



NR 128

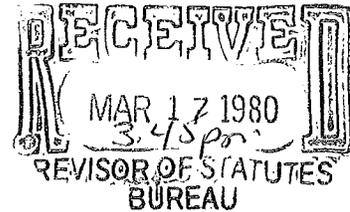
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WQ-47-79 was duly approved and adopted by this Department on January 23, 1980. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 11th day of March, 1980.

Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

AMENDING RULES

.....
IN THE MATTER of amending section NR 128.30 .
of the Wisconsin Administrative Code per- .
taining to state grants for the replacement . WQ-47-79
or rehabilitation of private sewage systems .
.....

Analysis Prepared by Department of Natural Resources

Sub. 144.24(10), Stats., authorizes state grants for the replacement or rehabilitation of individual septic tanks and other on-site sewage systems.

In early 1979, the Department of Natural Resources adopted the original section NR 128.30, Wis. Adm. Code, to implement the individual septic tank grant program. In response to the changes made in sub. 144.24(10), Stats., by ch. 34, laws of 1979, the Department adopted emergency rules, effective November 10, 1979, to allow the Department to award grants under the amended statute for a period of 120 days.

Permanent rule-making procedures are being followed for the amendments contained herein. These amendments, like the emergency rules, are designed primarily to bring the existing rule into conformity with the statute, for example: the substitution of the phrase "private sewage system" for "individual septic system", the change from 300 to 2,100 gallons per day in the definition of small commercial establishment, and the change from "public body" eligibility to "county" eligibility.

As in the emergency rules, three subsections of the rules contain substantive changes in section NR 128.30 which the Department is required to make under sub. 144.24(10), Stats., as affected by ch. 34, laws of 1979. The rules:

1. Establish a maintenance program to be administered by counties, section NR 128.30(6)(d)5.;
2. Establish criteria for determining if a private sewage system is a failing private sewage system, section NR 128.30(2)(d);
and
3. Establish a funding priority list, section NR 128.30(7).

In addition, these rules contain an enforcement subsection not found in the emergency rules, subsection NR 128.30(10). Because this separate enforcement subsection is created, section NR 128.24 is amended to apply only to violations of those sections of chapter NR 128 other than section NR 128.30.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 144.24 and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby amends rules interpreting subsection 144.24(10), Wisconsin Statutes, as follows:

SECTION 1 - Section NR 128.30 is amended to read:

NR 128.30 State grants for the individual septic tank replacement or rehabilitation ~~of individual septic systems~~. (1) Purpose. The purpose of this section is to establish rules under s. 144.24(10), Stats., for the implementation and administration of a financial assistance program to replace or rehabilitate ~~septic or other on-site~~ private sewage systems under enforcement orders.

Note: These eligibilities are separate and apart from those identified in NR ~~128.07~~ 128.08 and constitute a separate process.

(2) Definitions. The following definitions apply to this section.

(a) "Department" means the department of natural resources.

(b) A "failing private sewage system" is a private sewage system which causes or results in any of the following conditions:

1. The failure to accept sewage discharges which causes back up of sewage into the structure served by the private sewage system.

2. The discharge of sewage to the surface of the ground or to a drain tile.

3. The discharge of sewage to any waters of the state.

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

~~(b)~~(c) "Principal residence" means a residence which is occupied at least 51% of the year by an individual, family or household. Second homes, vacation or recreation residences are not considered ~~to be~~ "principal residences."

(d) -- "Public body" means sanitary district, town, village, city or county.

(a)(d) "Individual-septic Private sewage system" means a privately owned-domestic-wastewater sewage treatment and disposal system or portion of-an-individual-system serving a principal residence or small commercial establishment with a septic tank and soil absorption field located on the same parcel of land as the structure. This term also means an alternative sewage system approved by the department of health and social services including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on different parcel of land than the structure. A private sewage system may be owned by a property owner or by a special purpose district. In order to constitute an-"individual-septic a "private sewage system," a system cannot discharge-to-surface-waters-or be connected to any conventional municipal treatment works, or have municipal treatment facilities available to the property. Normally,-an-individual-septic system-is-an-on-site-system-with-localized-treatment-and-disposal-of wastewater-with-minimal-or-no-conveyance-of-untreated-wastewater.-:Limited conveyance-of-treated-or-partially-treated-effluents-to-further-treatment or-disposal-sites-can-be-a-function-of-individual-systems-where-it-is cost-effective.

(e)(e) "Small commercial establishments" means a commercial establishments or business places which have has wastewater average total sewage flows which-total of less than 300 2,100 gallons per day. However, the private sewage system for a small commercial establishment shall be designed for the maximum daily flow.

