Street Reconstruction Cost Policy
Responses to Public Comments

A 21-day public comment period for the Street Reconstruction Cost Policy opened on March 8, 2024, and closed on March 29, 2024. The comments and the corresponding responses are listed below. In some cases, the comments may have been shortened to highlight their recommendations. We appreciate the engagement we received, and the patience commenters have shown while awaiting responses.

Comment letter 1

Submitted by Ron Wolf, McMahon Group

In the document sent out Friday I noticed one concern. In the category:

0% of general construction costs are eligible under an LSL loan

If one had a LSL replacement contract that was focused entirely on the LSL, it would have to include costs either at the terrace / ROW line for landscaping and sidewalk replacement for the curb stop box installation, and in the roadway to reconnect to the existing main. It seems a number of the 'general construction cost' items should be 100% eligible in that case since the goal obviously is to do spot repairs and not a general roadway enhancement.

Zero percent seems prohibitive for the municipality in that example.

> **Response:** Under your scenario where the project is entirely an LSL project, and there are no other aspects, then the project would be considered a single utility project and the work will be reimbursed proportionally to the utility work being done. For each service there would be, at a minimum, some landscaping and probably sidewalk that would need to be replaced. With no other work those cost would be 100% reimbursable. However, if the sidewalk was in poor condition and the municipality included costs to replace all of the sidewalk along the construction area, the sidewalk and turf restoration would then be reimbursed proportional to the overall work of the project.

Comment letter 2

Submitted by Amy Kelsey, Cooper Engineering

I have read the 2-page policy change on how the DNR is proposing to allocate costs for streets, sidewalks, general construction, erosion control, etc. when they are part of a SFY 2025 CWF or SDW project.

This is a drastic change from how loans are currently offered and will catch many communities off guard. I can understand that the DNR may not want to offer principal forgiveness for street/sidewalk/general reconstruction costs when a project footprint exceeds that necessary for a water or sewer project. However, the ability for a community to obtain financing for the remainder of a project will not only become complicated with multiple funding sources (public and private), but it will also affect the underwriting of a loan (for example, the debt coverage needed goes up to 125% when a commercial loan is involved). In addition, when an item becomes "ineligible", the community may no longer be able to allocate the project costs to the utility. The general fund would be responsible for the DNR-ineligible portion of the project. Communities would bear the cost of obtaining both a revenue bond for the eligible portions and the costs for the GO-funded portion (bond or commercial loan). Tax levy limits already in place could hinder a community's ability to take on many projects. There are many unforeseen circumstances with this proposed change. And it is a substantial change in the way the DNR has been doing business.

Again, I understand that the DNR is not in the business of subsidizing road projects. However, for the protection of public drinking water and groundwater, public improvements are needed. I would instead suggest that loans continue to be written/offered for the public water and sewer infrastructure projects, however, road reconstruction, curb and gutter, and sidewalk can no longer receive a principal forgiveness element. Save the PF for water and sewer infrastructure elements. But the entire project should be offered a loan (perhaps even the interest rate on general construction items are non-subsidized). Many of the small communities that I work with in Northwest Wisconsin do not understand the funding elements now. Making items ineligible will only delay construction, miss loan closing deadlines, cause confusion *(board members are volunteers!!),* and lead to the improvements not being made. It will be very costly for some communities as the alternative financing and administration could double in cost.

I would also add that erosion control helps keep our surface waters clean. Regardless of the undertaking, DNR now has the opportunity to help ensure that erosion control measures are used. Erosion control should be funded 100% as it meets the DNR's objectives of clean and safe drinking waters. _

In summary, I agree DNR shouldn't be paying (i.e. principal forgiveness) for streets; however, as streets are a part of the project, the funding for the entire project should come from one source

when possible. Small communities only take on large projects every decade or so. Administering a program shouldn't be a nightmare for them.

