

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board approve the statement of scope for Board Order CF-13-13 , proposed rules affecting Chapter NR 162 related to the implementation of the Clean Water Fund Program. This program provides funding to municipalities for eligible water infrastructure improvement projects.

FOR: June 2013 Board meeting

PRESENTER'S NAME AND TITLE: Robin Schmidt, Chief, Environmental Loans Section

SUMMARY:

Chapter NR 162 addresses Department implementation of the federal Clean Water Fund Program, which provides funding to municipalities for eligible projects and activities. Funding can be in the form of a low-interest loan or in the form of principal forgiveness, which is similar to grant funding (i.e., no repayment occurs). Ch. NR 162 outlines implementation of the program, including project and cost eligibility, process flow, financial assistance and procurement requirements, interest rates, and the disbursement process. In addition, ch. NR 162 contains subchapters relating to the priority scoring and ranking system, the state hardship program, and the small loan program.

This rule revision will incorporate changes that have occurred to the Federal Clean Water Fund program, clarify eligibility issues, and better streamline processes for obtaining financial assistance for water infrastructure projects. For example, revisions will likely update information for projects with multiple funding sources (i.e., "bundling"), potential increase for interim financing costs, and making adjustments to population and income data when the US Census data is not available or has a significant margin of error.

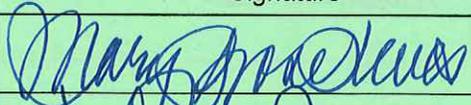
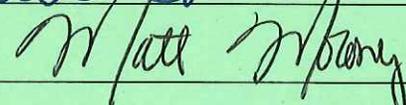
We plan to work with an internal and an external advisory group to identify areas where clarification is needed and help develop streamlining opportunities. The most substantive issue anticipated when revising ch. NR 162 is whether to put the project evaluation and ranking system into the annual Intended Use Plan (a binding document between WDNR and US EPA and subject to public review). ch. NR 162 was last updated in 2004 and the NRB has not acted on this rule in the past 10 years. We anticipate one public hearing that will be held via LiveMeeting with statewide participation encouraged.

This revision is a Type III action under ch. NR 150, Wis. Adm. Code; no environmental assessment is required. Revisions to ch. NR 162 are anticipated to have minimal impact on small businesses. Streamlining processes will only make the program more efficient for municipalities, their consultants, as well as the DNR.

RECOMMENDATION: That the Board approve the statement of scope for Board Order 13-13 .

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input type="checkbox"/> memo to the Board (for scope statement approval) | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Statement of scope | <input checked="" type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mary Rose Teves, Bureau Director		May 15, 2013
Julie Sauer, Administrator		5/15/13
Cathy Stepp, Secretary		5/30/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.:	CF-13-13
Relating to:	Clean Water Fund Program
Rule Type:	Permanent

1. **Finding/nature of emergency (Emergency Rule only):** Not applicable.

2. **Detailed description of the objective of the proposed rule:**

Chapter NR 162 is the administrative rule for the Clean Water Fund Program (CWFP), which provides loans to municipalities to finance wastewater infrastructure projects and urban runoff and storm water best management practices (BMPs). There are four objectives for revising ch. NR 162.

Objective 1: To update areas of ch. NR 162 that are either no longer in line with federal regulations or state statutes or need efficiency, accuracy, or clarity changes. At a minimum, the following topic areas need updating:

- Loan application
- Cost eligibility
- Financial assistance requirements
- Requirements for a user charge system
- Procurement including solicitation of disadvantaged businesses
- Reimbursement and refinancing
- Loan interest rates including median household income information
- Financial assistance disbursements
- Amendments to a financial assistance agreement
- Eligibility for hardship financial assistance
- Procedure for determining type and amount of hardship financial assistance
- Operation, maintenance, and replacement cost estimates

Objective 2: To separate the current Subchapter II into two or more subchapters. Topic areas to be covered in these separate subchapters are:

- Municipal wastewater projects
- Projects for stormwater runoff treatment works and structural urban best management practices (BMPs) in permitted municipalities
- Urban runoff treatment works and structural BMPs in non-permitted municipalities
- Feasible and effective agricultural BMPs and other nonpoint source pollution prevention or treatment practices that are approved by the U.S. Environmental Protection Agency (EPA).

Objective 3: To thoroughly review the "interest rate subsidies for small loans" portion of ch. NR 162 and the subprogram itself for effectiveness and to determine its future. In the small loan program, loans awarded to municipalities by the State Trust Fund (the Board of Commissioners of Public Lands) have part of their interest rates subsidized under ch. NR 162 for eligible projects. In the past few years, we have seen a reduction in the use of this program.

