

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee For
Review of Administrative
Rules (JCR-AR)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ 97hrJCR-AR_Crule_98-058_pt02

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 98-052

RULE NO.: Chapter Comm 87

RELATING TO: Private sewage system replacement or rehabilitation grant program
(Wisconsin Fund)

Agency contact person for substantive questions.

Name: Roman Kaminski

Title: Program Manager

Telephone No. (715) 345-5334

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority (s.227.15(2)(a))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

(Continued on reverse side)

- 3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
- 4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
- 5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
- 6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
- 7. Review rules for permit action deadline (s.227.15(2)(h))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))

i. Disagree. The titles added in the paragraphs [ss. Comm 87.30 (3) (a) to (g)] directly correspond to the titles in Tables 87.30-1 to 87.30-6 and staff believes this duplication adds to clarification for the users, both the participating governmental units and the applicants.

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))

f. Disagree. Section 145.245(7)(a), Stats., uses the term 'allowable' in relationship to the determination of costs for grand funding amounts. Therefore, the department revised Tables 87.30-1 to 87.30-6 and the related paragraphs to correspond with this term.

NOTE: Section 145.245(7)(a), Stats., reads: "Except as provided in par. (e), costs allowable [emphasis added] in determining grant funding under this section may not exceed the costs of rehabilitating or replacing a private sewage system which would be necessary to allow the rehabilitated system or new system to meet the minimum requirements of the state plumbing code promulgated under s. 145.13."

j. Disagree. Section 145.245(1)(b), Stats., makes the distinction between any governmental unit being eligible to 'participate' in the program and those that are 'participating' as having met the conditions (approved ordinances, etc.) to 'participate' in the program, as specified in s. 145.245(9). The users are familiar with this term and the forms the department furnishes for the program utilize this term.

NOTE: Section 145.245(1)(b), Stats., reads: "Participating [emphasis added] governmental unit" means a governmental unit which applies to the department for financial assistance under sub. (8) and which meets the conditions specified under sub. (9).

l. Disagree in part. Since the program has been under the authority of Commerce (formerly within DILHR), data collected reveal that the applications to the fund far exceed the annual allotment; therefore, the department may need to prorate grant amounts for this new portion of the chapter, experimental systems. By adding this language to the rule revision, the users, both participating governmental units and applicants, will be informed that the eligible total costs may not be the same as the grant awarded.

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-052

AN ORDER to repeal and recreate chapter Comm 87, relating to private onsite wastewater treatment system replacement and rehabilitation grant program.

Submitted by **DEPARTMENT OF COMMERCE**

03-30-98 RECEIVED BY LEGISLATIVE COUNCIL.
04-27-98 REPORT SENT TO AGENCY.

RNS:MCP:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-052

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. Cross-references should use the phrase "has the meaning given in" rather than "has the meaning found in" the cross-referenced provision.
- b. The applicability provision in s. Comm 87.02 is linked to an effective date of February 1, 1999. The rule includes a provision that the rule takes effect on February 1, 1999. However, there is no assurance that the final rule will be in effect on that date. If the rule takes effect after that date, a later date should be substituted.
- c. The term "failing private onsite wastewater treatment system" in s. Comm 87.03 (4) is defined by cross-reference to a statute. However, this is not the term that is used in the statute, and the cross-referenced provision, s. 145.245 (4), Stats., is not a definition. Also, the term "private onsite wastewater treatment system" is not defined in the rule.
- d. The rule defines "person" in s. Comm 87.03 (7). The department should carefully review how this word is used throughout the rule, because this definition differs from the conventional definition of "person" in s. 990.01 (26), Stats. (as made applicable to administrative rules in s. 227.27, Stats.). The rule variously uses the terms "person," "person who owns . . .," "owner" and "business which owns . . ." All of these terms should be checked for consistent use and conformity with the definition.
- e. The second sentence of the Note after s. Comm 87.03 (10) creates a substantive requirement that should be incorporated into the text of the rule.

f. The acronym in s. Comm 87.10 (title) does not appear to serve any purpose and should be deleted.

g. Section Comm 87.10 (1) (a) and (b) should be rewritten as notes. These provisions merely describe the statutory requirement. Also, s. Comm 87.10 (2) should be rewritten in the same format as s. Comm 87.10 (1) (intro.) and the second sentence should be in a note.

h. The numbering of the two sections that follow s. Comm 87.10 is incorrect. Is it intended that they be ss. Comm 87.20 and 87.21?

i. The titles for the individual paragraphs in s. Comm 87.30 (3) are unnecessary.

j. Section Comm 87.30 (6) does not relate to the maximum allowable grant amount, which is the subject of s. Comm 87.30, as stated in the section title.

k. The title of s. Comm 87.40 (3) (d) should be underlined.

l. Section Comm 87.50 (1) (intro.) should be changed to an introductory paragraph for s. Comm 87.50 and the paragraphs should be changed to subsections. A section should not be subdivided into just one subsection.

m. Section Comm 87.60 is titled "APPLICATION BY PARTICIPATING GOVERNMENTAL UNITS." This section is a mix of requirements to be eligible to submit an application and requirements applicable to the contents of the application. This provision could be clarified by separating those provisions into two sections.

n. The sequence of the subsections in s. Comm 87.72 should be reviewed. Generally, a chronological sequence is preferable. Subsection (1) provides for grant payments and sub. (2) relates to the request for grant payments.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section Comm 87.71 (2) and several other provisions of the rule refer to forms that are "acceptable" to the department. Does the department intend to provide these forms? If not, how does the department intend to determine that a particular form is acceptable? Also, see s. 227.14 (3), Stats.

