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State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 87

Relating to: Private Sewage System Replacement or Rehabilitation Grant Program
Clearinghouse Rule No.: 04-068

COM-10535 (N.03/97)

The Wisconsin Department of Commerce proposes an order to:

repeal Comm 87.60;

amend Comm 87 (title); 87.01 (intro.); 87.02 (1) and (2); 87.03 (5) and (7)(b), 87.03 (9) (intro.), 87.10 (title) (intro.), (1) and (2); 87.20 (1) (intro.), (1) (b) and (d), and (3)(intro.); 87.21 (2) and (3); 87.30 (title); Tables 87.30-1 to 87.30-6 (titles); 87.31 (title); 87.32 (1) to (3) and (6); 87.40 (1) (a) and (b), and (2); 87.40 (3) (a) 1. and 2., (b) and (c); 87.50; 87.70 (title), (1), (2) and (4); 87.71 (1) to (4) and (6) to (7); 87.72 (1), (2) (a) and (b), and (3) to (6); 87.80 (intro.), (2) and (3); 87.81 (1); 87.90 (1) and (2) Note; 87.91 (1) and (2);

repeal and recreate Comm 87.20 (4); and

create Comm 87.02 (3); 87.03 (7m), (9) (c) and Notes; 87.04 and 87.05, relating to private sewage system replacement or rehabilitation grant program, and affecting small business.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (2), and 145.02 (3) and (4), Stats.;

Statutes interpreted: ss. 145.02 (4), 145.135, 145.19, 145.20, and 145.245 (7), Stats.

Under s. 145.02, Stats., the Department of Commerce (Commerce) has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of Commerce to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81 to 87.

Under s. 145.245 (7) (c), Stats., Commerce shall revise the grant awards tables when it determines that 60% of current costs of private onsite wastewater treatment system (POWTS), rehabilitation or replacement exceeds the amount in the grant award tables by more than 10%, except that Commerce may not revise the grant award tables more often than once every two years. These tables were last revised in February 1999.

Under s. 145.245 (7) (e), Stats., Commerce shall promulgate rules that shall specify how the department will select, monitor and allocate the state share for experimental private onsite wastewater treatment systems that the Department funds under this chapter. Up to 10% of the annual funds shall be available for allocation for experimental POWTS, including monitoring of these systems.

The proposed revisions include minor changes to chapter Comm 87, private sewage system replacement or rehabilitation grant program. Since the last update of this chapter was undertaken in 1999, statutory changes and technical revisions to chapter Comm 83, POWTS became effective.

A summary of the significant rule revisions in chapter Comm 87 is as follows:

- The recommended increases in the maximum allowable financial assistance amounts, Tables 87.30-1 to 87.30-6, are based upon the average costs of those types of systems that received grant awards in FY 02, 03 and 04. The increases bring the amount allowed to the 60% approximate average costs in accordance with section 145.245 (7) (c), Stats. The table titles are amended to align with the technologies and methods now contained in chapter Comm 83.

- The definition of private sewage system was changed to POWTS to reflect current chapter Comm 83.
- Section Comm 87.20 is amended to clarify that the date of the system installation, not the age of the structure is a factor used in determining eligibility. Also section Comm 87.20 (4) was repealed and recreated to better clarify financial assistance amounts pertaining to existing systems installed for existing and replacement structures.
- Section Comm 87.60 is proposed to be repealed. The information in this section is proposed to be recreated in sections Comm 87.04 and 87.05 to better separate annual applications for financial assistance by governmental units to the department and applications by governmental units to participate in the program.

The rule revision also includes authority granted in the Wisconsin State Statutes as created by 2003 Act 169, relating to the use of holding tank costs when using the least costly method in determining grant awards.

An internet-based search regarding any Federal Regulations relating to a similar grant or loan program resulted in Title 40--Protection of Environment, Chapter I--Environmental Protection Agency Part 35--State and Local Assistance Sec. 35.001 Applicability. Subpart A--Environmental Program Grants. From the information available, it has been determined that these grant programs (40 CFR part 35-36) only apply at the municipal level and not for the homeowner or small business owner as in chapter Comm 87.

