

CR 90-224



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES)

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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. CA-65-90 was duly approved and adopted by this Department on February 28, 1991. 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 here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 9th
day of May, 1991.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

7-1-9

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

.
. IN THE MATTER of repealing NR 124.02(3) and .
. (4), NR 124.05(5)(g) and NR 124.06(2)(c); .
. renumbering NR 124.06(1)(c) and (2); amending .
. NR 124 (title), NR 124.01, NR 124.02(1), .
. NR 124.03(9) and NR 124.05(3)(intro), (4)(b) .
. and (5)(b); repealing and recreating .
. NR 124.02(2) and NR 124.05(3)(a) to (f) and . CA-65-90
. creating NR 124.03(1m), NR 124.04(4) and .
. NR 124.06(1)(c) and (2) of the Wisconsin .
. Administrative Code pertaining to the .
. private sewage system replacement or .
. rehabilitation grant program .
.

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.245 and 227.11(2)(a), Stats.
Statutes interpreted: s. 144.245, Stats.

Pursuant to s. 144.245, Stats., counties and Indian tribes may apply to the Department of Natural Resources for grants to rehabilitate or replace failing private sewage systems. These funds are disbursed to eligible homeowners and small businesses who have submitted applications to the participating governmental units.

The proposed rule incorporates statutory changes enacted in 1989 Wisconsin Act 31 and in 1989 Wisconsin Act 326. The proposed rule also makes changes to clarify eligibility when a structure is replaced and application requirements when property is bought or sold.

The proposed rule revision will apply to applications received by the Department on or after June 1, 1990. Applications received prior to that date are governed by NR 124 as it existed on May 31, 1990.

The proposed rule revision does the following:

- Incorporates the statutory definition of 'determination of failure'. This enables grant eligibility to be based on a field inspection by a licensed state or county employee as well as on a written enforcement order.

- Amends the definition of 'small commercial establishment' to conform to present statute. The maximum daily wastewater flow rate was raised from less than 2,100 gallons per day to less than 5,000 gallons per day.

- Establishes criteria under which the owner of a grant eligible principal residence or small commercial establishment may replace the structure and still be eligible for a grant to replace the failing private sewage system.
- Raises the grant ceiling from \$3,000 to \$7,000 to conform to present statute.
- Revises the grant funding tables to account for increased private sewage system replacement costs as required under s. 144.245 (7) (c), Stats. The revised tables are based on estimated cost increases of 25% to 30% since the year 1982.
- Raises the grant ceiling from \$2,000 to \$4,667 for systems installed on property owned by persons engaged in the business of installing private sewage systems. The proposed amount is equal to two-thirds of \$7,000.
- Restores grant eligibility for experimental private sewage systems.
- Establishes application requirements for applicants who buy or sell a property after the determination of failure is made. The applicant is required to provide documentation showing the date of sale and documentation showing that the applicant incurred the cost of replacing the failing private sewage system.
- Establishes application requirements to document the income eligibility of small commercial establishments as required under s. 144.245 (5) (d) 2. and 4., Stats.

SECTION 1. NR 124 (title) is amended to read:

~~INDIVIDUAL SEPTIC TANK~~ PRIVATE SEWAGE SYSTEM REPLACEMENT OR
REHABILITATION GRANT PROGRAM

SECTION 2. NR 124.01 is amended to read:

NR 124.01 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.~~

SECTION 3. NR 124.02 (1) is amended to read:

NR 124.02 APPLICABILITY. (1) This chapter applies to applications received by the department on or after ~~July 1, 1985~~ June 1, 1990.

SECTION 4. NR 124.02 (2) is repealed and recreated to read:

NR 124.02 (2) Applications received by the department prior to June 1, 1990 are governed by this chapter as it existed on May 31, 1990.

SECTION 5. NR 124.02 (3) and (4) are repealed.