(3) Limitations on award. Before awarding grant assistance for any project for an-individual-septic a private sewage system, the department shall determine;

(a) That the project has been entitled to priority in accordance with sub. (7) below.

~~(b) -- That the public body applying for the grant has:~~

~~1. -- Certified that the project will be completed as planned and that the non-state project costs will be paid; and~~

~~2. -- The legal, institutional, managerial, and financial capability to insure adequate installation, operation, maintenance and inspection of the systems.~~

~~(c) -- That the necessary permits and plan approvals have been obtained;~~

~~(d) -- That the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met;~~

~~(e) -- That public ownership of the proposed project is infeasible; and~~

~~(f)(b) That all requirements of sub. (6) of this section have been met.~~

(4) Eligible systems. Individual-septic Private sewage systems ~~to~~ which replace or rehabilitate existing systems are eligible for grant assistance if they meet the following conditions: eligibility criteria set forth in s. 144.24(10)(e), Stats.

~~(a) -- The individual-septic system will serve one or more principal residence or small commercial establishment constructed prior to and inhabited on July 1, 1978.~~

~~(b) -- The individual-septic system will replace or rehabilitate an existing system under enforcement orders under ss. 144.025(2)(d) or 145.02(3)(f), Stats.~~

~~(c) -- The principal residence or small commercial establishment which will be served by the individual-septic system has not received a previous grant under s. 144.24(10), Stats.~~

(5) Eligible and ineligible costs. The following cost eligibility criteria shall apply to ~~individual-septic~~ applications for private sewage systems applying for grants under s. 144.24(10), Stats.

(a) Costs allowable in determining grant funding under this section may not exceed the costs of rehabilitating or replacing a private sewage system which would be necessary to allow the rehabilitated or replaced system to meet the minimum requirements of the state plumbing code under s. 145.13, Stats.

(b) 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.

~~(a)~~(c) Acquisition of land on which the ~~individual private sewage system treatment-works-are~~ is located is not grant eligible.

~~(b)~~(d) ~~Common~~ toilets, sinks, tubs, drains and other wastewater generating fixtures, associated plumbing and modifications to ~~homes~~ a principal residence or small commercial establishments are not grant eligible.

~~(e)~~(e) Only reasonable costs of construction site restoration to preconstruction conditions are eligible; however, costs of improvement or decoration occasioned by the installation of ~~individual~~ a private sewage system are not grant eligible.

~~(d)~~(f) Conveyance pipes from wastewater generating fixtures to the treatment unit connection flange or joint are not eligible where the conveyance pipes are located on private property.

~~(e)~~(g) Small sewage treatment plants with surface discharges are not grant eligible.

(h) Replacement or rehabilitation work done before the enforcement order which makes the system eligible under s. 144.24(10)(e)1., Stats., was issued is not eligible.

(6) Grant application. (a) A ~~public-body~~ county shall apply for grants for the replacement or rehabilitation of private sewage systems aided under this program on forms to be supplied by the department.

Note: Application forms may be obtained, at no charge, from the Bureau of Water Grants, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

(b) Counties may request Ppreapplication assistance should-be requested including technical assistance from the department ~~for-each~~ project.

(c) Applications must be received by the department no later than January 1 ~~of-any-year~~ for consideration in that fiscal year.

(d) An application for a grant to replace or rehabilitate ~~individual~~ septic private sewage systems shall include:

1. Certification by the applicant ~~public-body~~ that ~~the-grant-moneys~~ provided grants will be used to replace or rehabilitate ~~individual-septic~~ private sewage systems ~~servng-one-or-more-principal-residence-or-small~~ commercial-establishment-constructed-prior-to-and-inhabited-on-July-1, 1978 which meet the eligibility requirements in s. 144.24(10)(e), Stats., that the funds will be used as provided in s. 144.24(10)(f), Stats., and that allowable costs will not exceed the amount under par. (5)(a) or (b);

2. Certification by the applicant ~~public-body~~ that ~~public-ownership~~ is-not-feasible grants provided to counties shall be dispursed to the owners of eligible private sewage systems;

3. Certification by the applicant that the project will be completed as planned, and that the total share for each principal residence owner or small commerical establishment owner shall not be less than 25% of the total cost of the project.

~~4.--The right (such as that granted by an easement or other covenant running with the land) of reasonable access by the agents of the department, and the grantee to each individual septic system at or for such purposes as construction inspection and monitoring, operation and maintenance.~~

12.4. Certification by the applicant that the grants will be used for individual septic private sewage systems that will be properly installed, operated and maintained.