b. Section Comm 87.80 (2) refers to s. 145.02 (3) (f), Stats., and cites this as authority to terminate or annul a grant under certain conditions. The cross-referenced statute does not provide this remedy.

c. The reference to ch. Comm 3 in s. Comm 87.90 (1) appears to be incorrect. That rule is now designated ch. ILHR 3, and there does not appear to be any rule submitted to the Clearinghouse for renumbering this chapter.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. There is a misspelling or letters missing in s. Comm 87.10 (intro.). Also, the (intro.) should end with a colon rather than a period.

b. In s. Comm 87.70 (1) (c) (the section following s. Comm 87.10), the rule requires work to be done in accordance with the "enforcement order." However, it does not appear under other provisions of the rule that an enforcement order is required to be eligible for a grant. Also, the term "state plumbing code" is not defined in the rule. Can a cross-reference to the code be included?

c. In s. Comm 87.70 (1) (d) (the section following s. Comm 87.10), a restriction is imposed if the person did not own the property at the time the system was failing and subject to a determination of failure. This portion of the rule does not establish the time at which the person must own the system.

d. The phrase "For the purposes of this chapter" in s. Comm 87.70 (2) (the section following s. Comm 87.10) is superfluous. Also, the department should consider whether this provision is needed at all. In any case, the department should correct the statutory cross-reference, which has been changed by 1997 Wisconsin Act 79, effective January 1, 1999. See s. 181.0103 (17), as affected by Act 79.

e. Does s. Comm 87.71 (the second section following s. Comm 87.10) require the department to notify all governmental units of all certifications by the Department of Workforce Development, or only those governmental units that are participating governmental units? Also, in sub. (3), "exceptions being" should be replaced by "except for."

f. The word "allowable" should be replaced by "allowed" or some other appropriate term in s. Comm 87.30 (2).

g. Section Comm 87.30 (3) (intro.) should apparently refer to the determination of the *amount of* grant awards. Also, in par. (a), "allowable" is redundant, and "shall be" should be replaced by "is." The replacement of "shall be" by "is" should be done at a number of other places in the rule.

h. Hyphens should be included in "case by case" in ss. Comm 87.30 (5) (a) and 87.31 (2).

i. The Note after s. Comm 87.30 (5) (c) should begin with "Under."

j. Should s. Comm 87.30 (6) (a) refer to a participating governmental unit rather than a governmental unit that "adopts this program"?

k. Section Comm 87.31 (1) states that this section establishes certain parameters. However, no parameters are established in s. Comm 87.31. The only decision in that section is on a case-by-case basis. It should also be noted that s. Comm 87.31 (2) is arguably not responsive to s. 145.245 (7) (e), Stats., which requires the department to promulgate rules specifying how it will allocate the state share for experimental private sewage systems. Merely stating that the department will do this on a case-by-case basis does not allow for the establishment of any consistent policies for funding experimental systems.

l. Section Comm 87.31 (3) includes a cross-reference to s. 145.245 (11m) (d), Stats. That statute provides that the department is not required to prorate funds for experimental

systems. It is unclear what this rule provision adds and why it is necessary to state that the department may prorate funds for this purpose.

m. Section Comm 87.40 (1) (a) refers to the owner of a failing private onsite wastewater treatment system. Other provisions of the rule refer to the owner of a property served by a failing system or the owner of a small commercial establishment. Each of these provisions should be reviewed to determine if they are consistent and if they accomplish the purpose of the rule.

n. In s. Comm 87.40 (1) (b) 5., the second "a" should be deleted.

o. It is unclear what it means in s. Comm 87.40 (1) (b) 6. to "respond" to "documentation."

p. Section Comm 87.40 (2) (intro.) refers to the "owners of a principal residence," but the singular form of the phrase is used in s. Comm 87.40 (2) (a). Generally, the singular form is preferable in rule drafting.

q. In the first Note following s. Comm 87.40 (3) (a) 2., "a" should be inserted after "for."

r. It is unclear why "eligible" is included in s. Comm 87.40 (3) (intro.). This provision deals with the application for a grant. The determination of eligibility is made later.

s. The paragraphs in s. Comm 87.40 (3) should be made consistent. Paragraphs (a) and (c) are complete sentences and the other paragraphs are not.

t. The word "show" should be changed to "shows" in s. Comm 87.40 (3) (c) 1.

u. The semicolon should be replaced by a comma in s. Comm 87.40 (3) (c) 2.

v. The use of "owner's" in s. Comm 87.50 (1) (a) is confusing. "Owner" is used in several contexts in the rule. The rule as a whole might be clarified by specifying who may apply for a grant, and referring thereafter to the "applicant."

w. The requirement in the last sentence of s. Comm 87.50 (1) (c) does not give guidance to the governmental unit regarding the additional evidence that must be obtained.

x. In s. Comm 87.50 (5) (b) (intro.), "shall" should replace "must." In the second sentence of subd. 4., a comma should be inserted after "years", "be required to" should be deleted and "POWTS" should be spelled out.

y. Section Comm 87.60 (1) refers to applications for monitoring in s. Comm 87.31, but that section does not contain provisions regarding applications for monitoring.

z. Although the statute refers to "Indian lands," the department might clarify this portion of the program. Land under the jurisdiction of a tribe or band may either be held in trust or may be owned in fee title by the tribe or band. Section Comm 87.60 (2) could be clarified by deleting the second "Indian."

aa. The word "my" should be changed to "may" in s. Comm 87.60 (4) and "to" should be changed to "of" in the same subsection.

ab. Section Comm 87.60 (5) (b) (intro.) refers to an "approvable" regulatory program. This combines the required contents of the application and the decision to approve the application. At a minimum, "approvable" should be deleted. The process for approving the regulatory program and the contents of the application should be established separately.

ac. It is unclear which five-year period is referred to in s. Comm 87.60 (5) (b) 5. Is this the five-year period prior to submitting the application?

ad. Section Comm 87.71 (7) does not appear to have any source in s. 145.245, Stats. It seems likely that many, if not all, governmental units will have some indebtedness to the state, such as clean water fund loans or state trust fund loans. The effect of this provision could be to deny grants to all governmental units. Section Comm 87.72 (6) should also be reviewed to determine if it is appropriate.

ae. The use of the passive voice makes s. Comm 87.72 (1) confusing. It is unclear who makes grant payments to owners of approved systems.

af. In s. Comm 87.81 (2), "and an audit of the entity" should replace "and audit of entity."

ag. "As per" should be changed to "Under" in s. Comm 87.90 (1).

ah. It is not clear what are "priority petitions" in s. Comm 87.90 (2).

aa. The word "my" should be changed to "may" in s. Comm 87.60 (4) and "to" should be changed to "of" in the same subsection.

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1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
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7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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c. The term “failing private onsite wastewater treatment system” in s. Comm 87.03 (4) is defined by cross-reference to a statute. However, this is not the term that is used in the statute, and the cross-referenced provision, s. 145.245 (4), Stats., is not a definition. Also, the term “private onsite wastewater treatment system” is not defined in the rule.

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b. In s. Comm 87.70 (1) (c) (the section following s. Comm 87.10), the rule requires work to be done in accordance with the "enforcement order." However, it does not appear under other provisions of the rule that an enforcement order is required to be eligible for a grant. Also, the term "state plumbing code" is not defined in the rule. Can a cross-reference to the code be included?

c. In s. Comm 87.70 (1) (d) (the section following s. Comm 87.10), a restriction is imposed if the person did not own the property at the time the system was failing and subject to a determination of failure. This portion of the rule does not establish the time at which the person must own the system.

d. The phrase "For the purposes of this chapter" in s. Comm 87.70 (2) (the section following s. Comm 87.10) is superfluous. Also, the department should consider whether this provision is needed at all. In any case, the department should correct the statutory cross-reference, which has been changed by 1997 Wisconsin Act 79, effective January 1, 1999. See s. 181.0103 (17), as affected by Act 79.

e. Does s. Comm 87.71 (the second section following s. Comm 87.10) require the department to notify all governmental units of all certifications by the Department of Workforce Development, or only those governmental units that are participating governmental units? Also, in sub. (3), "exceptions being" should be replaced by "except for."

f. The word "allowable" should be replaced by "allowed" or some other appropriate term in s. Comm 87.30 (2).

g. Section Comm 87.30 (3) (intro.) should apparently refer to the determination of the *amount of* grant awards. Also, in par. (a), "allowable" is redundant, and "shall be" should be replaced by "is." The replacement of "shall be" by "is" should be done at a number of other places in the rule.

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i. The Note after s. Comm 87.30 (5) (c) should begin with "Under."

j. Should s. Comm 87.30 (6) (a) refer to a participating governmental unit rather than a governmental unit that "adopts this program"?

k. Section Comm 87.31 (1) states that this section establishes certain parameters. However, no parameters are established in s. Comm 87.31. The only decision in that section is on a case-by-case basis. It should also be noted that s. Comm 87.31 (2) is arguably not responsive to s. 145.245 (7) (e), Stats., which requires the department to promulgate rules specifying how it will allocate the state share for experimental private sewage systems. Merely stating that the department will do this on a case-by-case basis does not allow for the establishment of any consistent policies for funding experimental systems.

l. Section Comm 87.31 (3) includes a cross-reference to s. 145.245 (11m) (d), Stats. That statute provides that the department is not required to prorate funds for experimental

systems. It is unclear what this rule provision adds and why it is necessary to state that the department may prorate funds for this purpose.

m. Section Comm 87.40 (1) (a) refers to the owner of a failing private onsite wastewater treatment system. Other provisions of the rule refer to the owner of a property served by a failing system or the owner of a small commercial establishment. Each of these provisions should be reviewed to determine if they are consistent and if they accomplish the purpose of the rule.

n. In s. Comm 87.40 (1) (b) 5., the second "a" should be deleted.

o. It is unclear what it means in s. Comm 87.40 (1) (b) 6. to "respond" to "documentation."

p. Section Comm 87.40 (2) (intro.) refers to the "owners of a principal residence," but the singular form of the phrase is used in s. Comm 87.40 (2) (a). Generally, the singular form is preferable in rule drafting.

q. In the first Note following s. Comm 87.40 (3) (a) 2., "a" should be inserted after "for."

r. It is unclear why "eligible" is included in s. Comm 87.40 (3) (intro.). This provision deals with the application for a grant. The determination of eligibility is made later.

s. The paragraphs in s. Comm 87.40 (3) should be made consistent. Paragraphs (a) and (c) are complete sentences and the other paragraphs are not.

t. The word "show" should be changed to "shows" in s. Comm 87.40 (3) (c) 1.

u. The semicolon should be replaced by a comma in s. Comm 87.40 (3) (c) 2.

v. The use of "owner's" in s. Comm 87.50 (1) (a) is confusing. "Owner" is used in several contexts in the rule. The rule as a whole might be clarified by specifying who may apply for a grant, and referring thereafter to the "applicant."

w. The requirement in the last sentence of s. Comm 87.50 (1) (c) does not give guidance to the governmental unit regarding the additional evidence that must be obtained.

x. In s. Comm 87.50 (5) (b) (intro.), "shall" should replace "must." In the second sentence of subd. 4., a comma should be inserted after "years", "be required to" should be deleted and "POWTS" should be spelled out.

y. Section Comm 87.60 (1) refers to applications for monitoring in s. Comm 87.31, but that section does not contain provisions regarding applications for monitoring.

z. Although the statute refers to "Indian lands," the department might clarify this portion of the program. Land under the jurisdiction of a tribe or band may either be held in trust or may be owned in fee title by the tribe or band. Section Comm 87.60 (2) could be clarified by deleting the second "Indian."

The Wisconsin Department of Commerce proposes an order to repeal and recreate ch. Comm 87.

ANALYSIS OF RULES

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (2), and 145.02 (3) and (4), Stats.
Statutes interpreted: ss. 145.02 (4), 145.045, 145.13, 145.135, 145.19, 145.20, 145.245 (7) (c) and (e), and 145.245 (8) (e), Stats.

Under s. 145.02, Stats., the Department of Commerce (Commerce) has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81-87.

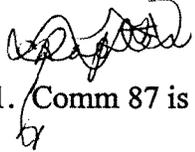
Under s. 145.245 (7) (c), Stats., Commerce shall revise the grant awards tables when it determines that 60% of current costs of private onsite wastewater treatment system rehabilitation or replacement exceeds the amount in the grant award tables by more than 10%, except that the Department may not revise the grant award tables more often than once every two years. Since these tables were last revised July 1, 1991, current format and updated grant award amounts have been incorporated into this rule revision.

Under s. 145.245 (7) (e), Stats., Commerce shall promulgate rules that shall specify how the Department will select, monitor and allocate the state share for experimental private onsite wastewater treatment systems that the Department funds under this chapter. Up to 10% of the annual funds shall be available for allocation for experimental private onsite wastewater treatment systems, including monitoring of these systems. The rule revision includes sections relating to application and eligibility for grants awards for experimental systems.

The rule revision also includes incorporation of Department authority granted in the Wisconsin State Statutes as created in various 1995 and 1997 Wisconsin Acts, including the creation of the Department of Commerce.

The chapter is being repealed and recreated due to the many amendments which relate to form, style, placement, table format, clarity and plain language of the current rules which have not been revised, except for slight corrections, since March 1992. The chapter title is being changed to reflect current terminology for sewage systems.

98-52



SECTION 1. Comm 87 is repealed and recreated to read:

Chapter Comm 87

PRIVATE ONSITE WASTEWATER TREATMENT SYSTEMS REPLACEMENT AND REHABILITATION GRANT PROGRAM

Comm 87.01 PURPOSE. The purpose of this chapter is to establish rules under s. 145.245, Stats., for the implementation and administration of a financial assistance program to replace or rehabilitate failing private onsite wastewater treatment systems.

Comm 87.02 APPLICABILITY. (1) This chapter applies to applications received by the department on or after February 1, 1999.

(2) Applications received by the department prior to February 1, 1999 are governed by the rules as they existed on or before January 31, 1999.

Comm 87.03 DEFINITIONS. The following definitions apply to this chapter. :

(1) "Applicant" has the meaning found in s. 145.245 (5) (a), Stats.

Note: Under ss. 145.245 (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 onsite wastewater treatment system. A person does not meet this condition if he or she did not own the property at the time the private onsite wastewater treatment system was failing and subject to a determination of failure. Therefore, the buyer of a property is not eligible if the failing private onsite wastewater treatment system was replaced prior to the date of the sale. Similarly, the seller of a property is not eligible if the determination of failure was made after the date of sale.

(2) "Department" means the department of commerce.

(3) "Determination of failure" has the meaning found in s. 145.245 (1) (a), Stats.

Note: Section 145.245 (1) (a), Stats., reads: "Determination of failure" means any of the following:

1. A determination that a private sewage system is failing, according to the criteria under s. 145.245 (4), Stats., based on an inspection of the private sewage system by an employe of the state or a governmental unit who is certified to inspect private sewage systems by the department.
2. A written enforcement order issued under s. 145.02 (3) (f), 145.20 (2) (f) or 281.19 (2), Stats.

3. A written enforcement order issued under s. 254.59 (1), Stats., by a governmental unit.

(4) "Failing private onsite wastewater treatment system" has the meaning found in s. 145.245 (4), Stats.

Note: Section 145.245 (4), Stats., reads: "The department shall establish criteria for determining if a private sewage system is a failing private sewage system. A failing private sewage system is one 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 back up of sewage into the structure served by the private sewage system.

(5) "Governmental unit" has the meaning as found in s. 145.01 (5), Stats

Note: Section 145.01 (5), Stats., reads: "Governmental unit responsible for regulation of private sewage systems" or "governmental unit", unless otherwise qualified, means the county, except that in a county with a population of 500,000 or more these terms mean the city, village or town where the private sewage system is located. "Governmental unit" also includes a federally recognized American Indian tribe or band.

(6) "Participating governmental unit" means a governmental unit which applies to the department for financial assistance under this chapter, and which meets the conditions as specified in s. 145.245 (9), Stats.

(7) "Person" means any one of the following:

(a) Any individual including the estate of an individual.

(b) Two or more individuals having a joint or common interest in a principal residence, as defined in s. 145.245 (1) (c), Stats., which uses a private onsite wastewater treatment system.

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

(8) "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 an estate of an individual, if the residence is occupied at least 51% of the year by a person who has an ownership interest as a beneficiary of the trust or estate.

(9) "Project period" means either of the following:

(a) For applications submitted to the department for installations of replacement private onsite wastewater systems, project period means the period of time beginning on February 1 and ending on December 31 of the following year.

(b) For applications submitted to the department for annual costs of monitoring replacement experimental onsite wastewater treatment systems, project period means the period beginning on February 1 and ending on December 31 of the 5th year after the date of installation.

(10) "Small commercial establishment" has the meaning found in s. 145.245 (1) (e), Stats.

Note: Section 145.245 (1) (e), Stats., defines small commercial establishment as a commercial establishment or a business place with a maximum daily wastewater flow rate of less than 5,000 gallons per day. 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 residence is less than 5,000 gallons per day as determined by the design criteria of the state plumbing code.

Comm 87.10 CATEGORIES OF PRIVATE ONSITE WASTEWATER TREATMENT SYSTEMS, POWTS. The department and the participating governmental unit shall use the following categories of failing private onsite wastewater treatment systems to determine grant eligibility under s. 145.245 (5), Stats., and ss. Comm 87.70 and 87.30, to a grant award under s. 145.245 (7) (d) and (11m), Stats., and s. Comm 87.70.

(1) ELIGIBLE FOR GRANT AWARD. As specified in s. 145.245 (5), Stats., only category 1 or category 2 failing private onsite wastewater treatment systems are eligible for funding.

(a) Category 1: Failing private onsite wastewater treatment system defined in s. 145.245 (4) (a) to (c), Stats.

(b) Category 2: Failing private onsite wastewater treatment system as defined in s. 145.245 (4) (d), Stats.

(2) INELIGIBLE FOR GRANT AWARD. As specified in s. 145.245 (5), Stats., those systems that fail as a result of back up of sewage into the structure served, are not grant eligible. Category 3, failing private onsite wastewater treatment systems are as defined in s. 145.245 (4) (e), Stats.

sub of reg. → Comm 87.70 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. 145.245, Stats., and this chapter.

(b) Submits an application to the participating governmental unit in which the failing private onsite wastewater treatment 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 prior to the installation of the system.

(d) Owned the principal residence or small commercial establishment which is served by the category 1 or 2 failing private onsite wastewater treatment system. A person does not meet this condition if he or she did not own the property at the time the private onsite wastewater treatment system was failing and subject to a determination of failure. The buyer of the property is not eligible if the failing private onsite wastewater treatment system was replaced prior to the date of sale. The seller of the property is not eligible if the determination of failure was made after the date of sale.

(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.

Note: Section 181.02 (4), Stats., means a nonstock nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(3) INELIGIBLE ENTITIES. Structures owned by any of the following entities are not eligible for grant award:

(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. 145.245, Stats., and this chapter may replace the structure served by the failing private onsite wastewater treatment system and be eligible for a grant to replace the failing private onsite wastewater treatment system if all of the following additional conditions are met:

1. The original principal residence or small commercial establishment served by the failing private onsite wastewater treatment 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 onsite wastewater treatment 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 allowable grant amount shall be limited to the minimum private onsite wastewater treatment 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.

*out of
sequence*

→ Comm 87.71 INELIGIBILITY OF OWNERS. (1) As specified under s. 145.245 (5m) (b), Stats., the department shall notify a governmental unit if it receives a certification under s. 49.855 (7), Stats., that an individual is delinquent in child support or maintenance payments or owes past support, medical expenses or birth expenses.

(2) The department or a governmental unit shall deny an application under sub. (1) if the department receives a certification under s. 49.855 (7), Stats., that the applicant or an individual who would be directly benefited by the grant is delinquent in child support or maintenance payments or owes past support, medical expenses or birth expenses.

(3) The department or a participating governmental unit shall deny an application if a grant amount under this chapter has been previously awarded for rehabilitation or replacement work at the same site, exceptions being those grants awarded on an annual basis for monitoring of approved experimental private onsite wastewater treatment system, as specified in s. Comm 87.31.

Comm 87.30 MAXIMUM ALLOWABLE GRANT AMOUNT. (1) ELIGIBLE REHABILITATION OR REPLACEMENT WORK. Except as provided under sub. (4) and s. Comm 87.70, private onsite wastewater treatment system work eligible for grant awards shall be limited to those activities listed in the grant awards under sub. (3), and Tables 87.30-1 to 87.30-6.

(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 awards under this chapter.

(3) GRANT AWARDS. Grant awards shall be determined by calculating the maximum allowable grant amount by type of system, system component, or service provided.

(a) Site evaluation and soil testing. The maximum allowable grant amount for site evaluation and soil testing shall be \$250.

(b) Installation of a replacement or additional septic tank. The maximum allowable grant amount for installation of a replacement or additional septic tank shall be as listed in Table 87.30-1.

(c) Installation of a pump chamber and lift pump or siphon. The maximum allowable grant amount for installation of a pump chamber and lift pump or siphon shall be as listed in Table 87.30-2.

(d) Installation of a non-pressurized and in-ground pressure soil absorption areas. The maximum allowable grant amount for installation of non-pressurized and in-ground pressure soil absorption areas shall be as listed in Table 87.30-3.

(e) Installation of an at-grade or mound soil absorption area. The maximum allowable grant amount for installation of at-grade or mound soil absorption areas shall be as listed in Table 87.30-4.

(f) Installation of a holding tank. The maximum allowable grant amount for installation of a holding tank shall be as listed in Table 87.30-5.

(g) Replacement exterior grease interceptor. The maximum allowable grant amount for installation of replacement exterior grease interceptor shall be as listed in Table 87.30-6.

Table 87.30-1
MAXIMUM ALLOWABLE GRANT AMOUNT FOR
INSTALLATION OF A REPLACEMENT OR ADDITIONAL SEPTIC TANK

Installation of a Replacement or Additional Septic Tank by Number of Bedrooms			
Number of Bedrooms	Grant Amount	Number of Bedrooms	Grant Amount
1 or 2	\$500	6	\$750
3	550	7	875
4	650	8 or more	950
5	725		

Table 87.30-2
MAXIMUM ALLOWABLE GRANT AMOUNT FOR
INSTALLATION OF A PUMP CHAMBER AND LIFT PUMP OR SIPHON

Installation of a Pump Chamber and Lift Pump or Siphon	
Number of Bedrooms	Grant Amount
1 or 2	\$1,100
3 or 4	1,200
5 or more	1,250

Table 87.30-3
**MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF NON-PRESSURIZED AND IN-GROUND PRESSURE
 SOIL ABSORPTION AREAS**

Installation of Non-Pressurized and In-Ground Pressure Soil Absorption Areas							
Design Loading Rate in Gallons Per Square Foot Per Day	Percolation Rate When Properly Filed with County Before July 2, 1994 (minutes per inch)	Grant Amount by Number of Bedrooms					
		1	2	3	4	5	Each Additional Bedroom
0.7 or more	0 – less than 10	\$800	\$1,100	\$1,225	\$1,400	\$1,725	\$150
0.60 to 0.69	10 – less than 30	900	1,175	1,400	1,800	1,900	250
0.50 to 0.59	30 – less than 45	1,050	1,450	1,650	1,950	1,975	300
0.49 or less	45 - 60	1,150	1,900	2,200	2,250	2,275	300

Table 87.30-4
**MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF AT-GRADE OR MOUND SOIL ABSORPTION AREAS**

Installation of an At-Grade or Mound Soil Absorption Area						
Type of Design	Grant Amount by Number of Bedrooms					
	1	2	3	4	5	Each Additional Bedroom
At-Grade	\$900	\$1,300	\$1,475	\$1,825	\$1,950	\$250
High Groundwater Mound	2,250	2,325	2,550	3,400	3,775	250
High Bedrock Mound	2,350	2,950	3,000	3,400	3,525	275
Slowly Permeable Mound ¹	2,900	3,100	3,250	3,400	3,650	300
Less Than 24" or Greater Than 12% Slope Mound	3,050	3,400	3,475	3,550	4,500	375

¹ A slowly permeable mound may be designed using percolation test results properly filed with the county before July 2, 1994. A slowly permeable mound is defined in s. Comm 83.23 (1) (b) as having a percolation rate of greater than 60 minutes per inch and less than or equal to 120 minutes per inch, or a soil loading rate of 0.3 or less

Table 87.30-5
**MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF A HOLDING TANK**

Installation of a Holding Tank			
Number of Bedrooms	Grant Amount	Number of Bedrooms	Grant Amount
3 or fewer	\$2,250	6	\$4,000
4	2,925	7	4,200
5	3,100	8	4,750
		Each Additional Bedroom	225

Table 87.30-6
**MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF REPLACEMENT EXTERIOR GREASE INTERCEPTOR**

Installation of Replacement Exterior Grease Interceptor by Capacity			
Capacity (in gallons)	Grant Amount	Capacity (in gallons)	Grant Amount
Up to 1,249	\$550	1,500 to 1,749	\$750
1,250 to 1,499	650	1,750 to 1,999	800
		2,000 or more	900

(4) **USE OF GRANT AWARD TABLES FOR SMALL COMMERCIAL ESTABLISHMENTS.** In order to use Tables 87.30-1 to 87.30-6 for small commercial establishments, where applicable, 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.

(5) **EXCEPTIONS TO THE GRANT AWARD TABLES.** (a) The department may determine on a case by case basis the maximum allowable grant amount for types of private onsite wastewater treatment systems which are not covered under sub. (3) and Tables 87.30-1 to 87.30-6.

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

(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 same year.

(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 was 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.

(c) 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 in which the enforcement order was issued. 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 issued. 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 participating governmental unit shall require additional evidence as necessary to provide proof of Wisconsin residency.

Comm 87.60 APPLICATION BY PARTICIPATING GOVERNMENTAL UNITS. (1) The participating governmental unit shall review information received from property owners and determine eligibility under s. 145.245, Stats., and this chapter, except for applications for monitoring as specified in s. Comm 87.31. In order to receive an allocation and grant award, the participating 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 Department of Commerce, Safety and Buildings Division, P.O. Box 2538, Madison, Wisconsin 53701-2538.

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

(3) Participating governmental units may request pre-application assistance including technical assistance from the department.

(4) Applications shall be received by the department no later than January 31 for consideration in the following fiscal year. Participating governmental units may request in writing to the department prior to December 31, a six-month extension to the project period.

(5) An application for a grant to replace or rehabilitate private onsite wastewater treatment system shall include all of the following:

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

(a) Evidence of annual business income. As specified in s. 145.245 (5) (a) 2., Stats., a business which owns a small commercial establishment shall provide one of the following as evidence of annual gross revenue:

1. 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.

2. If the small commercial establishment is owned by a private nonprofit 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 1: As specified in s. 145.245 (5) (d)1., Stats., to be eligible for ^a grant award under this section, the annual gross revenue of the business that owns the small commercial establishment may not exceed \$362,500.

Note 2: As specified in s. 145.245 (5) (a) 2., Stats., a business must own the small commercial establishment in order to be eligible for a grant amount. 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.

Note 3: As specified in s. 145.245 (11) (d), the department may not allocate more than 10% of the funds available under this subsection each fiscal year for grants for small commercial establishments.

(b) Sanitary permit number and date of issuance. A legible copy of the sanitary permit issued by the county in which the private onsite wastewater treatment system is located.

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

1. A copy of the closing statement or other documentation which show the date of sale of the property.

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 onsite wastewater treatment system.

(d) Other information. Any other information that may be requested by the department or participating governmental unit.

Comm 87.50 ALTERNATE EVIDENCE OF INCOME. (1) A participating governmental unit may disregard the evidence of income under s. Comm 87.40 and consider any of the following criteria as satisfactory evidence of income:

1. Documents the experiment as a research project under the management of a college, university or equivalent institution of higher education.
2. Indicates the objectives of the experiment relative to treatment capabilities.
3. Delineates proposed sampling protocols of influent and effluent loads and flows.
4. Includes a proposed schedule for the installation, monitoring, reporting and conclusion.
5. Includes a copy of a the monitoring contract with an estimate of the costs of monitoring for the project period.
6. Responds to other documentation as requested by the department or participating governmental unit.

(2) **PRINCIPAL RESIDENCE.** The application by owners of a principal residence shall include all of the following:

(a) Evidence of annual family income. A person who owns a principal residence shall provide the evidence of income required under s. 145.245 (5) (c) 2. and 3., Stats., or the alternative evidence of income required under s. Comm 87.50.

Note: Section 145.245 (5)(c)1., Stats., specifies that in order to be eligible for grant funds under this section, the annual family income of the person who owns the principal residence may not exceed \$45,000.

(b) Sanitary permit number and date of issuance. A legible copy of the sanitary permit issued by the county in which the private onsite wastewater treatment system is located.

(c) Additional information. If, after a determination of failure is made, an applicant buys or sells the principal residence served by a failing private onsite wastewater treatment system, the applicant shall provide the following additional information:

1. A copy of the closing statement or other documentation which show the date of sale of the property.
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 onsite wastewater treatment system.

(d) Other information. Any other information that may be requested by the department or the participating governmental unit.

(3) **SMALL COMMERCIAL ESTABLISHMENTS.** The application for eligible owners of small commercial establishments, as specified in s. 145.245 (5) (d) 1., Stats., shall be made on forms acceptable to the department and shall include:

(c) The maximum allowable grant amount for each principal residence or small commercial establishment shall be limited to 60% of the total cost of replacement or the amount determined under sub. (3) and Tables 87.30-1 to 87.30-6, whichever is less.

Note: Section 145.245 (7) (d), Stats., when the income of the person who owns a principal residence exceeds \$32,000 and the residence is served by a category 1 or 2 failing private onsite wastewater system, the amount of the grant award under this section is limited to the amount determined in par. (c) less 30% of the amount which the person's income exceeds \$32,000.

(6) **INELIGIBLE WORK.** Ineligible work includes any of the following items or projects:

(a) Rehabilitation or replacement of a failing private onsite wastewater treatment system done before the date on which the governmental unit adopts this program.

(b) Except for site evaluation, soil testing under sub. (3) (a) and issuing the sanitary permit, rehabilitation or replacement of a failing private onsite wastewater treatment system done before the determination of failure was made.

(c) Rehabilitation or replacement of a failing private onsite wastewater treatment system where a determination is made that public sewer is available to the property as determined by the municipality that owns or operates the public sewer.

(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 onsite wastewater treatment system to replace a privy.

Comm 87.31 MAXIMUM ALLOWABLE GRANT AMOUNT FOR EXPERIMENTAL PRIVATE ONSITE WASTEWATER TREATMENT SYSTEMS. (1) Pursuant to s. 145.245 (7) (e), Stats., this section establishes the parameters for allocating the maximum allowable state grant amount for experimental private onsite wastewater treatment systems.

(2) The department may determine on a case by case basis the maximum allowable grant amount for the installation and monitoring of an experimental private onsite wastewater treatment system.

(3) As specified in s. 145.245 (11m) (d), Stats., the department may prorate available funds for the installation and monitoring of an experimental private onsite wastewater treatment system.

Comm 87.40 APPLICATION BY INDIVIDUALS. (1) **CONTENTS.** (a) In order to be eligible to receive a grant award under this chapter, the owner of a failing private onsite wastewater treatment system shall submit an application to the participating governmental unit in which the private onsite wastewater treatment system is located. The application shall be made on forms that are acceptable to the department.

(b) In order to be eligible to receive a grant award for experimental systems under this chapter, an owner shall submit information, in addition to those items specified in par. (a), that:

1. A resolution designating an authorized representative, and authorizing such representative to apply for a grant under s. 145.245, 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 the private onsite wastewater treatment system rehabilitation or replacement for a principal residence or small commercial establishment owned by a person who meets the eligibility requirements of s. 145.245 (5), Stats., that the funds will be used as provided under s. 145.245 (6), Stats., and that the maximum allowable grant amount will not exceed the amount permitted under s. 145.245 (7), Stats.

3. A resolution certifying that grants will be used for private onsite wastewater treatment 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 onsite wastewater treatment systems constructed in the area of jurisdiction of the 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.

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 private onsite wastewater treatment system.

4. A maintenance program which requires inspection or pumping of all new or replacement private onsite wastewater treatment systems at least once every 3 years. Every 3 years, the owner of a private onsite wastewater treatment system subject to the maintenance program shall be required to submit to the governmental unit a certification form as provided by the governmental unit and signed by a master plumber, a journeyman plumber or restricted-service plumber licensed under ch. 145, Stats., a person licensed under s. 281.48, Stats., a person holding a current certification as listed in s. Comm 5.66 as a POWTS inspector, or by an employe of the participating governmental unit or state so designated by the department, who has inspected the private onsite wastewater treatment system. The inspection form shall require certification that the system is in proper operating condition, and that after inspection and pumping, if necessary, the treatment or holding tank is less than one-third full of sludge and scum.

5. A central record keeping system, so maintained for a period of not less than five years and capable of providing evidence that the governmental unit is administering the program as specified in this chapter.

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 program 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, at a minimum, the name of each owner, the name of the municipality in which the private onsite wastewater treatment system is located, the uniform sanitary permit number and the maximum allowable grant amount as determined under s. Comm 87.30 or Comm 87.31.

(d) Other information as requested by the department.

Comm 87.70 ALLOCATION OF FUNDS AND GRANT AWARDS. (1) GENERAL. The department shall allocate funds available for grant awards to participating governmental units as provided in s. 145.245 (11), Stats., except for funds so specified in ss. Comm 87.31 and 87.72.

(2) PRORATION. (a) If available funds are not sufficient to fully fund all applications, the department shall prorate available funds under s. 145.245 (11m), Stats. A prorated payment shall be deemed full payment of the grant.

(b) A grant application denied under s. 145.245 (11m) (c), Stats., is not eligible for awards 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. 145.245 (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. Comm 87.10, if a governmental unit does not meet the conditions specified under s. 145.245 (9), Stats.

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

(4) The allocation and payment of grant awards for experimental private onsite wastewater treatment systems shall be in accordance with s. Comm and 87.70.

Comm 87.71 PAYMENTS TO PARTICIPATING GOVERNMENTAL UNITS. (1) Except as provided in ss. Comm 87.70 and 87.72, 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 acceptable to 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 amount for

individual owners of a private onsite wastewater treatment system is limited to the maximum allowable grant amount under ss. Comm 87.30 and 87.31. 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.

Comm 87.72 PAYMENTS FOR MONITORING OF EXPERIMENTAL SYSTEMS. (1) Except as provided in ss. Comm 87.70 and 87.71, grant payments for experimental private onsite wastewater systems shall be made to owners of approved systems for the maximum allowable amount on an annual basis up to the approved estimated costs for monitoring for eligible work for a project period.

(2) (a) An owner shall request payment on forms acceptable to the department and shall include such information as required by the department to document satisfactory completion of eligible work. Subsequent annual payments for monitoring shall be requested in accordance with the payment schedule included in the grant award conditions as approved by the department.

(b) The owner shall make a request to the department for payment of monitoring costs on an annual basis by submitting paid invoices documenting the eligible work provided as included in the grant award conditions. Payments shall be awarded in accordance with the payment schedule included in the conditions of the grant and the maximum allowable grant amount in s. Comm 87.30 (3), Tables 87.30-1 to 87.30-6, and usual and customary costs for monitoring of an experimental private onsite wastewater treatment system.

(c) A direct payment of monitoring costs shall be made to the owner in accordance with s. Comm 87.72.

(3) The total grant amount payable to an owner for monitoring shall be limited to the amount of funds available for allocation in the project period for experimental systems under this chapter.

(4) At any time before final payment of the approved grant amount, 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 department may authorize the withholding of a grant payment where it determines in writing that an owner 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.

(6) The department shall withhold payment to the extent of any indebtedness of the owner 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.

Comm 87.80 PROGRAM ENFORCEMENT. If the department has reason to believe that a violation of the provisions of this chapter or of any grant award or grant award amendment made under this chapter has occurred, the department may take any of the following actions:

(1) Under s. 145.245 (14), Stats., the department may cause written notice to be served upon the alleged violator, and in conjunction with that notice may either:

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

(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. 145.02 (3) (f), 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 or owner, if an order issued under s. 145.245 (14), Stats., is violated.

(3) Under s. 145.245 (14) (d), Stats., the department may suspend or terminate additional grant awards made under this chapter if the department finds that a private onsite wastewater treatment 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 seek an injunction or other appropriate relief under s. 145.02 (3) (f), Stats.

(6) The department may seek the imposition of a forfeiture for each violation, pursuant to s. 145.245 (15), Stats.

Note: Section 145.245 (15), Stats., reads: "Any person who violates this section or a rule or order promulgated under this section shall forfeit not less than \$10 or more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

Comm 87.81 PROGRAM AUDIT. (1) A governmental unit, owner or any other entity receiving a grant award under this chapter shall make available to the department, upon request, any and all records necessary to ascertain compliance with this section and the provisions as specified in s. 145.245, Stats.

(2) The department may require documentation of monitoring and audit of entity providing monitoring. ^{an} ^{file}

Comm 87.90 PETITION FOR VARIANCE. (1) PROCEDURE. As per ch. Comm 3, the department shall consider and may grant a variance to an administrative rule upon receipt of a fee, a completed petition for variance form from the owner, and a completed municipal recommendation from the participating governmental unit having responsibility and an interest in the rule, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department may impose specific conditions in granting a variance to promote the protection of the health, safety or welfare of employes or the public. Violation of those conditions under which the variance is granted constitutes a violation of these rules.

(2) PETITION PROCESSING TIME. Except for priority petitions, the department shall review and make a determination on a petition for variance within 30 business days of receipt of all calculations, documents and fees required to complete the review. The department shall process priority petitions within 10 business days.

Comm 87.91 PROCESS FOR APPEAL. (1) DENIAL BY A PARTICIPATING GOVERNMENTAL UNIT. When the decision by a participating governmental unit is denial of a grant award, the applicant may appeal the decision of the governmental unit in accordance with ch. 68, Stats.

(2) DENIAL BY THE DEPARTMENT. An applicant denied a grant award by the department may appeal the decision in writing within 30 days from the date of the decision.

Note: Section 101.02 (6), Stats., outlines the procedure for submitting requests to the department for appeal hearings and the department procedures for hearing appeals.

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (b), Stats., these rules shall take effect on February 1, 1999.

(end)