



CR 91-188

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

RECEIVED

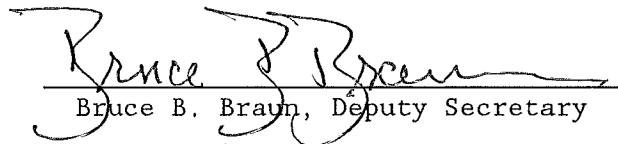
STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

APR 24 1992
1:30 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CA-27-91 was duly approved and adopted by this Department on February 23, 1992. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 21st
day of April, 1992.


Bruce B. Braun, Deputy Secretary

(SEAL)

7-1-92

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING,
AND CREATING RULES

.....
IN THE MATTER of repealing ss. NR 162.10(15) and .
162.21(2)(c); renumbering and amending s. NR 162.08 .
(2)(b)7.; amending ss. NR 162.03(16), (23)(b), (28), .
(29) and (35), 162.05(3)(f)1., (7)(a)14. and 28., .
162.06(2)(a)1. and 2., 162.07(2)(c), 162.08(2) .
(a)5. and 6. and (b)5. and 6., (4)(a)2., .
162.09(7), 162.10(7), 162.11(1), 162.13(5)(d) . CA-27-91
and (7) and 162.16(2)(b)3.c.; repealing and .
recreating ss. NR 162.08(2)(b)1., 162.09(9)(a) .
and 162.10(8); and creating ss. NR 162.05(4)(a) .
1.c., 2.d. and 3.d., 162.06(2)(a)5, 162.08(2)(b)7. .
and 162.09(7m) of the Wisconsin Administrative .
Code pertaining to the clean water fund. .
.....

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.241, 144.2415 and 227.11(2)(a), Stats.
Statutes interpreted: ss. 144.241 and 144.2415, Stats.

This proposed rules revision revises ch. NR 162, Wis. Adm. Code, to incorporate changes to the Clean Water Fund Program suggested by the Citizens's Advisory Committee, the Department of Administration, the U.S. Environmental Protection Agency, Region V and Bureau staff. These changes are intended to insure that the implementation of the program is consistent with the intent of the legislature. The major revisions are as follows:

1. Require communities to obtain DNR's contingent approval of their user charge systems and sewer use ordinances (UCS/SUOs) prior to the Notice of Financial Assistance Commitment (NOFAC) and to adopt and implement the DNR approved UCS/SUOs prior to the closing of the final loan agreement.
2. Expand the list of ineligible projects to include municipalities which failed to implement a user charge system or a replacement fund under a previous federal or state grant or loan program.
3. Delete capitalized interest as an eligible project cost, and include net capitalized interest and interest expense as eligible project costs.
4. Codify the department's written policies relating to the items required to complete a plan of operation and operation and maintenance manual.
5. Specify that principal payments on the loan are due each May 1 after the expected completion date of the project or the date of the Financial

Assistance Agreement, whichever is later, and that interest payments shall be due each May 1 and November 1 after the date of the Financial Assistance Agreement.

6. Add language to strengthen the code's state aids intercept language.
7. Incorporate changes suggested by the U.S. Environmental Protection Agency, Region V, concerning environmental review of projects.

SECTION 1. NR 162.03(16), (23)(b), (28), (29) and (35) are amended to read:

NR 162.03(16) "Financial assistance" means loans, refinancing, guarantees, purchase of insurance, credit enhancement or grant funds provided to a municipality under ~~s.~~ ss. 144.241 and 144.2415, Stats.

(23)(b) For step 2 activities, the approval of ~~the~~ a facility plan and other wastewater management decision documents;

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

(29) "Parallel cost estimate" means a cost estimate used to determine the cost of capacity for projects or portions of projects under s. NR 162.05(3)(a), (am), (c) and (d). The parallel cost estimate includes an estimate of all costs for treatment works units necessary to provide the design capacity of the treatment works exclusive of the cost necessary for providing capacity for the items under s. NR 162.05(3)(a), (am), (c) and (d) and an estimate of the cost of treatment works units necessary to provide the design capacity.

(35) "Recipient" means any municipality or group of municipalities that has applied for or received financial assistance available under this chapter.

SECTION 2. NR 162.05(3)(f)1. is amended to read:

NR 162.05(3)(f)1. The facility plan shall provide parallel cost estimates for treatment works ~~necessary to provide capacity for items under pars. (a), (c) and (d).~~

SECTION 3. NR 162.05(4)(a)1.c., 2.d. and 3.d are created to read:

NR 162.05(4)(a)1.c. Failure to implement a user charge system and a sufficient replacement fund as required by 40 CFR Part 35.