13.5. Documentation of an approvable regulatory program which will to insure proper installation, operation and maintenance of individual all new or replacement private sewage systems in the jurisdiction constructed in that county. The program shall include, at a minimum
An approvable regulatory program must include the following:

a. ~~Procedures to assure that new septic systems are properly permitted, sited, designed and installed, pursuant to chapter 258, laws of 1977 and section H62.20, Wis. Adm. Code.~~ County adoption of an ordinance which specifically requires compliance with the maintenance program set forth in subd. 5. d. and which specifically grants enforcement authority.

b. ~~A maintenance program and schedule which includes periodic pumping (where necessary) of septic and holding tanks as required by sections H62.20(7) and H62.20(9), Wis. Adm. Code.~~ A system for providing written notice of the maintenance program requirements to each applicant for a sanitary permit at the time of application.

c. An inspection and monitoring program, which includes at least one inspection during installation of a system, regular inspections thereafter, and enforcement actions when replacement, rehabilitation or abatement is necessary pursuant to s. 146.14, Stats.

d. A maintenance program, which requires inspection of all new or replacement private sewage systems at least once every 3 years. The owner of a system subject to the maintenance program must be required to submit to the county a certification form (to be provided by the county) every 3 years, signed by the owner and signed by a master plumber, journeyman plumber or restricted plumber licensed under ch. 145, Stats., a person licensed under s. 146.20, Stats., or by a county or state employee designated by the department, who has inspected the system. The form shall require certification that the system is in proper operating condition, and that after inspection, and pumping if necessary, the septic or holding tank is less than 1/3 full of sludge and scum.

~~d.~~ e. A central record keeping system.

~~e.~~ f. Where considered appropriate, by the county, a ~~user-charge~~ system of user charges and cost recovery which assures that each recipient of service under this program will pay ~~its~~ a proportionate share of the costs. User charges and cost recovery may include the cost of the grant application fee and the cost of supervising installation and maintenance.

~~3.~~6. Documentation that enforcement orders under s. 144.025(2)(d), or 145.02(3)(f), or 145.20(2)(f), Stats., or enforcement orders from the county under s. 146.13, Stats., have been issued against the systems to be replaced or rehabilitated~~;~~.

~~5.~~7. For a system serving more than one principal residence or small commercial establishment, an assurance~~;~~ (such as by deed restriction or other covenant running with the property) that the system is and will continue to be owned and controlled jointly by the owners of the properties served~~;~~.

6.8. A statement assuring availability of the proposed site, if relevant;

7. Copies of the certified soil tester's report and the plans and specifications for each system which is to be replaced or rehabilitated;

8. Evidence that all applicable approvals and permits required by local governments, state and federal agencies have been obtained;

9. A description of the nature and scope of the proposed project, including a schedule for the completion of specific tasks and an itemized description of the estimated or actual costs for the project;

10. An itemized description of the estimated costs for the project;

11. Subagreements or proposed subagreements, or an explanation of the intended method of awarding subagreements, for performance of any substantial portion of the project work;

12. A map showing the boundaries of all contiguous project areas established for the purposes of priority ranking under sub. (7), and showing the location of all property lines and all private sewage systems included in each contiguous project area.

(7) Priority ranking system. (a) The following factors scoring will be used to determine the funding priority for state grant assistance under s. 144.24(10), Stats.:

1. All individual septic system grants within a project area proposed by an applicant public body and approved by the department, will be considered as a single project for priority purposes.

2.1. Pollution severity score. a. Projects in areas with an existing septic system failure rate of 30% or more shall be assigned 10 points. a. Under this subdivision, the county must establish one or more contiguous areas. A contiguous project area must include at least 5 failing private sewage systems. There is no maximum number of private sewage systems that can be included in each contiguous project area. The county may include as many contiguous areas as it desires in one application. Each system in each contiguous project area shall receive a separate priority rating in accordance with this paragraph, and the total number of points assigned to the systems included in one application will be divided by the total number of systems, in accordance with par. (b). A contiguous project area can be any size or shape, except that the project boundaries must follow property lines and include all properties between the properties with failing systems included in that project area. The project boundaries may be adjusted to include an area with the highest percent of failing private sewage systems possible. The project boundaries, all private sewage systems within those boundaries, and all property lines must be shown on a map submitted with the grant application form.

b. Projects in areas with an existing septic system failure rate between 15% and 30% shall be assigned 5 points.

b. Applications with a private sewage system failure rate of 50% or more of the systems in a contiguous project area will be assigned 10 points for each system included in the application.

c. Applications with contiguous project areas with 30-50% failure rate will be assigned 8 points for each system included in the application.

d. Applications with contiguous project areas with 20-30% failure rate will be assigned 6 points for each system included in the application.

e. Applications with contiguous project areas with 10-20% failure rate will be assigned 4 points for each system included in the application.

