

RULES CERTIFICATE

Department of Commerce

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

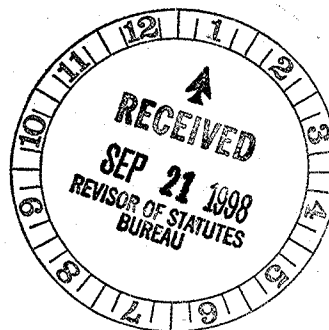
I, Paul E. Albert, Acting Secretary of the Department of Commerce,
and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to
Private sewage system replacement or rehabilitation grant program (Wisconsin Fund)
(Subject)

were duly approved and adopted by this department.

I further certify that said copy has been compared by me with the original on file in the department and
that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set
my hand at 201 West Washington Avenue
in the city of Madison, this 18th
day of September A.D. 19 98

Paul E. Albert
Acting Secretary





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 (Wisconsin Fund)

Clearinghouse Rule No.: 98-052

The Wisconsin Department of Commerce proposes an order to repeal and recreate ch. Comm 87.

ANALYSIS OF 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), 145.045, 145.13, 145.135, 145.19, 145.20, 145.245 (7) (c) and (e), and 145.245 (8) (e), 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 the Department to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81-87.

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 rehabilitation or replacement exceeds the amount in the grant award tables by more than 10%, except that the Department may not revise the grant award tables more often than once every two years. Since these tables were last revised July 1, 1991, current format and updated grant award amounts have been incorporated into this rule revision.

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 private onsite wastewater treatment systems, including monitoring of these systems. The rule revision includes sections relating to application and eligibility for grants awards for experimental systems.

The rule revision also includes incorporation of Department authority granted in the Wisconsin State Statutes as created in various 1995 and 1997 Wisconsin Acts, including the creation of the Department of Commerce.

The chapter is being repealed and recreated due to the many amendments which relate to form, style, placement, table format, clarity and plain language of the current rules which have not been revised, except for slight corrections, since March 1992.

SECTION 1. Comm 87 is repealed and recreated to read:

Chapter Comm 87

PRIVATE SEWAGE SYSTEM REPLACEMENT OR REHABILITATION GRANT PROGRAM

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 failing private sewage systems.

Comm 87.02 APPLICABILITY. (1) This chapter applies to applications received by the department on or after [effective date...Revisor to insert date].

(2) Applications received by the department prior to [effective date...Revisor to insert date] are governed by the rules as they existed on or before [one day prior to the effective date...Revisor to insert date].

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.

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(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 private sewage system.

(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 private sewage system.

(c) A nonprofit corporation as defined in s. 181.02 (4), Stats.

(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 either 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.

(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.

Comm 87.10 CATEGORIES OF PRIVATE SEWAGE SYSTEMS. The department and the participating governmental unit shall use the following categories of failing private sewage systems to determine grant eligibility under s. 145.245 (5), Stats., and s. Comm 87.20, to grant awards under s. 145.245 (7), Stats., and ss. Comm 87.30 and 87.31:

(1) ELIGIBLE FOR GRANT AWARD. As specified in s. 145.245 (5), Stats., only category 1 or category 2 failing private sewage systems are eligible for funding.

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 GRANT 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.

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

Comm 87.20 ELIGIBILITY OF OWNERS. (1) GENERAL. A person who owns a principal residence which was constructed prior to and inhabited on July 1, 1978 or a business which owns a small commercial establishment which was constructed prior to July 1, 1978 is eligible for grant 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 award 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 private sewage system 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 private sewage system. A person does not meet this condition if he or she did not own the property at the time the private sewage system was failing and subject to a determination of failure. The buyer of the property is not eligible if the failing private sewage system 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. 181.02 (4), Stats.

Note: Section 181.02 (4), 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 grant 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 OF STRUCTURES.** (a) The owner of a principal residence or small commercial establishment who meets all of the requirements of s. 145.245, Stats., and this chapter may replace the structure served by the failing private sewage system and be eligible to apply for a grant to replace the failing private sewage system if all of the following additional conditions are met:

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

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

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

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

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

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

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 (7), 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 certification under s. 49.855 (7), Stats., that the owner or an individual who would be directly benefited by the grant 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 amount under this chapter has been previously awarded for rehabilitation or replacement work at the same site, except for those grants awarded on an annual basis for monitoring of approved experimental private sewage system, as specified in s. Comm 87.31.

