

ELIGIBILITY INDEX

CLEAN WATER FUND PROGRAM

The purpose of this index is to provide municipalities and consultants with a preliminary review of eligible costs, guidance, and policies within the Clean Water Fund Program (CWFP) prior to submitting an application or a disbursement request to the Department of Natural Resources (DNR).

This index addresses the eligibility of many items not specifically covered within the statutes or codes. However, statutes and codes should be reviewed in conjunction with this index. The CWFP cost eligibility items are listed in s. NR 162.04, Wis. Adm. Code. Allocable project-specific costs that are reasonable and necessary are eligible for financial assistance.

ABANDONMENT – The abandonment of an entire or portions of a treatment works is an eligible cost if it is:

- within the scope of the project as determined by the facility plan or other department approved plan; and
- approved in the plans and specs or by appropriate DNR staff.

Portions of treatment works that may be abandoned include, but are not limited to: lagoons, lift stations, monitoring wells, buildings, sand filtering systems, and clarifiers. Abandonment may include activities such as demolition, removal and disposal of municipal waste or other debris, and landscaping.

See also “Demolition”.

ACCESS ROADS – Access roads included in the plans and specs are eligible. Access roads may be gravel or paved and may include curb and gutter. An access road may be a road:

- from a wastewater treatment plant site to the nearest public roadway;
- within the confines of a wastewater treatment plant site;
- to a lift station or pumping station;
- to a manhole;
- to a cluster system;
- required for other access.

ACQUISITION OF TREATMENT WORKS – In acquisition issues, there are several scenarios:

1. Buying capacity in an existing treatment works that is not being expanded is generally ineligible. These fees are often called hookup fees or buy-in costs.
2. On a case-by-case basis, acquisition costs for an entire or portion of a treatment works may be eligible.
3. Acquisition of treatment works or capacity when treatment works were built with Wisconsin Fund monies are ineligible.

ADMINISTRATION OF NON-CWFP LOANS/GRANTS – Any contract costs for administering a municipality’s CDBG, STAG, ACOE, or other federal/state loan or grant are ineligible.

AMERICANS WITH DISABILITIES ACT (ADA) – Costs associated with meeting ADA requirements are eligible. Municipalities must examine and conform to ADA requirements.

APPLICATION PREPARATION FOR CWFP – Salary reimbursement of a municipal employee (not elected officials or on-staff attorney(s)) is eligible if the municipality complies with the force account certification requirements. Application preparation is also eligible when it is part of a consultant contract. Application preparation costs associated with other state or federally funded financial assistance programs are ineligible. See also Force Account and Ordinary Operating Expenses.

ARCHAEOLOGICAL/HISTORICAL SURVEYS AND WORK – During the project, identified or incurred costs for historical, architectural, archaeological, and cultural resources are eligible. Eligible costs include but are not limited to the costs of: on-site inspections, review of pertinent documents, photographic reconnaissance, services of archaeologists and historians.

ARCHITECT/ENGINEER COSTS – Eligible project-specific costs include but are not limited to: CWFP application preparation, travel, indirect costs, labor, and public participation.

Construction phase A/E costs must be prorated if ineligible construction and equipment costs are 10% or more of total construction and equipment costs. Costs typically prorated include bidding services, contract preparation, inspection, project management, and project closeout activities.

AUDITS – Costs associated with annual municipal audits are ineligible. Prorated costs associated with the federal single audit portion of an audit report are eligible until the project is complete.

BUILDINGS – Buildings for wastewater treatment purposes, such as administration or storage buildings, are eligible if included in the approved plans and specifications. Costs for buildings that are shared with other municipal entities, such as a water utility, may be prorated.

CAPITALIZED INTEREST – A municipality may capitalize the interest on a CWFP loan. The municipality borrows monies from the CWFP to make its first May and/or November interest payment(s).

Capitalization of interest on a CWFP loan is allowable under the following circumstances:

1. Construction of the project is on behalf of a newly-created utility with no current service area or current customer base, or
2. The project will serve a substantial group that has not been extended services in the past, and thus has not been paying sewer bills (expansion of service area/customer base).