2.d. Failure to implement a user charge system and a sufficient replacement fund as required by s. NR 128.13.

3.d. Failure to implement a user charge system and a sufficient replacement fund as required by s. NR 162.11.

SECTION 4. NR 162.05(7)(a)14. is amended to read:

NR 162.05(7)(a)14. Costs for the development of water conservation plans ~~and~~ , user charge system plans and sewer use ordinances under s. NR 162.11(4);

SECTION 5. NR 162.05(7)(a)28. is amended to read:

NR 162.05(7)(a)28. ~~Capitalized~~ Net capitalized interest costs, interest expense and capitalized issuance costs incurred by a municipality to finance the eligible portion of a project that proceeded before receipt of financial assistance;

SECTION 6. NR 162.06(2)(a)1. and 2. are amended to read:

NR 162.06(2)(a)1. Approved current detailed plans and specifications which are capable of being bid.

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

SECTION 7. NR 162.06(2)(a)5. is created to read:

NR 162.06(2)(a)5. A user charge system and sewer use ordinance which have received contingent approval from the department. The department may waive the requirements of s. NR 162.11(2)(g) for an applicant owning a regional treatment works if the department has given contingent approval to user charge systems and sewer use ordinances for subscribers whose design flows, design BOD capacities, design suspended solids capacities and annual debt payments accumulate to at least 90% of the total for the regional treatment works project.

SECTION 8. NR 162.07(2)(c) is amended to read:

NR 162.07(2)(c)

Tier 3 projects shall be funded at the market interest rate.

Unsewered projects which meet the requirements of ss. NR 162.05(3)(a), (am) and (b), violator projects, future growth and reserve capacity, industrial capacity, and capital cost projects.

SECTION 9. NR 162.08(2)(a)5. and 6. are amended to read:

NR 162.08(2)(a)5. Certification and other supporting documentation, including audited financial statements, if required, that the municipality possesses the ability to repay the financial assistance, and calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage and financial reserves. This certification shall be supported by documentation of the applicant's financial capability; and

6. Financial assistance payment projections and a proposed repayment schedule; and

SECTION 10. NR 162.08(2)(b)1. is repealed and recreated to read:

NR 162.08(2)(b)1. A statement of the type of financial assistance being applied for and the reasons for each type being requested;

SECTION 11. NR 162.08(2)(b)5. and 6. are amended to read:

NR 162.08(2)(b)5. Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project; and

6. A schedule showing the dates of initiation and completion of the project, including appropriate milestones; and

SECTION 12. NR 162.08(2)(b)7. is renumbered (2)(b)8. and amended to read:

NR 162.08(2)(b)8. Invoices documenting the costs incurred during the preparation of the ~~facility plan~~ design plans and specifications, for which refinancing is being requested.

SECTION 13. NR 162.08(2)(b)7. is created to read:

NR 162.08(2)(b)7. Certification and other supporting documentation, including audited financial statements, if required, that the municipality possesses the ability to repay the financial assistance, and calculations showing that the income of the municipality will be sufficient to satisfy the requirements of the financial assistance, including debt service, coverage and financial reserves. This certification shall be supported by documentation of the applicant's financial capability; and

SECTION 14. NR 162.08(4)(a)2. is amended to read:

NR 162.08(4)(a)2. An executed intermunicipal agreement, if wastewater generated by the applicant will be discharged to or through wastewater facilities of another municipality. The department may waive the requirement of an executed intermunicipal agreement if an order under s. 144.07(1), Stats., has been issued or if the department has obtained executed intermunicipal agreements for subscribers whose design flows, design BOD capacities, design suspended solids capacities and annual debt payments accumulate to at least 90% of the total for the regional treatment works project;

SECTION 15. NR 162.09(7) is amended to read:

NR 162.09(7) ENVIRONMENTAL REVIEW. The Wisconsin environmental policy act (WEPA) requirements or national environmental policy act requirements applicable to the project have been met.

SECTION 16. NR 162.09(7m) is created to read:

NR 162.09(7m) ENVIRONMENTAL REVIEW REAFFIRMATION. If 5 years elapse between the date the Wisconsin environmental policy act or national environmental policy act review requirements have been met and the award of financial assistance, the project and its impacts shall be subject to a reevaluation under ch. NR 150 to determine whether new information warrants a reconsideration of the original decision.

SECTION 17. NR 162.09(9)(a) is repealed and recreated to read:

NR 162.09(9)(a) If the award of financial assistance is for a step 3 project, the applicant has adopted and implemented a user charge system and sewer use ordinance in compliance with s. NR 162.11. The applicant shall agree that a system of user charges and a sewer use ordinance in accordance with s. NR 162.11 will be adequately maintained for the design life of the treatment works. The department may waive the requirements of s. NR 162.11(2)(g) for an applicant owning a regional treatment works if the department has given final approval to user charge systems and sewer use ordinances for subscribers whose design flows, design BOD capacities, design suspended solids capacities and annual debt payments accumulate to at least 90% of the total for the regional treatment works project.

