

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

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** ch. NR 166, Wis. Adm. Code, relating to the Safe Drinking Water Loan Program and affecting small business.

**CF-12-13**

**Analysis Prepared by the Department of Natural Resources**

**1. Statute Interpreted, Statutory Authority and Explanation:** Section 281.61(12), Wis. Stats., authorizes the department to promulgate rules establishing eligibility criteria for applicants and projects necessary for the execution of its responsibilities under the Safe Drinking Water Loan Program. The Safe Drinking Water Loan Program provides financial assistance to municipalities for their drinking water systems.

**2. Related Statutes or Rules:** Concurrent with this effort, the department is also repealing and recreating ch. NR 162 relating to the Clean Water Fund Program. Both the Safe Drinking Water Loan Program and the Clean Water Fund Program are part of the Environmental Improvement Fund.

**3. Plain Language Analysis:** Revisions to ch. NR 166, Wis. Adm. Code, relating to the Safe Drinking Water Loan Program, clarify eligibility criteria, streamline processes, and update implementation issues since the rule was last revised. Substantive changes in this rule revision include:

- Adds several definitions to provide clarity in areas in which the program has experienced some difficulties.
- Clarifies that a municipality cannot already have “long-term affordable debt” outstanding for its completed or substantially completed project”; any project that has been substantially complete for more than 3 years is not eligible for financing.
- Provides flexibility for determining whether publishing a funding policy for a given fiscal year is appropriate or necessary, and changes the public comment format from holding a public hearing to having a 30-day online public comment period.
- Updates eligible projects/activities to incorporate current practices and add a few new eligibility items
- Changes the deadline dates for ITA/PERF submittals to Oct 31<sup>st</sup> and allows for/requires on-line submittals of ITAs
- Makes minor revisions to the PERF scoring system, and requires annual rather than biennial submittal of project information
- Increases allowable interim financing issuance costs from \$7,500 to up to \$15,000
- Updates Disadvantaged Business Enterprise (DBE) requirements to comply with federal requirements
- Clarifies that Median Household Income (MHI) data source is the American Community Survey conducted by the U.S. Census Bureau and provides data options for sanitary districts for which there is not a published MHI.

**4. Summary of, and Comparison with, Existing or Proposed Federal Statutes and**

**Regulations:** All state programs must comply with the federal requirements for the program, as outlined in 42 USC 300g-1. This rule complies with the requirements of the Federal Safe Drinking Water Act, 42 USC 300f to 300j-26.

**5. Comparison with Similar Rules in Adjacent States:** Each state implements the federal Safe Drinking Water Act consistent with the associated state statutes and federal requirements. Each state loan program has unique features, but all of the programs are designed to meet federal Safe Drinking Water Act requirements. Each state has a unique priority scoring system based on state priorities but consistent with federal priorities. The EPA reviews program implementation to ensure consistency with the federal requirements.

**6. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:** The implementation of the Safe Drinking Water Loan Program does not include regulatory activities. Refinements to the program were established with both internal and external advisory groups with the intent of streamlining processes and clarifying criteria for program implementation.

**7. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:** Rule revisions are expected to have minimal impact on small businesses, in that it streamlines existing processes and clarifies implementation criteria. Rule revisions do not contain any new requirements for small businesses.

**8. Effect on Small Business (initial regulatory flexibility analysis):** Minimal.

**9. Agency Contact Person:** Robin Schmidt, Bureau of Community Financial Assistance, 101 S. Webster Street., PO Box 7921, Madison WI 53707-7921; [robin.schmidt@wisconsin.gov](mailto:robin.schmidt@wisconsin.gov); 608-266-3915.

---

**SECTION 1. NR 166 is repealed and recreated to read:**

## **SUBCHAPTER 1 - GENERAL**

**NR 166.01 Purpose.** The purposes of this chapter are all of the following:

(1) Establish rules under ss. 281.59 and 281.61, Stats., for the implementation and administration of a financial assistance program to plan, design, construct or modify public water systems.

(2) Establish a priority system for the distribution of safe drinking water loan program financial assistance as provided in s. 281.61, Stats., and the mechanisms and methodology to be used to modify the priority system.

**Note:** All forms necessary for financial assistance under this chapter may be acquired at no charge from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921. The forms are also available on the Department of Natural Resources website.

**NR 166.02 Applicability.** This chapter applies to all applicants for and recipients of financial assistance to plan, design, construct or modify public water systems made pursuant to ss. 281.59 and 281.61, Stats. Compliance with the applicable requirements of this chapter is a prerequisite to receiving financial assistance under ss. 281.59 and 281.61, Stats.

**NR 166.03 Definitions.** In this chapter:

(1) “Action level” or “AL” has the meaning given in s. NR 809.04 (1).”

**Note:** In s. NR 809.04 (1), “action level” is the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a public water system is required to complete.

(2) “American community survey” or “ACS” means the nationwide survey conducted by the U.S. bureau of the census to collect demographic, social, housing, and economic data and produce 1-year, 3-year, and 5-year estimates based on population thresholds.

(3) “Applicant” means any municipality that applies for financial assistance under ss. 281.59 and 281.61, Stats.

(4) “Approval” means the written approval of the department.

(6) “Block group” means a subdivision of a census tract made up of a cluster of blocks having the same first digit of their four-digit identifying numbers within the tract.

(7) “Breach of contract” means the failure of the financial assistance recipient to comply with any of the following:

(a) The terms and conditions of the financial assistance agreement.

(b) The terms and conditions of the municipal obligation resolution authorizing the issuance and sale of bonds or notes to the safe drinking water loan program.

(8) “Capital improvement” means construction resulting in improvements to real property or depreciable property, or both, or adding to the value or useful life of these assets, including structural improvements such as constructing new wells or elevated storage tanks or modifying existing facilities, or improvements that enhance usefulness or productivity, including replacing an existing pump with a more efficient new pump.

**Note:** The following are examples of capital improvements: drilling a new well and constructing a well house; upgrading existing equipment or installing new, more efficient process equipment, such as pumps, and chemical feed or other treatment equipment; constructing new buildings or facilities; adding to or constructing major renovations of existing facilities; replacing aged or undersized water mains; constructing a water system crossing of a highway, railroad, or waterbody; constructing a watermain loop to eliminate one or more dead ends in the water system; upgrading or improving an existing storage tank, including recoating the entire exterior or entire interior, or both, of a storage tank; installing security, a supervisory control and data acquisition system, or monitoring equipment as part of a scored project.

(9) “Census block” means the smallest unit for which the U.S. census bureau collects and tabulates population information in the decennial census and income information in the ACS.

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

(11) “Census tract” means a small, relatively permanent statistical subdivision of a county used in the decennial census and the American community survey, delineated for the purpose of presenting data, typically following visible features or governmental boundaries or both, including approximately 4,000 inhabitants, and designed to be a relatively homogeneous unit with respect to population characteristics, economic status, and living conditions.

(12) “Change order” means an action that specifies and justifies a change to a construction contract that alters the time of completion, the contract scope of work, the total price, or a combination of any of these.

(13) “Community water system” means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Any water system serving 7 or more homes, 10 or more mobile homes, 10 or more apartment units or 10 or more condominium units shall be considered a community water system unless information is provided by the owners indicating that 25 year-round residents will not be served.

(14) “Construction” means a set of actions taken to make a capital improvement, including any of the following actions:

(a) Building, erecting, extending, or assembling a water system or a new major asset for an existing water system.

(b) Preparing a construction site or sites for work activities. Site preparation includes grading, staking, and digging, and demolition or abandonment of existing structures.

(c) Altering, modifying, improving, upgrading, rehabilitating, or adding to existing water system facilities.

(d) Installing new piping or mechanical, electrical, or electronic equipment or facilities.

(15) “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

(15m) “Core scope of work” means the set of activities, items, and work that is specific to and necessary for constructing and putting into operation a scored project.

**(16)** “Custom tabulation” means a special tabulation of income data from the ACS microdata files that is performed by the U.S. bureau of the census, is not part of the standard ACS data tabulations, and results in generation of a median household income for an area designated by the applicant as the boundaries of a town sanitary district, public inland lake protection and rehabilitation district, or municipal water district, or of the area served by the water system if the water system serves only a portion of the place or minor civil division in which it is located.

**(17)** “Debt” means a financial liability that is subject to repayment and incurred to fund a project, including liabilities in the form of lines of credit, bond anticipation notes, general obligation bonds, revenue bonds, general obligation promissory notes, certificates of indebtedness, and special assessment bonds.

**(18)** “Dedicated replacement fund” means a separate fund established by the municipality in which an appropriate balance is maintained, or sufficient deposits are made, or both, for the purpose of making expenditures for major repair or planned replacement of equipment or facilities necessary for the operation of the water system, or for unexpected unbudgeted major costs incurred for operation and maintenance of the water system.

**(19)** “Department” means the department of natural resources.

**(20)** “Disadvantaged business enterprise” or “DBE” means a business entity certified as disadvantaged under the U.S. department of transportation unified certification program or other program approved by the U.S. environmental protection agency to certify disadvantaged businesses.

**(21)** “Distribution system” means all pipes or conduits by which water is delivered to consumers except piping inside buildings served and a service line to a building from a distribution main or pipe.

**(22)** “DOA” means the department of administration.

**(23)** “Engineering” includes the following:

(a) Performing preliminary planning to determine the need for or the feasibility of building or modifying a water system.

(b) Performing engineering, architectural, geotechnical, hydrogeological, environmental, archaeological, fiscal, or economic investigations or studies.

(c) Preparing surveys, designs, plans, bidding documentation, working drawings, specifications, or as-built drawings.

(d) Observing, inspecting or supervising any of the activities under pars. (a) to (c) or under sub. (14).

**(24)** “Financial assistance” includes one or more of the following actions taken by the department and DOA under ss. 281.59 and 281.61, Stats.:

(a) Providing a loan, principal forgiveness, a guarantee, or credit enhancement to a municipality.

(b) Refinancing a municipality’s interim debt obtained for the project.

(c) Purchasing insurance for a municipality.

**(25)** “Financial assistance agreement” means a written agreement between a municipality, the department and DOA that contains the terms and conditions of the financial assistance provided to the municipality.

**(26)** “Financial assistance agreement amendment” means a formal, written change to an existing financial assistance agreement, executed by all parties to the original agreement.

**(27)** “Force account work” means engineering, construction, or other project-specific activities performed by a municipality’s employees, or using equipment owned by the municipality, or both.