CLOSING COSTS – The following are eligible costs when incurred for a CWFP loan closing:

1. Bond counsel fees – The CWFP requires that ALL municipalities closing on a CWFP loan hire a bond counsel to provide an opinion that addresses the validity, enforceability and tax-exempt status of the debt.
2. Financial advisor fees – Financial advisor fees related to the CWFP loan closing are eligible.

CLUSTER SYSTEMS – See Individual Systems

COMMISSIONS – On a case-by-case basis, the CWFP will administer loans for projects involving municipalities that are members of a joint commission. The CWFP will reimburse eligible administrative, legal and other costs associated with work performed by the commission on the project. The costs incurred forming the commission are ineligible. The actual loan(s) cannot be made directly to the commission but rather must be made to individual municipalities. The CWFP may provide funding to all or some of the municipalities that are members of the joint commission. Typically, each municipality that is a member of the joint commission is assigned a percentage of the project/treatment facility; these percentages are used to determine the costs attributable to each municipality.

An agency agreement is required by the CWFP for these types of projects. Agency agreements are reviewed by the CWFP for similar language as in intermunicipal agreements.

The commission can turn in one disbursement request, and the CWFP will make one disbursement to the commission, or individual disbursements can be made to each municipality that is a member of the joint commission, if each submits a separate disbursement request.

COMPUTERS – Computers, printers, and other computer-related equipment and software are eligible. We consider it necessary and reasonable for municipalities to purchase computers for accounting

purposes, billing systems, operation and maintenance of the treatment works, and other project specific uses.

DEMOLITION – In order for demolition costs to be eligible, the existing structures must be part of:

- the treatment works,
- a structural urban BMP project,
- site preparation, or
- demolition as part of abandonment procedures approved in plans and specifications or by appropriate DNR staff.

These costs are eligible if the demolition is part of an eligible CWFP project under s. NR 162.03(1) or (2), Wis. Adm. Code. The eligible costs of demolition do not include normal operation and maintenance costs.

See also “Abandonment”.

EASEMENTS – Costs related to acquisition of easements and rights-of-way, including administrative and legal costs, are eligible. A municipality may also gain necessary legal access for the purpose of operation and maintenance, or construction, of the treatment works by incorporating language into the Sewer Use Ordinance.

FEDERAL EQUIVALENCY – The costs associated with meeting federal equivalency requirements are eligible for CWFP financial assistance.

FORCE ACCOUNT – The CWFP can reimburse for work performed on a CWFP project by on-staff engineers, clerks, accountants, and others. Force Account costs include work that is typically contracted out but can be more economically performed by qualified in-house staff. For example, application preparation, planning, design, landscaping and inspection costs may be included if performed by municipal staff.

- Salaries and expenses of elected officials and on-staff municipal attorneys are ineligible.
- No legal costs should be charged to the force account. Legal costs are eligible as administrative costs if performed by an attorney who is on contract or retainer for the municipality and who bills the municipality for time devoted specifically to the CWFP project.

Municipalities must comply with all Force Account Certification requirements by completing Form No. 8700-245.

GROUNDWATER STUDIES & MONITORING – Project specific groundwater studies, monitoring equipment or facilities are eligible. Study costs for the entire treatment works will be prorated.

HOOKUP FEES – Hookup fees related to one municipality hooking into a treatment works owned by another municipality is a local issue. The DNR does not regulate these fees. Hookup fees are not an eligible CWFP expense. However, if a hookup fee will be charged to a municipality applying to the CWFP, it is important to negotiate this fee early on and to include the fee in the intermunicipal agreement or other executed document. Also, if a municipality that is eligible for hardship assistance takes out debt for 10 years or more to pay a hookup fee, that debt will be included as prior debt in the hardship calculation.

INDIVIDUAL AND CLUSTER SYSTEMS – A municipality may receive financial assistance to construct individual systems serving one or more residences or small commercial establishments if:

- the system is publicly-owned;
- the applicant complies with chs. NR 162, NR 110, and Comm 83, Wis. Adm. Code (where applicable);

- the Bureau of Watershed Management determines that construction of individual systems or cluster systems is the cost-effective solution; and
- the applicant establishes a comprehensive program for the regulation, inspection, operation and maintenance and monitoring.