SECTION 6. NR 124.03 (1m) is created to read:

NR 124.03 (1m) "Determination of failure" has the meaning found in s. 144.245 (1) (a), Stats.

SECTION 7. NR 124.03 (9) is amended to read:

NR 124.03 (9) "Small commercial establishment" means a commercial establishment or business place with a maximum daily wastewater flow rate of less than ~~2,100~~ 5,000 gallons per day as determined from the design criteria of the state plumbing code. Small commercial establishment includes a farm, including a residence on a farm, if the residence is occupied by a person who is an operator of the farm and if the maximum daily wastewater flow rate of the farm and the residence on the farm is less than ~~2,100~~ 5,000 gallons per day as determined from the design criteria of the state plumbing code.

SECTION 8. NR 124.04 (4) is created to read:

NR 124.04 (4) REPLACEMENT OF STRUCTURES. (a) The owner of a principal residence or small commercial establishment who meets all of the requirements

of s. 144.245, Stats., and this chapter may replace the structure served by the failing private sewage system and be eligible for a grant to replace the failing private sewage system if the following additional conditions are met:

1. The original principal residence or small commercial establishment served by the failing private sewage system was constructed prior to and occupied on July 1, 1978.

2. Except as provided under par. (b), the original principal residence or small commercial establishment was owned and occupied by the applicant when the determination of failure was made.

3. The determination of failure was made prior to the start of construction of the replacement principal residence or small commercial establishment.

4. The replacement principal residence or small commercial establishment was, or will be, constructed in a location that would be accessible to the failing private sewage system, as determined by the participating governmental unit.

(b) If the original principal residence or small commercial establishment was rendered uninhabitable because of accidental fire or storm damage, the determination of failure may be made up to 6 months after the original principal residence or small commercial establishment was last occupied.

(c) The maximum state share shall be limited to the minimum private sewage system capacity that would have been necessary to serve the original structure. Any increase in capacity required to serve a larger replacement structure is not grant eligible.

SECTION 9. NR 124.05 (3) (intro) is amended to read:

NR 124.05 (3) (intro) The following tables shall be used to determine the maximum state grant share for eligible work involved in the rehabilitation or replacement of a category 1 or 2 failing 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~~ \$7,000, whichever is less.

SECTION 10. NR 124.05 (3) (a) to (f) are repealed and recreated to read:

NR 124.05(3)(a) Site evaluation and soil testing.

Grant Amount
\$200

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

Minimum Gallons Required	Grant Amount
750	\$400
975	450
1,200	500
1,425	575
1,650	625
1,875	700
2,100 or more	750

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

Number of Bedrooms	Grant Amount
1 or 2	\$ 875
3 or 4	950
5 or more	1,000

(d) Installation of a non-pressurized or in-ground pressure soil absorption area.

1. The following table shall be used for systems sized according to soil morphological conditions specified s. ILHR 83.09 (4m).

[Drafter's Note: s. ILHR 83.09 is being revised by Clearinghouse Rule No. 90-141.]

Grant Amount by Number of Bedrooms

Design Loading Rate in Gallons per Square Foot per Day.	1	2	3	4	5	For Each Additional Bedroom
0.7 or more	\$ 375	\$ 600	\$ 825	\$1,025	\$1,150	\$125
0.6	575	875	1,200	1,450	1,650	200
0.5	600	900	1,250	1,500	1,750	250
0.4 or less	625	950	1,375	1,625	1,850	250

2. The following table shall be used for systems sized according to percolation tests under s. ILHR 83.09 (5).

[Drafter's Note: s. ILHR 83.09 is being revised by Clearinghouse Rule No. 90-141.]

Grant Amount by Number of Bedrooms

Percolation Rate in Minutes for Water to Fall One Inch.	1	2	3	4	5	For Each Additional Bedroom
0 to less than 10	\$ 375	\$ 600	\$ 825	\$1,025	\$1,150	\$125
10 to less than 30	575	875	1,200	1,450	1,650	200
30 to less than 45	600	900	1,250	1,500	1,750	250
45 to 60	625	950	1,375	1,625	1,850	250

(e) Installation of an at-grade or mound soil absorption area.

