

State of Wisconsin

CR 85-193

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS

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APR 17 1986
L. O. Stan
Revisor of Statutes
Bureau

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. WG-52-85 was duly approved and adopted by this Department on February 27, 1986. 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 16th day of April, 1986.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

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CR 85-193

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING, REPEALING
AND RECREATING AND CREATING RULES

.....
IN THE MATTER of repealing .
s. NR 124.02(2)(intro.); renumbering .
ss. NR 124.02(2)(b), 124.03(2)(d), 124.03(4).
to (9) and 124.08(5); renumbering and .
amending ss. NR 124.02(2)(a), 124.03(2)(a), .
124.03(2)(b) and 124.03(2)(c); amending .
ss. NR 124.02(1), 124.03(3), 124.03(7), .
124.06(1)(intro.), 124.06(2)(intro.)(a), (b).
and (d) and 124.07(3); repealing and .
recreating s. NR 124.06(1)(a) and (b); and .
creating s. NR 124.02(3), 124.03(2)(c), .
124.03(4), 124.035, 124.06(1)(c), 124.07(1m).
and 124.08(1) and (2) of the Wisconsin .
Administrative Code pertaining to a .
financial assistance program to replace or .
rehabilitate failing private sewage systems .
under enforcement orders. .
.....

WG-52-85

Analysis Prepared by Department of Natural Resources

Grants for private sewage system replacement or rehabilitation are authorized under s. 144.245, Stats. The budget bill, 1985 Wisconsin Act 29, makes a variety of changes to the statute. The proposed rule incorporates statutory changes as they affect grant applications received by the Department on or after July 1, 1985.

Private sewage system grants are awarded to governmental units, usually counties, which are responsible for distributing funds to eligible individual applicants. The proposed rule revises applicability, definitions, and application requirements for both individuals and governmental units. Revised procedures for allocating funds to governmental units and prorating grants to individual applicants are incorporated by reference to the statute.

Sections 1 through 5 relate to the applicability of NR 124 and previous statutory and code requirements. The Department is required to allocate funds to governmental units under current statute regardless of when an application was received by the Department. However, individual applicants fall under one of three different combinations of statutory eligibility requirements depending on the date on which the application was received by the Department.

Sections 6 through 10 reorder the criteria used to define a failing private sewage system to correspond with statute. An additional cause of failure is added-the discharge of sewage into zones of bedrock. Other definitions are revised in sections 11 through 14. American Indian tribes or bands are included as governmental units and may submit applications to the Department for lands under their jurisdiction. The definition of a principal residence is revised to require occupancy by the owner.

Section 15 establishes three categories of failing private sewage systems to reflect the degree of environmental harm caused by the failure. Category 1 failing systems have priority for funds. Category 3 systems, those in which failure is evident only through back up into the structure served, are no longer eligible for funding.

Sections 16 through 21 change application requirements. Evidence of income is now based on Wisconsin income tax information instead of the owners federal return. Persons who did not file a Wisconsin Income tax return in the year prior to the enforcement order are required to provide proof of residency to the governmental unit. The application deadline for governmental units is changed from June 30th to May 31st, in order to receive an allocation in the following fiscal year.

Sections 22 and 23 incorporate statutory provisions relating to the allocation of grants to governmental units. The allocation is now based on the amount of funding requested rather than the number of eligible applicants.

If funds are not sufficient to fully fund all applications the Department is required to prorate grants according to the category of failing private sewage system. Applications for category 1 systems must be funded before any category 2 applications are funded. If funds are not sufficient to fully fund all category 1 applications, category 1 applications receive a prorated grant and Category 2 applications receive nothing. Applicants who receive a prorated payment or whose application is denied due to a shortage of funds in a fiscal year are not eligible for additional funds in a later fiscal year.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 144.245 and 227.014, Stats., the State of Wisconsin Natural Resources Board hereby repeals, renumbers, renumbers and amends, amends, repeals and recreates and creates rules interpreting s. 144.245, Stats., as follows:

NR 124

SECTION 1. NR 124.02(1) is amended to read:

NR 124.02(1) This chapter applies to applications received by the department on or after July 1, ~~1984~~ 1985.

SECTION 2. NR 124.02(2)(intro.) is repealed.

SECTION 3. NR 124.02(2)(a) is renumbered NR 124.02(4) and amended to read:

NR 124.02(4) The allocation ~~formula~~ and proration procedures under s. 144.245(11) and (11m), Stats., and s. NR 128.08 ~~applies~~ apply to grants awarded after July 1, 1984 1985.

SECTION 4. NR 124.02(2)(b) is renumbered NR 124.02(2).

SECTION 5. NR 124.02(3) is created to read:

NR 124.02(3) Section 144.245, 1983-84, Stats., except subs.(9)(g) and (11)(b) and (c) and ch. NR 124 as it existed on December 1, 1985 apply to applications received by the department between July 1, 1984 and June 30, 1985.