> **Response:** The Environmental Loans programs were not intended to fund street reconstruction projects; therefore, it is the program's fiduciary responsibility to properly manage the environmental loans funds; just as public utilities have a responsibility to properly use utility rate payers' funds for the utility. Street reconstruction, when included with other municipal utility projects, should not be funded completely through utility rates. Non-subsidized, i.e. market rate, is not an available option at this time for general construction items in the CWF Loan Program or available at all in the SDW Loan Program. The proposed policy sets a consistent eligibility limit making it easier for communities and consultants to understand the amount that will be eligible for CWF and SDW loan funding before the project is bid. Currently, projects can be significantly under construction or finished before eligibility and loan amounts are determined. This is more of a burden for communities than having a formula up front to calculate the eligible amount. We will take note of PF suggestion for future enhancements.

Comment letter 3

Submitted by Larry Gotham, Morgan & Parmley, LTD., Rusk Surveying

We work with Amy on CWF and SDW projects. We have used the program since it began.

This proposed change is very significant and will create a much bigger burden on small communities than larger communities. Larger communities have the potential to cash flow ineligible items but small communities most likely will need to go with a separate bond issue for ineligible items. This will increase the financing costs significantly.

Amy did a very good job expressing her/our concerns. I will not rewrite her comments here but I concur with those comments.

As written, the proposed change is adverse to small communities. Thank you!

> **Response:** Thank you for your comments, see above response to comments received from Amy Kelsey at Cooper Engineering.

Comment letter 4

Submitted by Brandon Herbert, Strand Associates, Inc.

On behalf of myself as a municipal engineer, not Strand corporately, I have a few comments on the proposed guidance included in the attached document.

To make sure I am interpreting the guidance properly, here's a hypothetical situation. A municipality receives a CWF loan to replace an interceptor sewer or a deeper sanitary sewer. As part of this project, the municipality also decides to replace the water main, add storm sewer and reconstruct the roadway to improve a number of geometric issues Perhaps this decision was made because the deep sanitary sewer work would disturb most or all of the roadway "anyway". Or perhaps the water main need to be moved to meet current NR codes for water main and sanitary sewer separation, therefore disturbing even more of the roadway.

In this situation above, since water main and storm sewer were being replaced or added, only 20% of roadway "general construction" costs would be eligible for CWF. Is this correct?

However, if the municipality decided to only replace the deep sanitary sewer, a "individual utility" project, then the entirety of the roadway general construction costs would be eligible, correct?

If these above are both correct, blindly applying 20% eligibility to projects where more than one utility is being worked on doesn't accurately reflect the impact of replacing the utility that is being replaced. Only allowing 20% eligibility to multiple utility projects may lead to municipalities deciding to "only" replace the deep sanitary sewer and repave the roadway width, say 24 feet of asphalt because it is eligible then. This would be short-sighted if the water main needed replacement, drainage improvements needed, or roadway grades improved. The CWF funds would be used to repave the roadway anyway but the utility of those funds would be diminished because the pavement would likely be replaced again within the anticipated life of the pavement to replace or add the other utilities. Importantly, the 20% eligibility would strain already tight municipal budgets by requiring the City, etc. to find the remaining 80% of general construction costs even though most of the general construction costs are caused by the utility they got the loan or grant for.

Instead of a uniform 20%, I'd suggest the percentage of "General Construction" that's eligible for CWF, SDWLP, etc. be evaluated as if the project hypothetically was an "individual utility" project. If this evaluation results in all the asphalt and base course of a roadway needing to be replaced, then all the asphalt and base course would be eligible. Or perhaps 1/2 of the asphalt/base and one curb line of a road would be impacted as an individual utility project, then those elements would be eligible even if other utilities were being replaced.

Thank you for your time reading this email and consideration of these comments.

> **Response:** In your example the sanitary sewer would be single utility project and the roadway and general construction items would be proportionally reimbursed. For many deep utility projects where only one utility needs replacement and the roadway is in

good to excellent condition, there are other methods (lining, pipe bursting etc.) that can be used to minimize roadway repair, those methods are eligible expenses.

