

NR128

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

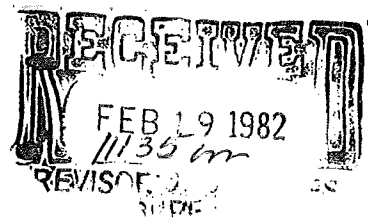
Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES)

ss



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carroll D. Besadny, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. FA-47-81 was duly approved and adopted by this Department on December 16, 1981. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 17th day of February, 1982.

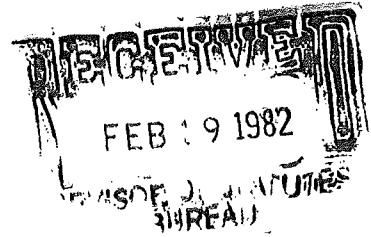
Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)

5-1-82

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

AMENDING AND CREATING RULES



.....
IN THE MATTER of amending NR 128.01 through . . .
128.30 of the Wisconsin Administrative Code . . .
pertaining to state grant assistance to . . .
municipalities for wastewater treatment . . .
projects under the point source water . . .
pollution abatement grant program and creating . . .
NR 128.35 through 128.52 of the Wisconsin . . .
Administrative Code pertaining to state grant . . .
assistance for municipalities for the . . .
elimination of combined sewer overflow to the . . .
waters of the state under the combined sewer . . .
overflow abatement program. . .
.....

FA-47-81

Analysis Prepared by Department of Natural Resources

Section 144.242, Stats., (Ch. 20, Laws of 1981) authorizes state assistance to municipalities for the construction of combined sewer overflow projects and the promulgation of rules necessary to execute the program.

The proposed language has been developed to carry out the legislative intent.

Because s. 144.242, Stats., parallels s. 144.24, Stats., which created the Point Source Pollution Abatement Program (Wisconsin Fund), the proposed rules have been developed as a subchapter of ch. NR 128 of the Wisconsin Administrative Code. Potential applicants are familiar with the code governing the Wisconsin Fund and, by creating a subchapter rather than a separate chapter, will have a one-source document to follow in applying for grants.

One of the differences between the two programs is that the Combined Sewer Overflow Abatement Program is for construction (Step 3) only. However, it is clear in s. 144.242, Stats., that facility planning (Step 1) and engineering design (Step 2) must have been completed before a municipality is eligible for financial assistance. The proposed code reflects the construction only aspects of the legislation. (See ss. NR 128.37, 128.39, 128.41, 128.42, 128.43, 128.47, 128.50)

Section NR 128.40 proposes language to implement a priority ranking for projects.

Sections NR 128.44, 128.48, 128.49, 128.51, and 128.52 reference provisions presently found in ss. NR 128.01 through 128.26 because the new sections are compatible with the Wisconsin Fund rules.

New provisions in ss. NR 128.45 and 128.46 are proposed to reflect the 50% grant award and to clarify language concerning when grant payments will be made.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 144.24, 144.242 and 227.014, Stats., the State of Wisconsin Natural Resources Board hereby amends rules interpreting s. 144.24, Stats., and creates rules interpreting s. 144.242, Stats., as follows:

SECTION 1 - A title before s. NR 128.01 is created to read:

(Title) Subchapter I - Wisconsin Fund

SECTION 2 - Sections NR 128.35 through 128.52 are created to read:

(Title) Subchapter II - Combined Sewer Overflow Abatement

NR 128.35 PURPOSE. The purpose of this subchapter is to establish rules under s. 144.242, Stats., for the administration of a financial assistance program to implement the legislative finding that state financial assistance for the elimination of combined sewer overflow to the waters of the state is a public purpose and a proper function of state government.

NR 128.36 APPLICABILITY. This subchapter shall apply to all applications for funding under s. 144.242, Stats., for the abatement of combined sewer overflow to the waters of the state. Compliance with this subchapter and all other applicable requirements identified herein is necessary for satisfying qualification requirements prior to grant assistance.

NR 128.37 DEFINITIONS. In this subchapter the definitions in s. 144.242, Stats., and s. NR 128.03 shall apply except:

(1) "Construction" means any one or more of the following activities: erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; or professional services necessary to accomplish any of the foregoing.

(2) "Initiation of construction" means the issuance of a notice to proceed under a construction contract or, if a notice to proceed is not required, execution of the construction contract.

(3) "Multi-purpose project" means any project which will result in combined sewer overflow abatement and one or more additional objectives being satisfied.

(4) "Project" means any discrete contract or subitem for the construction of a treatment works described in an approved facilities plan.

NR 128.38 SEVERABILITY. Should any section, paragraph, phrase, sentence, clause or word of this subchapter be declared invalid or unconstitutional for any reason, the remainder of this subchapter shall not be affected thereby.

NR 128.39 ELIGIBILITY FOR A STATE GRANT. (1) ELIGIBLE MUNICIPALITIES.

