



CR 82-236

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

RECEIVED

STATE OF WISCONSIN )  
DEPARTMENT OF NATURAL RESOURCES ) ss

MAR 16 1983  
4:10 pm  
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carroll D. Besadny, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WG-48-82 was duly approved and adopted by this Department on January 26, 1983. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 11<sup>th</sup> day of March, 1983.

*Carroll D. Besadny*  
Carroll D. Besadny, Secretary

(SEAL)

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5-1-83

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

CREATING RULES

. . . . .  
IN THE MATTER of creating NR 128.60 through .  
128.71 of the Wisconsin Administrative Code .  
pertaining to a financial assistance program . WG-48-82  
for facilities planning and engineering design .  
of point source pollution abatement facilities .  
. . . . .

Analysis Prepared by Department of Natural Resources

The Municipal Wastewater Treatment Construction Grant Amendments of 1981 (P.L. 97-117) to the Federal Water Pollution Control Act eliminated Step 1 (facilities planning) and Step 2 (engineering design) grants to communities. Instead, an allowance formula was devised to aid communities in defraying these costs. The allowance would normally be given at the time of an EPA Step 3 (construction) grant. However, it was recognized that small communities might not be able to bear these costs prior to the Step 3 grant award and an advance of allowance was authorized.

Because Subchapter I - Wisconsin Fund of NR 128 contains most of the provisions needed to administer a federal advance of allowance program, Subchapter III has been created to provide for the implementation and administration of the law. Since the Municipal Wastewater Treatment Construction Grant Amendments of 1981 eliminated Step 1 and 2 grants and created an advance of allowance for these steps, ss. NR 128.62, 128.64, 128.66, 128.67, 128.68 and 128.70 reflect the advance of allowance provisions.

The language in s. NR 128.65 provides for the disbursement or repayment of advance of allowance funds.

Sections NR 128.69 and 128.71 reference already existing procedures for handling any disputes or requests for variances from the code.

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Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 16.54, 144.025(2)(j) and 227.014, Stats., the State of Wisconsin Natural Resources Board hereby creates rules interpreting the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (P.L. 97-117) and ss. 16.54 and 144.025(2)(j), Stats., as follows:

SECTION 1. Section NR 128.60 through 128.71 are created to read:

(Title) Subchapter III - Advance of Allowance

NR 128.60 PURPOSE. The purpose of this subchapter is to establish rules under the municipal wastewater treatment construction grant amendments of 1981 (33 U.S.C. 1251 et. seq.) for the implementation and administration of a financial assistance program for facilities planning and engineering design of point source pollution abatement facilities.

NR 128.61 APPLICABILITY. This subchapter shall apply to any advance of allowance for facilities planning and engineering design of point source pollution abatement facilities. Compliance with this subchapter and all other applicable requirements identified herein is necessary to receive and retain funding under the advance of allowance provision of the municipal wastewater treatment construction grant amendments of 1981.

NR 128.62 DEFINITIONS. For the purposes of this subchapter the definitions in s. NR 128.03(2), (3), (5), (7), (9) and (24) shall apply and in addition:

(1) "Allowance" means funding intended to assist communities in defraying costs incurred for facilities planning and engineering design.

(2) "Building cost" means:

(a) For step 1 advance of allowance the amount indicated in the U.S. environmental protection agency needs survey as required by s. 516(b) of the federal water pollution control act, as amended (33 U.S.C. 1375(b)) or an amount submitted by the small community;

(b) For step 2 advance of allowance the amount indicated in the facilities plan; or

(c) For step 3 the allowable cost of the initial award of all subagreements for building the project.

(3) "Enforceable requirements of the act" means those conditions or limitations of s. 147.02, Stats., or s. 402 or 404 permits (33 U.S.C. 1342 and 1344 respectively) which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under s. 147.29, Stats., or s. 309 of the federal water pollution control act (33 U.S.C. 1319). If a permit has not been issued, the term shall include any requirements which, in the United States' environmental protection agency regional administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the regional administrator determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(4) "Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under state law, or an indian tribe or an authorized indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the federal water pollution control act (33 U.S.C. 1288).

(a) This definition includes a special district created under state law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the federal water pollution control act (33 U.S.C. 1281(e)), which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(b) This definition excludes the following:

(1) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(2) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under state law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(5) "Small community" means any municipality having a population of 3500 or less as determined by the most recent U.S. census.

NR 128.63 SEVERABILITY. Should any section, paragraph, phrase, sentence, clause or word of this subchapter be declared invalid or unconstitutional for any reason, the remainder of this subchapter shall not be affected thereby.

NR 128.64 ELIGIBILITY FOR ADVANCE OF ALLOWANCE. (1) ELIGIBLE PARTICIPANTS. (a) Small communities are eligible to participate in the financial assistance program established by this subchapter.

(b) Only an applicant which is eligible to receive financial assistance for subsequent phases of construction (steps 2 and 3) and which has the legal authority to subsequently construct and manage the facility may apply for a step 1 advance of allowance.

(2) ELIGIBLE PROJECTS. Projects for the construction of publicly owned treatment works, and privately owned treatment works meeting the requirements of s. NR 128.08, are eligible for participation in the financial assistance program established by this subchapter. Advance of allowance may be awarded for the following types of projects.

(a) Step 1 projects for facilities planning required to apply for step 2 financial assistance.

(b) Step 2 projects for engineering design required to apply for step 3 financial assistance.

(3) INELIGIBLE PROJECTS. (a) Projects not in conformance with approved areawide waste treatment management plans are not eligible.

(b) Projects meeting the enforceable requirements of the act are not eligible.

