



CR 96-134

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
Madison, Wisconsin 53707
TELEFAX NO. 608-267-3579
TDD NO. 608-267-6897

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. CA-41-90 was duly approved and adopted by this Department on October 25, 1990. 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 the Natural Resources Building in the City of Madison, this 5th day of December, 1990

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

RECEIVED

DEC 7 1990
9:05 am
Revisor of Statutes
Bureau

3-1-91

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

RECEIVED

DEC 7 1990

Revisor of Statutes
Bureau

.
. IN THE MATTER of repealing ss. NR 123 subch. I .
. (title), 123.03 (8) and (23), 123.05 (2) (b), .
. 123.06 (2), 123.09 (3), 123 subch. II (title) .
. and 123 subch. III; amending ss. NR 123.01 (1), .
. 123.02, 123.05 (1) (a), (b) & (c), 123.06 (1) .
. (c), 123.09 (intro), 123.21 (1) (b), 123.22 (2) .
. (c) 2, 123.23 (3) (a), 123.24 (1) (a) & (b) and .
. 123.25 (1) (f); and creating ss. NR 123.20 (1) .
. (c), 123.21 (1) (e), 123.21 (2) (k) & (l), .
. 123.21 (3) (c) 16, 123.22 (2) (g) and 123.23 (3) .
. (l) of the Wisconsin Administrative Code .
. pertaining to the well compensation grant program .
.

CA-41-90

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.027 and 227.11(2)(a), Stats.
Statutes interpreted: s. 144.027, Stats.

This rule amends ch. NR 123 incorporate statutory changes made to s. 144.027, Stats., and the repeal of s. 144.028, Stats.

1989 Wisconsin Act 31 amended s. 144.027, Stats., to establish an annual family income limitation and to reduce the level of cost sharing from 80% to 60% of eligible cost for well compensation grants. The law also repealed s. 144.028, Stats., which authorized well compensation grants to municipalities.

This rule establishes application criteria to document the income eligibility of landowners or lessees of property on which a contaminated well is located:

- As required by statute, the landowner or lessee must provide a copy of his or her Wisconsin income tax return for the year prior to the year in which a claim is made. If married and filing separately in the year prior to the claim, the landowner's or lessee's spouses return must also be provided.
- Persons who are not required to file a Wisconsin income tax return because of low income may substitute an affidavit certifying their gross income in the year prior to the claim and containing a projection of their gross income in the current year.
- Non-residents or part-year residents of Wisconsin may provide a copy of their federal income tax return for the year prior to the claim along with an affidavit containing a projection of their gross income in the current year.

CR 90-134
1

- Persons who exceeded the program income limitation in the year prior to claim, but suffered a loss of income in the current year, may provide a copy of their prior year Wisconsin or federal income tax return or returns along with an affidavit stating the reason for and the amount of the reduction of income in the current year.

This rule also repeals NR 123 subch. III, obsolete definitions and cross references relating to well compensation grants made to municipalities under s. 144.028, Stats. Although municipalities can no longer receive grants, individual landowners or lessees may still apply for a grant to cover their costs of connecting a residence to a municipal or public water supply. This rule establishes eligible cost criteria for individuals which are similar to the criteria formerly referenced under s. NR 123.41 (1).

In addition to the changes required by the budget, this rule:

- Establishes an eligible cost amount of \$1,500 for hydrofracturing,
- Enables the department to approve extensions to the one year time limit to complete the replacement water supply and request payment of the grant, and
- Requires department approval of changes in well and pump specifications.

SECTION 1. NR 123 subch. I (title) is repealed.

SECTION 2. NR 123.01 (1) is amended to read:

NR 123.01(1) PURPOSE. The purpose of this chapter is to establish rules, under ~~ss. s.~~ s. 144.027 ~~and 144.028~~, Stats., for the implementation and administration of a financial assistance program for the replacement of contaminated private water supplies.

SECTION 3. NR 123.02 is amended to read:

NR 123.02 APPLICABILITY. This ~~subchapter~~ chapter applies to contaminated private water supplies compensable under ~~ss. s.~~ s. 144.027 ~~and 144.028~~, Stats. ~~Subchapter 2 applies to awards granted under s. 144.027, Stats. Subchapter 3 applies to awards granted under s. 144.028, Stats. Well compensation grants awarded prior to August 9, 1989 are governed by ss. 144.027 and 144.028, Stats., and this chapter as they existed on August 8,~~

1989. This chapter does not apply to contamination which is compensable under subch. II of ch. 107 or s. 144.855 (4), Stats.

SECTION 4. NR 123.03 (8) and (23) are repealed.