**(28)** “Future growth” means distribution system expansion beyond the existing system and excess capacity built into facilities that exceeds standard engineering practices.

**(29)** “Interim financing” means a debt of a municipality incurred to temporarily finance a project until permanent financing is obtained from the department under this chapter.

**(30)** “Interim financing costs” means the net interest, fees, and charges associated with issuing interim financing, including underwriter discounts, attorney fees, financial advisor fees, printing costs, bond rating charges, and trustee fees.

**(32)** “Maintenance” means activities or procedures that are established, commonplace, or repetitious, and are performed or should be performed frequently or on a schedule to sustain the functional integrity and efficiency of existing facilities and to provide upkeep for prevention of early decline or failure, or are performed as needed in response to minor emergencies, such as watermain repair when a pipe bursts, including the following types of maintenance:

(a) Preventive maintenance, including scheduled service, repair, inspection, adjustment, or replacement of parts, to keep equipment or facilities in satisfactory operating condition, to avoid frequent breakdowns and premature replacements, and to achieve the expected life of constructed assets and installed building equipment, conducted with a frequency of one year or less.

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

(c) Mobile equipment maintenance, including all corrective, preventive, emergency, or replacement maintenance work done on mobile equipment assets, except when performed at time

of purchase of used equipment to bring the purchased equipment to a fully functional or improved condition, or both.

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

(e) Component renewal, which is preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 10 years, excepting storage tank recoating.

(f) Emergency maintenance, including unscheduled activities and repairs, such as repairing watermain breaks or mechanical malfunctions in aged or damaged infrastructure, typically initiated within a very short amount of time from when a need is identified, to correct an emergency need to prevent injury, loss of property, or human health impacts, or to quickly return an asset to service, excepting emergency repairs or replacement needed due to damage caused by severe weather, cyber attacks, or other unforeseen serious emergency situations over which the municipality has no control.

(g) Minor equipment replacement that substitutes or exchanges one existing asset, asset component, or item of installed equipment for another having the same specifications and the same capacity to perform the same function, except when performed within the scope of a larger capital improvement.

(h) Demolition that does not meet the cost eligibility criteria established in s. NR 166.07 (1) (g).

**(33)** “Market interest rate” has the meaning given in s. 281.59 (1) (b), Stats.

**Note:** Under s. 281.59 (1) (b), Stats., “market interest rate” means the effective interest rate on a fixed-rate revenue obligation issued by the state to fund a loan made under s. 281.59 (1) (b) or, for a variable rate obligation, the effective interest rate that the department of administration determines would have been paid if the variable rate obligation had been sold at a fixed rate.

**(34)** “Maximum contaminant level” or “MCL” means the maximum permissible level of a contaminant that is delivered to any user of a public water system.

**Note:** The maximum permissible level and the sampling and analytical requirements vary depending on the specific contaminant. Chapter NR 809 should be consulted for specific information regarding any contaminant.

**(35)** “MCL exceedance” means the analytical results of sampling for microbiological, inorganic, synthetic organic, volatile organic, disinfection byproducts, or radionuclide contaminants, as determined by methodology outlined in ch. NR 809, exceed the MCL of the contaminant.

**(36)** “Median household income” has the meaning given in s. 281.58 (1) (cm), Stats.

**Note:** Under s. 281.58 (1) (cm), Stats., “median household income” means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

**(37)** “Minor civil division” means the primary governmental divisions of a county, including towns, as designated by the U.S. bureau of the census to collect and publish data.

**(38)** “Minority business enterprise” or “MBE” means a DBE that is owned or controlled on a daily basis by one or more minority group members.

**(39)** “Municipality” has the meaning given in s. 281.59 (1) (c), Stats.

Note: Under s. 281.59(1)(c), Stats., “municipality” means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, joint local water authority created under s. 66.0823, Stats., or federally recognized American Indian tribe or band in this state. To be eligible for financial assistance from the safe drinking water loan program, an entity must be of a type included in the definition of “municipality” under s. 281.59 (1) (c), Stats., However, “municipality” includes some entities that are not eligible to receive safe drinking water loan program financial assistance because they are not eligible under federal regulations. The types of entities that are eligible to receive safe drinking water loan program financial assistance are those included in the definition of “local governmental unit” under s. 281.61 (1) (a), Stats., which reads as follows: ““Local governmental unit” means a city, village, town, county, town sanitary district, public inland lake protection and rehabilitation district, joint local water authority created under s. 66.0823, or municipal water district.” If a municipal water district applies for safe drinking water loan program financial assistance, the recipient of the financial assistance is the incorporated place, rather than the utility itself.

**(40)** “Non–community water system” means a public water system that is not a community water system.

**(41)** “Operations” means labor, materials and chemicals used regularly, and work activities performed on a recurring basis throughout the year that are intended to meet routine, daily functional needs. Work activities may include any of the following:

(a) Operational maintenance activities related to continuing normal performance of the functions for which a water system asset or item of equipment is intended, such as lubricating gates and valves and removing organic growth or sediment, or related to keeping building systems such as HVAC, lighting, and electrical utilities working properly.

(b) Custodial maintenance activities, such as housekeeping duties, rodent and pest control, cutting brush and weeds, and lawn mowing, associated with general day-to-day care and cleaning necessary to maintain constructed assets.

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

(d) Snow and ice removal and activities to treat surfaces to eliminate unsafe weather-related conditions.

(e) Office activities related to billing, collections, customer communications, personnel, and other types of activities that support the administration of the water system.



(f) Monitoring and record-keeping activities associated with making sure all components of the water system are working as they should, including: sampling, testing, analyzing data from a supervisory control and data acquisition system, patrolling and inspecting, reading gauges and meters, keeping plant logs and records, and preparing operations reports.

(42) “Place” means a concentration of population either legally bounded as an incorporated place, such as a city or village, or identified as a census designated place by the U.S. bureau of the census.

(43) “Plans and specifications” means project drawings and specification manuals for all construction work to be included in the financial assistance for the scored project.

(44) “Population” means the most recent year’s final population estimate published by the DOA demographic services center for the Wisconsin city, town, or village that submitted an intent to apply form. For a public water system owned by other than a city, town or village, “population” means the most recent population count or estimate done for the system or municipality and provided to the department by the municipality for purposes such as completing a sanitary survey.

(45) “Present value subsidy” or “PV” means the sum of periodic subsidies for loans made to or projected to be made to municipalities during a fiscal year, discounted at a rate of 5% to 7% per year to the first day of the biennium during which the loans are made.

(46) “Priority score” means the numerical value determined by the department that is assigned to each project in accordance with ss. NR 166.23 and 166.24.

(47) “Professional services” includes engineering, archaeological, legal, or financial services, provided by a formally certified member of a professional body, such as a trade association or organized profession.

(48) “Project” means a set of activities described by a municipality for a planned undertaking related to its water system.

(49) “Project closeout” means the procedures described in s. NR 166.16 (4) (b).

(50) “Project completion date” means the earliest date on which all of the following apply:

(a) The project construction is complete.

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

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

(d) The project closeout is complete.

(e) The department has notified the recipient that the project is complete.

**(51)** “Public water system” means a system for the provision to the public of piped water for human consumption if the water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days each year. A public water system is either a community water system or a non–community water system.

**Note:** The definition of public water system as regulated by this chapter is broader and includes more water systems than those governed by the Public Service Commission under its definition of a public utility in ch. 196, Stats.

**(52)** “Recipient” means any municipality or group of municipalities that has been awarded or has received financial assistance under ss. 281.59 and 281.61, Stats.

**(53)** “Safe drinking water act” means the federal safe drinking water act, 42 USC 300f to 300j–26.

**(54)** “Safe drinking water loan program” or “SDWLP” has the meaning given in s. 281.61 (1) (d), Stats.

**Note:** Under s. 281.61 (1) (d), Stats., “safe drinking water loan program” means the program administered under s. 281.61, Stats., with financial management provided under s. 281.59, Stats.

**(55)** “Scored project” means a project to which all of the following apply:

(a) The type of project meets eligibility criteria established in s. NR 166.06 (1).

(b) The planned set of activities of the project includes construction activities that are reasonably necessary and appropriate to address a particular public health or water system concern.

(c) The scope of work is described in a priority evaluation and ranking form and a notice of intent to apply submitted by the applicant.

(d) The department completed all of the following actions:

1. Reviewed the priority evaluation and ranking form.

2. Made any appropriate changes to the scope of work identified by the applicant to remove work that is superfluous to the scope of work necessary to address the particular public health or water system concern.

3. Determined the project priority score based on the adjusted scope.

4. Provided a SDWLP project number to the scored scope of work.

**(56)** “Service line” means the connection from a publicly or privately owned water system to a residential, commercial, institutional, or industrial user located in the public right–of–way or on private property.

**(57)** “Significant noncomplier” means a public water system that the U. S. environmental protection agency has reported to the department to be in significant noncompliance with any requirement of a primary drinking water regulation or variance under 42 USC 300g–1.

(58) “Subsidy” means the amount provided from the environmental improvement fund to a recipient of SDWLP financial assistance to reduce the interest rate of a loan made under the SDWLP from the market interest rate to a lesser rate, or to forgive a portion of the principal of an SDWLP loan.

(59) “Substantial completion” means the date on which project construction is sufficiently complete in accordance with the contract documents so that the owner can occupy or utilize the project for its intended use.

(61) “Treatment technique” means one or more methods of treatment that are known to remove or inactivate giardia and viruses as determined in ss. NR 810.29 and 810.31.

(62) “Utility” means a public utility as defined in s. 196.01 (5), Stats.

(63) “Water rates” means a charge or system of charges levied on users of a water system for the user’s proportional share of the revenue requirement of a water system that consists of operation and maintenance expenses, depreciation, taxes and return on investment.

(64) “Water system” means all structures, conduits and appurtenances by means of which water is obtained or drawn from a source and eventually delivered to consumers, except piping and fixtures inside buildings served and the privately owned portions of service lines from street mains to buildings.

(65) “Women business enterprise” or “WBE” means a DBE that is owned or controlled on a daily basis by a woman or women.

## **SUBCHAPTER II — FINANCIAL ASSISTANCE REQUIREMENTS**

**NR 166.04 Types of financial assistance available.** The department and DOA may, subject to applicable requirements of ss. 281.59 and 281.61, Stats., and ch. Adm 35, provide to eligible applicants for eligible projects any of the following types of financial assistance unless the project has been substantially complete for 3 years or longer or the applicant already has long-term affordable debt outstanding for its completed or substantially completed project:

(1) Subject to the limits established in s. NR 166.07 (3), purchase or refinance a municipality’s interim financing.