~~3. Cluster score:--If over 50% of the septic systems failing in a project area will be corrected by a jointly owned cluster system serving 5 or more existing systems the project will be assigned 5 points.~~

4.2. Health or pollution hazard severity score. In determining the health or pollution hazard score for a project, points may be assigned according to one of the categories below: Applications for projects which will alleviate ponding on the ground surface, sewage back-up, direct pipe discharge of sewage effluent, or contamination of groundwater shall be assigned points as follows:

~~a. Projects to alleviate documented contamination of groundwater used for water supply shall be assigned 10 points.~~

a. Applications with 30 or more failing private sewage systems will be assigned 8 points for each system included in the application.

~~b. Projects to eliminate ponding of effluent on the ground surface, sewage back-ups or direct piped discharge of effluent from 20 or more systems shall be assigned 8 points.~~

b. Applications with 20-30 failing private sewage systems will be assigned 6 points for each system included in the application.

~~c. Projects to eliminate ponding of effluent on the ground surface, sewage back-ups or direct piped discharge of effluent from less than 20 septic systems shall be assigned 4 points.~~

c. Applications with 10-20 failing private sewage systems will be assigned 4 points for each system included in the application.

d. Applications with 1-10 failing private sewage systems will be assigned 2 points for each system included in the application.

3. Those private sewage systems that have been shown to contribute significant pollution to a watershed and are located in a priority management area of a priority watershed that receives state grant funding under the Wisconsin non-point source pollution abatement grant program under s. 144.25, Stats., and chapter NR 120, Wis. Adm. Code, will be assigned 1 point for each such system included in the application.

(b) The total number of points assigned to an application under par. (a) will be divided by the total number of private sewage systems included in that application. The resulting number will be used to rank applications. The highest number will be funded first.

~~(b)~~(c) In case 2 or more projects applications have the same priority value number, the project-serving-the-larger-population application having the most private sewage systems will be considered to have a higher priority.

~~(e) If a factor enumerated in this subsection is not properly assignable to a project, then the project shall be assigned a score of zero for that factor.~~

(d) The project priority list shall be revised monthly by the department between July 1 and January 1, or until the funds are depleted (if depleted prior to January 1), to add eligible projects as applications are received. Each January a priority list shall be prepared that will be in effect until the end of June of that same year.

~~(d)~~(e) In cases where it is determined that the most cost-effective solution for an area includes the combination of an individual-septic a private sewage system project and a public sewerage sewage system project approved under chapter NR 110, Wis. Adm. Code, the applicant public-body will be eligible to receive individual-septic private sewage system grants under this subchapter section at the same time as it begins construction of its public sewerage sewage system project.

~~(e) -- The project priority list shall be revised annually by the department.~~

~~(8) -- State share. -- The state grant share under this subsection for any individual septic system and the cost of its installation shall be limited to \$3,000 or 60% of the total project cost, whichever is less. The total public body or principal owner or small commercial establishment owner share shall not be less than 25% of the total costs of the project.~~

~~(9)~~ (8) Payments. (a) Grant payments shall be made to the public body county applying for a grant. The public body county shall be responsible for disbursing all funds received from the department for the purposes for which ~~application~~ the grant award was made.

(b) The grantee shall be paid the state grant share of eligible project costs ~~incurred within the scope of an approved project and which are currently due and payable by the grantee (but not including withheld or deferred amounts)~~, under s. 144.24(10)(L)3., Stats.

(c) The grantee may submit requests for payments for eligible costs in accordance with a negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, the department shall cause to be disbursed from available funds such amounts as are necessary. The total amount of necessary state payments to the grantee for the project should be equal to the state share of the actual ~~or estimated~~ eligible project costs incurred to date, as the grantee certified in its most recent request for payment.

(d) At any time before final payment under the grant, the department may cause any request(s) for payment to be reviewed or audited. Based on such review or audit any payment may be reduced for prior overpayment or increased for prior underpayment.

(e) The state share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the state of Wisconsin.