The municipality must have the ability to inspect and maintain the systems, condemn failing systems and require installation of new systems. Maintenance includes, but is not limited to, pumping and hauling of holding tank and septic tank wastes. The management plan must detail the municipality's responsibility and authority to operate, maintain, and replace systems within its boundaries. The municipality should develop a management plan during facility planning and submit a draft plan with the CWFP loan application. The management plan must be executed before the CWFP loan closing.

Eligible costs include:

- development of a management plan;
- the treatment portion and treatment residue disposal portion of toilets with composting tanks, oil-flush mechanisms, or similar in-house devices;
- construction site restoration to original condition or upgraded to meet state and local requirements;
- land on which the individual systems are located, if the system is publicly owned and maintained.

Costs for the waste-generating fixtures and associated plumbing from the residence or commercial establishment to the treatment unit are ineligible, as are modifications to homes or other buildings for installation of special devices.

INDUSTRIAL FLOWS – See “Parallel Cost Percentage.”

INSPECTION – Costs associated with technical inspections of the project are eligible. These costs can be included under Force Account and/or Construction Management.

INSURANCE – General liability and builders risk insurance premiums are eligible. These types of insurance are required under the Financial Assistance Agreement. A municipality may carry construction insurance but often the insurance is part of the construction contract. If the municipality feels it is necessary to carry additional insurance for the project (e.g., public liability insurance for personal injuries or property damage), those costs are ineligible.

INTEREST AND LATE FEES ON DELAYED PAYMENTS – Any interest or late fees charged to a municipality for delayed payments are ineligible.

INTERIM FINANCING – Costs associated with the approval, preparation, issuance, and sale of interim financing (including bond counsel, financial consultants, and underwriter's fees) necessary for CWFP projects are eligible costs.

The interim financing policy limits the total issuance costs to \$7,500 plus ½% of the total issuance (debt). This policy applies to all interim financing issuance costs. All costs above and beyond this policy are ineligible.

Bond counsel fees are an eligible expense for interim financing. However, costs must comply with the current interim financing policy. In the event the municipality issues debt that covers more than one project, the legal costs need to be prorated for that portion of the debt reimbursed or refunded with CWFP proceeds.

Interest on interim financing is eligible from no earlier than 6 months prior to construction through the earliest of one of the following:

- loan closing date;

- one year following substantial completion;
- September 30th in the year after the project's listing on the funding list.

Net Interest Expenses – The CWFP will finance reasonable and necessary net interest expenses that municipalities may incur as the result of securing interim financing for planning, design and construction phases of an eligible project. Net interest expense is accrued interest less any interest earnings the municipality made on unspent monies of the interim financing. IRS regulations do not allow for the reimbursement of principal or interest payments made by the municipality out of its ordinary operating funds.

LABORATORY EQUIPMENT AND SUPPLIES – Laboratory equipment and supplies related to initial setup, upgrade or expansion of a lab are eligible. Costs associated with ongoing laboratory operations (i.e., chemicals, glassware, etc.) should be part of the O&M budget and are ineligible.

LAND – Costs associated with obtaining a legal statement regarding ownership of the project site are eligible. If the legal statement is for land deemed ineligible under ch. NR 162, Wis. Adm. Code, the costs of this statement are ineligible.

- **Other Eligible Land Costs**

- a. *Site Acquisition costs related to:*

- Land used for disposal of residues, treated wastewater storage, sludge spreading, composting, compost residue storage and compost application.
- Land on which treatment works and lift stations will be located.
- Land purchased to serve as the required “buffer zone” between the treatment works, etc., and developed areas.
- Administrative and legal activities for securing appropriate land and easements.
- The purchase of easements.
- The condemnation process thru the jurisdictional offer.

- b. *Relocation Costs* – Relocation costs necessary for construction of the project are eligible. Costs of implementing the State of Wisconsin Relocation Law defined under ss. 32.185 – 32.27, Wis. Stats., and 49 CFR, Part 24 (DOT), “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs” are eligible.

- **Other Ineligible Land Costs**

- a. Easement disputes after easements have been purchased.
- b. Annexation costs.

LANDSCAPING – Costs for landscaping, architectural and aesthetic features are eligible.

