (2) The department of administration's receipt of any payment after the
26 occurrence of a breach of contract does not constitute the department's waiver of
27 any rights and remedies under this section.

28 **Note:** The department of administration may under s. 281.59 (11) (b), Stats.,
29 seek recovery of some or all financial assistance payments by deducting those
30 amounts from any state payments due to a municipality, or by adding a special
31 charge to the amount of taxes apportioned to and levied upon the county under s.
32 70.60, Stats.