

Chapter Comm 87

PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM REPLACEMENT OR REHABILITATION FINANCIAL ASSISTANCE PROGRAM

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Note: Chapter NR 124 as it existed on February 29, 1992 was repealed and a new Chapter ILHR 87 was created effective March 1, 1992. Chapter ILHR 87 was renumbered Chapter Comm 87 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, February, 1997, No. 494. Chapter Comm 87 as it existed on December 31, 1998 was repealed and a new chapter Comm 87 was created effective February 1, 1999.

Comm 87.01 Purpose. The purpose of this chapter is to establish rules under s. 145.245, Stats., for the implementation and administration of a financial assistance program to reimburse eligible property owners a portion of the cost of replacing or rehabilitating failing private onsite wastewater treatment systems (POWTS).

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.02 Applicability. For applications received under the provisions of this chapter, subs. (1) and (2) shall apply. For date of installation of existing systems, sub. (3) shall apply.

(1) This chapter applies to applications received by the department on or after February 1, 2005.

(2) Applications received by the department prior to February 1, 2005 are governed by the rules as they existed on or before January 31, 2005.

(3) This chapter applies to existing failing POWTS installed prior to July 1, 1978.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (1) and (2), cr. (3) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.03 Definitions. The following definitions apply to this chapter.

(1) "Department" means the department of commerce.

(2) "Determination of failure" has the meaning given in s. 145.245 (1) (a), Stats.

Note: Section 145.245 (1) (a), Stats., reads:

"Determination of failure" means any of the following:

1. A determination that a private sewage system is failing, according to the criteria under s. 145.245 (4), Stats., based on an inspection of the private sewage system by an employee of the state or a governmental unit who is certified to inspect private sewage systems by the department.

2. A written enforcement order issued under s. 145.02 (3) (f), 145.20 (2) (f) or 281.19 (2), Stats.

3. A written enforcement order issued under s. 254.59 (1), Stats., by a governmental unit.

(3) "Failing private sewage system" has the meaning given in s. 145.245 (4), Stats.

Note: Section 145.245 (4), Stats., reads:

"The department shall establish criteria for determining if a private sewage system is a failing private sewage system. A failing private sewage system is one which causes or results in any of the following conditions:

(a) The discharge of sewage into surface water or groundwater.

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

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

(d) The discharge of sewage to the surface of the ground.

(e) The failure to accept sewage discharges and back up of sewage into the structure served by the private sewage system.

(4) "Governmental unit" has the meaning as given in s. 145.01 (5), Stats.

Note: Section 145.01 (5), Stats., reads:

"Governmental unit responsible for regulation of private sewage systems" or "governmental unit", unless otherwise qualified, means the county, except that in a county with a population of 500,000 or more these terms mean the city, village or town where the private sewage system is located. "Governmental unit" also includes a federally recognized American Indian tribe or band.

(5) "Owner", for the purposes of this chapter, means the person that owns the structure that is served by a failing POWTS.

(6) "Participating governmental unit" means a governmental unit which applies to the department for financial assistance under this chapter, and which meets the conditions as specified in s. 145.245 (9), Stats.

(7) "Person" means any one of the following:

(a) Any individual including the estate of an individual.

(b) Two or more individuals having a joint or common interest in a principal residence, as defined in s. 145.245 (1) (c), Stats., which uses a POWTS.

Note: Section 145.245 (1) (c), Stats., reads: "Principal residence" means a residence which is occupied at least 51% of the year by the owner.

(c) A nonprofit corporation as defined in s. 181.0103 (17), Stats.

(7m) "POWTS" has the same meaning as s. Comm 81.01 (182) and (194).

Note: Sections Comm 81.01 (182) and (194) read: "(182) "POWTS" means a private onsite wastewater treatment system.

(194) "Private onsite wastewater treatment system" has the meaning given for "private sewage system" under s. 145.01 (12), Stats."

Note: Section 145.01 (12), Stats., reads: "'Private sewage system' means a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. This term also means an alternative sewage system approved by the department 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 than the structure. A private sewage system may be owned by the property owner or by a special purpose district."

(8) "Principal residence" means a residence which is occupied at least 51% of the year by the owner. Principal residence includes a residence owned by a trust or an estate of an individual, if the residence is occupied at least 51% of the year by a person who has an ownership interest as a beneficiary of the trust or estate.

(9) "Project period" means any of the following:

(a) For applications submitted to the department for installations of replacement of private sewage systems, project period means the period of time beginning on February 1 and ending on December 31 of the following year.

(b) For applications submitted to the department for annual costs of monitoring replacement experimental sewage systems, project period means the period beginning on February 1 and ending on December 31 of the 5th year after the date of installation.

