

Chapter NR 128
POINT SOURCE POLLUTION ABATEMENT
GRANT PROGRAM

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NR 128.01 Purpose. The purpose of this chapter is to establish rules under s. 144.24, Stats., for the implementation and administration of a financial assistance program for the planning, design, engineering, and construction of point source pollution abatement facilities.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.02 Applicability and cross referencing. This chapter shall apply to all applications for funding for planning, design and construction of point source pollution abatement facilities made pursuant to s. 144.24, Stats. Compliance with this chapter and all other applicable requirements identified herein is necessary for satisfying qualification requirements prior to grant assistance.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.03 Definitions. For the purposes of this chapter:

(1) "Alternative wastewater treatment works" means a wastewater conveyance and/or treatment system other than a conventional system. This includes small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

(2) "Approval" means the written approval of the department.

(3) "Approved areawide waste treatment management plan" means a plan or elements thereof developed pursuant to Section 208 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act Amendments of 1977 (33 USC 1251 et. seq.), and approved by the state of Wisconsin.

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(4) "Combined sewer" means a sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

(5) "Construction" means any one or more of the following activities: Preliminary planning to determine the feasibility of treatment works; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures or other necessary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," means:

(a) The approval of the plan of study for step 1 activities;

(b) The award of a step 2 grant for step 2 activities;

(c) Issuance of a notice to proceed under a construction contract for any segment of step 3 project work or, if notice to proceed is not required, execution of the construction contract for step 3 activities.

(6) "Conventional system" means a collection and treatment system consisting of minimum size gravity collector sewers normally with manholes, force mains, pumping and lift stations, and interceptors leading to a central treatment plant.

(7) "Department" means the department of natural resources.

(8) "Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow, subject to the provisions in NR 128.20.

(9) "Individual systems" means privately owned alternative wastewater treatment works (including dual waterless/graywater systems) serving one or more principal residences or small commercial establishments which are neither connected into nor a part of any conventional treatment works. In general, these are on-site systems with localized treatment and disposal of wastewater with minimal or no conveyance of untreated wastewater. Limited conveyance of treated or partially treated effluents to further treatment or disposal sites can be a function of individual systems where cost-effective.

(10) "Industrial user" means:

(a) Any nongovernmental, nonresidential user of a publicly owned treatment works which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and which is identified in the Standard Industrial Classification Manual, 1972, United States Office of Management and Budget, as amended and supplemented as of October 1, 1978 under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing

Division B. Mining

Division D. Manufacturing

Division E. Transportation, Communications, Electric, Gas, and Sanitary Services

Division I. Services.

(2) In cases where service is not provided in a delineated service area in compliance with the facility planning schedule, a course of action under this section may not be entered into by the department until an order pursuant to s. 144.07 (1), Stats., has been entered by the department relative to that service area and in no case can such an action be taken unless 5 years have elapsed from the time that service is scheduled to be provided. Further, in no case can recovery sought be more than the depreciated value of the grant for that segment of the treatment works designated for service to the unserved area.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.25 Grantee accountability. (1) FINANCIAL MANAGEMENT. The grantee is responsible for maintaining a financial management system which shall adequately provide for:

(a) Accurate, current and complete disclosure of the financial results of each grant program in accordance with department reporting requirements. Accounting for project funds shall be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all project funds, property, and other assets.

(d) Comparison of actual with budgeted amounts for each grant.

(e) Procedures for determining the eligibility and allocability of costs in accordance with the provisions of NR 128.05.

(f) Accounting records which are supported by source documentation.

(g) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with the terms of the grant agreement. The grantee shall schedule such audits with the reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity.

(h) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(2) **RECORDS.** The following record and audit policies are applicable to all department grants and to all subagreements.

(a) The grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly:

1. The amount, receipt, and disposition by the grantee of all assistance received for the project, including both state assistance and any matching share or cost sharing; and

2. The total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which

the state grant has been awarded. In addition, contractors of grantees, including contractors for professional services, shall also maintain books, documents, papers, and records which are pertinent to a specific state grant award. The foregoing constitute "records" for the purposes of this section.

(b) The grantee's records and the records of his contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying, and audit by the department.

(c) The grantee and contractors of grantees shall preserve and make their records available to the department:

1. Until expiration of 3 years from the date of final settlement, or
2. For such longer periods, if required by applicable statute or lawful requirement; or
3. If a grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.
4. Records which relate to appeals, disputes, litigation on the settlement of claims arising out of the performance of the project for which a grant was awarded, or costs and expenses of the project to which exception has been taken by the department or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved.

(3) **AUDIT.** (a) Preaward or interim audits may be performed on grant applications and awards.

(b) A final audit shall be conducted after the submission of the final payment request. The time of the final audit will be determined by the department and may be prior or subsequent to final settlement. Any settlement made prior to the final audit is subject to adjustment based on the audit. Grantees and subcontractors of grantees shall preserve and make their records available pursuant to NR 128.25 (2).