Comm 87.30 MAXIMUM ALLOWABLE GRANT AMOUNT. (1) **ELIGIBLE REHABILITATION OR REPLACEMENT WORK.** Except as provided under sub. (5) and s. Comm 87.72, private sewage system work eligible for grant awards shall be limited to those activities listed in the grant 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 funding under this section may not exceed the costs of rehabilitating or replacing a private sewage system 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 awards under this chapter.

(3) **GRANT AWARDS.** Grant awards shall be determined by calculating the maximum allowable grant amount by type of system, system component, or service provided.

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

(b) Installation of a replacement or additional septic tank. The maximum allowable grant amount for installation of a replacement or additional septic tank is listed in Table 87.30-1.

(c) Installation of a pump chamber and lift pump or siphon. The maximum allowable grant amount for installation of a pump chamber and lift pump or siphon is listed in Table 87.30-2.

(d) Installation of a non-pressurized and in-ground pressure soil absorption areas. The maximum allowable grant amount for installation of non-pressurized and in-ground pressure soil absorption areas is listed in Table 87.30-3.

(e) Installation of an at-grade or mound soil absorption area. The maximum allowable grant amount for installation of at-grade or mound soil absorption areas is listed in Table 87.30-4.

(f) Installation of a holding tank. The maximum allowable grant amount for installation of a holding tank is listed in Table 87.30-5.

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

Table 87.30-1
MAXIMUM ALLOWABLE GRANT AMOUNT FOR
INSTALLATION OF A REPLACEMENT OR ADDITIONAL SEPTIC TANK

Installation of a Replacement or Additional Septic Tank by Number of Bedrooms			
Number of Bedrooms	Grant Amount	Number of Bedrooms	Grant 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 AMOUNT FOR
 INSTALLATION OF A PUMP CHAMBER AND LIFT PUMP OR SIPHON

Installation of a Pump Chamber and Lift Pump or Siphon	
Number of Bedrooms	Grant Amount
1 or 2	\$1,100
3 or 4	1,200
5 or more	1,250

Table 87.30-3
 MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF NON-PRESSURIZED AND IN-GROUND PRESSURE
 SOIL ABSORPTION AREAS

Installation of Non-Pressurized and In-Ground Pressure Soil Absorption Areas							
Design Loading Rate in Gallons Per Square Foot Per Day	Percolation Rate When Properly Filed with County Before July 2, 1994 (minutes per inch)	Grant Amount by Number of Bedrooms					
		1	2	3	4	5	Each Additional Bedroom
0.7 or more	0 – less than 10	\$800	\$1,100	\$1,225	\$1,400	\$1,725	\$150
0.60 to 0.69	10 – less than 30	900	1,175	1,400	1,800	1,900	250
0.50 to 0.59	30 – less than 45	1,050	1,450	1,650	1,950	1,975	300
0.49 or less	45 - 60	1,150	1,900	2,200	2,250	2,275	300

Table 87.30-4
 MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF AT-GRADE OR MOUND SOIL ABSORPTION AREAS

Installation of an At-Grade or Mound Soil Absorption Area						
Type of Design	Grant Amount by Number of Bedrooms					
	1	2	3	4	5	Each Additional Bedroom
At-Grade	\$900	\$1,300	\$1,475	\$1,825	\$1,950	\$250
High Groundwater Mound	2,250	2,325	2,550	3,400	3,775	250
High Bedrock Mound	2,350	2,950	3,000	3,400	3,525	275
Slowly Permeable Mound ¹	2,900	3,100	3,250	3,400	3,650	300
Less Than 24" or Greater Than 12% Slope Mound	3,050	3,400	3,475	3,550	4,500	375

¹ A slowly permeable mound may be designed using 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 a having soil loading rate of 0.3 or less.