(c) For applications for loans as provided in s. 145.245 (12m), Stats., the project period means the period beginning on February 1 and ending on December 31 of the following year after the date of installation.

Note: Records of applications are retained for the current project period only. Any loan applications, therefore, should be made in the current project period.

(10) "Small commercial establishment" has the meaning given in s. 145.245 (1) (e), Stats. 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 residence is less than 5,000 gallons per day as determined by the design criteria of the state plumbing code.

Note: Section 145.245 (1) (e), Stats., defines small commercial establishment as a commercial establishment or a business place with a maximum daily wastewater flow rate of less than 5,000 gallons per day.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; correction in (7) (c) made under s. 13.93 (2m) (b) 7., Register, April, 2000, No. 532; **CR 04-068: am. (5), (7) (b) and (9) (intro.), cr. (7m) and (9)(c) Register January 2005 No. 589, eff. 2-1-05; correction in (7m) made under s. 13.93 (2m) (b) 7., Stats.**

Comm 87.04 Application by governmental units to participate. An application by a governmental unit to participate in this program shall include at least all of the following:

(1) Certified copies of the following approved resolutions of the governing body of the governmental unit as follows:

(a) A resolution designating an authorized representative and authorizing such representative to apply for a grant under s. 145.245, Stats., and this chapter on behalf of the governmental unit. The authorized representative shall be an official or employee of the governmental unit.

(b) A resolution certifying that grants will be used for rehabilitation or replacement of a POWTS for a principal residence or small commercial establishment owned by a person who meets the eligibility requirements of s. 145.245 (5), Stats., that the funds will be used as provided under s. 145.245 (6), Stats., and that the maximum allowable amount of financial assistance will not exceed the amount permitted under s. 145.245 (7), Stats., and Tables 87.30-1 to 87.30-6.

(c) A resolution certifying that grants will be used for replacement or rehabilitation of POWTS which will be properly installed and maintained.

(d) A resolution certifying that financial assistance provided to the governmental unit will be disbursed to eligible owners, as specified in s. Comm 87.30 and s. 145.245, Stats.

(2) Documentation of a regulatory program to insure proper installation and maintenance of all new or replacement POWTS constructed in the area of jurisdiction of the governmental unit. An approvable regulatory program shall include the following:

(a) Adoption of an ordinance that specifically requires compliance with the maintenance program set forth in par. (d). and that specifically grants enforcement authority to the governmental unit.

(b) A system for providing written notice of the maintenance program requirements to each owner applying for a sanitary permit.

(c) An inspection program, that includes at least one inspection during installation of a POWTS.

(d) A maintenance program in effect.

Note: For additional maintenance program requirements, refer to ch. Comm 83.

(e) A central record keeping system, capable of maintaining records for a period of not less than six years from the date of a POWTS installation and capable of providing evidence that the governmental unit is administering the program as specified in this chapter.

(f) Where considered appropriate by the governmental unit, a system of user charges and cost recovery that assures that each recipient of service under this program will pay a proportionate share of the program costs. User charges and cost recovery may

include the cost of the grant application fee and the cost of supervising and maintaining an installation and maintenance program.

(3) Other information as requested by the department.

History: CR 04-068: cr. Register January 2005 No. 589, eff. 2-1-05.

Comm 87.05 Grant application by participating governmental units. **(1)** (a) The participating governmental unit shall review information received from owners and determine eligibility under s. 145.245, Stats., and this chapter, except for applications for monitoring as specified in s. Comm 87.31.

(b) In order to receive an allocation of financial assistance, the participating governmental unit shall prepare and submit an application to the department. The application shall be on forms acceptable to the department.

Note: All forms referenced in this chapter are available at no charge from the Department of Commerce, Safety and Buildings Division, P.O. Box 2658, Madison, WI 53701-2658, telephone 608/266-3151, or at the Safety and Buildings Web site at www.commerce.wi.gov/SB/.

(2) An application from a participating governmental unit for financial assistance to replace or rehabilitate a POWTS shall include all of the following:

(a) A list of owners approved as eligible by the participating governmental unit. The list shall include, at a minimum, the name of each owner and the maximum allowable amount of financial assistance as determined under s. Comm 87.30 or 87.31.

(b) Other information as requested by the department.

(3) Governmental units may request pre-application assistance including technical assistance from the department.

(4) Applications for grants from participating governmental units shall be postmarked no later than January 31 for consideration in the following project period. Participating governmental units may request in writing to the department prior to December 31, a six-month extension to the project period.

History: CR 04-068: cr. Register January 2005 No. 589, eff. 2-1-05.