Objective 4: To provide the Environmental Improvement Fund (EIF) — the umbrella fund for the CWFP and the Safe Drinking Water Loan Program -- with flexibility to adapt quickly to changing environmental and regulatory priorities. The main areas of ch. NR 162 in which the CWFP needs flexibility are:

- Types of financial assistance available
- Annual funding policy
- Project and cost eligibility.

Additional areas of flexibility may be identified by the Advisory Committee that will be convened to assist the Bureau with revisions to ch. NR 162.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

A. Existing Policies relevant to the rule:

Many of the existing policies relevant to ch. NR 162 (for example, the requirements for prioritizing projects receiving funds based on their ability to achieve water quality and compliance priorities for most types of point source pollution reduction and prevention) are based in federal requirements that have evolved over the years. Some existing policies are specified in the related state statutes. A significant portion of existing policies are already included in the current ch. NR 162, which serves the needs of the Clean Water Fund Program. Because the existing ch. NR 162 is very prescriptive and has not been revised since 2004, rule revisions are necessary to accommodate situations staff have encountered

B. New policies proposed to be included in the rule:

While the existing rule is fairly apt at addressing the point source projects, the rule does not allow the DNR flexibility to fund more innovative options for municipalities to meet water quality standards or permit limits. By revising the CWFP rules to allow financing of non-traditional solutions to water pollution prevention and treatment, DNR will be able to help municipalities more effectively achieve compliance with water quality standards. Staff envision creating subchapters for nonpoint source projects, wastewater projects, and stormwater projects.

The rule-revision process will also assess whether some of Wisconsin's CWFP policy changes are more effectively modified if they are included in the annual *Intended Use Plan (IUP)*. The IUP undergoes public review and comment prior to being submitted to the DNR Secretary and EPA for approval. Examples of policies that could be included in the IUP instead of ch. NR 162 include project scoring system priorities, "green project" reserve determinations, and additional subsidization requirements.

C. Analysis of Policy Alternatives:

1. Do Nothing – leave ch. NR 162 as it is
 - a. Pros: This alternative would mean no rule revisions are necessary and staff resources will not be diverted from program implementation.
 - b. Cons: The absence of rule revisions will mean that ch. NR 162 is still out of compliance with Federal fund requirements. Our inability to revise the rule means we must continue issuing variances for portions of the program that are inconsistent with new federal requirements. Opportunities for streamlining processes will be lost.
2. Incorporate policy changes into ch. NR 162
 - a. Pros: Many areas of ch. NR 162 can be improved or streamlined with fairly minor changes. Some of these changes are the result of federal requirements. In addition, incorporating changes that are discussed with DNR partner bureaus and external partners will help streamline the program, build better efficiencies for all, ensure consistency with federal requirements, and provide assurances to EPA that our program is meeting those requirements.
 - b. Cons: Rule changes in general require a significant amount of staff resources, which could be used for other program implementation activities.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 281.58(2), Wis. Stats., contains the statutory authority for the Department of Natural Resources to promulgate rules for administration of the CWFP.

Section 281.58(2) reads as follows:

(12) RULES. The department shall promulgate rules that are necessary for the proper execution of its responsibilities under this section.

The EIF is administered cooperatively by the Wisconsin DNR and Department of Administration (DOA). Revisions to ch. NR 162 must also be coordinated with s. 281.59, Wis. Stats., to ensure consistency with DOA policies and procedures.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

We estimate the following time needed by staff from the following Bureaus to revise ch. NR 162:

Community Financial Assistance	240 hours
Watershed Management	80 hours
Legal Services	40 hours
Management & Budget	4 hours
Science Services	<u>4 hours</u>
TOTAL:	368 hours