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

NR 128.30 State grants for the replacement or rehabilitation of individual septic systems. (1) **PURPOSE.** The purpose of this section is to establish rules under s. 144.24 (10), Stats., for the implementation and administration of a financial assistance program to replace or rehabilitate septic or other on-site systems under enforcement orders.

Note: These eligibilities are separate apart from those identified in NR 128.07 and constitute a separate process.

(2) **DEFINITIONS.** The following definitions apply to this section.

(a) "Individual septic system" means a privately owned domestic wastewater treatment and disposal system or portion of an individual system serving a principal residence or small commercial establishment. In order to constitute an "individual septic system", a system cannot discharge to surface waters or be connected to any conventional municipal treatment works. Normally, an individual septic system is an on-site system with localized treatment and disposal of wastewater with minimal or no conveyance of untreated wastewater. Limited conveyance of

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treated or partially treated effluents to further treatment or disposal sites can be a function of individual systems where it is cost-effective.

(b) "Principal residence" means a residence which is occupied at least 51% of the year by an individual, family or household. Second homes, vacation or recreation residences are not considered to be "principal residences."

(c) "Small commercial establishments" means commercial establishments or business places which have wastewater flows which total less than 300 gallons per day.

(d) "Public body" means sanitary district, town, village, city or county.

(3) **LIMITATIONS ON AWARD.** Before awarding grant assistance for any project for an individual septic system the department shall determine;

(a) That the project has been entitled to priority in accordance with sub. (7) below.

(b) That the public body applying for the grant has:

1. Certified that the project will be completed as planned and that the non-state project costs will be paid; and

2. The legal, institutional, managerial, and financial capability to insure adequate installation, operation, maintenance and inspection of the systems.

(c) That the necessary permits and plan approvals have been obtained;

(d) That the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met;

(e) That public ownership of the proposed project is infeasible; and

(f) That all requirements of sub. (6) of this section have been met.

(4) **ELIGIBLE SYSTEMS.** Individual septic systems to replace or rehabilitate existing systems are eligible for grant assistance if they meet the following conditions:

(a) The individual septic system will serve one or more principal residence or small commercial establishment constructed prior to and inhabited on July 1, 1978.

(b) The individual septic system will replace or rehabilitate an existing system under enforcement orders under ss. 144.025 (2) (d) or 145.02 (3) (f), Stats.

(c) The principal residence or small commercial establishment which will be served by the individual septic system has not received a previous grant under s. 144.24 (10), Stats.

(5) **ELIGIBLE AND INELIGIBLE COSTS.** The following cost eligibility criteria shall apply to individual septic systems applying for grants under s. 144.24 (10), Stats.

(a) Acquisition of land on which the individual system treatment works are located is not grant eligible.

(b) Commodes, sinks, tubs, drains and other wastewater generating fixtures, associated plumbing and modifications to homes or commercial establishments are not grant eligible.

(c) Only reasonable costs of construction site restoration to preconstruction conditions are eligible; however, costs of improvement or decoration occasioned by the installation of individual system are not grant eligible.

(d) Conveyance pipes from wastewater generating fixtures to the treatment unit connection flange or joint are not eligible where the conveyance pipes are located on private property.

(e) Small sewage treatment plants with surface discharges are not grant eligible.

(6) GRANT APPLICATION. (a) A public body shall apply for grants for the replacement or rehabilitation of private systems aided under this program.

(b) Preapplication assistance should be requested from the department for each project.

(c) Applications must be received by the department no later than January 1 of any year for consideration in that fiscal year.

(d) An application for a grant to replace or rehabilitate individual septic systems shall include:

1. Certification by the applicant public body that the grant monies provided will be used to replace or rehabilitate individual septic systems serving one or more principal residence or small commercial establishment constructed prior to and inhabited on July 1, 1978;

2. A certification by the applicant public body that public ownership is not feasible;

3. Documentation that enforcement orders under ss. 144.025 (2) (d) or 145.02 (3) (f), Stats., have been issued against the systems to be replaced or rehabilitated;

4. The right (such as that granted by an easement or other covenant running with the land) of reasonable access by the agents of the department, and the grantee to each individual septic system at or for such purposes as construction inspection and monitoring, operation and maintenance;

5. For a system serving more than one principal residence or small commercial establishment, an assurance, (such as by deed restriction or other covenant running with the property) that the system is and will continue to be owned jointly by the owners of the properties served;

6. A statement assuring availability of the proposed site, if relevant;

7. Copies of the certified soil tester's report and the plans and specifications for each system which is to be replaced or rehabilitated;

8. Evidence that all applicable approvals and permits required by local governments, state and federal agencies have been obtained;

9. A description of the nature and scope of the proposed project, including a schedule for the completion of specific tasks;

10. An itemized description of the estimated costs for the project;

11. Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

12. Certification by the applicant that the grants will be used for individual septic systems that will be properly installed, operated and maintained;