(c) Projects with step 1 advance of allowance applications received after the department's facilities plan approval date are not eligible.

(d) Projects with step 2 advance of allowance applications received after the department's engineering design approval date are not eligible.

NR 128.65 DISTRIBUTION, ADJUSTMENT AND REPAYMENT OF ADVANCE OF ALLOWANCE.

(1) DISTRIBUTION. (a) An advance of allowance will be given after the department determines that the project is eligible. The advance of allowance will be paid to the small community after the department receives a copy of the advance of allowance agreement signed by the small community's authorized representative.

(b) The amount of the advance of allowance will be determined using the percentage of total project costs as established in 40 CFR part 35, subpart I, appendix B, as amended, and may not exceed the federal share of the estimated allowance.

(2) ADJUSTMENT. Any adjustment to a step 1 or step 2 advance of allowance because of changes in the building cost shall be made at the time of the step 3 grant award.

(a) If a federal step 3 grant award is made, it will include an adjustment for step 1 and step 2 advance of allowance based on actual building costs.

(b) If a state step 3 grant award is made and actual building costs exceed the estimated building costs used for the advance of allowance, an additional allowance shall be made.

(3) REPAYMENT. (a) Repayment of a step 1 advance of allowance may be requested by the department if an acceptable facility plan is not completed within 3 years.

(b) Repayment of a step 2 advance of allowance may be requested by the department if engineering design work is not completed within 2 years.

(c) If a state step 3 grant award is made and actual building costs are less than the estimated building costs used for the step 1 and step 2 advance of allowance, the small community shall repay the excess advance of allowance.

(d) The department may require repayment of step 1 or step 2 advance of allowance if a project does not proceed to step 3, except in cases where a no-action alternative is approved by the department.

NR 128.66 ADVANCE OF ALLOWANCE APPLICATION. (1) PROCEDURE. An application must be submitted to the department of natural resources, bureau of water grants, box 7921, Madison, Wisconsin 53707, for an advance of allowance for facilities planning or engineering design. If any information required under sub. (2) has been furnished with an earlier application, the applicant need only incorporate that information by reference.

(2) CONTENTS OF APPLICATION. (a) Step 1. An application for a step 1 advance of allowance shall include the following:

1. The information and materials identified in s. NR 128.10(2)(a)1.a., b., and c.;
2. A resolution from the governing body designating an authorized representative.

(b) Step 2. An application for a step 2 advance of allowance shall include the following:

1. An approved facilities plan in accordance with ss. NR 110.09(1) to (6), 128.19(3) and (4). Where a federal step 1 grant was awarded prior to September 30, 1978, the facilities planning requirements of s. NR 110.09(1)(b)1., (2)(1) and (m) need not be met by the applicant. For projects where a federal step 1 grant was awarded prior to June 26, 1978, the facilities planning requirements of ss. NR 110.09(2)(j) and 110.10(2) need not be met by the applicant. Where a federal step 1 grant was awarded prior to May 12, 1978 the planning requirements of s. NR 110.09(2)(k) need not be met.
2. The nature and scope of the proposed step 2 project, including a schedule for the completion of specific tasks.



3. A resolution from the governing body designating an authorized representative.

NR 128.67 LIMITATIONS AND CONDITIONS. Before awarding an advance of allowance, the department shall determine that the requirements of

s. NR 128.66(2)(a) and (b) have been met and shall also determine that:

(1) The provisions of ss. NR 128.11(2), (4)(a) and (b), (6)(b) and (c), (11) and 128.12(1) apply to step 1.

(2) The provisions of ss. NR 128.11(2), (4)(a) and (b), (6)(b) and (c), (7), (10)(a) through (f), (11) and 128.12(1) apply to step 2.

(3) The small community agrees to complete the project in accordance with the advance of allowance application.

(4) The applicant is a small community.

NR 128.63 SUSPENSION OR TERMINATION OF ADVANCE OF ALLOWANCE. (1) In accordance with the provisions of this section the department may, for good cause, suspend state liability for work done after notification is given to the small community. Suspension of state liability under an advance of allowance shall be identified as a "stop-work order" for the purposes of this subchapter.

(2) Good cause for issuance of a stop-work order includes, but is not limited to, default by the small community, failure to comply with the terms and conditions of the advance of allowance agreement, or lack of adequate funding.

(3) Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute, and the small community may appeal a suspension or termination of an advance of allowance under s. NR 128.69.

NR 128.69 DISPUTES. The provisions of s. NR 128.23 shall apply to this subchapter.

NR 128.70 ENFORCEMENT. Noncompliance with the provisions of this subchapter or any advance of allowance made under this subchapter shall be cause for the imposition of one or more of the following sanctions at the discretion of the department:

- (1) The advance of allowance may be suspended or terminated under s. NR 128.68.
- (2) The sanctions in s. NR 128.24(1)(e) and (f) may be applied.
- (3) State liability for project work may be suspended under s. NR 128.68.
- (4) The department may seek repayment of all advance of allowance payments made under this subchapter unless the conditions set forth in the advance of allowance agreement have been fully satisfied.

NR 128.71 VARIANCES. The provisions of s. NR 128.26 shall apply to this subchapter except that the term "advance of allowance" shall be substituted for the word "grant" and the term "small community" shall be substituted for the word "grantee".

The foregoing rules were approved and adopted by the State of Wisconsin  
Natural Resources Board on

The rules contained herein shall take effect as provided in s. 227.026(1)  
(intro.), Stats.

Dated at Madison, Wisconsin March 11, 1983

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny  
Carroll D. Besadny, Secretary

(SEAL)

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