Comment letter 5

Submitted by Peter Holmgren, Madison Water Utility

My comments on this draft from a water utility perspective are as follows:

Watermain projects should be eligible for "general construction" costs for various items as either a function of their direct impact on that item as part of a complete reconstruction item, or a proportional impact to the overall construction project. Examples below, using the general cost items provided:

- Mobilization – Proportional to a utility's cost on the overall project. For example if water utility work accounts for 30% of the cost of the overall general project, 30% of the mobilization costs should be attributed to water and should be eligible under the SDWLP.
- Traffic control – Same as mobilization.
- Paving (if paving existed on site prior to the project) – If roadway paving and reconstruction is going to happen regardless of utility work, then the only costs related to paving for a utility should be temporary patches required to accommodate construction phases, or additional paving beyond the roadway repaving project limits. The latter two items should be 100% eligible for loans.
- Roadbed (cut, geogrid, material – if existed on site prior to the project) – Same as paving.
- Sidewalk (if sidewalk existed on site prior to the project) – Only where necessary for watermain work, for example if a water lateral replacement requires three squares of sidewalk to be replaced, those three squares of sidewalk are eligible for loans; the rest are unrelated to water work and therefore are not.
- Curb and gutter (if curb and gutter existed on site prior to the project) – Same as sidewalk.
- Landscaping (to condition that existed on site prior to the project) – Same as sidewalk.
- Detectable warning field – Same as sidewalk.
- Erosion control – Same as mobilization.
- Tree removal – Same as sidewalk.

Response: More than a decade ago our informal policy followed much to what you have described. This approach took quite a bit of time and often resulted in disagreements between the DNR and municipalities (and their consultants) over the eligible portion of a project. Over time, there were more debates on the eligible portion of each project, increasing staff time and billable hours, which in turn raises the cost for communities. Currently many projects are started or completed before the department issues a loan, thus it is not clear to the communities what will be loan-eligible and has left some municipalities in a position where they had to scramble to identify additional funding sources to cover ineligible portions of the project.

This proposal is meant to standardize the eligible cost between communities across the state, while also making it easier to understand what portion of a project's general construction will be eligible, allowing time to finalize funding before the construction is started.

Comment letter 6

Submitted by Andrew Dear, Village of North Freedom

Through the MEG-Water Division I received a notice that you are collecting feedback regarding a draft CWFP/SDWLP Complete Street Reconstruction Policy.

From what I understand as I read through the policy this appears to be something that could greatly benefit small municipalities looking to update old systems and streets.

From what I read I would be in favor of these policy changes.

Looking forward to seeing what the final outcome will be.

Response: Thank you for the comments in favor of the policy.

Comment letter 7

Submitted by Michael F. Davy, Davy Engineering Co., Inc.

We understand the intent to use SDWLP and CWFP $ for sewer and water, not construction of new streets, and recommend some modifications to align with good engineering practices.

1. We agree that the costs associated with new sidewalks, curb & gutter and driveways should not be eligible. Pavement width should be the same and should be replaced with like-kind: concrete with concrete, HMA with HMA and gravel with gravel. If those upgrades are included in the project, the costs should be segregated and excluded from funding.

2. It's unclear what is intended by, "This policy does not apply to individual utility projects". Is the 20% limit on "general construction" in addition to the areas impacted by the utility work? What is "proportional to the utility work being done"?

3. The costs associated with street restoration ("general construction") for Sewer or Water construction should be 100% eligible and not limited to 20%. For a cost to be ineligible, there must be a means to avoid the expense. In most cases, a Sewer or Water project

cannot be constructed without restoring the street to full width. It's not practical to patch the trenches for main line and service work and leave a checkerboard of old pavement. In addition, restoration will not be perceived as a benefit to the adjoining property owners, making it ineligible for assessment and leaving few ways to recover as a Street cost. That leaves the 80% as a Utility cost which then requires separate financing. Small, low-income communities, in particular, do not have the means to cover 80% of these costs.

4. Streets cannot be reconstructed to the original section when the subbase or original section are inadequate. Providing replacement materials including geotextile fabric, breaker rock and compacted base course is essential, especially when disturbed by trench excavation. Modern HMA pavement requires thicker lifts than the mix used years ago. While corrected the street section may be an improvement, no one should rebuild a street that will fail in short time.

