

Chapter NR 124

PRIVATE SEWAGE SYSTEM REPLACEMENT OR
REHABILITATION GRANT PROGRAM

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NR 124.01 Purpose. The purpose of this chapter is to establish rules under s. 144.245, Stats., for the implementation and administration of a financial assistance program to replace or rehabilitate failing private sewage systems.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. Register, June, 1991, No. 426, eff. 7-1-91.

NR 124.02 Applicability. (1) This chapter applies to applications received by the department on or after June 1, 1990.

(2) Applications received by the department prior to June 1, 1990 are governed by this chapter as it existed on May 31, 1990.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (1), r. (2) (intro.), renum. (2) (a) and (b) to be (4) and (2) and am. (4), cr. (3), Register, June, 1986, No. 366, eff. 7-1-86; am. (1), r. and recr. (2), r. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

NR 124.03 Definitions. The following definitions apply to this chapter.

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

(1m) "Determination of failure" has the meaning found in s. 144.245 (1) (a), Stats.

(2) "Failing private sewage system" means a private sewage system which causes or results in any of the following conditions:

(a) The discharge of sewage into surface water or groundwater.

(b) The introduction of sewage into zones of saturation which adversely affects the operation of a private sewage system.

(c) The discharge of sewage to a drain tile or into zones of bedrock.

(d) The discharge of sewage to the surface of the ground.

(e) The failure to accept sewage discharges and backup of sewage into the structure served by the private sewage system.

(2m) "Farm" means a parcel of 35 or more acres of contiguous land which is devoted primarily to agricultural use, as defined in s. 91.01 (1) and (5), Stats.

(3) "Governmental unit" means the local governmental unit responsible for the regulation of private sewage systems. This unit is the county, except that towns, cities and villages are the responsible unit of government in any county with a population of 500,000 or more. "Government-

tal unit" also includes a federally recognized American Indian tribe or band.

(4) "Indian lands" means lands owned by the United States and held for the use or benefit of Indian tribes or bands or individual Indians, and lands within the boundaries of a federally recognized reservation that are owned by Indian tribes or bands or individual Indians.

(5) "Participating governmental unit" means a governmental unit which applies to the department for financial assistance under s. NR 124.07, and which meets the conditions specified under s. 144.245 (9), Stats.

(6) "Person" means:

(a) Any individual including the estate of an individual; or

(b) Two or more individuals having a joint or common interest in a principal residence which uses a private sewage system; or

(c) A nonprofit corporation as defined in s. 181.02 (4), Stats.

(7) "Principal residence" means a residence which is occupied at least 51% of the year by the owner. Principal residence includes a residence owned by a trust or estate of an individual, if the residence is occupied at least 51% of the year by a person who has an ownership interest in the residence as a beneficiary of the trust or estate.

(8) "Private sewage system" means a sewage treatment and disposal system serving a principal residence or small commercial establishment with a septic tank and soil absorption field located on the same parcel of land as the structure. This term also means an alternative sewage system approved by the department of industry, labor and human relations including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel of land than the structure. A private sewage system may be owned by a property owner or by a special purpose district.

(9) "Small commercial establishment" means a commercial establishment or business place with a maximum daily wastewater flow rate of less than 5,000 gallons per day as determined from the design criteria of the state plumbing code. Small commercial establishment includes a farm, including a residence on a farm, if the residence is occupied by a person who is an operator of the farm and if the maximum daily wastewater flow rate of the farm and the residence on the farm is less than 5,000 gallons per day as determined from the design criteria of the state plumbing code.

(10) "State plumbing code" means rules promulgated under ss. 145.02 and 145.13, Stats., by the department of industry, labor and human relations.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; renum. (2) (a) to (d) and (4) to (9) to be (2) (e), (d), (a), (b) and (5) to (10) and am. (2) (a), (d), (e) and (7), cr. (2) (c) and (4), am. (3), Register, June, 1986, No. 366, eff. 7-1-86; cr. (2m), am. (7) and (9), Register, August, 1988, No. 392, eff. 9-1-88; cr. (1m) and am. (9), Register, June, 1991, No. 426, eff. 7-1-91.