Table 87.30-5
 MAXIMUM ALLOWABLE GRANT AMOUNT FOR
 INSTALLATION OF A HOLDING TANK

Installation of a Holding Tank			
Number of Bedrooms	Grant Amount	Number of Bedrooms	Grant Amount
3 or fewer	\$2,250	6	\$4,000
4	2,925	7	4,200
5	3,100	8	4,750
		Each Additional Bedroom	225

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

Installation of Replacement Exterior Grease Interceptor by Capacity			
Capacity (in gallons)	Grant Amount	Capacity (in gallons)	Grant 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 GRANT 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 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 AWARD TABLES.** (a) The department may determine on a case-by-case basis the maximum allowable grant amount for types of private sewage systems which are not covered under sub. (3) and Tables 87.30-1 to 87.30-6.

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

(c) The maximum allowable grant 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 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.

Comm 87.31 MAXIMUM ALLOWABLE GRANT AMOUNT FOR EXPERIMENTAL PRIVATE SEWAGE SYSTEMS. (1) Pursuant to s. 145.245 (7) (e), Stats., this section establishes the parameters for allocating the maximum allowable state grant award for experimental private sewage systems.

(2) The department may determine on a case-by-case basis the maximum allowable grant amount for the installation and monitoring of an experimental private sewage system installed under s. 145.02 (3)(b).

(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.

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."

Comm 87.32 INELIGIBLE REHABILITATION OR REPLACEMENT WORK. For the purposes of establishing work which is not eligible for a grant award under this chapter, the following items or projects are considered ineligible work:

(1) Rehabilitation or replacement of a failing private sewage system done before the date on which the governmental unit adopts this program.

(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 done before the determination of failure was made.

(3) Rehabilitation or replacement of a failing private sewage system 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 private sewage system to replace a privy.

Comm 87.40 APPLICATION BY OWNERS. (1) CONTENTS. (a) In order to be eligible to receive a grant award under this chapter, the owner of a failing private sewage system shall submit an application to the participating governmental unit in which the private sewage system 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 award for experimental systems under this chapter, an owner shall 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. 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 in which the private sewage system is located.

(c) Additional information. If, after a determination of failure is made, a person buys or sells the principal residence served by a failing private sewage system, the person shall provide the following additional information:

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

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

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

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 determination of failure was made or for the tax year in which the determination of failure was made, whichever is required by the governmental unit to which the application is submitted.

Note 1: As specified in s. 145.245 (11) (d), 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 2: 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 private sewage system is located.

(c) Additional information. If, after a determination of failure is made, a person buys or sells the small commercial establishment served by a failing private sewage system, the person shall provide the following additional information:

1. A copy of the closing statement or other documentation which show the date of sale of the property.
2. A copy of the 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.

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

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 income tax return for the taxable year in which the enforcement order was issued and, if married and filing separately, a copy of the Wisconsin income tax return 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, the estimated amount of that reduction, and a complete listing of taxable income and adjustments since January 1 of the year in which the enforcement order is issued.

(3) An affidavit from the owner stating the reason that he or she was not required to file a Wisconsin income tax return in the year prior to the year in which the enforcement order was issued. 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.

Comm 87.60 APPLICATION BY PARTICIPATING GOVERNMENTAL UNITS. (1) 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. In order to receive an allocation and grant award, the participating governmental unit shall prepare and submit an application to the department. The application shall be on forms supplied by the department.

Note: Application forms may be obtained, at no charge, from the Department of Commerce, Safety and Buildings Division, P.O. Box 2538, Madison, Wisconsin 53701-2538.

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

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

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

(5) An application for a grant to replace or rehabilitate a private sewage system shall include all of the following:

(a) Certified copies of the following resolutions of the governing body of the governmental unit:

1. 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 employe of the governmental unit.

2. A resolution certifying that grants will be used for rehabilitation or replacement of a private sewage system for 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 grant amount will not exceed the amount permitted under s. 145.245 (7), Stats., and Tables 87.30-1 to 87.30-6.