An internet-based search for comparing similar rules in the four surrounding states resulted in the following: Michigan has a similar program, the Strategic Water Quality Initiatives Fund, which is solely a loan, not a grant, program. This fund has been available since November 2002 and to date no counties have shown interest in participation. An Illinois state revolving fund loan program, Water Pollution Control Revolving Fund, has been in effect since 1987. These loans are for municipalities and appear to be related to municipally-owned wastewater treatment facilities. In searching for comparable programs in the states of Iowa and Minnesota; no related funding programs (grants or loans) were found.

The proposed rule revisions were developed with the assistance of the 9-member Wisconsin Fund Advisory Code Council.

<u>Member</u>	<u>Representing</u>
Harry Butler	Wisconsin Onsite Wastewater Recycling Association
Ruth Fitzgerald	Wisconsin Liquid Waster Carrier Association
Dave Jones	Plumbing, Heating & Cooling Contractors of Wisconsin
Tom Larson	Wisconsin Realtors Association
Steve Olson	Wisconsin Precast Concrete Association
Roger Plesha	Wisconsin Counties Association
Ted Rohloff	Wisconsin County Code Administrators Association
Lesley Roll	Wisconsin County Code Administrators Association
Todd Stair	Wisconsin Builders Association

SECTION 1. Comm 87 (title) is amended to read:

Chapter Comm 87
PRIVATE SEWAGE ONSITE WASTEWATER TREATMENT SYSTEM
REPLACEMENT OR REHABILITATION GRANT FINANCIAL ASSISTANCE
PROGRAM

SECTION 2. Comm 87.01 is amended to read:

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 ~~replace or rehabilitate~~ reimburse eligible property owners a portion of the cost of replacing or rehabilitating failing private sewage system private onsite wastewater treatment systems (POWTS).

SECTION 3. Comm 87.02 (1) and (2) are amended to read:

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, ~~1999~~ 2005.

(2) Applications received by the department prior to February 1, ~~1999~~ 2005 are governed by the rules as they existed on or before January 31, ~~1999~~ 2005.

SECTION 4. Comm 87.02 (3) is created to read:

Comm 87.02 (3) This chapter applies to existing failing POWTS installed prior to July 1, 1978.

SECTION 5. Comm 87.03 (5) and (7) (b) are amended to read:

Comm 87.03 (5) “Owner”, for the purposes of this chapter, means the person that owns the structure that is served by a failing ~~private sewage system~~ POWTS.

(7) (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 ~~private sewage system~~ 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.

SECTION 6. Comm 87.03 (7m), (9) (c) and Notes are created to read:

Comm 87.03 (7m) “POWTS” has the same meaning as s. 81.03 (182) and (194).

Note: Sections Comm 81.03 (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 systemserving 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 systemapproved 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 systemlocated on a different parcel than the structure. A private sewage system may be owned by the property owner or by a special purpose district.’

(9) (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.

SECTION 7a. Comm 87.03 (9) (intro.) is amended to read:

Comm 87.03 (9) “Project period” means ~~either~~ any of the following:

SECTION 7b. Comm 87.04 and 87.05 are created to read:

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.

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.

SECTION 8. Comm 87.10 (title) (intro.), (1) and (2) are amended to read:

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

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

(2) **INELIGIBLE FOR ~~GRANT~~ 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 ~~grant~~ eligible for assistance under this chapter.

SECTION 9. Comm 87.20 (1) (intro.), (1) (b) and (d), and (3) (intro.) are amended to read:

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 ~~which was constructed~~ prior to ~~and inhabited on~~ July 1, 1978 or a business which owns a small commercial establishment served by a category 1 or 2 failing POWTS installed ~~which was constructed~~ prior to July 1, 1978 is eligible for ~~grant~~ financial assistance under this chapter if the person or business:

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

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

~~private sewage system~~ 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.

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

SECTION 10. Comm 87.20 (4) is repealed and recreated to read:

Comm 87.20 (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.

SECTION 11. Comm 87.21 (2) and (3) are amended to read:

Comm 87.21 (2) The department or a governmental unit shall deny an application under sub. (1) if the department receives a certification under s. 49.855 (7), Stats., that the owner or an individual who would ~~be directly benefited~~ benefit by the ~~grant~~ 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 ~~grant~~ financial assistance amount under this chapter has been previously awarded for rehabilitation or replacement work at the same site, except for ~~those grants~~ financial assistance awarded on an annual basis for monitoring of approved experimental ~~private sewage system~~ POWTS, as specified in s. Comm 87.31.