(2) Guarantee, or purchase insurance for, municipal obligations for construction if the guaranteed or purchased insurance would improve credit market access or reduce interest costs on the municipal obligations.

(3) Make loans below the market interest rate.

**NR 166.05 Annual funding policy, project priority list, and funding list. (1)**

FUNDING POLICY AND PROJECT PRIORITY LIST. The department may produce an annual SDWLP funding policy in conjunction with the fiscal year's project priority list established under s. NR 166.25. The funding policy may describe methods for making funding determinations and other policies related to the fiscal year. If the department publishes a funding policy for a given year, it shall provide an opportunity for public comment regarding the funding policy.

(2) FUNDING LIST. The department shall prepare an annual funding list in accordance with s. 281.61 (8), Stats., and s. NR 166.25.

**NR 166.06 Project eligibility. (1) ELIGIBLE PROJECTS.** A municipality may receive financial assistance under this chapter for a project that has any of the following purposes:

(a) Address safe drinking water act health standards that have been exceeded or to prevent future violations of health standards and regulations contained in ch. NR 809. This includes projects to maintain compliance with existing regulations for contaminants with acute health effects and regulations for contaminants with chronic health effects.

(b) Replace infrastructure if necessary to maintain compliance with or further the public health protection goals of the safe drinking water act. This includes projects with any of the following purposes:

1. Rehabilitate or develop sources to replace contaminated sources, excluding reservoirs, dams, dam rehabilitation, and water rights,.

2. Install or upgrade treatment facilities if, in the department's opinion, the project would improve the quality of drinking water to comply with primary or secondary drinking water standards.

3. Install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the public water system.

4. Install, replace, or rehabilitate transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.

(c) Consolidate existing community water systems that have technical, financial, or managerial difficulties. Projects for consolidating existing systems shall be limited in scope to the service area of the systems being consolidated.

(d) Purchase a portion of another public water system's capacity if it is the most cost-effective solution.

(e) Restructure a public water system that is in noncompliance with the safe drinking water act requirements or lacks the technical, managerial, and financial capability to maintain the

system if the assistance will ensure that the system will return to and maintain compliance with the safe drinking water act requirements.

(f) Create a new community water system or expand an existing community water system that, upon completion, will address an existing public health threat from contaminated drinking water provided by individual wells or surface water sources. Projects to address existing public health threats associated with individual wells or surface water sources shall be limited in scope to the specific geographic area affected by contamination and shall be a cost-effective solution to resolve the problem threatening public health. Projects in this paragraph must meet all of the following criteria:

1. The municipality submits documentation, such as well sampling results, showing that the MCL for a microbiological, nitrate or nitrite, or chronic contaminant is exceeded by 40% or more of the individual wells or surface water sources within the affected area; or the municipality submits hydrogeological data or other documentation that indicates contamination is imminent.

2. The department determines that a community water system is a necessary and appropriate response to the contamination.

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

(a) Building or rehabilitating a dam.

(b) Purchasing or selling water rights, except if the water rights are owned by a public water system that is being purchased through consolidation as part of a capacity development strategy.

(c) Developing a reservoir, except a finished water reservoir or a reservoir that is part of the treatment process and located on the property where the treatment facility is located.

(d) A project or a portion of a project needed primarily for fire protection.

(e) A project for a public water system that lacks adequate technical, managerial, and financial capability, unless assistance will ensure compliance.

(f) A project for a water system determined to be a significant noncomplier unless funding will ensure compliance with safe drinking water act requirements.

(g) A project or a portion of a project primarily intended to serve future growth.

(h) A project or a portion of a project for water systems owned by state or federal agencies.

(i) A project not reasonably necessary and appropriate to address a public health concern.

(j) Any portion of a project that is not reasonably necessary and appropriate to address a public health concern within the core scope of work, except when the applicant identifies an activity outside of the core scope of work in the application form as being necessary for the efficient operation or the integrity of the overall water system and having de minimis cost, and the department determines the cost of that portion of the project to be eligible for financial assistance under the scored project.

(k) Any project from which no construction costs are to be funded through the SDWLP, unless another governmental agency is providing financing for the construction costs and the department receives acceptable documentation, as determined by the department, of the other agency's commitment.

(L) Any project to which one of the following applies, unless the municipalities served by the project execute an intermunicipal agreement that meets the requirements described in s. NR 166.10 (2) (h):

1. The applicant will obtain water from another municipality's water facilities.
2. The applicant is providing water to another municipality.

(m) Projects of a municipality that is failing to substantially comply with conditions or requirements of s. 281.58 or s. 281.59, Stats., ch. Adm 35, this chapter, or an existing financial assistance agreement with the SDWLP or the clean water fund program.

**NR 166.07 Cost eligibility. (1) ELIGIBLE COSTS.** Allocable project-specific costs that are necessary and reasonable are eligible for financial assistance. Eligible costs include expenses incurred by the municipality for any of the following items and activities when specific to the core scope of work in a scored project, or when approved by the department after being identified in the application as necessary for the efficient operation or the integrity of the overall water system and having de minimis cost:

(a) *Abandonment.* Abandonment of an entire water system or portions of a water system if approved in the plans and specifications of an eligible project or by department staff, including activities such as demolition, re-landscaping, and removal and disposal of debris.

(b) *Access roads.* Construction of roadways necessary to provide appropriate access to water system facilities such as wellhouses, storage tanks, and water treatment plants.

(c) *Administrative buildings and equipment.* Buildings, offices, and office equipment and furnishings used for purposes of operating a water system, such as administration and storage buildings when part of the scope of the scored project and included in the approved plans and

specifications or otherwise approved by department staff. The department may prorate costs for buildings, offices, and office equipment and furnishings that are partially used for purposes not related to the water system.

(d) *Administrative costs of a commission.* Administrative, legal, and other project-specific costs incurred by a commission, if identifiable in a contract or agreement between the member municipalities.

(e) *Compliance with state and federal requirements.* Costs incurred for activities associated with complying with state and federal requirements related to the scored project.

**Note:** Federal and state requirements may include any of the following: Americans with Disabilities Act design and construction; green project reserve documentation; Davis-Bacon and related acts administration or other activities associated with wage rate requirements; DBE solicitation and documentation; environmental review of project sites and other activities related to ch. NR 150 compliance, including costs of public notices and hearings; historical, architectural, archaeological, and cultural resources work identified during planning, design, or construction of the project and incurred prior to project closeout; signage requirements, including on a website or at a drinking water facility or project site; audit activities related to the federal single audit act portion of the municipality's annual audit report until the project is complete.

(f) *Construction activities.* Activities defined in s. NR 166.03 (14) and included in construction contracts or performed by force account, including any of the following:

1. Replacing, repairing, or rehabilitating a water system if identified in the plans and specifications as cost-effective and necessary.
2. Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and sewers necessary as a result of construction of the project.
3. Punch list item activities.
4. Acquiring, consuming, or expending materials.
5. Other capital costs incurred solely for purposes of the scored project.

(g) *Demolition.* Demolishing existing portions of a water system if the demolition is part of a scored project and at least one of the following applies:

1. The demolition will remove an existing building structure located in the space in which a new structure is to be constructed.
2. The demolition is necessary for site preparation.
3. The demolition is included in abandonment procedures as approved in the project plans and specifications or by department staff.
4. The demolition entails removal of equipment or materials, or both, from inside an existing water system building or other structure being modified or repurposed as part of the scored project.

(h) *Easements and rights-of-way.* Acquiring easements and rights-of-way if acquisition is from a willing seller. Expenses related to acquisition include purchase cost, and administrative and legal expenses.

(i) *Equipment and tools.* Equipment and tools, the costs of which the department may prorate if the municipality intends to use the equipment or tools for multiple purposes rather than solely for the water system. Eligible equipment and tools include any of the following:

1. Mobile equipment, such as portable stand-by generators, portable emergency pumps, and grounds and maintenance equipment for mowing and snow removal, for the water system.
2. Spare parts, if included in the plans and specifications or otherwise approved by the department.
3. Tools necessary for operations and maintenance of the water system, including specialized tools for specific purposes, site and building maintenance tools such as wheelbarrows, lawn sprinklers, weed trimmers, hoses, shovels, and rakes, and other basic tools such as trash cans, brooms, flashlights and multiple-use hand tools.
4. Machinery for manufacturing or repairing necessary water system tools or equipment for the water system.
5. Computers and related equipment, including purchasing, installing, programming, or upgrading computers, printers, control systems, and other computer-related equipment necessary for operating and maintaining the public water system. This includes equipment and systems for accounting, billing, public notification, testing, monitoring, reporting, emergency alerts, supervisory control and data acquisition, and communications.

(j) *Fees.* Fees paid by the municipality for any of the following:

1. Permits obtained for construction, including building, electrical, and plumbing permits, pit/trench dewatering permits, hydrostatic test water permits, construction site storm water permits, railroad crossing permits, and permits required under ch. 30, Stats.
2. Legal fees of an attorney that is not an on-staff municipal attorney, including costs of legal reviews of architectural, engineering, or construction contracts, user charge systems and water system ordinances, management plans, intermunicipal agreements, and work necessary for securing eligible permits.
3. Service fees paid to a state or federal agency, except administrative fees paid annually along with principal and interest payments on a SDWLP loan.

(k) *Groundwater monitoring.* Installing groundwater monitoring equipment or facilities.

(L) *Insurance.* Purchasing insurance necessary during construction of the project, including property, liability, builders risk, and construction insurance.



(m) *Interim financing.* Costs associated with interim financing incurred for the scored project as delineated in sub. (3).

(n) *Laboratories.* Laboratory equipment, chemicals, and supplies related to initial setup, upgrade, or expansion of the laboratory.

(o) *Land Acquisition.* Acquiring land, including purchase cost and administrative and legal expenses if all of the following apply:

1. The land is integral to the project, including land needed to locate a treatment facility, transmission line, storage tank, pump station, or well.
2. The land is acquired from a willing seller.

(p) *Municipal staff, equipment, and materials.* Municipal costs incurred solely for the scored project and documented by the municipality as force account, including any of the following:

1. Salary and benefits of municipal employees, except elected officials or on-staff attorneys, for time spent working directly on the project.
2. Expendable material costs incurred by the municipality.
3. Estimated costs incurred using equipment owned by the municipality.