Type of Design	Grant Amount by Number of Bedrooms					For Each Additional Bedroom
	1	2	3	4	5	
At-Grade	\$ 700	\$ 900	\$1,200	\$1,450	\$1,650	\$200
High Groundwater Mound	1,625	1,875	2,200	2,400	2,600	200
High Bedrock Mound	1,875	2,125	2,450	2,600	2,825	225
Slowly Permeable Soil Mound	2,125	2,375	2,575	2,700	2,950	250
Mound for sites with less than 24 inches of suitable soil or greater than 12% slope.	2,300	2,500	2,800	3,100	3,400	300

(f) Installation of a holding tank.

Number of Bedrooms	Grant Amount
1, 2 or 3	\$1,250
4	1,575
5	1,875
6	2,125
7	2,300
8	2,500
For each additional bedroom add:	\$ 175

SECTION 11. NR 124.05 (4) (b) and (5) (b) are amended to read:

NR 124.05(4)(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~~ \$4,667, whichever is less.

(5) (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~~ determination of failure was made;

SECTION 12. NR 124.05 (5) (g) is repealed.

SECTION 13. NR 124.06 (1) (a) is amended 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).~~

1. A person who owns a principal residence shall provide the evidence of income required under s. 144.245 (5) (c) 2. and 3., Stats., or the alternate evidence of income under sub. (3).

2. A business which owns a small commercial establishment shall provide the evidence of income required under sub. (2).

SECTION 14. NR 124.06 (1) (c) is renumbered to (1)(d).

SECTION 15. NR 124.06 (1) (c) is created to read:

NR 124.06 (1)(c) If, after a determination of failure is made, an applicant buys or sells a principal residence or small commercial establishment served by a failing private sewage system, the applicant shall provide the following additional information:

1. A copy of the closing statement or other documentation which shows the date of sale of the property, and;

2. A copy of the sale contract, escrow agreement or other documentation which shows that the applicant has or will incur the cost of replacing the failing private sewage system.

Note: Under s. 144.245 (5) (a) 1. and 2., Stats., the applicant for a grant must, among other things, be the owner of a principal residence or small commercial establishment which is served by a category 1 or 2 failing private sewage system. A person does not meet this condition if he or she did not own the property at the time the private sewage system was failing and subject to a determination of failure. Therefore, the buyer of a property is not eligible if the failing private sewage system was replaced prior to the date of sale. Similarly, the seller of a property is not eligible if the determination of failure was made after the date of sale.

SECTION 16. NR 124.06 (2) (c) is repealed.

SECTION 17. NR 124.06 (2) is renumbered (3).

SECTION 18. NR 124.06 (2) is created to read:

NR 124.06 (2) SMALL COMMERCIAL ESTABLISHMENTS. A business which owns a small commercial establishment shall provide one of the following as evidence of annual gross revenue.

(a) A copy of the business's state and federal income tax return for the tax year prior to the year in which the determination of failure was made or for the tax year in which the determination of failure was made, whichever is required by the governmental unit to which the application is submitted.

(b) If the small commercial establishment is owned by a private nonprofit corporation as defined in s. 181.02 (4), Stats., the nonprofit corporation shall provide a profit and loss statement for the commercial establishment for the tax year prior to the year in which the determination of failure was made or for the tax year in which the determination of failure was made, whichever is required by the governmental unit to which the application is submitted.

Note: Under s. 144.245 (5) (a) 2, Stats., a business must own the small commercial establishment in order to be eligible for a grant. A business which leases a small commercial establishment is not eligible. Therefore, the application and income eligibility requirements must be met by the owner of the property.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 28, 1991.

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 May 3, 1991.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)