LATERALS – NR 162.003(37) defines lateral as “a privately-owned sewer service line that connects a residence, commercial establishment, institutional facility or industrial user to a municipal sewage collection system or individual system.” These privately-owned laterals are ineligible. The portion of the lateral that is owned and maintained by the municipality is eligible. The point at which the lateral changes from the municipal section to the privately-owned section is determined by the design of the system for each connection. Generally, these municipal laterals are located in the public right-of-way. Items such as 4” or 6” laterals, service connections, service branches, risers, riser pipes are examples of the terminology used with regard to laterals, all of which may or may not be eligible. The determining factor is whether the municipality owns and maintains that section of the system as part of the municipal collection system.

Grinder pumps and laterals that are municipally-owned and maintained are eligible.

Crossover sewers may be eligible when it is determined that they are more cost-effective than the installation of an eligible parallel sewer. A crossover sewer or crossover service connection is defined as “the sewer to connect one or more properties on one side of a major street, road, or highway to the collection system on the opposite side”. These connections are typically seen in urban situations.

Reconnection of laterals due to the rehabilitation of a publicly-owned treatment works is eligible.

For additional information on eligibility, refer to s. NR 162.03(2) and (3), Wis. Adm. Code.

LEASES – Leases are generally ineligible because they are on-going and are viewed as operating expenses. However, there could be exceptions and these should be discussed with the project manager and the Dept. of Administration.

LIQUIDATED DAMAGES – Costs associated with liquidated damages (judgments, law suits, arbitration or lien waivers) are ineligible.

MOBILE EQUIPMENT – This equipment is eligible provided it is part of the DNR approved plans and specifications necessary for the operation and maintenance of the treatment works or if recommended by appropriate DNR staff. Such equipment must be necessary for the transmission of wastewater, storm water, sludge or for the maintenance of plant grounds and/or equipment. Eligible items include, but are not limited to:

- a. Portable stand-by generators or large portable emergency pumps to provide “pump-around” capacity in the event of pump station failure or due to pipeline breaks.
- b. Cars, trucks, sludge tanks, trailers and other necessary vehicles (if cost-effective) having as their sole purpose the transportation of liquid or dewatered waste from the collector point to the treatment facility or disposal site.
- c. Grounds and maintenance apparatus such as mowers and snow removal equipment.
- d. Sewer cleaning equipment.

Where applicable, replacement fund monies may be applied toward these costs. If the equipment is used only for wastewater collection, conveyance and treatment plant purposes, the entire cost is eligible; otherwise, it is prorated.

MONITORING EQUIPMENT – Equipment at the treatment works used to monitor industrial and commercial discharges is eligible provided it is part of the DNR approved plans and specifications, or if recommended by appropriate DNR staff.

OFFICE SPACE, EQUIPMENT & FURNISHINGS – Items necessary for administration of the treatment works, and a part of the DNR approved plans and specifications or approved by appropriate DNR staff, are eligible. Eligible costs include but are not limited to: telephones, walkie talkies, answering machines, computers, AV equipment for training, printers, software, copy machines, office furniture and shop furnishings.

Sewer utility office space within the treatment plant is eligible. However, these costs must be prorated if services other than the sewer utility are provided. Office space primarily used for purposes unrelated to wastewater treatment (e.g., town or village board meetings) is ineligible.

OPERATION AND MAINTENANCE – Equipment service, preventive maintenance, correctional maintenance and replacement of equipment are ineligible. Maintenance agreements, financial and personnel management, records, laboratory control, process control, safety and emergency operation planning are ineligible. See Startup Services for similar costs that are eligible.

ORDINARY OPERATING EXPENSES/NORMAL GOVERNMENTAL EXPENSES - Costs incurred by a municipality that are typical business expenses are ineligible if not incurred solely for the project.

▪ **Ineligible:**

- a. *Legal Fees* – Costs for setting up a wastewater commission, metro sewerage district, sanitary district, or a utility district, or legal expenses incurred regarding liquidated damages, contract disputes and appeals, etc.