NR 124.035 Categories of failing private sewage systems. The department and the participating governmental unit shall use the following categories of failing private sewage systems to determine grant eligibility
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under s. 144.245 (5), Stats., and s. NR 124.04 and to prorate grant funds under s. 144.245 (11m), Stats., and s. NR 124.08.

(1) Category 1: Failing private sewage systems defined in s. NR 124.03 (2) (a) to (c).

(2) Category 2: Failing private sewage systems defined in s. NR 124.03 (2) (d).

(3) Category 3: Failing private sewage systems defined in s. NR 124.03 (2) (e).

Note: Under s. 144.245 (5), Stats., only category 1 or category 2 failing private sewage systems are eligible for grant funding. Category 3 systems, those that fail only as a result of back up of sewage into the structure served, are not grant eligible.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

NR 124.04 Eligibility of owners. (1) **GENERAL.** A person who owns a principal residence which was constructed prior to and inhabited on July 1, 1978 or a business which owns a small commercial establishment which was constructed prior to July 1, 1978 is eligible for grant assistance under this chapter if the person or business:

(a) Meets the eligibility requirements set forth in s. 144.245, Stats., and this chapter.

(b) Submits an application to the participating governmental unit in which the failing private sewage system is located;

(c) Has completed all rehabilitation or replacement work in accordance with the enforcement order and the state plumbing code. Any variances or petitions to modify specific state plumbing code requirements shall be approved in writing by the department of industry, labor and human relations prior to the installation of the system.

(2) **PRIVATE NONPROFIT ENTITIES.** For the purposes of this chapter a small commercial establishment may be owned by a private nonprofit corporation as defined in s. 181.02 (4), Stats.

(3) **INELIGIBLE ENTITIES.** Structures owned by the following entities are not eligible for grant assistance:

(a) The state;

(b) An office, department, independent agency, institution of higher education, association, society or other body in state government;

(c) An authority created under ch. 231 or 234, Stats.;

(d) A city, village, town, or county;

(e) A federal agency, department or instrumentality;

(f) An interstate agency.

(4) **REPLACEMENT OF STRUCTURES.** (a) The owner of a principal residence or small commercial establishment who meets all of the requirements of s. 144.245, Stats., and this chapter may replace the structure served by the failing private sewage system and be eligible for a grant to replace the failing private sewage system if the following additional conditions are met:

1. The original principal residence or small commercial establishment served by the failing private sewage system was constructed prior to and occupied on July 1, 1978.

2. Except as provided under par. (b), the original principal residence or small commercial establishment was owned and occupied by the applicant when the determination of failure was made.

3. The determination of failure was made prior to the start of construction of the replacement principal residence or small commercial establishment.

4. The replacement principal residence or small commercial establishment was, or will be, constructed in a location that would be accessible to the failing private sewage system, as determined by the participating governmental unit.

(b) If the original principal residence or small commercial establishment was rendered uninhabitable because of accidental fire or storm damage, the determination of failure may be made up to 6 months after the original principal residence or small commercial establishment was last occupied.

(c) The maximum state share shall be limited to the minimum private sewage system capacity that would have been necessary to serve the original structure. Any increase in capacity required to serve a larger replacement structure is not grant eligible.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; cr. (4), Register, June, 1991, No. 426, eff. 7-1-91.

NR 124.05 Maximum state share. (1) **ELIGIBLE REHABILITATION OR REPLACEMENT WORK.** Except as provided under sub. (4) (a), private sewage system work eligible for grant funding shall be limited to those activities listed in the grant funding tables under sub. (3).

(2) **LEAST COSTLY METHODS.** Only eligible work necessary to meet the minimum requirements of the state plumbing code by the least costly methods may be allowable in determining grant funding under this chapter.