Comm 87.10 Categories of POWTS. The department and the participating governmental unit shall use the following categories of failing POWTS to determine financial assistance eligibility under s. 145.245 (5), Stats., and s. Comm 87.20, to financial assistance under s. 145.245 (7), Stats., and ss. Comm 87.30 and 87.31:

(1) ELIGIBLE FOR FINANCIAL ASSISTANCE AWARD. As specified in s. 145.245 (5), Stats., only category 1 or category 2 failing POWTS are eligible for assistance under this chapter.

Note: Section 145.245 (5), Stats., defines failure for two categories which are eligible for grant awards—Category 1, failing private sewage system as defined in s. 145.245 (4) (a) to (c), Stats.; Category 2, failing private sewage system as defined in s. 145.245 (4) (d), Stats.

(2) INELIGIBLE FOR FINANCIAL ASSISTANCE AWARD. As specified in s. 145.245 (5), Stats., those systems that fail as a result of back up of sewage into the structure served, are not eligible for assistance under this chapter.

Note: Section 145.245 (5), Stats., defines Category 3, failing private sewage system as defined in s. 145.245 (4) (e), Stats., as ineligible for a grant award.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (intro.), (1) and (2) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.20 Eligibility of owners. **(1) GENERAL.** A person who owns a principal residence served by a category 1 or 2 failing POWTS installed prior to July 1, 1978 or a business which owns a small commercial establishment served by a category 1 or 2 failing POWTS installed prior to July 1, 1978 is eligible for financial assistance under this chapter if the person or business:

(a) Meets the eligibility requirements set forth in s. 145.245, Stats., and this chapter.

Note: Section 145.245 (5) (c) 1., Stats., specifies that in order to be eligible for grant awards under this section, the annual family income of the person who owns the principal residence may not exceed \$45,000. Section 145.245 (5) (d) 1., Stats., specifies that in order to be eligible for grant awards under this section, the annual gross revenue of the business that owns the small commercial establishment may not exceed \$362,500.

(b) Submits an application to the participating governmental unit in which the failing POWTS is located.

(c) Has completed all rehabilitation or replacement work in accordance with the enforcement order and the state plumbing code, chs. Comm 82 to 84. Any variances or petitions to modify specific state plumbing code requirements shall be approved in writing by the department prior to the installation of the system.

(d) Owned the principal residence or small commercial establishment which is served by the category 1 or 2 failing POWTS. A person does not meet this condition if he or she did not own the property at the time the POWTS was failing and subject to a determination of failure. The buyer of the property is not eligible if the failing POWTS was replaced prior to the date of sale. The seller of the property is not eligible if the determination of failure was made after the date of sale.

(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. 181.0103 (17), Stats.

Note: Section 181.0103 (17), Stats., means a nonstock nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(3) INELIGIBLE ENTITIES. Structures owned by any of the following entities are not eligible for financial assistance awards:

(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.

(4) REPLACEMENT AND EXISTING STRUCTURES. (a) For a principal residence or small commercial establishment that meets all of the requirements of s. 145.245, Stats., the maximum allowable financial assistance amount shall be limited to the minimum POWTS capacity that would have been necessary to serve the original structure. Any increase in capacity required to serve a larger replacement structure shall not be eligible.

Note: An example where par. (a) applies would be a POWTS that once served a 3-bedroom structure and the replacement structure is 4 or more bedrooms; the financial assistance would be based on the maximum allowable amount for a POWTS sized for 3-bedrooms.

(b) For a principal residence or small commercial establishment that meets all of the requirements of s. 145.245, Stats., the maximum allowable financial assistance amount shall be limited to the minimum POWTS capacity that would have been necessary to serve the existing structure. Any increase in capacity required to serve the existing structure may be eligible.

Note: An example where par. (b) applies would be a POWTS that once served a 2-bedroom structure and such POWTS was later determined to be acceptable for a 3-bedroom structure. The existing structure served by such POWTS contains 3 bedrooms; the financial assistance would be based on the maximum allowable amount for a POWTS sized for 3-bedrooms.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; correction in (2) made under s. 13.93 (2m) (b) 7., Register, April, 2000, No. 532; **CR 04-068: am. (1) (intro.), (1) (b), (d) and (3) (intro.), r. and recr. (4) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.21 Ineligibility of owners. (1) As specified under s. 145.245 (5m) (b), Stats., the department shall notify a governmental unit if it receives a certification under s. 49.855 (3), Stats., that an individual is delinquent in child support or maintenance payments or owes past support, medical expenses or birth expenses.