- b. *Postage and Phone Bills* – Costs relating to postage, phone bills, fax bills and other utility bills.
- c. *Municipal Salaries* – Salaries of elected municipal officials and on-staff municipal attorneys. See Force Account for further information regarding municipal employees' salaries.
- d. *Miscellaneous Expenses* - Interest or late fees on delayed payments, annual financial audits and bank fees.
- e. *Annexation Costs*.

- **Eligible:**

- a. *Permits* – Examples of project specific permits/fees include railroad crossing permits, Chapter 30 permits, building, electrical and plumbing permits, etc. If these permits are part of a construction contract, the costs will be paid as part of the contract. If obtained outside of the construction contract, the municipality must provide documentation of the cost. The cost of a municipality's WPDES permit for discharging from its wastewater treatment plant is ineligible because this cost is not incurred solely for the project. However, a special WPDES permit specific to construction of the project is eligible.
- b. *Service Fees* - Fees for project specific services provided to a municipality by a state agency (DOT, DNR, Commerce, etc.).
- c. *Legal Fees* – Legal costs if the legal work is project specific and performed by an attorney that is not an on-staff municipal attorney. Includes legal reviews of A/E or construction contracts, user charge, sewer use ordinances, management plans, intermunicipal agreements, and legal work necessary for securing eligible permits.

PARALLEL COST PERCENTAGE – The CWFP cannot subsidize industry or state and federal facilities, or costs for future growth beyond 10 years. The parallel cost percentage is used to place these project costs at the market interest rate. The costs included in the calculation of the parallel cost percentage are:

- reserve capacity for sewage collection system, interceptor or individual system projects in unsewered municipalities necessary to serve projected flows beyond the initial flows expected at the project completion date.
- reserve capacity for wastewater projects necessary to treat projected flows beyond 10 years from the project completion date.
- capacity for present and future flows from industrial users.
- state and federal facility flows that exceed 5% of the total flow to the treatment works.

The plan reviewer for a project reviews the parallel cost percentage information provided by a municipality's engineer and provides an approved percentage to the CWFP project manager.

PRETREATMENT – Costs for construction of privately-owned pretreatment facilities and monitoring equipment used by industry for sampling discharges to municipal works are ineligible. Costs for monitoring equipment used by a municipality to sample and analyze industrial discharges to a municipal treatment facility are eligible. Development and construction costs associated with a municipal pretreatment or toxicity reduction program for a municipal treatment works are eligible.

PRIVATE ACTIVITY - Municipalities must issue a tax-exempt obligation as security on their CWFP loan. This tax-exempt status must meet the requirements of the Internal Revenue Code of 1986. Following are examples of some common relationships with private companies that may impact the issuance of tax-exempt bonds:

- a contractual payment to the municipality if the company ceases or reduces its use of the system, ceases operations, or moves to another municipality
- a guaranteed fixed payment for municipal debt payments or capital costs
- a guaranteed payment for a percentage of debt payments or capital costs
- sewer rates or other special provisions that are not available to other users in the same service class
- structure of a contract for management/operation of a municipal system
- the private company receives all or part of the net profits of the system

- the private company is a “related party” to the municipality

Municipalities can accept flows from industrial users (private use) without having private activity problems. If a municipality has a customer that contributes more than 10% of the revenues to the user charge system, the municipality and the CWFP need to determine if there is a private activity problem. The CWFP can offer financial assistance to municipalities with private activity problems. However, the municipality may need to meet alternative minimum tax requirements.

PROJECT SIGNS – Temporary CWFP project and permanent plant identification signs are eligible.

REPLACEMENT (MAINTENANCE, REHABILITATION) - Replacement, repair or rehabilitation of the plant or collection system identified in the plans as a cost-effective and necessary part of a project is eligible.

RESTORATION OF STREETS AND RIGHTS-OF-WAY – Reasonable and necessary restoration of streets and/or rights-of way is an eligible cost, provided the need for such restoration results directly from the construction of the eligible project. Repairing damaged pavement, sidewalks, or storm sewers, etc., is generally eligible. These costs are ineligible if incurred due to contractor negligence.

SAFETY EQUIPMENT - Safety equipment included in the approved plans and specifications, or approved by appropriate DNR staff, is eligible. Such safety equipment should meet applicable local, state, federal, and industry regulations and standards.