(q) *Professional services.* Engineering, architectural, legal, and other professional services and fees, including any of the following:

1. Conducting value engineering studies or analyses during the design phase.
2. Conducting system evaluations and studies, including well site investigations.
3. Preparing and submitting engineering reports and plans and specifications.
4. Preparing, printing, and distributing bidding documents.
5. Gathering documents and information for, and completing, the SDWLP financial assistance application and other forms required for financial assistance.
6. Developing or revising an operations and maintenance manual.
7. Preparing a plan of operation for the project.
8. Advertising for and conducting bid lettings.
9. Analyzing bids, preparing award recommendations, and preparing contracts.
10. Providing construction management, observation, and inspection.
11. Preparing for and facilitating public education and participation opportunities.
12. Travel, indirect costs, and labor.
13. Preparing a user charge system.
14. Preparing environmental assessment reports and evaluations.
15. Conducting archaeological surveys and gathering historical site information.

16. Providing financial advisor or bond counsel services related to loan closing or the issuance of bonds.

17. Preparing a water conservation or wellhead protection plan.

18. Producing record drawings.

19. Updating or upgrading system maps of the areas impacted by the project.

20. Providing administration of activities related to Davis-Bacon and related acts or other wage rate requirements, if applicable.

(r) *Project site.* Construction-related work activities at the project site, including any of the following:

1. Landscaping areas impacted by construction of the project.

2. Reconnecting water service lines due to the rehabilitation of a publicly-owned water system.

3. Relocating storm water or wastewater sewer pipes if necessary for construction, and replacing sewers with the same size or required minimum size pipe if breakage from construction occurs.

4. Erecting project and water system identification signs.

5. Preparing a site for construction, including surveying, staking, and grading.

6. Restoring the construction site to original condition or upgrading the site to meet state and local requirements.

7. Removing, relocating or replacing utilities, providing temporary utilities, installing new utility equipment, or upgrading utilities, if the recipient is legally obligated to pay these costs.

(s) *Safety.* Purchasing and installing safety equipment to be used in the operation and maintenance of the public water system.

(t) *Security.* Purchasing and installing security equipment and appurtenances for the water system, including surveillance cameras, fencing, security alarms, and motion detectors, and conducting a vulnerability assessment if necessary for determining security needs.

(u) *Sewers on site.* Storm sewers and sanitary sewers necessary for controlling storm water runoff and wastewater on water system sites, such as at a wellhouse or water treatment plant site.

(v) *Special assessment fees.* Financial and legal costs associated with the process of preparing and implementing special assessments when the municipality is pledging special assessments for repayment of its SDWLP loan.

(w) *Startup.* Startup expenses for a water system incurred solely because of the scored project or items approved in the application as necessary for the efficient operation or the

integrity of the overall water system and having de minimis costs, including costs for any of the following:

1. Preparing a start-up curriculum and training materials.
2. Initial training of operating personnel on new or modified equipment, laboratory procedures, computers, controls, records management, and treatment processes.
3. Obtaining expert operational assistance for adjustments to the treatment process or other significant portions of the water system.
4. Implementing a maintenance management system.
5. Obtaining necessary computers, upgrades and software.
6. Attending off-site formal training programs if necessary for the initial operation of the constructed water system.
7. Purchasing the first fuel fill-up for new equipment, such as generators.

(x) *Street restoration.* Restoring streets and rights-of-way, and repairing damage to items such as pavement, sidewalks, and storm sewers necessary as a result of construction of the scored project. Eligibility of costs may be prorated based on participation by one or more other funding sources, or on the percent of the project attributable to SDWLP-eligible activities.

(2) **INELIGIBLE COSTS.** Costs for items and activities not directly associated with or not necessary for the construction or startup of a scored project are not eligible for financial assistance, except activities or items identified in the application as necessary for the efficient operation or the integrity of the overall water system and as having de minimis cost, and approved by the department to be included in the scored project. Ineligible items and activities include all of the following:

- (a) *Allowances.* Any contingency or allowance amounts built into a bid contract for nonspecific or ineligible items or activities.
- (b) *Basin planning.* Basin or areawide planning not related to the project.
- (c) *Bonus payments.* Bonus payments not legally required for completion of construction before a contractual completion date.
- (d) *Certification.* Fees for operator certification training.
- (e) *Conflict of interest.* Costs incurred under a contract that creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a recipient participates in the selection, award, or administration of a contract supported by the SDWLP and any of the following conditions exist:

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

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

(f) *DBE noncompliance.* The amount of project costs determined by the department to be appropriate for a sanction under s. NR 166.12 (4) (b) for noncompliance with DBE good faith effort requirements.

(g) *Engineering.* Engineering costs attributable to ineligible construction costs when ineligible construction and equipment costs are 10% or more of total construction and equipment costs.

(h) *Grant administration.* Any costs for administering or applying for funding from sources other than the SDWLP, such as U.S. department of agriculture's rural development programs, a community development block grant program, federal state and tribal assistance grants, U.S. army corps of engineers, focus on energy, or other non-SDWLP federal or state government loan or grant programs, or other types of financial assistance programs.

(i) *Hookup charges.* Hookup charges imposed by one municipality on another for hooking into a water system, unless the charges are based on identifiable capital improvement costs incurred by the municipality imposing the charge, proportional to the capacity to be used by the municipality hooking up, and included in an intermunicipal agreement meeting the requirements of s. NR 166.10 (2) (h).

(j) *Interim financing.* Interest or principal payments on interim financing paid by the municipality out of its internal funds rather than capitalized funds.

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

(k) *Lab fees.* Laboratory fees incurred for activities related to monitoring, except when the monitoring is project specific.

(L) *Late fees.* Interest or late fees charged a municipality for delayed payments to engineers, construction contractors, financial advisors, and others providing services to the municipality.

(m) *Leases.* Costs related to leasing land or buildings.

(n) *Mismanagement and litigation.* Costs of claims against the recipient resulting from mismanagement or caused by the recipient's vicarious liability for the improper action of others, and costs resulting from litigation of contract disputes, liquidated damages, appeals, and other related disputes.

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

(p) *No construction.* All costs of a project if the municipality does not finance some construction costs through the SDWLP, unless the department is cooperating with another governmental funding agency to put together an affordable financing package and the other agency is providing funding for the construction.

(q) *O&M.* Operations and maintenance expenses as defined in ss. NR 166.03 (41) and (32), respectively.

(r) *Ordinary municipal operating expenses.* Ordinary operating expenses of a municipality, such as salaries and expenses of elected officials and on-staff attorneys, postage, utility bills, and annual financial audits.

(s) *Other funding.* Costs for which payment has been or will be received from another funding source, including costs for which funds from the U.S. department of agriculture's rural development program or a community development block grant program are committed, or costs covered by a focus on energy grant. If the municipality does not receive the funds expected from the other source, the department may consider the costs of the work that was to be funded through the other source eligible for SDWLP financial assistance.

(t) *Outside of scope.* Costs outside the scope of the scored project. The department may approve a de minimis amount of costs outside the scope of the scored project if the extra items or activities will improve the overall integrity, operation, or functionality of the water system.

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

(v) *Post-closeout.* Expenses incurred after the project completion date of the scored project.

(w) *Service lines.* Water service lines downstream of the curb stop.

(x) *Sewer pipes.* Storm sewer or wastewater sewer pipe construction, replacement, or repair, unless the work is necessary as a direct result of work performed for a scored project, such as moving a wastewater pipe to allow appropriate distance between it and a watermain being constructed as part of the core scope of work or repairing or replacing a sewer pipe damaged during construction of the scored project.

(y) *Site acquisition.* Site acquisition expenses other than those meeting the criteria established under sub (1) (h) and (o).

(z) *Source water protection.* Land acquisition or easement costs incurred for land used for source water protection.

(zg) *Special districts.* Costs of establishing special purpose districts or commissions, such as sanitary districts, utility districts, public inland lake protection and rehabilitation districts, joint

local water authorities created under s. 66.0823, Stats., municipal water districts, and joint commissions.

(zr) *Violation penalties.* Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

**(3) LIMITATION ON ELIGIBILITY OF INTERIM FINANCING COSTS.** (a) *Net interest expense.* Interim financing interest expenses shall be offset with any interest earnings from the investment of the proceeds from the interim financing to determine the amount eligible for financial assistance.

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

(c) *Interim interest costs.* The period of time for which interest on interim financing is eligible for financial assistance shall run from no earlier than 12 months prior to the start of construction through the earliest of the following:

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

(d) *Cost proration.* If the term of the interim financing exceeds the limit in par. (c), the interim financing costs shall be prorated using the length of the eligible term divided by the total time that the interim financing is outstanding. If the debt used for interim financing is not exclusively for the SDWLP scored project, costs shall be prorated according to the proportion of the total debt that is for the scored project plus any approved de minimis costs.

(e) *Maximum principal.* The amount of interim financing principal that may be refinanced with SDWLP financial assistance shall not exceed the total amount of the interim financing that was spent on eligible project costs.

**(4) REIMBURSEMENT OF PREVIOUSLY PAID PROJECT COSTS.** The department may reimburse eligible project costs previously paid by the municipality from its internal funds, if the reimbursement is in compliance with applicable U.S. treasury reimbursement regulations in 26 CFR 1.150–2 and the criteria under s. NR 166.04 (intro.) are met.

**NR 166.08 Notice of intent to apply. (1)** A municipality shall submit notice of its intent to apply for financial assistance in the form required by the department. The municipality shall submit the notice by October 31 prior to the state fiscal year from which the municipality is

requesting to receive financial assistance. In order for the notice of intent to apply to be valid, it shall include the signature of an elected official of the municipality, an employee of the municipality, or the municipality's authorized representative designated by resolution, and at least one of the following shall apply:

(a) The online intent to apply form is completed and submitted by October 31.

(b) An alternate method of delivery is used due to inability to access or electronically submit the online electronic form if appropriate justification accompanies the alternate submittal. Alternate submittal methods include any of the following:

1. A paper copy of the intent to apply form is postmarked by October 31 or has a documented shipping or mailing date of October 31 or earlier.

2. The department receives the intent to apply form by October 31 via fax, e-mail, or other delivery methods. These methods are acceptable only if it is clear that the notice arrived at the department by the October 31 deadline.

3. Hand-delivery and shipping without documentation of the shipping date are acceptable if the intent to apply form is received by the department prior to the close of business on October 31.