5. In the title of the policy, change "Distribution" to "Eligibility".

Response: The 20% limit described in the policy will only be used on a street reconstruction project that is replacing all underground utilities: water, sewer and storm sewer. The "proportional to the utility work being done" portion of the policy is for single utility projects, such as a watermain being replaced but no sewer or storm sewer. In this instance, paving and general construction would not be distributed at a straight 20%, instead a reasonable trench width being patched would be eligible; however, complete street repaving for a watermain project would not eligible. Most communities are replacing all utilities with a street replacement since most pavements have a shorter design life than an underground pipeline. Upgrades to the street section would be eligible, and upgrades to the roadbed to current standards is expected and reimbursable up to the 20% limit.

Comment letter 8

Submitted by Lawrie J. Kobza, Municipal Environmental Group

MEG - Water has the following questions and requests for clarification about the DNR's draft Street Reconstruction Cost Policy.

1. It is MEG - Water's understanding that this policy applies to "complete street reconstruction projects" only. Is there a definition of a "complete street reconstruction project"? Who decides whether a project qualifies as a complete street reconstruction project?

2. Will this policy be automatically applied to all complete street reconstruction projects or must the applicant ask that the policy be applied to a particular

project? May an applicant ask that this policy not be applied to a particular project?

3. Does this policy apply to street projects that are funded by the Wisconsin Department of Transportation?

4. What design, bidding, and contracting requirements apply to a complete street reconstruction project? Must all portions of the project be designed, bid, and contracted together?

5. It is our understanding that utility projects often proceed street work and that temporary pavement is applied to the utility trench. The city then follows later to do the full street reconstruction under a city contract and at the city's cost. Would the DNR expect this policy to apply to the street reconstruction in that type of situation?

6. Does the DNR expect that all general construction costs assigned to the water utility under this policy will be fully recoverable from water utility customers through water utility rates? Has the DNR discussed this policy with the Public Service Commission and does the PSC agree that all general construction costs assigned to the water utility under this policy will be fully recoverable from water utility customers through water utility rates? Water utilities should not be caught between potentially inconsistent policies and practices implemented by the DNR and PSC.

7. Certain water utility main projects also require PSC approval. Has the DNR discussed with the PSC how the PSC will treat street reconstruction costs when it reviews a proposed water main project? Will the estimated costs in the PSC approval include street reconstruction costs?

8. The draft provides that this policy will be effective on all complete street reconstruction projects with application submitted for State Fiscal Year 2025 and beyond. How does DNR intend to handle these costs prior to that date?

Response: The definition of a complete street reconstruction is often different and dependent on the community and the current utilities present at the project site. A typical urban street reconstruction may include curb and gutter, asphalt roadway, storm sewer, watermain and sanitary sewer while a rural street reconstruction may include asphalt roadway, a gravel shoulder, watermain, and sanitary sewer.

This policy will automatically apply to all street reconstruction projects. The community can always discuss their project with the DNR Construction Management Engineer beforehand if they feel it is necessary for clarification.

If a community would like to fund a project in their community being sponsored by DOT, the community would need to replace their utilities, normally watermain and sanitary sewer, to have eligible CWF or SDW loan projects. DOT typically has an 80/20 cost split

on the roadway and general construction with the communities. Thus, the 20% municipal share of the project would be split, likely with half on the CWF loan and half on the SDW loan, or approximately 10% of roadway and general construction costs on each loan.

Most street reconstruction projects are engineered and bid as a complete package. If a project spans multiple utility jurisdictions, we recommend talking to DNR Environmental Loans staff beforehand to verify all eligible costs would be reimbursable, due to the many federal and state requirements that need to be met in construction contracts.

If utility work is completed with temporary paving before a street reconstruction, the project would be treated as an individual utility project and temporary pavement for a reasonable trench width would be eligible. In this instance, the 20% per loan street reconstruction on the actual street contract would be ineligible for CWF or SDW funding.

One of the reasons for this policy is the difference between the amount requested for the project from DNR and PSC for the same project. This policy has been discussed with PSC. In doing so, it became apparent that the DNR's current approach for distributing general construction costs sometimes results in more costs being included in the SDW loan than are recoverable from water utility customers. A sampling of projects was analyzed and the 20% cost distribution proposed in this policy is more in line with what PSC expects on a cost per foot of water mainline basis.

For projects submitted in State Fiscal Year 2024 and prior we are using our current method, which admittedly is not consistent across the state.

