



CR 84-230

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

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Revisor of Statutes
Bureau

STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy 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-70-84 was duly approved and adopted by this Department on February 27, 1985. 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 9th day of April, 1985.


Bruce B. Braun, Deputy Secretary

(SEAL)

5165J

6-1-85

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

.....
IN THE MATTER of creating ch. NR 124 of the .
Wisconsin Administrative Code pertaining to .
septic tank replacement and rehabilitation .
grant program .
.....

FA-70-84

Analysis Prepared by Department of Natural Resources

Grants for private sewage system rehabilitation or replacement are authorized under s. 144.245, Stats. 1983 Wisconsin Act 545 makes a variety of changes to the statute. Proposed Chapter NR 124 establishes rules to implement these changes as they affect applications received by the department on or after July 1, 1984. The backlog of applications received before that date will continue to be governed by the old eligibility requirements and s. NR 128.30. The proposed rule includes definitions, identifies who is eligible, establishes the type of work that is eligible and sets maximum grant amounts for eligible work. The rule also establishes procedures for application by governmental units, for allocating funds, awarding grants, payments, and enforcement.

Private sewage systems grants are awarded to participating governmental units which are responsible for distributing funds to eligible individual property owners. One of the statutory changes establishes an income limit. The proposed rule contains specific criteria to be used by the participating governmental unit in determining what constitutes satisfactory evidence of income of the owner. The rule also establishes maximum state grant amounts for specific kinds of eligible rehabilitation or replacement work. The grant amounts in this rule are designed to approximate the average of previous grants made between the years 1979-82. The overall statutory maximum grant remains at \$3,000.

Under the proposed rule private non-profit corporations may receive funds, however, private sewage systems serving structures owned by the federal, state or local governments are not eligible. Other ineligible activities include private sewage systems installed before a governmental unit adopts the program, before an enforcement order is issued, where public sewer is available, or to replace a privy. Specific limitations also prohibit funding to connect a public sewer, to construct systems with surface discharges, or to fund experimental systems.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 144.245 and 227.014(2)(a), Stats., the State of Wisconsin Natural Resources Board hereby creates rules interpreting s. 144.245, Stats., as follows:

SECTION 1. Chapter NR 124 is created to read:

(Title) Individual Septic Tank Replacement or Rehabilitation Grant Program

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

NR 124.02 APPLICABILITY. (1) This chapter applies to applications received by the department on or after July 1, 1984.

(2) Applications received by the department prior to July 1, 1984 are affected as follows:

(a) The allocation formula under s. 144.245(11), Stats., and s. NR 124.08 applies to grants awarded after July 1, 1984.

(b) Section NR 128.30 applies to applications received by the department prior to July 1, 1984, except that the maximum state share under s. NR 124.05 shall apply to grants awarded after July 1, 1986.

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

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

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

(a) The failure to accept sewage discharges which causes back up of sewage into the structure served by the private sewage system.

(b) The discharge of sewage to the surface of the ground or to a drain tile.

(c) The discharge of sewage to any waters of the state.

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

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

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

(5) "Person" means:

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

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

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

(6) "Principal residence" means a residence which is occupied at least 51% of the year by an individual, family or household.

Note: For the purpose of this chapter, an individual family or household cannot claim more than one "principal residence." Normally, in cases where an individual, family or household occupies more than one residence, the "principal residence" will be the legal domicile for income tax, school or voting purposes and does not include a second home, vacation or recreational residence.

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

(8) "Small commercial establishment" means a commercial establishment or business place with a maximum daily wastewater flow rate of less than 2,100 gallons per day as determined from the design criteria of the state plumbing code.

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

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

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

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

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

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

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

(a) The state;

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

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

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

(e) A federal agency, department or instrumentality;

(f) An Interstate agency.

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

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

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

(a) Site evaluation and soil testing.

Grant Amount
\$150

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

<u>Minimum Gallons Required</u>	<u>Grant Amount</u>
750	\$ 325
975	350
1,200	400
1,425	450
1,650	500
1,875	550
2,100 or more	600

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

<u>Number of Bedrooms</u>	<u>Grant Amount</u>
1 or 2	\$ 700
3 or 4	750
5 or more	800

(d) Installation of a soil absorption area for a conventional or in-ground pressure system.

		Grant Amount by Number of Bedrooms					
Class	Percolation Rate Minutes for Water to Fall One Inch						For Each
		1	2	3	4	5	Additional Bedroom
1	0 to less than 10	\$ 300	\$ 475	\$ 650	\$ 825	\$ 925	\$ 100
2	10 to less than 30	450	700	950	1,150	1,325	175
3	30 to less than 45	475	725	1,000	1,200	1,400	200
4	45 to 60	500	750	1,100	1,300	1,475	200

(e) Installation of a soil absorption area for a mound system.

		Grant Amount by Number of Bedrooms				
Type of Design						
	1	2	3	4	5 or more	
High Groundwater	\$ 1,300	\$ 1,500	\$ 1,750	\$ 1,850	\$ 2,150	
Creviced Bedrock	1,500	1,700	1,950	2,050	2,250	
Slowly Permeable Soil	1,700	1,900	2,050	2,150	2,300	

(f) Installation of a holding tank.