**Note:** An Intent to Apply form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707-7921.

(2) The department may waive the requirement in sub. (1) upon the written request of a municipality pursuant to s. 281.61 (3) (c), Stats. Before waiving the requirement in sub. (1), the department shall consider special circumstances and factors consistent with those established in s. NR 166.22 (3) for granting variances.

**NR 166.09 Engineering report.** (1) A municipality shall submit an engineering report to the department for approval as required under s. 281.61 (4), Stats.

(2) An engineering report shall comply with the applicable engineering report requirements contained in chs. NR 108 and NR 811 for the type of project being constructed.

(3) The department shall determine whether there are activities included in the engineering report that fall outside of the scope of the project for purposes of this chapter.

(4) If neither ch. NR 108 nor ch. NR 811 requires an engineering report for a specific project, or if either ch. NR 108 or ch. NR 811 allows submittal and review of the engineering report and plans and specifications simultaneously, and the department receives the plans and specifications with or prior to submittal of the SDWLP application, the municipality may submit

an application for financial assistance prior to receiving department approval of the engineering report.

**NR 166.10 Application. (1) PROCEDURES.** Municipalities shall apply for financial assistance in accordance with s. 281.61 (5), Stats., to be considered for financial assistance in the following state fiscal year. The application shall be in the form required by the department.

**Note:** Section 281.61 (5), Stats., states “The applicant shall submit the application on or before the June 30 preceding the beginning of the fiscal year in which the applicant wishes to receive the financial assistance, except that if funds are available in a fiscal year after funding has been allocated under sub. (8) for all approved applications submitted before the June 30 preceding that fiscal year, the department of administration may allocate funding for approved applications submitted after June 30. The application shall be in the form and include the information required by the department and the department of administration and shall include plans and specifications that are approvable by the department under this section. An applicant may not submit more than one application per project per year.”

**Note:** An application form is available on the Environmental Improvement Fund website at [dnr.wi.gov/Aid/EIF.html](http://dnr.wi.gov/Aid/EIF.html) and in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

**(2) CONTENTS OF APPLICATION.** The applicant shall submit a complete application in accordance with s. 281.61 (5), Stats. A complete application includes each of the following items, if applicable to the project:

(a) Evidence of compliance with s. NR 166.09.

(b) A copy of biddable construction plans and specifications approvable by the department for all parts of the scored project for which the municipality is requesting financial assistance from the fiscal year applicable to the project. Well construction projects are an exception; if plans and specifications for the drilling of a permanent well are submitted with or prior to submittal of the application for financial assistance, the municipality may submit additional plans and specifications for the scored project, such as those for pumps or the wellhouse, after the department determines the application is complete.

(c) A completed financial assistance application form, including estimated or actual construction costs and information regarding assistance received or expected from another funding source.

**Note:** The SDWLP cannot provide any financial assistance for a project if construction costs are not included as part of the project costs to be funded by the SDWLP, with the exception of some situations in which another funding source is also participating in the financing of the project.

(d) Items for compliance with federal regulations, identified by the department on the application form as required for a complete application; these items may include documentation



of compliance with wage rate laws, completed federal forms, and information regarding green project components or buying American iron and steel.

(e) Copies of executed engineering contracts for planning and design if funds are requested for planning and design, and a copy of the executed contract for construction management, if available at the time of application submittal.

(f) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds if required by U.S. treasury reimbursement regulations 26 CFR 1.150-2 and the municipality passed a reimbursement resolution prior to the application submittal deadline.

(g) A resolution authorizing a municipal official or an individual employed by the municipality to act as the applicant's representative in connection with the application and with any additional information required for financial assistance.

(h) A proposed or an executed intermunicipal agreement, if the project will serve more than one municipality. The intermunicipal agreement shall do all of the following:

1. Identify ownership for each individual portion of the water system, such as distribution systems, storage, wells, and water treatment facilities.
2. Establish the term of the agreement.
3. Demonstrate the basis for generating revenue for operation and maintenance costs based on actual use, and state the parties that are responsible for paying these charges.
4. Indicate the method for generating revenue for capital costs and indicate who is responsible for payment.
5. Indicate that the owner of the regional facility shall supply water to the identified users of the system.
6. Require each entity to comply with public service commission requirements, including rates and project approvals, or to adopt a user charge system if not regulated by the public service commission.

(i) Financial information required by DOA to be used in determining the affordability of the proposed project, the financial capability of the municipality, and the adequacy of the pledge of revenues to repay the obligation securing the proposed financial assistance.

(j) Proposed water rates, if the public water system is not regulated by the public service commission.

(k) Any existing or proposed contracts with customers of the water system.

(L) Documentation applicable to U.S. internal revenue service tax information as indicated in the application form.

(m) A copy of the debt instrument of any debt to be refinanced with SDWLP financial assistance.

**Note:** All forms necessary for financial assistance under this chapter may be acquired at no charge from the Environmental Improvement Fund website at <http://dnr.wi.gov/Aid/EIF.html> or from the Bureau of Community Financial Assistance, Department of Natural Resources, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

**(3) APPLICATION ACCEPTANCE.** The department shall accept an application as complete after all of the following occur:

(a) The department determines that it received all of the application items and information from sub. (2) for the scored project, either in the application form or separately.

(b) The department receives a certification worksheet documenting DOA's initial determination that there is a reasonable likelihood the municipality will be financially capable of paying back a loan from the SDWLP.

**(4) PROJECTS FUNDED JOINTLY WITH OTHER AGENCIES.** If a project is receiving funding from another state or federal agency, and the department is unable to obtain typical documentation for the project due to differences between agencies in items or procedures, such as the project being let with a group of projects by the Wisconsin department of transportation or the contents of a contract having language specific to another agency, the department may determine what documentation is appropriate to satisfy the application requirements.

**(5) MISSING ITEMS.** The applicant shall submit a completed application form and required attachments by the application submittal deadline, or otherwise in compliance with s. 281.61(5), Stats., in order to be considered eligible. If the department determines an attachment or some information is missing from an application and is, therefore, incomplete, the department may allow a reasonable amount of additional time for an applicant to submit the missing items. The department may refuse an application if it is missing multiple attachments or a significant amount of information, or if the applicant fails to submit missing attachments or information by the extended deadline date set by the department in correspondence sent to the applicant.

**NR 166.11 Financial assistance requirements.** Before executing a financial assistance agreement for any project, the department shall determine that all of the applicable requirements of s. NR 166.10 are met and that all of the following are satisfied:

**(1)** All of the following documentation is submitted to the department:

(a) Certification for force account as required by s. NR 166.12 (5).

(b) Legal opinion regarding land ownership and acquisition of easements and rights-of-way necessary for the project.

(c) Items related to bids for each prime contract including all of the following:

1. The proposal of the successful bidder.
2. An engineer's evaluation of the bids, including bid tabulation, and a recommendation.
3. If an applicant awards a construction or equipment contract to other than the lowest bidder, one of the following:
  - a. Written documentation of the reasons why the lowest bidder is considered nonresponsive or nonresponsible.
  - b. A legal opinion stating that the award to other than the lowest responsive, responsible bidder meets the requirements of municipal bidding law.
4. Solicitation and utilization information regarding DBEs.
5. Evidence of bid advertisement, including appropriate wage rate language, when applicable.
6. A copy of the bid bond and the performance bond.
7. Evidence of award of the construction contract by the municipality, which may be a notice of award, a municipal resolution, or minutes from the municipal meeting at which the determination of award was made.
8. A bound copy of the executed construction contract with up-to-date copies of all addenda, attachments, appendices, appropriate Davis-Bacon or other wage rate information, and all other applicable documentation that makes the contract complete.
9. Documentation of the construction start date and estimated substantial and final completion dates.

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

(d) A request for disbursement and required supporting invoices, payoff statements, and other applicable documentation of expenditures, including a copy of the title or deed for land purchased for the project if the applicant is requesting financial assistance for land purchase costs, and complete copies of any contract change orders included in the request for disbursement.

(e) Evidence that a bond counsel is drafting legal documents related to the authorization and issuance of bonds for action at a municipal meeting prior to the scheduled loan closing.

(f) Completed federal forms, if applicable, including federal forms related to compliance with DBE solicitation and utilization requirements.

(g) An executed intermunicipal agreement, if the project will serve more than one municipality.

(h) A copy of the executed construction management contract with an architectural or engineering firm, if costs are requested for this activity.

(i) A resolution declaring intent to reimburse municipal accounts with financial assistance proceeds, as described in U.S. treasury reimbursement regulations 26 CFR 1.150-2.

(j) Documentation of compliance with federal requirements, when applicable, which may include certification of compliance with Davis-Bacon wage rate requirements, and use of American iron and steel in the project.

(2) The department has approved the plans and specifications for the project.

(3) The project is entitled to priority in accordance with ss. NR 166.24 and NR 166.25.

(4) The applicant has the legal, institutional, managerial, technical, and financial capability to ensure adequate construction, operation, and maintenance of the water system throughout the applicant's jurisdiction.

(5) DOA finds that the municipality is likely to be able to meet the terms and conditions for receiving financial assistance under ch. Adm 35 and s. 281.59, Stats.

(6) The applicant has received, or has applied for, permits required by the department, including those under ch. 283, Stats.

(7) If a public water system is regulated by the public service commission, the applicant has filed the appropriate applications to increase water rates with the public service commission, if necessary for the project, and the public service commission has issued the corresponding order authorizing the water rates and operating rules.

(8) If a public water system is not regulated by the public service commission, the applicant has, to the satisfaction of the department and DOA, developed and adopted water rates and operating rules.

**NR 166.12 Procurement. (1) APPLICABILITY.** Procurement of professional services and construction contracts by financial assistance recipients under this chapter shall be in accordance with state and local law and federal law applicable to the SDWLP project. No contract may be awarded to any person or organization that does not operate in conformance with state and federal civil rights and equal opportunity laws.