SECTION 18. NR 162.10(7) is amended to read:

NR 162.10(7) REPAYMENT. Repayment of financial assistance is to begin not later than 12 months after the ~~date of~~ expected physical completion date of the project and the final payment shall be made not later than 20 years after the date of the financial assistance agreement.

SECTION 19. NR 162.10(8) is repealed and recreated to read:

NR 162.10(8) OPERATION AND MAINTENANCE. (a) The recipient shall provide the department with a plan of operation for the wastewater treatment facilities. The plan of operation shall include necessary actions and an implementation schedule to assure the timely start-up and efficient operation of the facilities for the following:

1. A summary of implementation dates in chronological order;
2. Staffing and training;
3. Records, reports and laboratory control;
4. Process control and start-up procedures;
5. Safety procedures;
6. Sludge management;
7. An emergency operating plan;
8. Maintenance management;
9. An operations budget; and
10. An operations and maintenance manual. For projects or facilities which have an approved operation and maintenance manual, this requirement may be met by the submission of an addendum to the original manual. For projects in unsewered communities, this requirement may be met by the submission of information stating the date the operations and maintenance manual will be completed and certified to the department.

(b) The recipient shall submit an operations and maintenance manual to the department. The project engineer and the authorized representative of the recipient shall certify that the operation and maintenance manual meets or

exceeds the requirements of this chapter. The operations and maintenance manual shall address the following areas:

1. General information;
2. Staffing;
3. Records and recordkeeping;
4. Laboratory;
5. Safety;
6. Utility systems;
7. A description of the process, operations and controls;
8. Maintenance;
9. Sludge management;
10. Manufacturer's information; and
11. An appendix.

SECTION 20. NR 162.10(15) is repealed.

SECTION 21. NR 162.11(1) is amended to read:

NR 162.11(1) USER CHARGE SYSTEMS: GENERAL. The department may approve a user charge system which is based on the actual use of wastewater treatment services. The user charge system shall require that each user or user class pays its proportionate share of the operation and maintenance costs, including replacement costs, of treatment works within the recipient's service area. The proportionate share is based on the user's or user ~~classes~~ class's proportionate contribution to the total wastewater loading from all users and user classes. To insure a ~~proportional~~ proportionate distribution of operation and maintenance costs to each user or user class, factors such as

strength, volume, delivery flow rate characteristics or equivalent use shall be utilized in determining the waste load contribution from each user or user class. The department may grant contingent approval of a user charge system which meets the requirements of this section, pending adoption of the user charge system by the recipient.

SECTION 22. NR 162.13(5)(d) is amended to read:

NR 162.13(5)(d) Have received final approval of ~~and~~ , adopted and implemented its user charge system and sewer use ordinance.

SECTION 23. NR 162.13(7) is amended to read:

NR 162.13(7) LOAN REPAYMENT. (a) The recipient shall repay the department of administration in accordance with the repayment schedule included in the financial assistance agreement. Principal payments shall be due on each May 1 following the date of expected physical completion of the project or the date of the financial assistance agreement, whichever is later. Interest payments shall be due on each May 1 and November 1 following the date of the financial assistance agreement. Capitalization of interest payments shall be in accordance with the terms and conditions of the financial assistance agreement.

(b) Loans issued under this chapter shall accrue interest based on actual disbursements beginning on the day the funds are released to a recipient.

SECTION 24. NR 162.16(2)(b)3.c. is amended to read:

NR 162.16(2)(b)3.c. The municipality qualifies as a financial hardship community under ch. NR 163 and received a notice of financial assistance

commitment ~~during the 1989-1991 biennium~~ between July 1, 1989 and June 30, 1991.

SECTION 25. NR 162.21(2)(c) is repealed.

SECTION 26. A Note following NR 162.21 is created to read:

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

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 27, 1992.

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

Dated at Madison, Wisconsin

April 21, 1992

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By

Carroll D. Resadny

Carroll D. Resadny, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

RECEIVED

APR 24 1992

Revisor of Statutes
Bureau

April 21, 1992

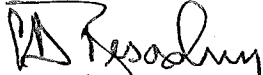
Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CA-27-91. These rules were reviewed by the Assembly Committee on Environmental Resources, Utilities and Mining and the Senate Committee on Urban Affairs, Environmental Resources and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

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

Sincerely,


C. D. Besadny
Secretary

Enc.