Only a municipality with a sewerage system which is violating ch. 147, Stats., or title III of the federal water pollution control act, as amended, 33.U.S.C 1251 to 1376, because of combined sewer overflow is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(2) ELIGIBLE PROJECTS. Projects for the abatement of combined sewer overflow are eligible for participation in the financial assistance program established by this subchapter. Grant assistance may be awarded by the department for those projects that:

(a) Are the most cost-effective means of abating combined sewer overflow and have completed facility planning and engineering design requirements under s. 144.242(4), Stats.

(b) Are entitled to priority in accordance with s. NR 128.40 and ch. NR 160, Wis. Adm. Code.

(3) INELIGIBLE PROJECTS. Projects funded under this subchapter are not eligible for participation in the financial assistance program established under subchapter I.

(4) ELIGIBLE COSTS. The grantee's allocable project costs which are reasonable and necessary are eligible. These costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material the grantee incurs for the project except as provided in sub. (5);

(b) Those costs identified in ss. NR 128.05(4)(c), (d), (j), (k), (l), (n), (p), (q), (r) and (7).

(c) Pre-award professional services and bid advertisement publication as approved by the department.

(d) Costs associated with multi-purpose projects as determined by the department are eligible up to the amount necessary for the abatement of combined sewer overflows. Costs shall be determined by prorating the design capacity necessary to abate combined sewer overflows to the design capacity of the proposed project.

(5) INELIGIBLE COSTS. Costs which are not necessary for the construction of a combined sewer overflow abatement project are ineligible. Such costs include, but are not limited to:

(a) Those costs identified in s. NR 128.05(5)(b) to (i) and (q).

(b) Costs of project construction work performed prior to the approved date of initiation of construction established in the grant agreement except as allowed under sub. (4)(c).

(c) Costs associated with percentage-of-cost type contracts.

(6) DISPUTES CONCERNING ELIGIBLE COSTS. The grantee should seek to resolve any questions relating to cost eligibility or allocation at the earliest opportunity before execution of the grant agreement. Disputes regarding determination of cost eligibility shall be resolved in accordance with s. NR 128.49.

NR 128.40 DISTRIBUTION OF GRANT FUNDS. (1) GENERAL. Grant funds distributed under this program will be allocated to those projects placed on a funding list. Project sequence will be by priority value as identified on the project priority list established under ch. NR 160, Wis. Adm. Code.

(a) By December 31 of each year, each municipality intending to apply for a combined sewer overflow abatement project during the next calendar year shall notify the Department of Natural Resources, Bureau of Water Grants, Box 7921, Madison, Wisconsin 53707, of its intent in writing. For those municipalities that notify the department by December 31, the department shall annually compile a funding list which ranks those municipalities in the same order as they appear on the project priority list established under ch. NR 160, Wis. Adm. Code. If there are not sufficient funds available under this section to fund all grant requests that year, the department shall award available funds to projects in the order in which they appear on the funding list. The department may provide a notice entitled a "ready to allocate notice" to municipalities which appear on the funding list and which fulfill the requirements of sub. (2). The department may presume that a municipality which has not submitted complete plans and specifications for review by June 30, 1982, and each March 31 thereafter and a state grant application by July 31, 1982, and each April 30 thereafter will not be able to receive a "ready to allocate notice" prior to December 31 and receive funding under this paragraph.

(b) As of January 1 of each year, the list created under this section in the prior year expires. The department may allocate funds to a municipality on the list after the expiration of the list if the municipality received a "ready to allocate notice" before the expiration of the list and the requirements of sub. (2) are met.

(2) ALLOCATION PROCEDURE. The allocation procedure identified in s. NR 128.09(2) applies here except for the references to the lists compiled under s. NR 128.09(1). The lists used shall instead be taken from sub. (1).

NR 128.41 GRANT APPLICATION. (1) PROCEDURE. An application must be submitted to the Department of Natural Resources, Bureau of Water Grants, Box 7921, Madison, Wisconsin 53707, for each group of proposed projects.

Submissions required for subsequent related projects may be provided in the form of amendments to the basic application. Each such submission shall be complete. If any information required under sub. (2) has been furnished with an earlier application, the applicant need only incorporate by reference and if necessary, revise the information utilizing the previous application.

(2) CONTENTS OF APPLICATION. Prior to the award of a grant or grant amendment for a project, the applicant shall furnish the following:

(a) The information and materials identified in s. NR 128.10(2)(a)1.d. and 2., (b)7. and (c)2.;

(b) An approved facilities plan as required under s. 144.242(4)(b) and (c), Stats.;

(c) A schedule or evidence that the applicant has made satisfactory provision to assure the efficient operation and maintenance of the combined sewer overflow abatement project, including a preliminary plan of operation;

(d) Statements that the applicant has complied with the provisions of s. NR 128.11(4)(a), (b) and (5); and

(e) Evidence that the project will meet applicable effluent limitations or such limitations as the department and municipality may stipulate in a state court of law.

(f) A sewer use ordinance or evidence that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the project before the completion of construction.

(3) GRANT CONDITIONS. (a) Each combined sewer overflow abatement project grant shall be subject to the provisions of s. NR 128.12(1), (4), (5), (6), (7), (8)(a) and (b), (10) and (12).