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

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

(4) SOLICITATION OF DISADVANTAGED BUSINESS ENTERPRISES. (a) Whenever a recipient or its prime contractor is procuring construction, equipment, raw materials, or supplies for a project funded wholly or in part with SDWLP financial assistance, they shall make good faith efforts to provide DBEs opportunities to compete for participation in the project. Recipients and their prime contractors shall comply with DBE regulations contained in 40 CFR part 33 in the manner determined by the SDWLP. Failure to comply with DBE regulations and requirements may result in a sanction as defined in par. (b). Requirements may include any of the following activities:

1. Use outreach and recruitment activities to make DBEs aware of contracting opportunities, including any of the following activities:
  - a. Including a sentence in bid advertisements that encourages DBEs to submit bids or proposals, and submitting a copy of the advertisement to DNR with evidence of advertising.
  - b. Contacting DBEs via telephone, faxed or mailed letter, e-mail, or other methods of correspondence, informing them of the project and encouraging their participation, and submitting documentation of those contacts to DNR.
  - c. Advertising the project in trade publications, and submitting a copy of the advertisement and evidence of publishing to DNR.
2. Arrange timeframes for contracts and establish delivery schedules when possible in a way that encourages and facilitates participation by DBEs in the competitive process, including posting solicitations for bids or proposals for at least 30 calendar days before the bid or proposal closing date, when possible.
3. Divide total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by DBEs in the competitive process.
4. Consider contracting with a consortium of DBEs when a contract is too large for one DBE to handle individually.
5. Use the services and assistance of the federal small business administration and the minority business development agency of the department of commerce.
6. Use required federal forms when applicable.
7. Include in project bidding documents DBE information prescribed by the department.
8. Solicit DBEs certified under the unified certification program or by the U.S. environmental protection agency or an agency approved by the U.S. environmental protection

agency to certify DBEs, and provide to the department documentation of solicitation efforts made.

Note: The Wisconsin Department of Transportation Unified Certification Program's list of certified DBEs is available online at <http://www.dot.wisconsin.gov/business/engrserv/dbe-firms.htm>.

9. Document any participation of DBEs, including MBEs and WBEs, and submit the documentation in the required form to the department.

(b) Failure to comply with par. (a) may result in a sanction of up to 8% of the construction costs otherwise eligible for financial assistance being determined ineligible for financial assistance. This paragraph does not apply to any recipient that awards contracts to MBEs or WBEs or both in an amount equal to or greater than the applicable fair share objectives. Fair share objectives means the percentage of participation in project costs by MBEs and WBEs that can be reasonably procured. Fair share objectives are determined by the department as negotiated with and agreed to by the U.S. environmental protection agency under 40 CFR part 33, subpart D, given the availability of qualified MBEs and WBEs in the state.

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

(a) The applicant's staff has the necessary competence required to accomplish the work and they can accomplish the required tasks more economically as force account work.

(b) Emergency circumstances make force account work necessary.

**(6) CONTRACTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.** (a) The department may review architectural or engineering service contracts and amendments for the eligibility and reasonableness of costs. The department shall only provide financial assistance for costs that are eligible and reasonable.

(b) Reasonableness reviews may include a comparison of architectural or engineering fees for the project to the range of architectural or engineering fees for other similar projects undertaken within the state. The department may consider the scope of work, conditions unique to the project, and any other factors affecting costs.

(c) Architectural or engineering services contracts shall indicate a maximum estimated cost for a defined scope of work that the contractor may not exceed without a negotiated contract amendment for additional costs.

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

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

(c) *Contract change orders.* 1. The recipient shall secure a fair and reasonable price for each contract change order and submit each change order and all associated backup documentation to the department construction management engineer within 90 days of execution of the change order, or, for change orders executed 90 days or more prior to submittal of the SDWLP application, within 30 days of the date on which DNR receives the application.

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

**NR 166.13 Loan interest rates.** Interest rates for projects eligible under s. NR 166.06 shall be set in accordance with s. 281.61 (11), Stats., and all of the following:

(1) If the municipality meets all of the following criteria, the loan interest rate shall be determined as specified in s. 281.61 (11) (a) 2., Stats.:

(a) The population of the municipality is less than 10,000.

(b) The median household income of the municipality is 80% or less of the median household income in this state. The department shall determine median household income of a municipality for the fiscal year from which financial assistance is requested as follows:

1. If the municipality is a place, including a city, village, or census designated place, or the municipality is a county or a minor civil division, such as a town, the department shall obtain the most recent median household income figure published for the municipality by the U.S. bureau of the census prior to the department's publishing of the project priority list.

Note: The department uses the U.S. census bureau's municipal incomes as derived from the ACS and published annually in the 5-year survey data. At the time of writing of this administrative code, the U.S. census bureau is not collecting income data during the decennial census. The U.S. census bureau does not publish data for all types of municipalities eligible for SDWLP funding. A municipality for which the U.S. census bureau does not publish median household income data is responsible for obtaining a median household income and supplying it to the department.

2. If the municipality is a town sanitary district, public inland lake protection and rehabilitation district, joint local water authority, or municipal water district, the municipality shall supply a median household income provided by the U.S. bureau of the census along with documentation of how the median household income was determined. This median household income of the municipality shall be one of the following:

a. A median household income derived by requesting a custom tabulation of income data at the census block level from the ACS most recently published with 5-year data.

Note: To obtain a custom tabulation, the municipality will likely need to compare a map showing the boundaries of the municipality to a census block map and determine which census blocks contain any portion of the municipality. The municipality would then submit the appropriate census block numbers to the U.S. bureau of the census with a request for a custom tabulation of a median household income figure for that set of identified blocks only.

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

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

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

3. If the service area of the water system within the boundaries of the municipality is different than the municipality's boundaries, the municipality may choose to follow the custom tabulation procedure as described in subd. 2. a. and submit the result to the department to use in lieu of the median household income obtained by the department as described in subd. 1.

(2) If the municipality does not meet all of the criteria established in sub. (1), the loan interest rate shall be determined as specified in s. 281.61 (11) (a) 1, Stats.

(3) The department shall determine the interest rate based on the market rate in effect at the time the financial assistance agreement is prepared, prior to mailing it to the municipality.

**NR 166.14 Financial assistance agreement conditions.** (1) Each financial assistance agreement shall require the recipient to do all of the following:

(a) Maintain system water rates and operating rules in accordance with s. NR 166.11 (7) or (8).



(b) Comply with all pertinent requirements of federal, state, and local environmental laws and regulations.

(c) Comply with the requirements contained in P.L. 104–182, the 1996 safe drinking water act amendments, section 1452.

(d) Pay the costs of water system construction that are ineligible for financial assistance under this chapter.

(e) Comply with all state and local laws regarding procurement and public contracts.

(f) Provide department representatives access to the project, including construction activities, whenever the project is in preparation or in progress, and for a final inspection when the project is complete. The recipient shall include a provision in each of its contracts for the project that requires the recipient and its contractors or subcontractors to allow the department access to records of the contractor and subcontractor that are pertinent to the project for the purpose of making inspections, examinations, excerpts, copies, and transcriptions. The recipient shall also allow DOA or its agent access to records for audits.

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

(h) Promptly notify the department of changes to the project.

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

(j) Begin repayment of the principal balance of the loan no later than 12 months after the substantial completion date of the project as specified in the financial assistance agreement, and make the final principal payment no later than 20 years after the date of the financial assistance agreement.

(k) Comply with all applicable construction site performance standards and technical standards established in ch. NR 151 for controlling runoff pollution.

**Note:** Storm water technical standards, models, and BMPs are available online at <http://dnr.wi.gov/topic/stormwater/standards/>. Use the standards to plan, design, install, and maintain erosion and sediment control, and storm water management practices, to comply with ch. NR 151. This information on the web is also available in paper form and may be obtained from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 South Webster Street, Madison, Wisconsin 53702.

(L) Provide and maintain adequate construction inspection to ensure conformance with the approved plans and specifications.

(m) Notify the department of the substantial completion of the project.

(2) The financial assistance agreement is not effective until all parties to the financial assistance agreement have signed the financial assistance agreement.

**NR 166.15 Financial management.** The recipient shall do all of the following:

(1) Maintain project accounts in accordance with generally accepted accounting principles or other methods of accounting accepted by the department or required by the federal government.

(2) Maintain a financial management system that meets the requirements, terms and conditions of the financial assistance agreement and s. Adm 35.07.

(3) Comply with any U.S. treasury requirements for maintaining the tax-exempt status of the bonds or notes sold to the SDWLP.

**NR 166.16 Financial assistance disbursements. (1) REQUESTS FOR DISBURSEMENT.** The recipient shall submit to the department requests for disbursement for eligible costs in the format specified by the department.

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

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

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

(b) The department may withhold 5% of the principal amount of the loan until the requirements of project closeout are complete.

(c) The department may withhold payment of costs of a contract that fall outside of the beginning or end dates of the contract until the recipient amends the dates of the contract.

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

(b) All of the following project closeout procedures shall occur prior to the final disbursement:

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

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

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

**Note:** A project acceptance certification form is available on the DNR web site at <http://dnr.wi.gov/Aid/documents/EIF/Forms/Forms.html> or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

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

**Note:** A form for documenting utilization of MBEs and WBEs is available on the DNR web site at <http://dnr.wi.gov/Aid/documents/EIF/Forms/Forms.html> or in paper form from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

5. The department shall certify in writing to DOA the recipient's compliance with all applicable requirements of this chapter and the financial assistance agreement.

**NR 166.17 Amendments to financial assistance agreement. (1) ALTERING THE PROJECT.** The recipient shall request a financial assistance agreement amendment if it is proposing one of the following:

(a) Altering the type of water treatment.

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

**(2) CHANGES CONSISTENT WITH OBJECTIVES.** The department may determine that execution of a financial assistance agreement amendment is not required if the changes to the project are consistent with the objectives of the project, within the scope of the financial assistance agreement, and do not require review under ch. NR 809, 810, or 811.

**(3) ADDITIONAL FUNDING.** (a) *General.* The department may provide additional financial assistance in the form of a loan for eligible project costs incurred beyond the amount specified in the original financial assistance agreement. The department may not process a request to provide additional financial assistance for a project until the total remaining costs to complete the project can be reasonably determined.

(b) *Applicability.* Additional financial assistance for a scored project is subject to the availability of funds and present value subsidy as determined in s. 281.59, Stats., and in accordance with the following:

1. 'Sufficient PV, original biennium.' If there are sufficient funds and present value subsidy available from the biennium in which the original financial assistance agreement was

funded, the SDWLP may provide a municipality financial assistance for the additional project costs from that biennium's present value subsidy. The loan interest rate and loan maturity date in the original financial assistance agreement shall be maintained in the financial assistance agreement amendment.