(2) The department or a governmental unit shall deny an application under sub. (1) if the department receives a certifica-

tion under s. 49.855 (3), Stats., that the owner or an individual who would directly benefit by the financial assistance is delinquent in child support or maintenance payments or owes past support, medical expenses or birth expenses.

(3) The department or a governmental unit shall deny an application if a financial assistance amount under this chapter has been previously awarded for rehabilitation or replacement work at the same site, except for financial assistance awarded on an annual basis for monitoring of approved experimental POWTS, as specified in s. Comm 87.31.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (2) and (3) Register January 2005 No. 589, eff. 2-1-05; correction in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register January 2005 No. 589.**

Comm 87.30 Maximum allowable financial assistance amount. (1) ELIGIBLE REHABILITATION OR REPLACEMENT WORK. Except as provided under sub. (5) and s. Comm 87.72, POWTS work eligible for financial assistance awards shall be limited to those activities listed in the financial assistance awards under sub. (3), and Tables 87.30-1 to 87.30-6.

(2) LEAST COSTLY METHODS. As specified in s. 145.245 (7) (b), Stats., costs allowable in determining financial assistance funding under this section may not exceed the costs of rehabilitating or replacing a POWTS by the least costly methods. Only eligible work necessary to meet the minimum requirements of the state plumbing code by the least costly methods may be allowed in determining financial assistance awards under this chapter.

Note: Section 145.245 (7) (b) reads: "Except as provided in par. (e), costs allowable in determining grant funding under this section may not exceed the cost of rehabilitating or replacing a private sewage system by the least costly method, except that a holding tank may not be used as the measure of the least costly method for rehabilitating or replacing a private sewage system other than a holding tank."

(3) FINANCIAL ASSISTANCE AWARDS. Financial assistance awards shall be determined by calculating the maximum allowable financial assistance amount by type of system, system component, or service provided.

(a) *Site evaluation and soil testing.* The maximum allowable financial assistance amount for site evaluation and soil testing is \$250.

(b) *Installation of a replacement or additional POWTS anaerobic treatment component.* The maximum allowable financial assistance amount for installation of a replacement POWTS anaerobic treatment component is listed in Table 87.30-1.

(c) *Installation of a POWTS dosing component and lift pump or siphon.* The maximum allowable financial assistance amount for installation of a POWTS dosing component and lift pump or siphon is listed in Table 87.30-2.

(d) *Installation of a non-pressurized and in-ground pressure POWTS treatment or dispersal component.* The maximum financial assistance amount for installation of non-pressurized and in-ground pressure POWTS treatment or dispersal component is listed in Table 87.30-3.

(e) *Installation of an at-grade or mound POWTS treatment or dispersal component.* The maximum allowable financial assistance amount for installation of at-grade or mound POWTS treatment or dispersal component is listed in Table 87.30-4.

(f) *Installation of a POWTS holding tank component.* The maximum allowable financial assistance amount for installation of a POWTS holding tank component is listed in Table 87.30-5.

(g) *Replacement exterior grease interceptor.* The maximum allowable financial assistance amount for installation of a replacement exterior grease interceptor is listed in Table 87.30-6.

Table 87.30-1
MAXIMUM ALLOWABLE FINANCIAL ASSISTANCE AMOUNT FOR INSTALLATION OF A REPLACEMENT POWTS ANAEROBIC TREATMENT COMPONENT

Installation of a Replacement POWTS Anaerobic Treatment Component by Number of Bedrooms			
Number of Bedrooms	Financial Assistance Amount	Number of Bedrooms	Financial Assistance Amount
1 or 2	\$500	6	\$750
3	550	7	875
4	650	8 or more	950
5	725		

Table 87.30-2
MAXIMUM ALLOWABLE FINANCIAL ASSISTANCE AMOUNT FOR INSTALLATION OF A POWTS DOSING COMPONENT AND LIFT PUMP OR SIPHON

Installation of a POWTS Dosing Component and Lift Pump or Siphon	
Number of Bedrooms	Financial Assistance Amount
1 or 2	\$1,100
3 or 4	1,200
5 or more	1,250

Table 87.30-3
MAXIMUM ALLOWABLE FINANCIAL ASSISTANCE AMOUNT FOR INSTALLATION OF NON-PRESSURIZED AND IN-GROUND PRESSURE POWTS TREATMENT OR DISPERSAL COMPONENT

Installation of a Non-Pressurized And In-Ground Pressure POWTS Treatment or Dispersal Component							
Design Loading Rate in Gallons Per Square Foot Per Day	Percolation Rate When Properly Filed with the Governmental Unit Before July 2, 1994 (minutes per inch)	Financial Assistance Amount by Number of Bedrooms					
		1	2	3	4	5	Each Additional Bedroom
0.7 or more	0 – less than 10	\$925	\$1,200	\$1,400	\$1,450	\$2,100	\$250
0.60 to 0.69	10 – less than 30	925	1,200	1,400	1,800	2,175	250
0.50 to 0.59	30 – less than 45	1,375	1,550	1,650	2,000	2,225	300
0.49 or less	45 – 60	1,375	1,900	2,200	2,250	2,275	300

Table 87.30-4
MAXIMUM ALLOWABLE FINANCIAL ASSISTANCE AMOUNT FOR INSTALLATION OF AT-GRADE OR MOUND POWTS TREATMENT OR DISPERSAL COMPONENT

Installation of an At-Grade Or Mound POWTS Treatment or Dispersal Component						
Type of Design	Financial Assistance Amount by Number of Bedrooms					
	1	2	3	4	5	Each Additional Bedroom
At-Grade	\$1,975	\$2,350	\$2,350	\$2,925	\$3,025	\$275
High Groundwater Mound	2,600	3,150	3,525	4,250	4,775	300
High Bedrock Mound	3,300	3,850	3,975	4,500	4,725	350
Slowly Permeable Mound ^a	3,250	3,600	3,600	3,975	4,775	375
Less Than 24" or Greater Than 12% Slope Mound	3,050	3,450	4,000	4,550	4,550	375

^a A slowly permeable mound may be designed based on a percolation rate of greater than 60 minutes per inch and less than or equal to 120 minutes per inch, or a soil application rate of 0.3 or less.

**Table 87.30-5
MAXIMUM ALLOWABLE FINANCIAL ASSISTANCE AMOUNT FOR INSTALLATION OF A POWTS
HOLDING TANK COMPONENT**

Installation of a POWTS Holding Tank Component			
Number of Bedrooms	Financial Assistance Amount	Number of Bedrooms	Financial Assistance Amount
3 or fewer	\$2,500	6	\$3,625
4	3,150	7	4,200
5	3,225	8	4,750
		Each Additional Bedroom	400

**Table 87.30-6
MAXIMUM ALLOWABLE FINANCIAL ASSISTANCE AMOUNT FOR INSTALLATION OF
REPLACEMENT EXTERIOR GREASE INTERCEPTOR**

Installation of Replacement Exterior Grease Interceptor by Capacity			
Capacity (in gallons)	Financial Assistance Amount	Capacity (in gallons)	Financial Assistance Amount
Up to 1,249	\$550	1,500 to 1,749	\$750
1,250 to 1,499	650	1,750 to 1,999	800
		2,000 or more	900

(4) USE OF FINANCIAL ASSISTANCE AWARD TABLES FOR SMALL COMMERCIAL ESTABLISHMENTS. In order to use Tables 87.30-1 to 87.30-6 for small commercial establishments, where applicable, divide the design 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.

(5) EXCEPTIONS TO THE FINANCIAL ASSISTANCE AWARD TABLES. (a) The department may determine on a case-by-case basis the maximum allowable financial assistance amount for types of POWTS which are not covered under sub. (3) and Tables 87.30-1 to 87.30-6.

(b) The maximum allowable financial assistance amount for POWTS work done on property owned by a licensed plumber or contractor engaged in the business of installing POWTS shall be limited to two-thirds of the financial assistance amount or \$4,667, whichever is less.

(c) The maximum allowable financial assistance amount for each principal residence or small commercial establishment shall be limited to 60% of the total cost of replacement or the amount determined under sub. (3) and Tables 87.30-1 to 87.30-6, whichever is less.

Note: Under s.145.245 (7) (d), Stats., if the income of the person who owns a principal residence exceeds \$32,000 and the residence is served by a category 1 or category 2 failing private sewage system, the amount of the grant award under this section is limited to the amount determined in par. (c) less 30% of the amount which the person's income exceeds \$32,000.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; CR 04-068: am. Register January 2005 No. 589, eff. 2-1-05.

Comm 87.31 Maximum allowable financial assistance amount for experimental POWTS. **(1)** Pursuant to s. 145.245 (7) (e), Stats., this section establishes the parameters for allocating the maximum allowable state financial assistance award for experimental POWTS.

(2) The department may determine on a case-by-case basis the maximum allowable financial assistance amount for the installation and monitoring of an experimental POWTS installed under s. 145.02 (3) (b), Stats.

(3) As specified in s. 145.245 (11m) (d), Stats., the department may prorate available funds for the installation and monitoring of an experimental POWTS.

Note: Section 145.245 (7) (e), Stats., reads: "Costs allowable for experimental private sewage systems shall include the costs of installing and monitoring experimental private sewage systems installed under s. 145.02 (3) (b) and this section."

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; CR 04-068: am. Register January 2005 No. 589, eff. 2-1-05.

Comm 87.32 Ineligible rehabilitation or replacement work. For the purposes of establishing work which is not eligible for a financial assistance award under this chapter, the following items or projects are considered ineligible work:

(1) (a) Rehabilitation or replacement of a failing POWTS conducted before the date on which the governmental unit adopts this program.

(b) Rehabilitation or replacement of a failing POWTS with an experimental POWTS conducted without department pre-approval as specified under s. Comm 87.40 (1) (b).

(2) Except for site evaluation, soil testing under s. Comm 87.30 (3) (a) and issuing the sanitary permit, rehabilitation or replacement of a failing POWTS done before the determination of failure was made.

(3) Rehabilitation or replacement of a failing POWTS where a determination is made that public sewer is available to the property as determined by the municipality that owns or operates the public sewer.

(4) Connection to a municipal sewage treatment works.

(5) Installation of a small sewage treatment plant with a surface discharge.

(6) Installation of a POWTS to replace a privy.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; CR 04-068: am. (1) to (3) and (6) Register January 2005 No. 589, eff. 2-1-05.

Comm 87.40 Application by owners. **(1)** CONTENTS. (a) In order to be eligible to receive a financial assistance award under this chapter, the owner of a failing POWTS shall submit an application to the participating governmental unit in which the POWTS is located. The application shall be made on forms that are acceptable to the department.

(b) In order to be eligible to receive a financial assistance award for experimental systems under this chapter, an owner shall receive written pre-approval for such system from the department and submit information, in addition to those items specified in par. (a), that:

1. Documents that the experimental system is being conducted by an individual or entity as a research project under the management of the department.

2. Indicates the objectives of the experiment relative to treatment capabilities.

3. Delineates proposed sampling protocols of influent and effluent loads and flows.

4. Includes a proposed schedule for the installation, monitoring, reporting and conclusion.

5. Includes a copy of the monitoring contract with an estimate of the costs of monitoring for the project period.

6. Provides other documentation as requested by the department or participating governmental unit.

(2) PRINCIPAL RESIDENCE. The application by the owner of a principal residence shall be made on forms acceptable to the department and shall include all of the following:

(a) *Evidence of annual family income.* A person who owns a principal residence shall provide the evidence of income required under s. 145.245 (5) (c) 2. and 3., Stats., or the alternative evidence of income required under s. 145.245 (5) (c) 4., Stats., and s. Comm 87.50.

(b) *Sanitary permit number and date of issuance.* A legible copy of the application for the sanitary permit issued by the governmental unit in which the POWTS is located.

(c) *Additional information.* If within three years of the date in which the enforcement order was issued or determination of failure was made, the applicant has bought or sold the principal residence served by a failing POWTS, the person shall provide the following additional information:

1. A copy of the closing statement, the sale contract, escrow agreement or other documentation which shows the date of sale of the property.

2. A copy of the closing statement, sale contract, escrow agreement or other documentation which shows that the cost of replacing the failing POWTS has or will be incurred at the owner's expense.

(3) SMALL COMMERCIAL ESTABLISHMENTS. The application for eligible owners of small commercial establishments, as specified in s. 145.245 (5) (a) 2., Stats., shall be made on forms acceptable to the department and shall include all of the following:

(a) *Evidence of annual business income.* As specified in s. 145.245 (5) (d) 2., Stats., a business which owns a small commercial establishment shall provide one of the following as evidence of annual gross revenue:

1. A copy of the federal income tax return filed by the business for the tax year prior to the year in which the enforcement order was issued or determination of failure was made or for the tax year in which the determination of failure was made.

2. If the small commercial establishment is owned by a private nonprofit corporation as defined in s. 560.038 (1) (b), 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 enforcement order was issued or determination of failure was made or for the tax year in which the enforcement order was issued or determination of failure was made.

Note: As specified in s. 145.245 (11) (d), Stats., the department may not allocate more than 10% of the funds available under this subsection each fiscal year for grants for small commercial establishments.

Note: As specified in s. 145.245 (5) (a) 2., Stats., a business must own the small commercial establishment in order to be eligible for a grant amount. A business which leases a small commercial establishment is not eligible. Therefore, the application and income eligibility requirements must be met by the owners of the property served by the failing private sewage system.

(b) *Sanitary permit number and date of issuance.* A legible copy of the application for the sanitary permit issued by the county in which the POWTS is located.

(c) *Additional information.* If within 3 years of the date that the enforcement order was issued or determination of failure was made, and an owner has bought or sold the small commercial establishment served by a failing POWTS, the person shall provide the following additional information:

1. A copy of the closing statement, sale contract, escrow agreement or other documentation which shows the date of sale of the property.

2. A copy of the closing statement, sale contract, escrow agreement or other documentation which shows that the cost of replacing the failing POWTS has or will be incurred at the owner's expense.

(d) *Other information.* Any other information that may be requested by the department or participating governmental unit.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; correction in (3) (a) 2., made under s. 13.93 (2m) (b) 7., Register, April, 2000, No. 532; **CR 04-068: am. (1) (a), (b), (2), (3) (a) 1., 2., (b) and (c) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.50 Alternate evidence of income. A participating governmental unit may consider any of the following criteria as satisfactory evidence of income:

(1) A copy of the owner's federal income tax return or federal income tax forms for the taxable year in which the enforcement order was issued or determination of failure was made and, if married and filing separately, a copy of the federal income tax return or federal income tax forms for that same year for the owner's spouse.

(2) 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 net income or adjusted gross income is expected in the year in which the enforcement order was issued or determination of failure was made, and the estimated amount of that reduction, for the taxable year in which the enforcement order is issued or determination of failure is made.

(3) An affidavit from the owner of the principal residence or small commercial establishment stating the reason that he or she was not required to file a federal income tax return or federal income tax forms in the year prior to the year in which the enforcement order was issued or for the year in which the determination of failure was made.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.60 Application by participating governmental units. **History:** Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: r. Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.70 Allocation of funds and financial assistance awards. **(1) GENERAL.** The department shall allocate funds available for financial assistance awards to participating governmental units as provided in s. 145.245 (11), Stats., except for funds so specified in s. Comm 87.72.

(2) PRORATION. (a) If available funds are not sufficient to fully fund all applications, the department shall prorate available funds under s. 145.245 (11m), Stats. A prorated payment shall be deemed full payment of the financial assistance.

(b) A financial assistance application denied under s. 145.245 (11m) (c), Stats., is not eligible for awards in a later fiscal year.

(3) REVISION OF ALLOCATION OR AWARD. (a) If the department finds that an owner listed in the application of a governmental unit does not meet the eligibility requirements under s. 145.245 (5), Stats., the department may reduce an allocation to the governmental unit in the current or in a following fiscal year.

(b) The department may withhold funds allocated to a governmental unit and initiate enforcement under s. Comm 87.80, if a governmental unit does not meet the conditions specified under s. 145.245 (9), Stats.

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

(4) EXPERIMENTAL SYSTEMS. The allocation and payment of financial assistance awards for experimental POWTS shall be in accordance with ss. Comm 87.31 and 87.72.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (1), (2) and (4) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.71 Payments to participating governmental units. **(1)** Except as provided in s. Comm 87.72, finan-

cial assistance 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 financial assistance award was made.

(2) A participating governmental unit shall request payment on forms acceptable to 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 financial assistance award conditions.

(3) The total financial assistance 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 financial assistance amount for individual owners of a POWTS is limited to the maximum allowable financial assistance amount under s. Comm 87.30. Payment based on a prorated financial assistance amount shall constitute a complete payment for that owner.

(4) At any time before final payment of the financial assistance, 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 financial assistance payment where it determines in writing that a participating governmental unit has failed to comply with program objectives, financial assistance award conditions, or reporting requirements. Such withholding shall be limited to only that amount necessary to assure compliance.

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

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; CR 04-068: am. (1) to (4), (6) and (7) Register January 2005 No. 589, eff. 2-1-05.

Comm 87.72 Payments for monitoring of experimental systems. (1) Except as provided in ss. Comm 87.70 and 87.71, the department shall make financial assistance payments for monitoring of experimental POWTS to the individual or entity performing the monitoring for the maximum allowable amount on an annual basis up to the approved estimated costs for monitoring for eligible work for a project period.

(2) (a) The individual or entity performing the monitoring shall request payment on forms acceptable to the department and shall provide such information as required by the department to document satisfactory completion of eligible work. Subsequent annual payments for monitoring shall be requested in accordance with the payment schedule included in the financial assistance award conditions as approved by the department.

(b) The individual or entity performing the monitoring shall make a request to the department for payment of monitoring costs on an annual basis by submitting paid invoices documenting the eligible work provided as included in the financial assistance award conditions. Payments shall be awarded to the eligible individual or entity in accordance with the payment schedule included in the conditions of the financial assistance, the maximum allowable financial assistance amount, and usual and customary costs for monitoring of an experimental POWTS.

(c) A direct payment of monitoring costs shall be made to the individual or entity in accordance with this section.

(3) The total financial assistance amount payable to the individual or entity for monitoring shall be limited to the amount of funds available for allocation in the project period for experimental systems under this chapter.

(4) At any time before final payment of the approved financial assistance amount, 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 department may authorize the withholding of a financial assistance payment where it determines in writing that an owner has failed to comply with program objectives, financial assistance award conditions, or reporting requirements. Such withholding shall be limited to only that amount necessary to assure compliance.

(6) The department shall withhold a financial assistance payment to the extent of any indebtedness, relating to the provisions of this chapter, unless it determines that collection of the indebtedness will impair accomplishment of the program objectives and that continuation of the specific project is in the best interest of the state of Wisconsin.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; CR 04-068: am. (1), (2) (a), (b) and (3) to (6) Register January 2005 No. 589, eff. 2-1-05.

Comm 87.80 Program enforcement. If the department has reason to believe that a violation of the provisions of this chapter or of any financial assistance award or financial assistance award amendment made under this chapter has occurred, the department may take any of the following actions:

(1) Under s. 145.245 (14), Stats., the department may cause written notice to be served upon the alleged violator, and in conjunction with that notice may either:

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

(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. 145.245 (14), Stats., the department may terminate or annul financial assistance made under this section and seek recovery of some or all financial assistance funds previously paid to the participating governmental unit or owner, if an order issued under s. 145.02 (3) (f), Stats., is violated.

(3) Under s. 145.245 (14) (d), Stats., the department may suspend or terminate additional financial assistance awards made under this chapter if the department finds that a POWTS previously funded by the participating governmental unit with financial assistance 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 seek an injunction or other appropriate relief under s. 145.02 (3) (f), Stats.

(6) The department may seek the imposition of a forfeiture for each violation, pursuant to s. 145.245 (15), Stats.

Note: Section 145.245 (15), Stats., reads:

"Any person who violates this section or a rule or order promulgated under this section shall forfeit not less than \$10 or more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; CR 04-068: am. (intro.), (2) and (3) Register January 2005 No. 589, eff. 2-1-05.

Comm 87.81 Program audit. (1) A governmental unit, owner or any other individual or entity receiving financial assistance award under this chapter shall make available to the department, upon request, any and all records necessary to ascertain compliance with this chapter and the provisions as specified in s. 145.245, Stats.

(2) The department may require documentation of monitoring and an audit of the individual or entity providing monitoring.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (1) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.90 Petition for variance. (1) PROCEDURE. Under ch. Comm 3, the department shall consider and may grant a variance to an administrative rule upon receipt of a fee, a completed petition for variance form from the owner, and a completed municipal recommendation from the participating governmental unit having responsibility and an interest in the rule, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department may impose specific conditions in granting a variance to promote the protection of the health, safety or welfare of employees or the public. Violation of those conditions under which the variance is granted constitutes a violation of these rules.

(2) **PETITION PROCESSING TIME.** Except for priority petitions, the department shall review and make a determination on a petition for variance within 30 business days of receipt of all calculations, documents and fees required to complete the review. The department shall process priority petitions within 10 business days.

Note: The petition for variance form (SBD-9890) is available, at no charge, from the Department of Commerce, Safety and Buildings Division, P.O. Box 2658, Madison, WI 53701-2658, telephone 608/266-3151, or at the Safety and Buildings webpage at: www.commerce.wi.gov/SB/. Refer to s. Comm 2.52 for fees and processing of priority petitions. This form may be downloaded from the Commerce webpage at: <http://commerce.wi.gov/Index.html/SB/SB-FormPetition9890X.pdf>.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (1) and (2) Register January 2005 No. 589, eff. 2-1-05.**

Comm 87.91 Process for appeal. (1) DETERMINATION OF INELIGIBILITY BY A PARTICIPATING GOVERNMENTAL UNIT. When a decision by a participating governmental unit is that the applicant does not meet the eligibility criteria as established in this chapter and s. 145.245, Stats., the owner may appeal the decision of the governmental unit in accordance with ch. 68, Stats.

(2) **DETERMINATION OF INELIGIBILITY BY THE DEPARTMENT.** When a decision by the department is that the applicant does not meet the eligibility criteria as established in this chapter and s. 145.245, Stats., the owner may appeal the decision of the department in writing within 30 days from the date of said decision in accordance with s. 227.42, Stats.

Note: Section 101.02 (6), Stats., outlines the procedure for submitting requests to the department for appeal hearings and the department procedures for hearing appeals.

History: Cr., Register, December, 1998, No. 516, eff. 2-1-99; **CR 04-068: am. (1) and (2) Register January 2005 No. 589, eff. 2-1-05.**