SALVAGE VALUE - Salvage value of existing material that remains the property of the municipality will not be recovered by the state. It is not subject to refunds, rebates or credits.

SEPTAGE – A/E and construction costs for receiving, storing and treating septage are eligible for zero percent (0%) interest rate.

SLUDGE REMOVAL – Sludge removal is generally considered a maintenance activity and is ineligible. If sludge removal is part of a capital improvement project, such as a treatment plant upgrade, lagoon abandonment or conversion of a lagoon into an equalization basin, the costs are eligible.

SPARE PARTS - Spare parts for items included in the approved plans and specifications, or approved by the appropriate DNR staff, are eligible.

SPECIAL ASSESSMENTS - Legal and financial costs associated with preparing/developing special assessments are eligible if the municipality is pledging special assessments for its CWFP financial assistance.

SPECIAL DISTRICTS - The mechanics of establishing special purpose districts such as sanitary districts, utility districts and joint commissions, etc., are ineligible because they are normal governmental functions.

STAFFING EVALUATIONS – Evaluations to determine appropriate post-project staffing levels are eligible.

START-UP SERVICES – Eligible start-up services include:

- a. Preparing a start-up curriculum and training materials.
- b. Initial training of operating and maintenance personnel on new or modified equipment, laboratory procedures, records management, and treatment processes.
- c. Obtaining expert operational assistance for adjustments to the treatment process.
- d. Implementing the maintenance management system.
- e. Trucking seed sludge for start-up of the activated sludge process.

- f. Obtaining necessary computers, upgrades, and software.
- g. Attending off-site formal training programs, if necessary for the the initial operation of the constructed treatment works.

Costs associated with the operation and maintenance of a municipal wastewater treatment works, such as salaries for operation and maintenance personnel, chemicals, power, etc., are ineligible. The cost of training for operators to meet state certification requirements under ch. NR 114, Wis. Adm. Code, is also ineligible. Equipment and facility testing is the responsibility of the contractor under the supervision of the engineer and would be included in the construction contract.

STATE AND FEDERAL FACILITIES – The costs for the flow from state and federal facilities will be placed at market rate through the parallel cost percentage if the flow exceeds 5% of the total flow to the treatment works.

STORAGE FACILITIES – Construction of storage facilities that are used for wastewater pumping equipment, repair vehicles, maintenance vehicles, etc., are eligible if they are included in the approved plans and specifications.

STORM SEWERS (On-Site) – Storm sewers to handle runoff at treatment facilities, lift stations, septage receiving facilities, etc., are eligible.

TOOLS/EQUIPMENT – Tools necessary for construction or maintenance of the treatment works, when purchased as part of a project, are eligible. In addition, machinery for manufacturing and/or repairing necessary treatment plant tools and/or equipment is eligible.

TRAINING FOR CWFP RECIPIENTS - Costs associated with training, workshops and seminars conducted by CWFP are eligible. Training for new equipment and new processes related to the project is also eligible.

TWO-THIRDS REVIEW - An unsewered project is eligible for subsidy only if the department finds that at least two-thirds of the initial flow will be for wastewater originating from residences in existence on October 17, 1972. An eligible unsewered project must meet the two-thirds rule to qualify for a 70% market interest rate. If an unsewered project does not meet the two-thirds rule, then all of the eligible unsewered construction costs will be funded at market rate.

UTILITIES – Removing, relocating or replacing utilities, providing temporary utilities necessary for the project, installing new utility equipment or upgrading utilities are eligible costs, if included in the plans and specifications or approved by appropriate DNR staff.

If, in the course of moving a utility pole, etc., a water main or other essential utilities are damaged, the replacement cost is eligible. Costs associated with negligence on the part of the consultant or contractor are ineligible.

VULNERABILITY ASSESSMENTS – A vulnerability assessment is eligible if needed to determine security equipment needs. The vulnerability assessment is not required in order to receive funding for security equipment, nor are the specific security details required in the plans and specs.

WATER MAINS - If construction of the project requires relocation of water mains, the work associated with the relocation is an eligible cost. If the water mains cannot be placed back into the new location without breakage, costs to replace the water mains at the same size or mandated minimum size are eligible.