2. 'Compete for PV, new biennium.' If a municipality is not able to obtain financial assistance for its additional project costs through the method described in subd. 1., the municipality may compete through the application process in a new biennium to receive financial assistance from the new biennium's present value subsidy and funds for the additional costs. If a municipality is successful in obtaining financial assistance for the additional costs, and the interest rate and loan maturity date for the additional financial assistance are the same as in the original financial assistance agreement, the financial assistance may be provided through a financial assistance agreement amendment. If the loan interest rate or loan maturity date for the additional financial assistance is different than those established in the original financial assistance agreement, the financial assistance shall be provided in a new financial assistance agreement in the form of a loan for up to 20 years at the current interest rate. The interest rate shall be at the same percentage of market interest rate as was determined appropriate for the project in accordance with s. NR 166.13 for the original financial assistance agreement. The department shall rank applications for additional costs on the SDWLP funding list based on the priority score the project received in the fiscal year from which the original financial assistance agreement was funded.

(c) *Requesting funds.* A municipality may request financial assistance for additional project costs using one of the following options:

1. 'Request by letter.' If par. (b) 1. is applicable, the municipality shall submit a letter to the department that justifies the need for the additional financial assistance and details the additional eligible costs. A revised budget sheet shall be attached to the letter, indicating in one column the requested additional costs and in a second column the total project costs. All costs in the revised budget sheet shall be assigned to the appropriate budget line items from which disbursement will be requested.

2. 'Request by application.' If par. (b) 2. is applicable, the municipality shall submit a notice of intent to apply as described in s. NR 166.08, and a financial assistance application as described in s. NR 166.10, requesting financial assistance for additional project costs. The department may waive specific application requirements for the financial assistance agreement amendment request if submittals made with the initial application are still acceptable to the department. A municipality may submit the application through the second fiscal year of the

biennium following the biennium that contains the substantial completion date of the project written in the original financial assistance agreement.

(4) **EFFECTIVE DATE.** A financial assistance agreement amendment is not effective until all parties to the agreement have signed it.

**NR 166.18 Disputes. (1) DECISION OF THE DEPARTMENT.** Except as otherwise provided by law, any dispute arising under this chapter, prior to the execution of a financial assistance agreement, shall be decided in writing by the department. The department shall serve a copy of the decision on the recipient personally or by mail.

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

**NR 166.19 Records and records retention. (1) REQUIREMENTS.** The recipient shall maintain books, documents, papers, records, and accounting procedures in accordance with generally accepted government accounting standards, the financial assistance agreement and ch. Adm 35 and retain them in accordance with subch. II of ch. 19, Stats. The recipient shall require contractors, including contractors for professional services, to maintain books, documents, papers, and records related to the project which are necessary for the recipients' compliance with this section.

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

(3) **RECORDS RETENTION.** (a) The recipient and its contractors shall retain and make all files, books, documents, and records relating to the construction of the scored project available to the department for a minimum of either 3 years from the date the department notifies the recipient that the project closeout is complete or 3 years from final completion of construction, whichever is later.

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

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

(d) All other files and records relating to the scored project shall be retained so long as this FAA remains in effect. As-built plans for the project shall be retained for the useful life of the project.

(4) **FEDERAL SINGLE AUDIT.** Recipients of financial assistance provided directly from the federal capitalization grant shall comply with the federal single audit act, 31 USC 7501 to 7507, OMB circular A-133 and ch. Adm 35.

**NR 166.20 Breach of contract.** (1) Upon breach of contract by the recipient, the department and DOA may initiate any of the following:

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

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

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

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

(e) Seek any other appropriate administrative remedy.

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

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

**NR 166.21 Noncompliance.** Upon failure of the recipient to comply with s. 281.59 or s. 281.61, Stats., or with provisions of this chapter, the department may do any of the following:

(1) Refuse to enter into a financial assistance agreement.

(2) Seek penalties as provided in s. 281.59 or 281.61, Stats.

(3) Seek any other appropriate remedy, relief, or penalty.

**NR 166.22 Variances.** (1) **GENERAL.** The department may, on its own initiative or pursuant to a written request from an applicant, approve a variance from a requirement of this chapter when it determines that special circumstances make a variance in the best interest of the state. Any variance approved shall be consistent with the objectives of ss. 281.59 and 281.61, Stats.

(2) **APPLICABILITY.** The department may only approve a variance from any non–statutory requirement of this chapter.

(3) **REQUEST FOR VARIANCE.** An applicant shall submit any request for a variance in writing to the department as soon as it is determined a variance is needed. Each request for a variance shall contain all of the following:

(a) The name of the applicant and the project number.

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

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

(d) An adequate description of the variance desired, and the facts which the recipient believes warrant the department’s approving the variance.

(4) **GRANTING A VARIANCE.** Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the recipient, emergencies, natural disasters, and financial hardship.

### **SUBCHAPTER III — PRIORITY SCORING AND RANKING SYSTEM**

**NR 166.23 Priority scoring criteria.** The purpose of the priority scoring criteria is to establish a list of eligible projects to be funded in a manner that is in accordance with the federal requirements of the safe drinking water act, 42 USC 300j–12. Consistent with the act, the criteria in subs. (1) to (4) shall apply. The department may require documentation to support any points requested by the municipality. The department may also require a potential applicant to communicate with the department prior to priority evaluation and ranking form submittal to determine what type of documentation is appropriate to show existing contamination for projects that will expand an existing water system or create a new community water system.

**Note:** The act requires, to the maximum extent practicable, that priority ranking be given to projects that: 1) address the most serious risk to human health; 2) are necessary to ensure compliance with the requirements of the safe drinking water act, including requirements for filtration; and 3) assist systems most in need on a per household basis according to state affordability criteria. The department will give first priority to acute public health risks, particularly those related to microbiological organisms, and second priority to situations that pose chronic and longer term health risks to consumers, such as organic chemical contamination. The scoring criteria also consider issues that are related to infrastructure upgrading or replacement to address those projects, or portions of a project, that are eligible for funding but not included in the first 2 priority groups, including projects to correct significant deficiencies or develop capacity in a water system.

**(1) RISK TO HUMAN HEALTH.** The following criteria related to human health risks are divided into acute and chronic risk categories. The department shall assign points to a project based on criteria in a single category in par. (a), if applicable, or a single category in par. (b), if applicable, but not from both. If the severity of the problem is not reflected in any of the categories in par. (a) or (b), the department shall determine the number of points to assign to the project.

(a) Project addresses a maximum contaminant level violation, an action level exceedance, or a treatment technique violation, or an acute or a chronic health hazard.

1. ‘Acute contaminants.’ Acute contaminants are divided into 3 groups. Points are awarded in the following manner for a project that eliminates a problem that poses an acute health hazard from one of these groups:

a. Five hundred points shall be awarded to a project that proposes to eliminate a microbiological MCL violation that already occurred or will address a confirmed waterborne disease outbreak as defined in s. NR 809.04 (90), or a demonstrated microbiological contamination problem for a newly created community water system or for expanding an existing community water system in accordance with s. NR 166.06 (1) (f).

b. Four hundred points shall be awarded to a project that eliminates violations of filtration requirements in s. NR 810.29 and disinfection requirements in ss. NR 810.09 and 810.31, or confirmed microbial, including giardia and cryptosporidium, contamination found in finished water.

c. Three hundred points shall be awarded to a project that eliminates a continuing nitrate or nitrite MCL exceedance, or a demonstrated nitrate or nitrite problem for a newly created community water system or expansion of an existing community water system in accordance with s. NR 166.06 (1) (f).

2. ‘Chronic contaminants.’ Chronic contaminants are divided into 5 subgroups: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides, and disinfection byproducts. For a newly created community water system or for expanding an existing community water system in this subdivision, points shall be assigned by determining the 90th percentile sample for the project area. All individual wells or surface water sources in the project area shall be included in the determination. A single water sample from each individual well or surface water source shall be used for the determination. All water samples submitted shall be collected within the same 6-month period and shall be representative of current conditions. If there is no sample for an individual well or surface water source, a value of zero or no detect shall be used in the determination. The maximum point total that shall be awarded in this subdivision



is 250 points. Points shall be awarded in the following manner for a project that eliminates a chronic health hazard from these groups of chemicals:

a. For each subgroup, other than the disinfection byproducts subgroup, only the MCL exceedance of greatest percentage magnitude is to be used for the point calculation, even though multiple contaminant MCL exceedances might be occurring. For exceedances in multiple subgroups, see subd. 2. c. The MCL exceedance shall be divided by the current MCL or AL and then multiplied by 50 to obtain a subgroup point total.

b. For the disinfection byproducts subgroup, the total sum disinfection byproducts exceedance as defined in s. NR 809.566 is used for the calculation similar to subd. 2. a.

c. For MCL exceedances in more than one subgroup, the highest point level of the subgroups shall be used as the primary number to be divided by the current MCL or AL and then multiplied by 50. The other subgroup exceedances will be divided by their respective MCL or AL and then multiplied by 10. The total point value shall be the sum of points in each subgroup.

(b) Project prevents an anticipated MCL, AL or treatment technique violation or critical health hazard. Points shall be awarded to a single group under either subd. 1. or 2. to a project that proposes to eliminate an anticipated acute or chronic health hazard.

1. 'Acute contaminants.' Acute contaminants are divided into 3 groups. Points shall be awarded from one of the following groups for a project that eliminates an anticipated acute health hazard:

a. Three hundred points shall be awarded to a project that eliminates an anticipated microbiological MCL violation, where no actual violation has yet occurred.

b. Two hundred points shall be awarded to a project that proposes to eliminate anticipated violations of filtration requirements, or turbidity, in s. NR 810.29, or anticipated violations of the requirements of the federal long term 2 enhanced surface water treatment rule promulgated by the U.S. environmental protection agency as directed by the U.S. congress.

c. One hundred points shall be awarded to a project that proposes to eliminate an anticipated nitrate or nitrite violation.

2. 'Chronic contaminants.' Chronic contaminants are divided into 5 subgroups: inorganics, volatile organic chemicals, synthetic organic chemicals, radionuclides and disinfection byproducts. Points shall be awarded in the following manner for a project that eliminates an anticipated chronic health hazard from these groups of chemicals:

a. Twenty points shall be awarded to a project that proposes to eliminate an anticipated exceedance of an inorganic, volatile organic chemical, synthetic organic chemical, radionuclide, or disinfection byproducts contaminant.

b. Five points shall be awarded for each additional subgroup addressed by a project that eliminates an anticipated exceedance.

(2) **FINANCIAL NEED.** The department shall grant additional points to a project if the applicant is considered most in need of financial assistance on a per household basis. The department shall determine the appropriate number of points by evaluating table A and table B in this section for the municipality in question and totaling the points allocated in the point columns. A municipality shall have a population less than 10,000 and a median household income less than or equal to 80% of the state's median household income to acquire any points in this section. Median household income shall be determined as described in s.NR 166.13 (1) (b).