(b) No approval of a project change shall obligate the state of Wisconsin to increase the amount of the grant or payments made under a grant agreement unless a grant increase is also approved under s. NR 128.46. Failure to receive prior approval does not preclude submission or consideration of a request for a grant amendment.

NR 128.42 PROCUREMENT. (1) APPLICABILITY. Procurement of architectural or engineering services and construction contracts by grantees for construction of a combined sewer overflow abatement project shall be in accordance with state and local law and the provisions of s. NR 128.14(2), (3), (4), (5), (6) and (8).

(2) FORCE ACCOUNT WORK. (a) A grantee shall secure prior written approval from the department for utilization of the force account method.

(b) The department's approval shall be based on the grantee's certification that the grantee possesses the necessary competence required to accomplish such work and the work can be accomplished more economically by the use of the force account method, or emergency circumstances so dictate.

NR 128.43 SUBAGREEMENTS FOR ARCHITECTURAL OR ENGINEERING SERVICES.

Administration or management of the construction of a combined sewer overflow abatement project may be performed by negotiated procurement of architectural or engineering services. Subagreements for such services shall be negotiated with candidates selected on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices. To the maximum extent practicable all negotiated procurement shall be conducted in a manner to provide open and free competition.

NR 128.44 CONSTRUCTION CONTRACTS (SUBAGREEMENT) OF GRANTEES. The provisions of s. NR 128.16(1), (3) and (4) shall apply.

NR 128.45 STATE SHARE. The state share of the project cost shall be no greater than 50% of the eligible construction costs as provided in s. 144.242(7), Stats.

NR 128.46 GRANT PAYMENTS. (1) The provisions of s. NR 128.18(2), (3), (4) and (6) shall apply to this subchapter.

(2) The grantee shall be paid the state share of eligible project costs incurred within the scope of an approved project and which are currently due and payable by the grantee (but not including withheld or deferred amounts), subject to the limitations of s. NR 128.39(4)(d), up to the grant amount set forth in the grant agreement and any approved amendments thereto.

(3) After completion of final inspection, approval of the request for payment which the grantee designates as the "final payment request", and the grantee's compliance with all applicable requirements of this subchapter and the grant agreement, the provisions of s. NR 128.18(5) with the exception of the references to s. NR 128.12(11), shall apply to this subchapter.

NR 128.47 SUSPENSION OR TERMINATION OF GRANT. (1) In accordance with the provisions of this section the department may, for good cause, suspend state liability for work done after notification is given to the grantee. Suspension of state liability under such a grant shall be termed for purposes of this subchapter as a "stop-work order".

(2) The provisions of s. NR 128.21(1)(b), (c), (d), (e), (f), (g), (h), (2)(a), (b), (c), (d), (e) and (f) shall apply to this subchapter.

(3) Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute, and the grantee may appeal a termination or annulment of a grant under s. NR 128.49.

NR 128.48 GRANT AMENDMENTS. The provisions of s. NR 128.22 shall apply to this subchapter.

NR 128.49 DISPUTES. The provisions of s. NR 128.23(2) and (3) shall apply to this subchapter.

NR 128.50 ENFORCEMENT. Noncompliance with the provisions of this subchapter or any grant or grant amendment made under this subchapter shall be cause for the imposition of one or more of the following sanctions at the discretion of the department:

- (1) The grant may be terminated or annulled under s. NR 128.47.
- (2) The sanctions in s. NR 128.24(1)(b), (e) and (f).
- (3) Payment otherwise due to the grantee of up to 10% may be withheld under s. NR 128.46(1).
- (4) Project work may be suspended under s. NR 128.47.
- (5) The department may seek recovery of some or all grant payments made under s. 144.242, Stats., unless the conditions set forth in the grant agreement have been fully satisfied.

NR 128.51 GRANTEE ACCOUNTABILITY. (1) The provisions of s. NR 128.25(1)(a), (b), (c), (d), (f), (g), (h), (2) and (3) shall apply to this subchapter.

(2) The grantee is responsible for maintaining a financial management system which shall adequately provide for procedures for determining the eligibility and allocability of costs in accordance with the provisions of s. NR 128.39.

NR 128.52 VARIANCES. The provisions of s. NR 128.26 shall apply to this subchapter.

SECTION 3 - In ss. NR 128.01 through 128.30, wherever the term "chapter" appears, substitute the word "subchapter."

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on December 16, 1981.

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

Dated at Madison, Wisconsin

February 17, 1982

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By

Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

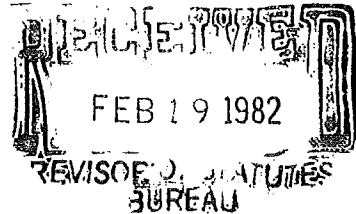
Carroll D. Besadny
Secretary

February 17, 1982

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L

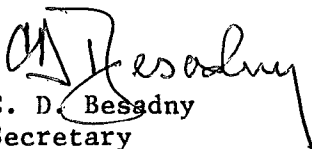


Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FA-47-81. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Agriculture and Natural Resources pursuant to s. 227.018, Stats. There were no comments or recommendations for modification.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.