SECTION 12. Comm 87.30 (title) is amended to read:

Comm 87.30 (title) Maximum allowable ~~grant~~ financial assistance amount. (1) ELIGIBLE REHABILITATION OR REPLACEMENT WORK. Except as provided under sub. (5) and s. Comm 87.72, ~~private sewage system~~ POWTS work eligible for ~~grant~~ financial assistance awards

shall be limited to those activities listed in the ~~grant~~ 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 ~~grant~~ financial assistance funding under this section may not exceed the costs of rehabilitating or replacing a ~~private sewage system~~ 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 ~~grant~~ 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) **GRANT FINANCIAL ASSISTANCE AWARDS.** ~~Grant~~ Financial assistance awards shall be determined by calculating the maximum allowable ~~grant~~ financial assistance amount by type of system, system component, or service provided.

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

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

(c) Installation of a ~~pump chamber~~ POWTS dosing component and lift pump or siphon. The maximum allowable ~~grant~~ financial assistance amount for installation of a ~~pump chamber~~ 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 ~~soil absorption area~~ POWTS treatment or dispersal component. The maximum ~~grant~~ financial assistance amount for installation of non-pressurized and in-ground pressure ~~soil absorption area~~ POWTS treatment or dispersal component is listed in Table 87.30-3.

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

(f) Installation of a POWTS holding tank component. The maximum allowable ~~grant~~ 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 ~~grant~~ financial assistance amount for installation of a replacement exterior grease interceptor is listed in Table 87.30-6.

(4) Use of grant 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 ~~estimated~~ 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 grant financial assistance award tables. (a) The department may determine on a case-by-case basis the maximum allowable grant financial assistance amount for types of ~~private sewage system~~ POWTS which are not covered under sub. (3) and Tables 87.30-1 to 87.30-6.

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

(c) The maximum allowable grant 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.

SECTION 13. Comm 87.30 Tables 87.30-1 to 87.30-6 (titles) are amended to read:

Table 87.30-1
MAXIMUM ALLOWABLE ~~GRANT FINANCIAL ASSISTANCE~~ AMOUNT FOR
INSTALLATION OF A REPLACEMENT ~~OR ADDITIONAL SEPTIC TANK~~ POWTS ANAEROBIC
TREATMENT COMPONENT

Installation of a Replacement or Additional Septic Tank <u>POWTS Anaerobic Treatment Component</u>			
by Number of Bedrooms			
Number of Bedrooms	<u>Grant Financial Assistance</u> Amount	Number of Bedrooms	<u>Grant Financial Assistance</u> 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 ~~GRANT FINANCIAL ASSISTANCE~~ AMOUNT FOR
INSTALLATION OF A ~~PUMP CHAMBER~~ POWTS DOSING COMPONENT AND LIFT PUMP OR SIPHON

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

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

Installation Of A Non-Pressurized And In-Ground Pressure Soil Absorption Area <u>POWTS Treatment or Dispersal Component</u>							
Design Loading Rate in Gallons Per Square Foot Per Day	Percolation Rate When Properly Filled with County <u>the Governmental Unit</u> Before July 2, 1994 (minutes per inch)	<u>Grant Financial Assistance</u> Amount by Number of Bedrooms					
		1	2	3	4	5	Each Additional Bedroom
0.7 or more	0 – less than 10	\$800 <u>925</u>	\$1,100 <u>1,200</u>	\$1,225 <u>1,400</u>	\$1,400 <u>1,450</u>	\$1,725 <u>2,100</u>	\$150 <u>250</u>
0.60 to 0.69	10 – less than 30	900 <u>925</u>	1,175 <u>1,200</u>	1,400	1,800	1,900 <u>2,175</u>	250
0.50 to 0.59	30 – less than 45	1,050 <u>1,375</u>	1,450 <u>1,550</u>	1,650	1,950 <u>2,000</u>	1,975 <u>2,225</u>	300
0.49 or less	45 - 60	1,150 <u>1,375</u>	1,900	2,200	2,250	2,275	300

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

Installation Of An At-Grade Or Mound Soil Absorption Area <u>POWTS Treatment or Dispersal Component</u>						
Type of Design	<u>Grant Financial Assistance</u> Amount by Number of Bedrooms					
	1	2	3	4	5	Each Additional Bedroom
At-Grade	\$900 <u>1,975</u>	\$1,300 <u>2,350</u>	\$1,475 <u>2,350</u>	\$1,825 <u>2,925</u>	\$1,950 <u>3,025</u>	\$250 <u>275</u>
High Groundwater Mound	2,250 <u>2,600</u>	2,325 <u>3,150</u>	2,550 <u>3,525</u>	3,400 <u>4,250</u>	3,775 <u>4,775</u>	250 <u>300</u>
High Bedrock Mound	2,350 <u>3,300</u>	2,950 <u>3,850</u>	3,000 <u>3,975</u>	3,400 <u>4,500</u>	3,525 <u>4,725</u>	275 <u>350</u>
Slowly Permeable Mound ^{4a}	2,900 <u>3,250</u>	3,100 <u>3,600</u>	3,250 <u>3,600</u>	3,400 <u>3,975</u>	3,650 <u>4,775</u>	300 <u>375</u>
Less Than 24" or Greater Than 12% Slope Mound	3,050	3,400 <u>3,450</u>	3,475 <u>4,000</u>	3,550 <u>4,550</u>	4,500 <u>4,550</u>	375

^{4a} A slowly permeable mound may be designed using based on percolation test results properly filed with the county before July 2, 1994. A slowly permeable mound is defined in s. Comm 83.23 (1) (b) as having a percolation rate of greater than 60 minutes per inch and less than or equal to 120 minutes per inch, or having a soil loading application rate of 0.3 or less.

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

<u>Installation of a <u>POWTS</u> Holding Tank <u>Component</u></u>			
<u>Number of Bedrooms</u>	<u>Grant <u>Financial</u> <u>Assistance</u> Amount</u>	<u>Number of Bedrooms</u>	<u>Grant <u>Financial</u> <u>Assistance</u> Amount</u>
3 or fewer	\$ 2,250 <u>2,500</u>	6	\$ 4,000 <u>3,625</u>
4	2,925 <u>3,150</u>	7	4,200
5	3,400 <u>3,225</u>	8	4,750
		Each Additional Bedroom	225 <u>400</u>

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

<u>Installation of Replacement Exterior Grease Interceptor by Capacity</u>			
<u>Capacity (in gallons)</u>	<u>Grant <u>Financial</u> <u>Assistance</u> Amount</u>	<u>Capacity (in gallons)</u>	<u>Grant <u>Financial</u> <u>Assistance</u> Amount</u>
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

SECTION 14. Comm 87.31 (title) is amended to read:

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

(2) The department may determine on a case-by-case basis the maximum allowable ~~grant~~ financial assistance amount for the installation and monitoring of an experimental ~~private sewage system~~ 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 ~~private sewage system~~ POWTS.

SECTION 15. Comm 87.32 (1) to (3) and (6) are amended to read:

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

(1) (a) Rehabilitation or replacement of a failing ~~private sewage system~~ done 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 ~~private sewage system~~ POWTS done before the determination of failure was made.

(3) Rehabilitation or replacement of a failing ~~private sewage system~~ 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.

(6) Installation of a ~~private sewage system~~ POWTS to replace a privy.

SECTION 16. Comm 87.40 (1) (a) and (b), and (2) are amended to read:

Comm 87.40 Application by owners. (1) CONTENTS. (a) In order to be eligible to receive a ~~grant~~ financial assistance award under this chapter, the owner of a failing ~~private sewage system~~ POWTS shall submit an application to the participating governmental unit in which the ~~private sewage system~~ 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 ~~grant~~ 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:

(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 ~~county~~ governmental unit in which the ~~private sewage system~~ POWTS is located.

(c) Additional information. ~~If, after a determination of failure is made, a person buys or sells 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 private sewage system 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 owner has or will incur~~ the cost of replacing the failing ~~private sewage system~~ POWTS has or will be incurred at the owner's expense.

SECTION 17. Comm 87.40 (3) (a) 1. and 2., (b) and (c) are amended to read:

Comm 87.40 (3) (a) 1. A copy of the ~~state and~~ federal income tax ~~returns~~ 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, ~~whichever is required by the governmental unit to which the application is submitted.~~

2. 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 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, ~~whichever is required by the governmental unit to which the application is submitted.~~

(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 ~~private sewage system~~ POWTS is located.

(c) Additional information. ~~If, after a determination of failure is made, a person buys or sells~~ within three 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 ~~private sewage system~~ POWTS, the person shall provide the following additional information:

1. A copy of the closing statement, sale contract, escrow agreement or other documentation which ~~show~~ 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 owner has or will incur~~ the cost of replacing the failing ~~private sewage system~~ POWTS has or will be incurred at the owner's expense.

SECTION 18. Comm 87.50 is amended to read:

Comm 87.50 Alternate evidence of income. A participating governmental unit may ~~disregard the evidence of income under s. Comm 87.40 and~~ consider any of the following criteria as satisfactory evidence of income:

(1) A copy of the owner's ~~Wisconsin~~ 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 ~~Wisconsin~~ 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, ~~and a complete listing of taxable income and adjustments since January 1 of~~ 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 ~~Wisconsin~~ 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. ~~If a person who owns the principal 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 participating governmental unit shall require additional evidence as necessary to provide proof of Wisconsin residency.~~

SECTION 19. Comm 87.60 is repealed.

SECTION 20. Comm 87.70 (title) (1), (2) and (4) are amended to read:

Comm 87.70 (title) Allocation of funds and ~~grant~~ financial assistance awards. (1)

GENERAL. The department shall allocate funds available for ~~grant~~ 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 ~~grant~~ financial assistance.

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

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

SECTION 21. Comm 87.71 (1) to (4) and (6) to (7) are amended to read:

Comm 87.71 Payments to participating governmental units. (1) Except as provided in s. Comm 87.72, ~~grant~~ financial 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 ~~grant~~ 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 ~~grant~~ financial assistance award conditions.

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

(4) At any time before final payment of the grant 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.

(6) The department may authorize the withholding of a grant financial assistance payment where it determines in writing that a participating governmental unit has failed to comply with program objectives, grant 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 grant 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.

SECTION 22. Comm 87.72 (1), (2) (a) and (b), and (3) to (6) are amended to read:

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 grant financial assistance payments for monitoring of experimental ~~private sewage system~~ 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 grant 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 grant 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 grant financial assistance, the maximum allowable grant financial assistance amount, and usual and customary costs for monitoring of an experimental ~~private sewage system~~ POWTS.

(3) The total grant 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 ~~grant~~ 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 ~~grant~~ financial assistance payment where it determines in writing that an owner has failed to comply with program objectives, ~~grant~~ 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 ~~grant~~ financial assistance payment to the extent of any indebtedness, relating to the provisions of this chapter, ~~of the owner 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.

SECTION 23. Comm 87.80 (intro.), (2) and (3) are amended to read:

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

(2) Under s. 145.245 (14), Stats., the department may terminate or annul a ~~grant~~ financial assistance made under this section and seek recovery of some or all ~~grant~~ 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 ~~grant~~ financial assistance awards made under this chapter if the department finds that a ~~private sewage system~~ POWTS previously funded by the participating governmental unit with a ~~grant~~ financial assistance awarded under this chapter is not being or has not been properly rehabilitated, constructed, installed or maintained.

SECTION 24. Comm 87.81 (1) is amended to read:

Comm 87.81 Program audit. (1) A governmental unit, owner or any other individual or entity receiving a ~~grant~~ 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.

SECTION 25. Comm 87.90 (1) and (2) Note are amended to read:

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 ~~employes~~ 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 7162, Madison, WI 53707-7162.~~ All forms referenced in this chapter are available at no charge from the department at the 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](http://commerce.wi.gov/Index.html/SB/SB-FormPetition9890X.pdf).

SECTION 26. Comm 87.91 (1) and (2) are amended to read:

Comm 87.91 Process for appeal. (1) ~~DENIAL DETERMINATION OF INELIGIBILITY~~ BY A PARTICIPATING GOVERNMENTAL UNIT. When a decision by a participating governmental unit is ~~denial of a grant award~~ 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) ~~DENIAL DETERMINATION OF INELIGIBILITY~~ BY THE DEPARTMENT. When a decision by the department is ~~denial of a grant award~~ 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.

(end)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (b), Stats., these rules shall take effect on February 1, 2005.