**TABLE A**

<b>Population</b>	<b>Points</b>
0–499	30
500–999	25
1000–1999	20
2000–2999	15
3000–4999	10
5000–9999	5

**TABLE B**

<b>Median Household Income</b>	<b>Points</b>
75%–80%	5
70%–74%	10
65%–69%	15
60%–64%	20
<60%	25

(3) **SECONDARY CONTAMINANT VIOLATION OR SYSTEM COMPLIANCE WITH CH. NR 811.** No points may be awarded by the department for specific areas related to secondary contaminant violations or system compliance with ch. NR 811 if the project is already receiving points under sub. (1) for the same issue. The department shall assign points to a project from any of the following that are applicable to the project:

(a) Twenty points shall be awarded if the project will reduce a secondary drinking water contaminant, as listed in s. NR 809.70, to a level below the aesthetic standard.

(b) Twenty points shall be awarded if the project addresses areas of inadequate distribution system pressure, as defined in s. NR 810.10, 810.11, or 811.70 (4).

(c) Twenty points shall be awarded if the project will address a documented storage deficiency, excluding fire demand, within an existing public water supply system.

(d) Twenty points shall be awarded if the project addresses a source or capacity deficiency where there is a demonstrated need within the existing public water supply system.

(e) Twenty points shall be awarded if the project will address system reliability under all operational situations, where there are significant concerns regarding reliability in the existing system, such as lack of redundancy of major components of the water system. Activities for which these points may be awarded include the addition of a second crossing of a river, railroad, or highway to a major system divide; installation of a second surface water intake; or construction of a second well.

(f) Twenty points shall be awarded if a major portion of the project will address significant deficiencies identified in a sanitary survey conducted by the department and the activities to correct deficiencies are related to the core project activities.

(g) Four points shall be awarded if the project includes replacement of lead service lines or lead joints in watermains.

(h) Four points shall be awarded if the project includes long-term zebra mussel control.

(i) Four points shall be awarded if the project includes installation of an auxiliary power source to a well, pump station, or water treatment plant.

(j) Four points shall be awarded if the project includes replacement of asbestos-cement pipe material.

(k) Four points shall be awarded if the project includes upgrading an existing supervisory control and data acquisition system.

(L) Four points shall be awarded if the project includes installation or replacement of fluoridation equipment.

(m) Four points shall be awarded if the project includes the upgrading of existing facilities for capturing, holding or disposing of liquid or solid waste generated from the water system operation.

(n) Four points shall be awarded if the project includes the replacement of a water main or mains less than 6 inches in diameter.

(o) Four points shall be awarded if the project includes the looping of water mains or the elimination of dead end water mains.

(p) Four points shall be awarded if the project includes treatment that reduces the potential for formation of disinfection by-products.

(q) Four points shall be awarded if, as a secondary benefit, the project will increase the fire protection of the community.

**Note:** If the primary purpose of the project is to improve the fire protection of the system, the project is not eligible for funding.

(r) Four points shall be awarded if the project will include the installation of a water booster station or pressure reducing station to improve the quality of service to the customers by supplying water at a more acceptable level of pressure.

(s) Four points shall be awarded if the project includes the installation of an additional river, railroad, or highway crossing to a major system divide when two or more crossings already exist, and the additional crossing may result in greater system reliability.

(t) Four points shall be awarded if the project includes replacement of one or more pumps or pump motors that are no longer functional, or have reached the end of their useful life.

(u) Four points shall be awarded if the project improves the intake structure for a surface water plant.

(v) Four points shall be awarded if the public water system currently has non-revenue water in excess of 30% of the total amount of water that enters the distribution system, or water losses exceeding 25% for public water systems with 1,000 customers or less, or water losses exceeding 15% for public water systems with more than 1,000 customers, and the project reduces the amount of non-revenue water within the system.

(w) Four points shall be awarded if the project includes removal of watermain that pass through sanitary sewer manholes, or correction of other types of undesirable cross connections as determined by the department.

**(4) SYSTEM CAPACITY POINTS.** The department shall award points to a project based on the technical, financial, and managerial capacity of the existing public water system, or upon completion of construction of a newly created community water system, if existence of the following can be verified by the department through information contained in department databases or through documentation provided by the municipality:

(a) Five points shall be awarded if the applicant has a written emergency action plan for the public water system.

(b) Five points shall be awarded if the applicant has implemented a private well abandonment ordinance for the public water system.

(c) Five points shall be awarded if the applicant has a wellhead protection plan and ordinance for all the wells in the public water system.

(d) Five points shall be awarded if the applicant has a certified operator and provisions for a certified back-up operator for the public water system.

(e) Five points shall be awarded if the applicant has a cross connection control program for the public water system.

(f) Five points shall be awarded if the applicant has a dedicated replacement fund for the water system.

**(5) CONSOLIDATED SYSTEMS CAPACITY POINTS.** For consolidating existing systems that are eligible in accordance with s. NR 166.06 (1) (c), the department shall award 30 points for each existing water system that is consolidated which is having technical, financial or managerial difficulties. The maximum number of points that shall be awarded under this subsection is 90 points.

**(6) PROJECT PRIORITY SCORE.** The total points from subs. (1) to (5) shall be added together to determine the final project priority score.

**(7) INTENDED USE PLAN.** The department may add additional priority scoring criteria or modify existing criteria through the annual intended use plan, which is part of the application for the SDWLP's annual U.S. environmental protection agency capitalization grant.

**NR 166.24 Procedure for determining and updating project priority scores. (1)** An applicant intending to apply for SDWLP financial assistance under this chapter shall, by the October 31 prior to the state fiscal year from which the municipality intends to apply for financial assistance, submit to the department a project priority evaluation and ranking form in the format required by the department. The form shall be valid only for the state fiscal year following the October 31 by which the form is submitted. The department may require that the priority evaluation and ranking form be submitted electronically.

**Note:** A priority evaluation and ranking form is available on the department website at <http://dnr.wi.gov/Aid/EIF.html> and from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

**(2)** The department may not assign a priority score greater than 0 to a project until the applicant has submitted a completed priority evaluation and ranking form to the department for evaluation.

**(3)** The department shall determine a project priority score based on information provided to the department that is no more than 5 years old as of the date the department receives the applicant's intent to apply form for funding in the following fiscal year.

(4) The department may, upon review of the priority evaluation and ranking form, separate the scope of the project submitted by the municipality on a single priority evaluation and ranking form into multiple projects, each addressing separate health or system concerns.

**Note:** For example, if the project submitted by the municipality includes construction of a new well due to contamination in another well, and replacement of undersized water mains that are not directly associated with construction of the new well, the department would score the construction of the well as one project and score the water main replacement as a second project.

(5) After the department completes the evaluation and determines the project priority score, the department shall provide the priority score determination to the applicant in writing.

(6) The department may review and, if necessary under the requirements of this chapter, recalculate priority scores to assure accuracy and age of the information provided, and the necessity of portions of the project to address a single public health or system concern. The department shall notify the applicant in writing if the department revises the project priority score previously assigned to a project. The department shall also notify the applicant if, during the review, the department identifies and scores multiple projects within the scope described by the applicant on a single priority evaluation and ranking form.

(7) If the applicant objects to the department's determination of the priority score in sub. (5) or (6), the applicant shall notify the department in writing within 30 days of the date of the department's notification in sub. (5) or (6). The notice from the applicant shall state the specifics of the objection. The applicant shall submit to the department any information that supports the objection and the priority score the applicant believes should be assigned to the project based on this information.

(8) Upon receipt of an objection under sub. (7), the department shall reevaluate its determination of the priority score and shall notify the applicant of the outcome of the reevaluation. If the department denies the requested priority score, it shall state the reasons in writing.

(9) Notwithstanding sub. (5) or (6), an applicant may request a reevaluation of its priority score within 45 days after the application submittal deadline established under s. 281.61(5), Stats. The department shall notify the applicant of the results of the reevaluation in the same manner as required in subs. (5) and (6).

**Note:** The application form is available on the department website at <http://dnr.wi.gov/Aid/EIF.html> and from the Department of Natural Resources, Bureau of Community Financial Assistance, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707-7921.

**NR 166.25 Project ranking system. (1)** The department shall maintain a project priority list for each state fiscal year, based on the intent to apply forms submitted under s. NR 166.08, and shall rank the projects for which priority scores have been determined. The projects shall be ranked in the order of descending priority score, with the project with the highest priority score ranked first. The department shall develop an annual funding list consisting of all projects for which applications are submitted under s. NR 166.10.

(2) If 2 or more projects have the same priority score, the project serving the larger population shall have the higher priority.

(3) Funds shall be allocated to projects in the order in which they appear on the funding list, except that projects may be given priority or removed from the list, upon written notice by the department, if any of the following situations occur:

(a) Ranking the projects in descending order does not result in at least 15% of the funds allocated to small systems serving less than 10,000 persons. In this case, systems serving less than 10,000 persons shall be given priority until the 15% funding allocation requirement is met.

(b) Requirements of s. NR 166.10 are not met.

(c) A project is canceled or the funding request is withdrawn by an applicant.

(d) The applicant is unable to provide bidding documentation to the department by a date that allows enough time for a loan closing to occur by the loan closing deadline for the project.

Note: The amount of time needed between submittal of bidding documentation and loan closing can vary by project. Typically, though, several weeks are needed to accomplish all of the steps that must be taken by various players in the process prior to loan closing--review the bidding documents, prepare a financial assistance agreement, have bond documents drafted, review invoices for the first disbursement of funds, conduct final reviews of the applicant's revenues and expenses, pass a bond resolution and sign the financial assistance agreement, mail signed documents to appropriate agencies, and arrange for the wiring of funds to the municipality's account.

(e) The project fails to meet the engineering review requirements or does not have department approval of the project.

(f) The applicant has reached the 25% biennial funding cap, as established under ss. 281.61 (8) (a) 2. and 281.59 (3s) (b), Stats.

**Note:** In any biennium, no municipality may receive more than 25% of the SDWLP funds projected by DOA to be available for that biennium.

(g) DOA is not satisfied that the municipality has the financial capacity as described in ch. Adm 35 to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations it issues for the project.

(h) Federal or state refinancing or reimbursement restrictions prevent funding of the project with SDWLP monies.

**SECTION 3. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 4. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 10, 2014.