(3) **GRANT FUNDING TABLES.** The following tables shall be used to determine the maximum state grant share for eligible work involved in the rehabilitation or replacement of a category 1 or 2 failing private sewage system. The maximum state grant share for each principal residence or small commercial establishment to be served by the private sewage system may not exceed the sum of the grant amounts for eligible work or \$7,000, whichever is less.

(a) Site evaluation and soil testing.

Grant Amount
\$200

(b) Installation of a replacement or additional septic tank.

Minimum Gallons Required	Grant Amount
750	\$ 400
975	450
1,200	500
1,425	575
1,650	625
1,875	700
2,100 or more	750

(c) Installation of a pump chamber and lift pump or siphon.

Number of Bedrooms	Grant Amount
1 or 2	\$ 875
3 or 4	950
5 or more	1,000

(d) Installation of a non-pressurized or in-ground pressure soil absorption area.

1. The following table shall be used for systems sized according to soil morphological conditions specified s. ILHR 83.09 (4m).

Design Loading Rate in Gallons per Square Foot per Day.	Grant amount by Number of Bedrooms					For Each Additional Bedroom
	1	2	3	4	5	
0.7 or more	\$ 375	\$ 600	\$ 825	\$1,025	\$1,150	\$125
0.6	575	875	1,200	1,450	1,650	200
0.5	600	900	1,250	1,500	1,750	250
0.4 or less	625	950	1,375	1,625	1,850	250

2. The following table shall be used for systems sized according to percolation tests under s. ILHR 83.09 (5).

Percolation Rate in Minutes for Water to Fall One Inch.	Grant Amount by Number of Bedrooms					For Each Additional Bedroom
	1	2	3	4	5	
0 to less than 10	\$ 375	\$ 600	\$ 825	\$1,025	\$1,150	\$125
10 to less than 30	575	875	1,200	1,450	1,650	200
30 to less than 45	600	900	1,250	1,500	1,750	250
45 to 60	625	950	1,375	1,625	1,850	250

(e) Installation of an at-grade or mound soil absorption area.

Type of Design	Grant Amount by Number of Bedrooms					For Each Additional Bedroom
	1	2	3	4	5	
At-Grade	\$ 700	\$ 900	\$1,200	\$1,450	\$1,650	\$200
High Groundwater Mound	1,625	1,875	2,200	2,400	2,600	200
High Bedrock Mound	1,875	2,125	2,450	2,600	2,825	225
Slowly Permeable Soil Mound	2,125	2,375	2,575	2,700	2,950	250
Mound for sites with less than 24 inches of suitable soil or greater than 12% slope.	2,300	2,500	2,800	3,100	3,400	300

(f) Installation of a holding tank.

Number of Bedrooms	Grant Amount
1,2 or 3	\$1,250
4	1,575
5	1,875
6	2,125
7	2,300
8	2,500
For each additional bedroom add:	\$ 175

(g) In order to use these tables for small commercial establishments, divide the estimated daily wastewater flow rate in gallons per day by 150, round off to the next highest whole number and use the result in place of the number of bedrooms.

(4) **EXCEPTIONS TO THE GRANT TABLES.** (a) The department may determine the maximum state share for types of private sewage systems which are not covered by the grant tables on a case by case basis.

(b) The maximum state share for private sewage system work done on property owned by a licensed plumber or contractor engaged in the business of installing private sewage systems shall be limited to two-thirds of the grant table amount or \$4,667, whichever is less.

(5) **INELIGIBLE WORK.** Ineligible work includes the following items or projects:

(a) Rehabilitation or replacement of a failing private sewage system done before the date on which the governmental unit adopts this program;

(b) Except for site evaluation and soil testing under sub. (3) (a), rehabilitation or replacement of a failing private sewage system done before the determination of failure was made;

(c) Rehabilitation or replacement of a failing private sewage system where it is determined by the governmental unit that public sewer is available to the property;

(d) Connection to a municipal sewage treatment works;

(e) Installation of a small sewage treatment plant with a surface discharge;

(f) Installation of a private sewage system to replace a privy;

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (3) (intro.), (4) (b) and (5) (b), r. and recr. (3) (a) to (f), r. (5) (g), Register, June, 1991, No. 426, eff. 7-1-91.