(f) After approval of the request for payment, which the grantee designates as the "final payment request", and the grantee's compliance with all applicable requirements of this chapter and the grant agreement, the department shall pay to the grantee any unpaid balance of the state share of the eligible project cost ~~which has not already been paid~~. The final payment request must be submitted by the grantee promptly after project completion. Before final payment under the grant, the grantee must execute and deliver an assignment to the state of Wisconsin, of the state share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the state under the grant. ~~The grantee must also execute and deliver a release discharging the state of Wisconsin, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to the exceptions specified in the release.~~

(g) It is department policy that full and prompt payment be made to the grantee for eligible project costs. The department may only authorize the withholding of a grant payment where it determines in writing that a grantee has failed to comply with project objectives, grant award conditions, or reporting requirements. Such withholding shall be limited to only that amount necessary to assure compliance.

(h) The department shall withhold payment to the extent of any indebtedness to the state of Wisconsin, unless it determines that collection of the indebtedness will impair accomplishment of the project objectives and that continuation of the project is in the best interest of the state of Wisconsin.

(9) Enforcement. If the department has reason to believe that a violation of the provisions of this section or of any grant or grant amendment made under this section has occurred, the department may take action as follows:

(a) Under s. 144.24(10)(n), Stats., the department may cause written notice to be served upon the alleged violator, and in conjunction with that notice:

1. Issue an order that corrective action be taken by the alleged violator within a reasonable time, or

2. Require that the alleged violator appear before the department for a hearing, to answer the charges that a violation has occurred.

(b) Under s. 144.98, 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 grantee, if an order issued under s. 144.24(10)(n), Stats., is violated.

(c) Under s. 144.24(10)(n)4., Stats., the department may suspend or terminate additional grants made under this section if the department finds that a private sewage system previously funded by the county with a grant awarded under this section is not being or has not been properly installed or maintained.

(d) The department may declare as ineligible project costs directly related to the violation.

(e) The department may withhold payment otherwise due to the grantee, under section NR 128.18(6), Wis. Adm. Code.

(f) The department may seek an injunction or other appropriate relief, under s. 144.98, Stats.

(g) The department may seek the imposition of a forfeiture for each violation, pursuant to s. 144.99, Stats.

(10) General conditions. All grants and grantees, ~~under this subsection,~~ for ~~individual-septic~~ private sewage system projects under this section are governed, where applicable, by general administration requirements of this chapter.

Section 2 - Section NR 128.24 is amended to read:

NR 128.24 Enforcement. (1) Noncompliance with the provisions of ~~this chapter~~ sections NR 128.01 through NR 128.25 or any grant or grant amendment made under ~~this chapter~~ those sections shall be cause for the imposition of one or more of the following sanctions at the discretion of the department.

- (a) The grant may be terminated or annulled under NR 128.21;
- (b) Project costs directly related to the noncompliance may be declared ineligible;
- (c) Payment otherwise due to the grantee of up to 10% may be withheld under NR 128.18(6);
- (d) Project work may be suspended under NR 128.21;
- (e) A court of appropriate jurisdiction may enter an injunction or afford other equitable relief;
- (f) Such other administrative or judicial remedies may be instituted as may be legally available and appropriate.
- (g) The department may seek recovery of some or all grant payments made pursuant to s. 144.24, Stats., unless the conditions set forth in the grant agreement have been fully satisfied.

(2) In cases where service is not provided in a delineated service area in compliance with the facility planning schedule, a course of action under this section may not be entered into by the department until an order pursuant to s. 144.07(1), Stats., has been entered by the department relative to that service area and in no case can such an action be taken unless 5 years have elapsed from the time that service is scheduled to be provided. Further, in no case can recovery sought be more than the depreciated value of the grant for that segment of the treatment works designated for service to the unserved area.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on January 23, 1980.

The rules contained herein shall take effect upon publication as required by sec. 227.026, Stats.

Dated at Madison, Wisconsin 11 March 1980

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

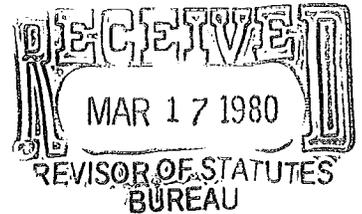
Anthony S. Earl
Secretary

March 12, 1980

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
411 West
C A P I T O L

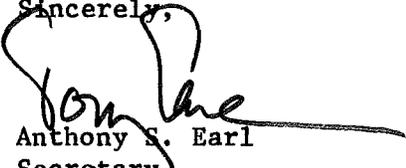


Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WQ-47-79. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Natural Resources and Tourism pursuant to sec. 227.018, Stats. There were no comments.

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

Sincerely,


Anthony S. Earl
Secretary

Enc.