Comment letter 9

Submitted by Kenneth J. Ligman, Becher-Hoppe Associates, Inc.

We disagree with the draft policy with regard to a maximum of 20% of general construction costs per utility are eligible for each loan as follows:

1. To safely construct a pipeline in accordance with OSHA safety trench guidelines will result in a minimum surface restoration of 20 feet wide. Typical community street widths vary from 24 feet wide to 30 feet wide. To arbitrarily decide to fund only a portion of the necessary surface restoration is not logical. The same applies to other identified work items of general construction. All are integral portions of the project. The identified general construction work items typically amount to 50% of the total project cost.

2. If less than 20% of a project's general construction costs are eligible for the SDWLP loan, most communities will have to go through a separate bond process to finance those costs not covered by the SDWLP loan. Could these costs still be included in the SDWLP, but at the market rate interest?
3. Rather than isolate only general construction costs for a reduced coverage in the SDWLP loan, it may be more practical to apply a reduced percentage on an entire project cost basis since sometimes each individual general construction cost is not identified as a bid item.
4. We understand that the funding agency does not have sufficient monies to finance all of the projects that have expressed a notice of Intent. Rather than reduce funding levels of all projects, we prefer funding at 100% until the borrowing limit is reached.

Response: Your example appears to be the worst-case scenario without the use of a trench box. Safety is the contractor's responsibility; trench boxes are used on all projects for workers safety, and they also minimize trench width. SDW loans do not have the option for Market rate costs per Wisconsin State Statute. The purpose of the Environmental Loans programs is to provide financial assistance for water infrastructure projects, not to fund street reconstruction projects. This policy is intended to clarify and consistently identify general construction costs that are loan eligible. Despite the timing, this policy is not intended to address or resolve any loan capacity issues.

Comment letter 10

Submitted by Teresa Anderson, MSA Professional Services, Inc.

Comment 1: On categorization of "general costs" and standardizing methodology for eligibility computations

A. **General Costs.** The proposed guidance indicates that up to 20% of general costs would be eligible for each loan. We are concerned that some costs included in that category, such as pavement, roadbed, etc. seem not to be "general costs" but rather are specific and itemizable costs directly related to utility construction. We agree that general costs should include such items as mobilization, traffic control, and erosion control which apply to the entire project.

We suggest the "General Cost" category be subdivided into two categories: General Project Costs (such as mobilization) and Utility-Related Costs (such as demolition and surface restoration). This would be in line with NR 162.04(1)(a)7.b. which includes as eligible "Restoring streets and rights-of-way and repairing damage to items such as pavement, sidewalks, watermains, and storm sewers necessary **as a direct result of construction** of the scored project." And NR 166.07(1)(f)2. That includes **"**Repairing or restoring items or

areas **damaged as a direct result** of construction of the project" (red text and bolding by MSA).

B. **Utility-Related Costs of Construction.** We recognize the need for a standard to determine which portions of complete street reconstruction are **a direct result of** the construction of sewer and water infrastructure. However, direct sewer and water construction impacts are not realistically represented by a standardized percentage across all projects. For example:

   The amount of pavement disturbed by installation of a water or sewer main is not related to the width of the street. On a 50-foot-wide street, 20% of pavement width would be 10 feet. On a 20-foot-wide street, 20% is only 4 feet. Funding pavement restoration based on street width, rather than trench width, seems arbitrary and places a higher cost burden on communities with narrow existing streets, in some cases creating a hardship which could preclude pursuing the project.

C. **Standardizing Methodology Rather Than Percentages –** We suggest, rather than standard percentages, that the Department require use of a standardized methodology for determining demolition and restoration costs related to construction of sewer and water infrastructure. A "worksheet" to be completed, certified by the project Engineer, and submitted to DNR would provide a standardized and easily reviewable breakdown of costs. This method would define a standard "restoration vee" and capture the significant items **"damaged as a direct result of construction" (**NR 166.07(1)(f)2.) without straying into negligible "one-off" items that happen to coincide with the water or sewer trench. A draft of a suggested worksheet for calculations is attached. MSA would be willing to provide additional assistance in developing a standardized spreadsheet for this purpose.

Comment 2: On the standardization around <u>20%</u>

- How did the department determine that the correct percentage of "general construction costs" isn't to exceed 20%?
- MSA has completed many SDWLP and CWF projects that were part of a complete street reconstruction. The percentage of eligibility, based on items that were disturbed as a direct result of construction often is more than 35% of street/general costs (per utility).
- The 20% replacement cost for some general costs is too low. For a small community to be able to pursue a utility project, 50% of the entire roadway reconstruction costs need to be covered. Logically, the funds would cover no less than 1/3 per utility, as replacing all three utilities (storm, water, and sanitary) will require the entire roadway to be replaced. If the project includes water and sanitary sewer, a minimum of 2/3 of the roadway costs should be covered.
- Depending on the project, 20% can be a generous number, but it can also be a true hardship and the project can't move forward.

Comment 3: On paying more for less

- The unit prices for construction items included in a complete street reconstruction are typically lower than the unit prices for sawcutting and paving a single trench, or for patching and spot repairs. If communities are forced by affordability concerns to reduce projects from complete-reconstruct to utility-replacement-only the Program may end up paying more for each item.

Comment 4: On LSL program eligibility

- With the recently passed legislation, the utility can pay for the costs of replacing a lead line from the main to the house connection. Please explain why the demolition, restoration, and mobilization items are 0% eligible for the DNR's SDW program.
- This creates undue hardship for both the utility and the homeowner. It appears to be a deterrence for them to use this program.

Questions and requests for clarification

- What determines whether a project is a complete street reconstruction? When is a project considered "water only" or "sewer only" with utility CWF or SDWLP paying for all costs, and when does it become a "complete street reconstruction?"
- Does the 20% clause assume the entire roadway, base, pavement, curb and gutter and sidewalk is getting replaced? Or does the policy say only 20% of the general costs that are directly affected by the work are eligible for replacement?
- It may be beneficial to clarify which costs are included in items such as landscaping and roadbed.

Response: We agree that in many municipalities road work is not general construction and is its own project. Chs. NR 162 and 166, Wis. Adm. Code were originally written for single utility projects. Many projects are now bid to replace all utilities and the roadway. Specifically, NR 162.04(1)(a)34 and NR 166.07(a)(zm) allow the department to prorate the cost of repairing street items damaged during construction. Most of these projects begin with milling the pavement and at times removing the roadbed before underground utilities are constructed; therefore, the utility trench in many cases is not removing the pavement or roadbed, so the percent affected by utility construction is 0%. This is due to the fact the communities along with their consultant, during planning and design, made a conscious decision to replace all utilities and rebuild the road. This policy establishes a standardized methodology that communities can use to calculate the eligible portion of a complete street reconstruction project.

The 20% was derived from municipalities that had a long practice, greater than 50 years, of replacing all utilities, roadway, curb and gutter, and sidewalks all at once. The standard used was 20% of street and general costs were the responsibility of the water

and sewer utility respectively. There have been other communities that did not want water and sewer rates to pay for any more than a trench width. Using AutoCAD, and the contractor providing a reasonable trench width if the work was done independently, those percentages were found to be in the 15-20% range. The Wisconsin Public Service Commission (PSC) also requested that we put together our loan costs as price per foot of 8" PVC watermain. Of the projects reviewed by DNR CME's, the 20% approach returns a price per foot value within a range expected by PSC. Our current method of calculating the loan-eligible amount on a project-by-project basis returns a price per foot value over the PSC's expectations, which has and would continue to cause issues for municipalities applying for a rate increase at PSC after they have received a SDW loan.

Your comment about paying more for less is the exact reason most communities have moved to complete street reconstruction. Also note, about 15-20% of all the plan and specifications approvals by the DNR Water and Wastewater programs are funded through CWF and SDW loans.

For LSL replacement during a complete street reconstruction, most LSL's that are replaced are pulled not excavated; therefore, during a complete street restoration the area is already disturbed from the road removal, and mainline sewer and watermain installation etc.

Complete street reconstruction will be dependent on the actual current street. As stated above, the definition of a complete street reconstruction could be slightly different dependent on the community and the current utilities. A typical urban street reconstruction may include curb and gutter, asphalt roadway, storm sewer, watermain and sanitary sewer while a rural street reconstruction may include asphalt roadway, a gravel shoulder, watermain, and sanitary sewer.

Comment letter 11

Submitted by Amy Bares, Town & Country Engineering, Inc.

Town & Country Engineering would like to provide a written comment on this proposed policy: The CWF/SDW loan programs have been great programs to work with and a lifeblood to our client communities that have used them for infrastructure improvements. In the past our clients have been able to fund larger portions of their roadway construction with associated utility replacement, sometimes up to 100% of the roadway with a combination of SWD and CWF for water and sanitary sewer along with lateral replacement. This has been a very useful feature of the program and has allowed these communities to make necessary improvements that they otherwise may not have been able to afford. The new proposed policy would limit the

eligible/fundable roadway portion to 40% (most of our small communities would not qualify for stormwater funding) and would greatly limit the usefulness of the program to our clients, forcing them to find a third funding source, or more likely to forego doing projects and deferring utility maintenance. We respectfully request that the DNR consider raising these percentages from 20% to 33% per utility at a minimum, possibly considering higher percentages for smaller/disadvantaged communities.

We would be happy to provide more information and input from our client's perspective if desired.

Response: Thank you for your comments.

Comment letter 12

Submitted by Brea Grace, Short Elliott Hendrickson, Inc.

Thank you for the opportunity to comment on draft Policy dated March 8, 2024. We have had an opportunity to review this material and discuss with several local municipalities which we are working with. While we understand the Department's desire to "consistently and equitably" apply costs across all municipalities, this does not match up with the language in NR162.04(1)(a)(7)(b) "Restoring streets and rights-of-way and repairing damage to items such as pavement, sidewalks, watermains, and storm sewers necessary as a direct result of construction of the scored project." Or NR166.07(1)(f)(2) "Repairing or restoring items or areas damaged as a direct result of construction of the project".

- By attempting to create a set calculation of 20%, the Department is establishing a standard that is not available in the Statutes. NR162(04)(1)(a)(11) and NR166(07)(1)(i) specifically allow the Department to prorate the costs of equipment; this language is not included in the construction activities section noted in the opening paragraph above.
- Construction impacts are not consistent or equitable in all municipalities or even within a single municipality. The impact of an 8-inch water main replacement at depth along a level surface with well-drained sandy loam is different than a 36-inch interceptor sewer replacement along a hillside slope with sandy soils.
- Construction impacts are not consistent with the main sizing variations by location and system needs. The depth and location of an 8-inch water main is very different from a 36-inch interceptor sewer line.
- A strict 20% calculation is much different in a total project cost of $1,000,000 ($200,000) than in a total project cost of $400,000 ($80,000). Placing a consistent maximum percentage does not allow for variation in complexity of construction techniques or safety regulations which may result in cost savings or increases.
- Some project preliminary cost estimates are already calculated with percentages included for utility reconstruction work. The Department has the current practice of considering these and if necessary requesting changes early in the process. This existing project-based internal review allows total project budgeting to be established early in the process and continue through bidding and contract awards without a strict across-the-board State-wide limitation.

We would request that the Department withdraw this proposed policy change based on these issues and allow for future consideration of other alternatives to address eligible construction activities included in the SDW and CWF loan programs.

Response: Wisconsin state statutes (specifically s. 281.58 and 281.61 Wis. Stats.) do not address project cost eligibility, rather this is addressed in Wisconsin administrative code (specifically chs. NR 162 and 166, Wis. Adm. Code). The proration of eligible street restoration costs is specifically addressed in NR 162.04(1)(a)34 and NR 166.07(1)(zm). Regarding NR 162.04(1)(a)(7)(b) and NR 166.07(1)(f)(2), if all items in the road right of way that presently exist are being replaced there is no damage from installing the watermain, sanitary or storm sewer. As stated earlier above, the decision was made to replace all utilities; therefore, there are no conflicts. Also note that NR 162.04 and NR 166.07 include language that project sites can be restored to the original condition or when necessary, can be upgraded, this policy is allowing upgrades, but the costs are prorated as stated above.