Number of Bedrooms	Grant Amount
1, 2, or 3	\$ 1,000
4	1,250
5	1,500
6	1,700
7	1,850
8	2,000
9	2,150
10	2,300
11	2,450
12	2,600
13	2,750
14	2,900

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

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

(b) The maximum state share for private sewage system work done on property owned by a licensed plumber or contractor engaged in the business of installing private sewage systems shall be limited to two-thirds of the grant table amount or \$2,000, whichever is less.

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

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

(b) Except for site evaluation and soil testing under sub. (3)(a), rehabilitation or replacement of a failing private sewage system done before the enforcement order required under s. 144.245(5), Stats., was issued;

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

(d) Connection to a municipal sewage treatment works;

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

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

(g) Installation of an experimental private sewage system which is approved under s. 145.02(3), Stats.

NR 124.06 EVIDENCE OF INCOME. (1) GENERAL. In order to be eligible to receive grant assistance under this chapter, the owner of a failing private sewage system shall submit satisfactory evidence of income to the participating governmental unit as required under s. 144.245(5)(c)3. or (d)3., Stats.

(a) Principal residence. The person who owns a principal residence shall submit a copy of his or her federal income tax return for the taxable year prior to the year of the enforcement order and, if married and filing separately, a copy of his or her spouse's federal income tax return for that year.

(b) Small commercial establishment. The business which owns a small commercial establishment shall submit a copy of the business' federal income tax return for the taxable year prior to the year of the enforcement order.

(2) ALTERNATE EVIDENCE OF INCOME. A participating governmental unit may disregard the evidence of income under sub. (1), and consider the following criteria as satisfactory evidence of income in the year the enforcement order was issued.

(a) A copy of the owner's federal 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 federal income tax return for that year; or

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

(c) Proof of tax exempt status as a private nonprofit corporation; or

(d) An affidavit from the owner stating that he or she was not required to file a return in the year prior to the year of the enforcement order because of insufficient taxable income.

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

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

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

(3) Applications must be received by the department no later than June 30, for consideration in the next fiscal year.

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

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

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

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

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

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

5. A resolution which establishes a system for the equitable distribution of grant funds received among the owners of eligible private sewage systems in the governmental unit. This system shall be based on eligibility criteria established under s. 144.245(5), Stats., and shall provide that eligible owners of private sewage systems who are denied grants in one fiscal year receive first priority in the next fiscal year.

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

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

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

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

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

5. A central record keeping system.

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

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

(d) Other information as requested by the department.

NR 124.08 ALLOCATION OF FUNDS AND GRANT AWARDS. (1) GENERAL. At the beginning of each fiscal year the department shall allocate funds available for grants to each participating governmental unit according to the number of property owners listed in its application and certified as eligible by that governmental unit.

(2) PRORATION FACTOR. The department shall calculate a proration factor for determining allocations in each fiscal year. The proration factor shall be equal to the total amount of funds available for grants under this chapter divided by the total number of property owners certified as eligible by all participating governmental units.

Example: If \$2,500,000 is available for grants in a fiscal year, and the total number of eligible property owners is 1,700, the proration factor for that fiscal year is equal to:

$$\frac{\$2,500,000}{1,700} = \underline{\$1,470.}$$

(3) AMOUNT OF ALLOCATION. The allocation for each participating governmental unit shall be equal to the proration factor for that fiscal year times the number of property owners certified as eligible by that participating governmental unit in its application.

Example: If the proration factor is 1,470, the allocation for a county which has 70 eligible property owners is equal to: $\$1,470 \times 70 = \underline{\$102,900}$.

(4) GRANT AWARDS AND AMENDMENTS. The department may award grants to a participating governmental unit up to the amount allocated under sub. (3). If the allocation under sub. (3) is larger than the total maximum state share requested in its application, the participating governmental unit may amend its application during the fiscal year to include additional eligible property owners. Requests for amendments shall be received by the department at least 30 days prior to the end of the fiscal year.

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

the current or in a following fiscal year. For each ineligible owner the amount of funds withheld from the allocation shall be equal to the proration factor for each year the ineligible owner was listed in the governmental units application.

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

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

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

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

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

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

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

(6) The department may authorize the withholding of a grant payment where it determines in writing that a participating governmental unit has failed to comply with project objectives, grant award conditions, or reporting requirements. Such withholding shall be limited to only that amount necessary to assure compliance.

(7) The department shall withhold payment to the extent of any indebtedness of the participating governmental unit to the state of Wisconsin, unless it determines that collection of the indebtedness will impair accomplishment of the project objectives and that continuation of the project is in the best interest of the state of Wisconsin.

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

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

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

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

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

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

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

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

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

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

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

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on: February 27, 1985

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

Dated at Madison, Wisconsin

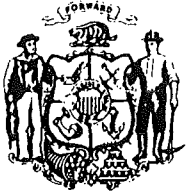
April 9, 1985

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besaday Secretary

(SEAL)

4759T



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

April 10, 1985

IN REPLY REFER TO: 1020

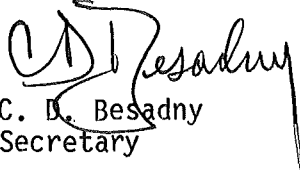
Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FA-70-84. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Energy and Environmental Resources pursuant to s. 227.018, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

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

Sincerely,


C. D. Besadny
Secretary

Enc.
5165J