SECTION 5. NR 123.05 (1) (a), (b) and (c) are amended to read:

NR 123.05 (1) (a) All eligibility requirements are met in s. NR 123.20 ~~or 123.40~~;

(b) All forms required in s. NR 123.22 ~~or 123.43~~ are submitted; and

(c) All information necessary for departmental evaluation and acceptance of the least costly feasible replacement water supply or the equipment to be used for treating the contaminated private water supply is provided. If the department does not approve the claimant's chosen solution, the reasons shall be communicated in writing to the claimant explaining why the solution is not acceptable. If the claim has been denied for reasons other than those specified in s. NR 123.06, the department shall assist the claimant in revising the claim to meet, if possible, the intent of s. 144.027 ~~or 144.028~~, Stats.

SECTION 6. NR 123.05 (2) (b) is repealed.

SECTION 7. NR 123.06 (1) (c) is amended to read:

NR 123.06 (1) (c) The claim is for reimbursement of costs incurred before the date of issuance of an award or proceed notice except costs allowed under ss. NR 123.21 (1) (d) 3, and 123.27, ~~and 123.41 (1) (g)~~.

SECTION 8. NR 123.06 (2) is repealed.

SECTION 9. NR 123.09 (intro) is amended to read:

NR 123.09 ENFORCEMENT. The following sanctions may be imposed for noncompliance with ~~ss.~~ s. 144.027 ~~and 144.028~~, Stats., the provisions of this chapter or any award made under this chapter:

SECTION 10. NR 123.09 (3) and NR 123 subch. II (title) are repealed.

SECTION 11. NR 123.20 (1) (c) is created to read:

NR 123.20 (1) (c) 1. In order to be eligible for an award under this chapter, the annual family income of the landowner or lessee of property on which a contaminated private water supply is located may not exceed \$32,000 or 125% of the county median income for the county in which the residence is located, whichever is greater.

2. Except as provided under subd. 4, annual family income shall be based upon the adjusted gross income of the landowner or lessee and landowner's or lessee's spouse, if any, as computed for Wisconsin income tax purposes for the taxable year prior to the year in which the claim is made.

3. The department shall determine county median family income based on statistics provided by the federal department of housing and urban development for the taxable year prior to the year in which the claim is made.

4. The claimant shall submit a copy of the landowner's or lessee's joint Wisconsin income tax return for the year prior to the year in which the claim is made; or, if filing separately, the landowner's or lessee's separate Wisconsin income tax return and the separate Wisconsin income tax return of his or her spouse, if any, for the year prior to the year in which the claim is made. The department may disregard the Wisconsin income tax return for the year prior to the year in which the claim is made and may determine annual family income based on satisfactory evidence of income in the current year as provided under s. NR 123.22 (2) (g) 2 through 4.

SECTION 12. NR 123.21 (1) (a), (b) and (c) are amended to read:

NR 123.21 (1) (a) Obtaining an alternate water supply for a maximum period of one year after the date of issuance of a proceed notice or an award

as provided in s. NR 123.23, or until the replacement water supply or equipment used for treating the contaminated private water supply has been installed and completed, whichever is earlier. If it is determined by the secretary of the department that the contamination in the private water supply can be expected to be remedied in 2 years or less, an award or proceed notice may be issued for an alternate water supply for up to a 2 year period or until the well is no longer contaminated, whichever is earlier. At the end of this period, the department shall review water quality data for this water supply to determine if contamination has been remedied. If the well is still contaminated, the department shall request the claimant to submit any information necessary to complete his or her claim application. Once the claim is complete, the application review process will resume;.

(b) A replacement water supply which includes new or reconstructed wells, providing for a ~~public~~ municipal water supply or providing a connection to an existing public or private water supply. ~~If the replacement water supply is to be providing for a public water supply to replace the contaminated private water supply, the eligible costs are listed in s. NR 123.41;~~

(c) Equipment used for treating the contaminated private water supply only if it is not feasible to remedy the contamination with a replacment water supply; ~~and.~~

SECTION 13. NR 123.21 (1) (e), (2) (k), (2) (l) and (3) (c) 16 are created to read:

NR 123.21 (1) (e) If the replacement water supply is to be provided by connection to a municipal water supply, the eligible costs include the costs listed under par. (d) 2, 3 and 5, and the following additional items:

1. The claimant's costs of obtaining an alternate water supply for a maximum period of 2 years after the date of issuance of a proceed notice or an award as provided in s. NR 123.23, or until the municipal water supply has been installed and completed, whichever is earlier.

2. The claimant's costs assessed by the municipality for the municipality's direct capital costs of providing a municipal water supply. These costs may include the direct capital costs for the installation of surface water inlet piping, treatment and appurtenances, new wells, pumps, pump controls, pumphouses, water storage facilities, distribution mains, water meters, auxiliary power, valves and other appurtenances, test wells and continuous chlorination. Eligible costs are limited to the minimum capacity necessary to provide a municipal water supply to the dwelling unit with a contaminated private water supply. The minimum capacity does not include capacity required for fire protection, residential and industrial growth, or dwelling units not having a contaminated private water supply.

3. The cost of installing the lateral connection from the distribution main to the dwelling unit with a contaminated private water supply.