NR 124.06 Individual application. (1) **CONTENTS.** In order to be eligible to receive grant assistance under this chapter, the owner of a failing private sewage system shall submit an application to the participating governmental unit in which the failing private sewage system is located. The application for individuals shall be made on forms provided by the department and shall include:

(a) Evidence of annual family or business income.

1. A person who owns a principal residence shall provide the evidence of income required under s. 144.245 (5) (c) 2. and 3., Stats., or the alternate evidence of income under sub. (3).

2. A business which owns a small commercial establishment shall provide the evidence of income required under sub. (2).

(b) Sanitary permit number and date of issuance.

(c) If, after a determination of failure is made, an applicant buys or sells a principal residence or small commercial establishment served by a failing private sewage system, the applicant shall provide the following additional information:

1. A copy of the closing statement or other documentation which shows the date of sale of the property, and;

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2. A copy of the sale contract; escrow agreement or other documentation which shows that the applicant has or will incur the cost of replacing the failing private sewage system.

Note: Under s. 144.245 (5) (a) 1. and 2., Stats., the applicant for a grant must, among other things, be the owner of a principal residence or small commercial establishment which is served by a category 1 or 2 failing private sewage system. A person does not meet this condition if he or she did not own the property at the time the private sewage system was failing and subject to a determination of failure. Therefore, the buyer of a property is not eligible if the failing private sewage system was replaced prior to the date of sale. Similarly, the seller of a property is not eligible if the determination of failure was made after the date of sale.

(d) Other information as requested by the department or participating governmental unit.

(2) **SMALL COMMERCIAL ESTABLISHMENTS.** A business which owns a small commercial establishment shall provide one of the following as evidence of annual gross revenue.

(a) A copy of the business's state and federal income tax return for the tax year prior to the year in which the determination of failure was made or for the tax year in which the determination of failure was made, whichever is required by the governmental unit to which the application is submitted.

(b) If the small commercial establishment is owned by a private non-profit corporation as defined in s. 181.02 (4), Stats., the nonprofit corporation shall provide a profit and loss statement for the commercial establishment for the tax year prior to the year in which the determination of failure was made or for the tax year in which the determination of failure was made, whichever is required by the governmental unit to which the application is submitted.

Note: Under s. 144.245 (5) (a), 2, Stats., a business must own the small commercial establishment in order to be eligible for a grant. A business which leases a small commercial establishment is not eligible. Therefore, the application and income eligibility requirements must be met by the owner of the property.

(3) **ALTERNATE EVIDENCE OF INCOME.** A participating governmental unit may disregard the evidence of income under sub. (1) (a) and consider the following criteria as satisfactory evidence of income.

(a) A copy of the owner's Wisconsin income tax return for the taxable year in which the enforcement order was issued and, if married and filing separately, a copy of the owner's spouse's Wisconsin income tax return for that year; or

(b) In conjunction with the evidence of income required under sub. (1) (a), an affidavit from the owner. The affidavit shall state the reason that a reduction in net income or adjusted gross income is expected in the year in which the enforcement order is issued, the estimated amount of that reduction, and a complete listing of taxable income and adjustments since January 1 of the year in which the enforcement order is issued; or

(d) An affidavit from the owner stating the reason that he or she was not required to file a Wisconsin income tax return in the year prior to the year of the enforcement order. If a person who owns the principal residence was a non-resident or part-year resident of Wisconsin in the year prior to the enforcement order, the affidavit shall include a statement that the owner is a permanent resident of Wisconsin, the date on which permanent residency began, and the owner's estimate of Wisconsin adjusted gross income in the year in which the enforcement order was is-

sued. The owner's estimate shall include a complete listing of taxable income and adjustments since January 1 of the year in which the enforcement order was issued. The governmental unit shall require additional evidence as necessary to prove Wisconsin residency.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (1) (intro.) and (2) (intro.), (a), (b) and (d), r. and recr. (1) (a) and (b), cr. (1) (c), Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a), renum. (1) (c) and (2) to be (1) (d) and (3) and r. (3) (c), cr. (1) (c) and (2), Register, June, 1991, No. 426, eff. 7-1-91.

NR 124.07 Application . (1) The governmental unit shall review information received from property owners and determine those who are eligible under s. 144.245, Stats., and this chapter. In order to receive an allocation and grant award, the governmental unit shall prepare and submit an application to the department. The application shall be on forms supplied by the department.

Note: Application forms may be obtained, at no charge, from the Bureau of Water Grants, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

(1m) An American Indian tribe or band may submit an application for participation for any Indian lands under its jurisdiction.

(2) Governmental units may request preapplication assistance including technical assistance from the department.

(3) Applications shall be received by the department no later than May 31 for consideration in the following fiscal year.

(4) An application for a grant to replace or rehabilitate private sewage systems shall include:

(a) Certified copies of the following resolutions of the governing body of the governmental unit:

1. A resolution designating an authorized representative, and authorizing such representative to apply for a grant under s. 144.245, Stats., and this chapter on behalf of the governmental unit. The authorized representative shall be an official or employe of the governmental unit.

2. A resolution certifying that grants will be used for private sewage system rehabilitation or replacement for a principal residence or small commercial establishment owned by a person who meets the eligibility requirements of s. 144.245 (5), Stats., that the funds will be used as provided under s. 144.245 (6), Stats., and that the maximum state share will not exceed the amount permitted under s. 144.245 (7), Stats.

3. A resolution certifying that grants will be used for private sewage systems which will be properly installed and maintained.

4. A resolution certifying that grants provided to the governmental unit will be disbursed to eligible owners.

(b) Documentation of an approvable regulatory program to insure proper installation and maintenance of all new or replacement private sewage systems constructed in that governmental unit. An approvable regulatory program must include the following:

1. Adoption of an ordinance which specifically requires compliance with the maintenance program set forth in subd. 4. and which specifically grants enforcement authority.

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2. A system for providing written notice of the maintenance program requirements to each applicant for a sanitary permit at the time of application.

3. An inspection program, which includes at least one inspection during installation of a system.

4. A maintenance program which requires inspection of all new or replacement private sewage systems at least once every 3 years. The owner of a system subject to the maintenance program must be required to submit to the governmental unit county a certification form (to be provided by the governmental unit) every 3 years, signed by the owner and signed by a master plumber, a journeyman plumber or restricted plumber licensed under ch. 145, Stats., a person licensed under s. 146.20, Stats., or by an employe of the governmental unit or state designated by the department, who has inspected the system. The form shall require certification that the system is in proper operating condition, and that after inspection, and pumping if necessary, the septic or holding tank is less than 1/3 full of sludge and scum.

5. A central record keeping system.

6. Where considered appropriate by the governmental unit, a system of user charges and cost recovery which assures that each recipient of service under this program will pay a proportionate share of the costs. User charges and cost recovery may include the cost of the grant application fee and the cost of supervising installation and maintenance.

(c) A list of property owners approved as eligible by the participating governmental unit. The list shall include the name of each owner, the name of the town or municipality in which the private sewage system is located, the uniform sanitary permit number and the maximum state grant share determined under s. NR 124.05.

(d) Other information as requested by the department.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; r. (4) (a) 5., Register, November, 1985, No. 359, eff. 12-1-85; cr. (1m), am. (3), Register, June, 1986, No. 366, eff. 7-1-86.

NR 124.08 Allocation of funds and grant awards. (1) **GENERAL.** The department shall allocate funds available for grants to participating governmental units as provided in s. 144.245 (11), Stats.

(2) **PRORATION.** (a) If available funds are not sufficient to fully fund all applications, the department shall prorate available funds under s. 144.245 (11m), Stats. A prorated payment shall be deemed full payment of the grant.

(b) A grant application denied under s. 144.245 (11m) (c) is not eligible for funds in a later fiscal year.

(3) **REVISION OF ALLOCATION OR AWARD .** (a) If the department finds that a property owner listed in the application of a governmental unit does not meet the eligibility requirements under s. 144.245 (5), Stats., the department may reduce an allocation to the governmental unit in the current or in a following fiscal year.

(b) The department may withhold funds allocated to a governmental unit and initiate enforcement under s. NR 124.10, if a governmental unit does not meet the conditions specified under s. 144.245 (9), Stats.

(c) The department may reallocate any withheld or recovered funds in the following fiscal year.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; r. (1) to (4) and am. (5) (a), Register, November, 1985, No. 359, eff. 12-1-85; cr. (1) and (2), renum. (5) to be (3), Register, June, 1986, No. 366, eff. 7-1-86.

NR 124.09 Payments. (1) Grant payments shall be made to the participating governmental unit which shall be responsible for disbursing all funds received from the department for the purposes for which the grant award was made.

(2) A participating governmental unit shall request payment on forms provided by the department and shall include such information as required by the department to document satisfactory completion of eligible work. Payments shall be requested in accordance with the payment schedule included in the grant award conditions.

(3) The total grant amount payable to a participating governmental unit is limited to the amount of funds awarded to the participating governmental unit under this chapter. The specific grant amounts for individual owners of private sewage systems are limited to the maximum state share under s. NR 124.05. Payment based on a prorated grant amount shall constitute a complete payment for that individual.

(4) At any time before final payment of the grant, the department may review and audit any request for payment. Based on the review or audit, any payment may be reduced for prior overpayment or increased for prior underpayment.

(5) The participating governmental unit shall return to the department any funds, including any interest derived therefrom, received under this chapter which are not disbursed to eligible owners.

(6) The department may authorize the withholding of a grant payment where it determines in writing that a participating governmental unit 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.

(7) The department shall withhold payment to the extent of any indebtedness of the participating governmental unit 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.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

NR 124.10 Enforcement. If the department has reason to believe that a violation of the provisions of this chapter or of any grant or grant amendment made under this chapter has occurred, the department may take action as follows:

(1) Under s. 144.245 (14), Stats., the department may cause written notice to be served upon the alleged violator, and in conjunction with that notice:

(a) Issue an order that corrective action be taken by the alleged violator within a reasonable time, or;

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(b) Require that the alleged violator appear before the department for a hearing, to answer the charges that a violation has occurred.

(2) Under s. 144.98, Stats., the department may terminate or annul a grant made under this section and seek recovery of some or all grant funds previously paid to the participating governmental unit, if an order issued under s. 144.245 (14), Stats., is violated.

(3) Under s. 144.245 (14) (d), Stats., the department may suspend or terminate additional grants made under this chapter if the department finds that a private sewage system previously funded by the participating governmental unit with a grant awarded under this chapter is not being or has not been properly rehabilitated, constructed, installed or maintained.

(4) The department may declare as ineligible project costs directly related to the violation.

(5) The department may withhold payment otherwise due to the participating governmental unit, under s. NR 128.18 (6).

(6) The department may seek an injunction or other appropriate relief under s. 144.98, Stats.

(7) The department may seek the imposition of a forfeiture for each violation, pursuant to s. 144.99, Stats.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

NR 124.11 Variances. The department may approve variances from requirements of this chapter upon the request of a participating governmental unit when it is determined that such variances are essential to effect necessary grant actions or department objectives, and where special circumstances make such variances in the best interests of the state. Before granting a variance, the department shall take into account such factors as good cause, circumstances beyond the control of the participating governmental unit or owner of a failing private sewage system, and financial hardship. The department may not approve a variance from statutory requirements.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.