3. A resolution certifying that grants will be used for replacement or rehabilitation of private sewage systems which will be properly installed and maintained.

4. A resolution certifying that grants provided to the governmental unit will be disbursed to eligible owners, as specified in s. Comm 87.30 and s. 145.245, Stats.

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

1. Adoption of an ordinance which specifically requires compliance with the maintenance program set forth in subd. 4. and which specifically grants enforcement authority.

2. A system for providing written notice of the maintenance program requirements to each owner for a sanitary permit at the time of application.

3. An inspection program, which includes at least one inspection during installation of a private sewage system.

4. A maintenance program which requires inspection or pumping of all new or replacement private sewage systems at least once every 3 years. Every 3 years, the owner of a private sewage system subject to the maintenance program shall submit to the governmental unit a certification form as provided by the governmental unit and signed by a master plumber, a journeyman plumber or restricted-service plumber licensed under ch. 145, Stats., a person licensed under s. 281.48, Stats., a person holding a current certification as listed in s. Comm 5.66 as a private sewage treatment system (POWTS) inspector, or by an employe of the participating governmental unit or state so designated by the department, who has inspected the private sewage system. The inspection form shall require certification that the system is in proper operating condition, and that after inspection and pumping, if necessary, the treatment or holding tank is less than one-third full of sludge and scum.

5. A central record keeping system, so maintained for a period of not less than six years from the date of system installation and capable of providing evidence that the governmental unit is administering the program as specified in this chapter.

6. Where considered appropriate by the governmental unit, a system of user charges and cost recovery which 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.

(c) A list of owners approved as eligible by the participating governmental unit. The list shall include, at a minimum, the name of each owner, the name of the municipality in which the private sewage system is located, the uniform sanitary permit number and the maximum allowable grant amount as determined under s. Comm 87.30 or Comm 87.31.

(d) Other information as requested by the department.

Comm 87.70 ALLOCATION OF FUNDS AND GRANT AWARDS. (1) GENERAL. The department shall allocate funds available for grant 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.

(b) A grant 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) The allocation and payment of grant awards for experimental private sewage systems shall be in accordance with ss. Comm 87.31 and 87.72.

Comm 87.71 PAYMENTS TO PARTICIPATING GOVERNMENTAL UNITS. (1) Except as provided in s. Comm 87.72, grant 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 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 award conditions.

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

(4) At any time before final payment of the grant, 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 grant payment where it determines in writing that a participating governmental unit has failed to comply with program objectives, grant 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 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 project is in the best interest of the state of Wisconsin.

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 payments for monitoring of experimental private sewage systems 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 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 award conditions. Payments shall be awarded to eligible the individual or entity in accordance with the payment schedule included in the conditions of the grant, the maximum allowable grant amount, and usual and customary costs for monitoring of an experimental private sewage system.

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

(3) The total grant 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 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 payment where it determines in writing that an owner has failed to comply with program objectives, grant 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 payment to the extent of any indebtedness, relating to 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 project is in the best interest of the state of Wisconsin.

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 award or grant 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 a grant made under this section and seek recovery of some or all grant 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 awards made under this chapter if the department finds that a private sewage system previously funded by the participating governmental unit with a grant 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.

Comm 87.81 PROGRAM AUDIT. (1) A governmental unit, owner or any other individual or entity receiving a grant 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.

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-8) is available, at no charge, from the Department of Commerce, Safety and Buildings Division, P.O. Box 7162, Madison, WI 53707-7162. Refer to s. Comm 2.52 for fees and processing of priority petitions.

Comm 87.91 PROCESS FOR APPEAL. (1) DENIAL BY A PARTICIPATING GOVERNMENTAL UNIT. When a decision by a participating governmental unit is denial of a grant award, the owner may appeal the decision of the governmental unit in accordance with ch. 68, Stats.

(2) DENIAL BY THE DEPARTMENT. When a decision by the department is denial of a grant award, the owner may appeal the decision of the department in writing within 30 days from the date of said decision.

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.

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (b), Stats., these rules shall take effect on February 1, 1999.

(end)