SECTION 6. NR 124.03(2)(a) is renumbered NR 124.03(2)(e) and amended to read:

NR 124.03(2)(e) The failure to accept sewage discharges ~~which-causes~~ and backup of sewage into the structure served by the private sewage system.

SECTION 7. NR 124.03(2)(b) is renumbered NR 124.03(2)(d) and amended to read:

NR 124.03(2)(d) The discharge of sewage to the surface of the ground ~~or~~ to-a-drain-tile.

SECTION 8. NR 124.03(2)(c) is renumbered NR 124.03(2)(a) and amended to read:

NR 124.03(2)(a) The discharge of sewage ~~to any waters of the state~~ into surface water or groundwater.

SECTION 9. NR 124.03(2)(c) is created to read:

NR 124.03(2)(c) The discharge of sewage to a drain tile or into zones of bedrock.

SECTION 10. NR 124.03(2)(d) is renumbered NR 124.03(2)(b).

SECTION 11. NR 124.03(3) is amended to read:

NR 124.03(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. "Governmental unit" also includes a federally recognized American Indian tribe or band.

SECTION 12. NR 124.03(4) to (9) are renumbered NR 124.03(5) to (10).

SECTION 13. NR 124.03(4) is created to read:

NR 128.03(4) "Indian lands" means lands owned by the United States and held for the use or benefit of Indian tribes or bands or individual Indians,

and lands within the boundaries of a federally recognized reservation that are owned by Indian tribes or bands or individual Indians.

SECTION 14. NR 124.03(7) is amended to read:

NR 128.03(7) "Principal residence" means a residence which is occupied at least 51% of the year by ~~an individual, family or household~~ the owner.

NOTE: For the purpose of this chapter, an owner cannot claim more than one principal residence. Normally, the principal residence will be the owner's legal domicile for income tax or voting purposes and does not include a second home, vacation or recreational residence.

SECTION 15. NR 124.035 is created to read:

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

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

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

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

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

SECTION 16. NR 124.06(1)(intro.) is amended to read:

NR 124.06 INDIVIDUAL APPLICATION. (1) CONTENTS. In order to be eligible to receive grant assistance under this chapter, the owner of a failing private sewage system shall submit ~~satisfactory-evidence-of-income~~ an application to the participating governmental unit ~~as required under s. 144.245(5)(e)3. or (d)3., Stats~~ in which the failing private sewage system is located. The application for individuals shall be made on forms provided by the department and shall include:

SECTION 17. NR 124.06(1)(a) and (b) are repealed and recreated to read:

NR 124.06(1)(a) Evidence of annual family or business income as required under s. 144.245(5)(c)2. and 3. or (d)2. and 3., Stats., or alternate evidence of income under sub. (2).

(b) Sanitary permit number and date of issuance.

SECTION 18. NR 124.06(1)(c) is created to read:

NR 124.06(1)(c) Other information as requested by the department or participating governmental unit.

SECTION 19. NR 124.06(2)(intro.)(a), (b) and (d) are amended to read:

NR 124.06(2) ALTERNATE EVIDENCE OF INCOME. A participating governmental unit may disregard the evidence of income under sub. (1)(a) and consider the following criteria as satisfactory evidence of income ~~in the year the enforcement order was issued.~~

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

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

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

who owns the principle 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 governmental unit shall require additional evidence as necessary to prove Wisconsin residency.

SECTION 20. NR 124.07(1m) is created to read:

NR 124.07(1m) An American Indian tribe or band may submit an application for participation for any Indian lands under its jurisdiction.

SECTION 21. NR 124.07(3) is amended to read:

NR 124.07(3) Applications ~~must~~ shall be received by the department no later than ~~June-30~~ May 31 for consideration in the next following fiscal year.

SECTION 22. NR 124.08(1) and (2) are created to read:

NR 124.08 ALLOCATION OF FUNDS AND GRANT AWARDS. (1) GENERAL. The department shall allocate funds available for grants to participating governmental units as provided in s. 144.245(11), Stats.

(2) PRORATION. (a) If available funds are not sufficient to fully fund all applications, the department shall prorate available funds under s. 144.245(1m), Stats. A prorated payment shall be deemed full payment of the grant.

(b) A grant application denied under s. 144.245(1m)(c) is not eligible for funds in a later fiscal year.

SECTION 23. NR 124.08(5) is renumbered NR 128.08(3).

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 27, 1986.

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

Dated at Madison, Wisconsin

April 16, 1986

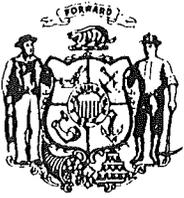
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By

Carroll D. Besadny

Carroll D. Besadny, Secretary

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State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

April 16, 1986

IN REPLY REFER TO: 1020

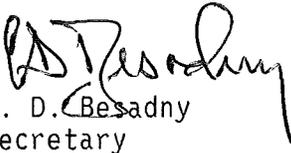
Mr. Orlan L. Prestegard
Revisor of Statutes
Suite 904
30 W. Mifflin Street

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WG-52-85. 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.

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