6. List with description of all entities that may be affected by the proposed rule:

- Wisconsin municipalities (cities, towns, villages, sanitary districts, lake rehabilitation & protection districts, counties, tribes, Metropolitan Sewerage Districts) – CWFP applicants
- Bond counsels – Hired by applicants to prepare municipal bond documents for CWFP loan closings
- Consulting engineers – Hired by applicants to plan, design, conduct bidding process, oversee construction and coordinate various players—including financial assistance agencies—in the projects
- Financial advisors – Hired by applicants to advise them on best financial options for interim financing and permanent project financing
- Municipal attorneys – Hired by applicants to prepare statements required by the CWFP for proof of land ownership and to provide legal advice related to other loan related documents and issues
- Construction contractors & subcontractors – Awarded bids by applicants to construct necessary infrastructure projects; must follow certain program requirements such as paying Davis-Bacon wage rates, and soliciting and reporting utilization of disadvantaged business enterprises
- DNR Bureau of Watershed Management – Provides technical expertise on wastewater issues, and storm water and other nonpoint issues, cooperates with CWFP staff in setting overall program priorities, conducts environmental/historical/archaeological reviews, and reviews project plans and specifications and parallel cost estimates
- DNR Bureau of Legal Services – Provides legal counsel on proposed rule revisions and for CWFP interpretations or actions related to unclear issues
- DOA Capital Finance Office – Administers the CWFP in cooperation with DNR
- DOA Community Development Block Grant (CDBG) Program - Works cooperatively with the CWFP to provide special funding packages for municipalities that need assistance from more than one funding agency on a project
- Wisconsin DOT Regional Offices and Division of Transportation System Development – Provide bidding and contract documentation to the CWFP for projects let by DOT
- U.S. Bureau of the Census – Provides income and other data needed for decision-making related to hardship financial assistance eligibility and amount of subsidy municipalities receive
- USDA Rural Development Wisconsin – Works cooperatively with the CWFP to provide special funding packages for municipalities that need assistance from more than one funding agency on a project
- Wisconsin Rural Water Association – Provides training and assistance for wastewater operators and municipal officials; carries out contract work related to the Clean Water Act goals; works cooperatively with the CWFP and other funding agencies to help its members finance their wastewater infrastructure projects

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Clean water state revolving fund (CWSRF) programs in each state must comply with the Clean Water Act, federal regulations under 40 CFR Part 35, EPA Guidelines and grant conditions specific to each annual capitalization grant the state receives. In addition, in recent years, additional requirements have been added through appropriations bills. The existing rule was developed to comply with the federal regulations that were in place at that time. However, since the rule has not been revised for 10 years, there are inconsistencies that need to be corrected. The following federal requirements will be addressed as ch. NR 162 is revised:

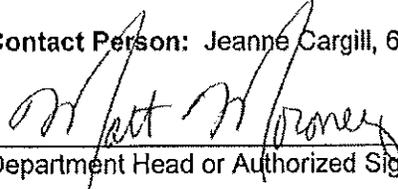
- Loan recipient consistency with all federal cross-cutting authorities, including laws and executive orders such as the Davis-Bacon Act, Archaeological and Historic Preservation Act, Endangered Species Act, National Historic Preservation Act, Wild and Scenic Rivers Act, the Debarment and Suspension Executive Order 12549, Uniform Relocation and Real Property Acquisition Policies Act, and the Equal Employment Opportunity Executive Order 11246.
- Need for annual *Intended Use Plan* and public time for review and comment before submitting it to EPA for approval.
- Requirement to expend all funds in the SRF in an expeditious and timely manner.
- Financing for land acquisition only if the land is integral to the treatment process.
- Need for environmental reviews of sites where projects will occur.
- Requirement for 20% Wisconsin match to the Federal capitalization grant each year.

Revisions to ch. NR 162 will better refine how the CWFP complies with federal regulations, EPA guidelines, and conditions of the CWFP's annual federal capitalization grant. Over the years of operating the program, CWFP staff have found that a number of areas in ch. NR 162b could be improved and streamlined by fairly changes, by updating sections that may currently include cumbersome procedures that impact the design engineering and construction industry, and by aligning various sections with federal regulations and guidelines that have been modified over time. For example, Congress included in recent annual appropriations bills that Davis-Bacon wages must be paid to workers. Ch. NR 162 will need to accommodate these types of changes now and in the future.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Revisions to ch. NR 162 will likely have a positive impact on small businesses. It would keep municipal infrastructure projects moving, which would mean more engineering and construction jobs available. It would also remove some uncertainty regarding requirements that must be followed for the engineering and construction companies involved in CWFP projects; DNR would be able to relay Congressional changes to these businesses more quickly each year.

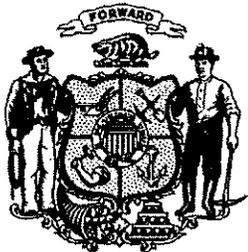
Contact Person: Jeanne Cargill, 608-267-7587



Department Head or Authorized Signature

3/21/13

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

April 3, 2013

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Scope Statement for CF-13-13 modifying Chapter NR 162 relating to the Clean Water Fund Program

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on March 21, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to Chapter NR 162. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor