

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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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).