13. Documentation of an approvable regulatory program which will insure proper installation, operation and maintenance of individual systems in the jurisdiction. The program shall include, at a minimum:

a. Procedures to assure that new septic systems are properly permitted, sited, designed and installed, pursuant to chapter 258, laws of 1977 and section H 62.20, Wis. Adm. Code.

b. A maintenance program and schedule which includes periodic pumping (where necessary) of septic and holding tanks as required by sections H 62.20 (7) and H 62.20 (9), Wis. Adm. Code.

c. An inspection and monitoring program, which includes at least one inspection during installation of a system, regular inspections thereafter, and enforcement actions when replacement, rehabilitation or abatement is necessary pursuant to s. 146.14, Stats.

d. A central record keeping system.

e. Where appropriate, a user charge system which assures that each recipient of service under this program will pay its proportionate share of the costs.

(7) PRIORITY RANKING SYSTEM. (a) The following factors will determine the funding priority for state grant assistance under s. 144.24 (10), Stats.:

1. All individual septic system grants within a project area proposed by an applicant public body and approved by the department, will be considered as a single project for priority purposes.

2. Pollution severity score. a. Projects in areas with an existing septic system failure rate of 30% or more shall be assigned 10 points.

b. Projects in areas with an existing septic system failure rate between 15% and 30% shall be assigned 5 points.

3. Cluster score. If over 50% of the septic systems failing in a project area will be corrected by a jointly owned cluster system serving 5 or more existing systems the project will be assigned 5 points.

4. Health or pollution hazard score. In determining the health or pollution hazard score for a project, points may be assigned according to one of the categories below.

a. Projects to alleviate documented contamination of groundwater used for water supply shall be assigned 10 points.

b. Projects to eliminate ponding of effluent on the ground surface, sewage back-ups or direct piped discharge of effluent from 20 or more systems shall be assigned 8 points.

c. Projects to eliminate ponding of effluent on the ground surface, sewage back-ups or direct piped discharge of effluent from less than 20 septic systems shall be assigned 4 points.

(b) In case 2 or more projects have the same priority value, the project serving the larger population will be considered to have a higher priority.

(c) If a factor enumerated in this subsection is not properly assignable to a project, then the project shall be assigned a score of zero for that factor.

(d) In cases where it is determined that the most cost-effective solution for an area includes the combination of an individual septic system project and a public sewerage system project approved under chapter NR 110, Wis. Adm. Code, the applicant public body will be eligible to receive individual septic system grants under this subchapter at the same time as it begins construction of its public sewerage system project.

(e) The project priority list shall be revised annually by the department.

(8) STATE SHARE. The state grant share under this subsection for any individual septic system and the cost of its installation shall be limited to \$3,000 or 60% of the total project cost, whichever is less. The total public body or principal owner or small commercial establishment owner share shall not be less than 25% of the total costs of the project.

(9) PAYMENTS. (a) Grant payments shall be made to the public body applying for a grant. The public body shall be responsible for disbursing all funds received from the department for purposes for which application was made.

(b) The grantee shall be paid the state share of eligible project costs incurred within the scope of an approved project and which are currently due and payable by the grantee (but not including withheld or deferred amounts).

(c) The grantee may submit requests for payments for eligible costs in accordance with a negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, the department shall cause to be disbursed from available funds such amounts as are necessary. The total amount of necessary state payments to the grantee for the project should be equal to the state share of the actual or estimated eligible project costs incurred to date, as the grantee certified in its most recent request for payment.

(d) At any time before final payment under the grant, the department may cause any request (s) for payment to be reviewed or audited. Based on such review or audit any payment may be reduced for prior overpayment or increased for prior underpayment.

(e) The state share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the state of Wisconsin.

(f) After approval of the request for payment, which the grantee designates as the "final payment request", and the grantee's compliance with all applicable requirements of this chapter and the grant agreement, the department shall pay to the grantee any balance of the state share of the eligible project cost which has not already been paid. The final payment request must be submitted by the grantee promptly after project completion. Before final payment under the grant, the grantee must execute and deliver an assignment to the state of Wisconsin, of the state share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the state under the grant. The grantee must also execute and deliver a release discharging the state of Wisconsin, its officers, agents, and employes from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to the exceptions specified in the release.

(g) It is department policy that full and prompt payment be made to the grantee for eligible project costs. The department may only authorize the withholding of a grant payment where it determines in writing that a grantee has failed to comply with project objectives, grant award conditions, or reporting requirements. Such withholding shall be limited to only that amount necessary to assure compliance.

(h) The department shall withhold payment to the extent of any indebtedness to the state of Wisconsin, unless it determines that collection of the indebtedness will impair accomplishment of the project objectives and that continuation of the project is in the best interest of the state of Wisconsin.

(10) GENERAL CONDITIONS. All grants and grantees, under this subsection, for individual septic system projects are governed, where applicable, by general administration requirements of this chapter.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.