4. The cost of connecting the lateral connection to the internal plumbing of the dwelling unit with a contaminated private water supply.

5. The cost of a water meter installed at the dwelling unit with a contaminated private water supply.

(2) (k) Any land acquisitions, municipal administrative costs, laboratory facilities, fire protection and municipal water treatment facilities other than for continuous chlorination, or treatment of surface water supplies.

(2) (1) The claimant's share of any assessment for distribution mains that are not necessary to provide a municipal water supply to dwelling units eligible under s. NR 123.20.

(3) (c) 16. Hydrofracturing, when necessary to increase the yield of water from the replacement private water supply = \$1,500 total cost.

SECTION 14. NR 123.22 (2) (c) 2. is amended to read:

NR 123.22 (2) (c) 2. The analysis shall include a detailed description of each replacement water supply alternative or an explanation of why any of the replacement water supply alternatives are considered not feasible. The claimant shall propose the replacement water supply. ~~If the proposed replacement water supply is to be providing for a public water supply to replace the contaminated private water supply, the department may request the owner or operator of the public water supply to submit information requested in s. NR 123.43 (1) (e).~~ If it is not feasible to remedy the problem of the contaminated private water supply with a replacement water supply, then a detailed description of the equipment to be used for treating the contaminated private water supply shall be supplied. The department shall approve the least costly feasible replacement water supply which will remedy the contamination.

SECTION 15. NR 123.22 (2) (g) is created to read:

NR 123.22 (2) (g) Evidence of annual family income of the landowner or lessee of property on which the contaminated private water supply is located. Evidence of annual family income shall consist of one of the following:

1. A copy of the landowner's or lessee's joint Wisconsin income tax return for the year prior to the year in which the claim is made; or, if filing separately, the landowner's or lessee's separate Wisconsin income tax

return and the separate Wisconsin income tax return of his or her spouse, if any, for the year prior to the year in which the claim is made.

2. For low income residents of Wisconsin, an affidavit by the landowner or lessee stating that he or she did not have sufficient taxable income in the prior year to be required to file a Wisconsin income tax return. The affidavit shall include the landowner's or lessee's estimate of projected gross income in the current year.

3. For part-year residents or non-residents of Wisconsin, a copy of the landowner's or lessee's federal income tax return for the taxable year prior to the year in which the claim is made, the separate federal income tax return for the prior year of his or her spouse, if any, and an affidavit by the landowner or lessee including the landowner's or lessee's estimate of projected gross income in the current year.

4. For landowners or lessees with a reduction of income in the current year, an affidavit by the landowner or lessee stating the reason that a reduction in adjusted gross income is expected in the current year, the estimated amount of the reduction in adjusted gross income, and a complete listing of income subject to taxation received since January 1 of the current year. In addition to this affidavit, the landowner or lessee shall provide a copy of the documentation required under subd. 1 or 3.

SECTION 16. NR 123.23 (3) (a) is amended to read:

NR 123.23 (3) (a) That all eligible work be completed in accordance with the award and a payment request, which includes items specified in s. NR 123.25 (1), be submitted within one year of the date of issuance of the award or within a project period extension approved by the department. This

condition does not apply to cases where the secretary of the department has made a determination as provided in s. NR 123.21 (1) (a).

SECTION 17. NR 123.23 (3) (1) is created to read:

NR 123.23 (3) (1) That no changes from the well location, construction specifications or pump installation specifications of the grant award shall be made without department approval.

SECTION 18. NR 123.24 (1) (a) and (b) are amended to read:

NR 123.24 (1) (a) The award shall pay up to ~~80%~~ 60% of the eligible costs.

(b) The award may not provide for payment of any portion of eligible costs in excess of \$12,000. Therefore, the maximum payment that can be made is ~~\$9,600~~ \$7,200.

SECTION 19. NR 123.25 (1) (f) is amended to read:

NR 123.25 (1) (f) Information identifying the amount and source of any funds received from other parties to defray the costs of installing the replacement water supply or the equipment used for treating the contaminated private water supply. The department may reduce the payment if other funds received exceed ~~20%~~ 40% of the eligible costs specified in the award.

SECTION 20. NR 123 subch. III is repealed.

The foregoing rule was approved and adopted by the State of Wisconsin
Natural Resources Board on October 25, 1990.

This rule shall take effect on the first day of the month following
publication in the Wisconsin administrative register, as provided in s.
227.22(2)(intro), Stats.

Dated at Madison, Wisconsin December 4, 1990.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)
ca9123.tak

RECEIVED

DEC 7 1990

Revisor of Statutes
Bureau



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary

Box 7921

Madison, Wisconsin 53707

TELEFAX NO. 608-267-3579

TDD NO. 608-267-6897

December 4, 1990

Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

RECEIVED

DEC 7 1990

Revisor of Statutes
Bureau

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. CA-41-90. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

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

Sincerely,

A handwritten signature in cursive script that reads "C. D. Besadny".

C. D. Besadny
Secretary

Enc.