

## Chapter NR 128

POINT SOURCE POLLUTION ABATEMENT  
GRANT PROGRAM

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## Subchapter I Wisconsin Fund

**NR 128.01 Purpose.** The purpose of this subchapter is to establish rules under s. 144.24, Stats., for the implementation and administration of a financial assistance program for the planning, design, engineering, and construction of point source pollution abatement facilities.

**History:** Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.02 Applicability and cross referencing.** This subchapter shall apply to all applications for funding for planning, design and construction

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of point source pollution abatement facilities made pursuant to s. 144.24, Stats. Compliance with this subchapter and all other applicable requirements identified herein is necessary for satisfying qualification requirements prior to grant assistance.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.03 Definitions.** For the purposes of this subchapter:

(1) "Alternative wastewater treatment works" means a wastewater conveyance and/or treatment system other than a conventional system. This includes small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

(2) "Approval" means the written approval of the department.

(3) "Approved areawide waste treatment management plan" means a plan or elements thereof developed pursuant to Section 208 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act Amendments of 1977 (33 USC 1251 et. seq.), and approved by the state of Wisconsin.

(4) "Combined sewer" means a sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

(5) "Construction" means any one or more of the following activities: Preliminary planning to determine the feasibility of treatment works; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures or other necessary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," means:

(a) The approval of the plan of study for step 1 activities;

(b) The award of a step 2 grant for step 2 activities;

(c) Issuance of a notice to proceed under a construction contract for any segment of step 3 project work or, if notice to proceed is not required, execution of the construction contract for step 3 activities.

(6) "Conventional system" means a collection and treatment system consisting of minimum size gravity collector sewers normally with man-holes, force mains, pumping and lift stations, and interceptors leading to a central treatment plant.

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

(8) "Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow, subject to the provisions in s. NR 128.20.

(9) "Individual systems" means privately owned alternative wastewater treatment works (including dual waterless/graywater systems) serving one or more principal residences or small commercial establishments which are neither connected into nor a part of any conventional treatment works. In general, these are on-site systems 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 cost-effective.

(10) "Industrial user" means:

(a) Any nongovernmental, nonresidential user of a publicly owned treatment works which discharges more than the equivalent of 25,000

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for ensuring the integrity of the financial statements and for providing a clear audit trail. The text also mentions that proper record-keeping is essential for identifying and correcting errors in a timely manner.

2. The second part of the document focuses on the role of internal controls in preventing fraud and misstatements. It highlights that a strong internal control system is necessary to ensure that all transactions are properly authorized, recorded, and reviewed. The text also notes that internal controls should be designed to be cost-effective and to provide a reasonable level of assurance.

3. The third part of the document discusses the importance of segregation of duties. It explains that this principle is essential for preventing fraud and for ensuring that no single individual has control over all aspects of a transaction. The text also mentions that segregation of duties should be implemented in a way that is practical and efficient.

4. The fourth part of the document focuses on the importance of regular reconciliations. It explains that reconciling accounts and statements is a key component of the accounting process and is essential for ensuring that the financial records are accurate and up-to-date. The text also notes that reconciliations should be performed on a regular basis and should be reviewed by a separate individual.

5. The fifth part of the document discusses the importance of maintaining proper documentation. It explains that all transactions should be supported by appropriate evidence, such as invoices, receipts, and contracts. The text also mentions that this documentation is essential for providing a clear audit trail and for ensuring the accuracy of the financial statements.

6. The sixth part of the document focuses on the importance of training and education. It explains that all employees involved in the accounting process should receive appropriate training and education to ensure that they are able to perform their duties accurately and efficiently. The text also notes that ongoing education is essential for staying up-to-date on the latest accounting practices and regulations.

(c) Payment otherwise due to the grantee of up to 10% may be withheld under s. NR 128.18 (6);

(d) Project work may be suspended under s. 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.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (intro.), Register, May, 1980, No. 293, eff. 6-1-80.

**NR 128.25 Grantee accountability. (1) FINANCIAL MANAGEMENT.** The grantee is responsible for maintaining a financial management system which shall adequately provide for:

(a) Accurate, current and complete disclosure of the financial results of each grant program in accordance with department reporting requirements. Accounting for project funds shall be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all project funds, property, and other assets.

(d) Comparison of actual with budgeted amounts for each grant.

(e) Procedures for determining the eligibility and allocability of costs in accordance with the provisions of s. NR 128.05.

(f) Accounting records which are supported by source documentation.

(g) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with the terms of the grant agreement. The grantee shall schedule such audits with the reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity.

(h) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(2) RECORDS. The following record and audit policies are applicable to all department grants and to all subagreements.

(a) The grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly:

1. The amount, receipt, and disposition by the grantee of all assistance received for the project, including both state assistance and any matching share or cost sharing; and

2. The total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the state grant has been awarded. In addition, contractors of grantees, including contractors for professional services, shall also maintain books, documents, papers, and records which are pertinent to a specific state grant award. The foregoing constitute "records" for the purposes of this section.

(b) The grantee's records and the records of his contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying, and audit by the department.

(c) The grantee and contractors of grantees shall preserve and make their records available to the department:

1. Until expiration of 3 years from the date of final settlement, or

2. For such longer periods, if required by applicable statute or lawful requirement; or

3. If a grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

4. Records which relate to appeals, disputes, litigation on the settlement of claims arising out of the performance of the project for which a grant was awarded, or costs and expenses of the project to which exception has been taken by the department or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved.

(3) AUDIT. (a) Preward or interim audits may be performed on grant applications and awards.

(b) A final audit shall be conducted after the submission of the final payment request. The time of the final audit will be determined by the department and may be prior or subsequent to final settlement. Any settlement made prior to the final audit is subject to adjustment based on the audit. Grantees and subcontractors of grantees shall preserve and make their records available pursuant to s. NR 128.25 (2).

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

**NR 128.26 Variances.** (1) GENERAL. The natural resources board may approve variances from requirements of this subchapter upon the recom-

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mentation of the department secretary when it is determined that such variances are essential to effect necessary grant actions or department objectives where special circumstances make such variances in the best interest of the state. Before granting variances, the board shall take into account such factors as good cause, circumstances beyond the control of the grantee, and financial hardship.

(2) **APPLICABILITY.** A grantee may request a variance from any non-statutory requirement of this subchapter.

(3) **REQUEST FOR VARIANCE.** A request for variance shall be submitted in writing to the director, office of intergovernmental programs, as far in advance as the situation will permit. Each request for a variance shall contain the following:

(a) The name of the applicant or the grantee, the grant number, and the dollar value;

(b) The section of this subchapter from which a variance is sought;

(c) An adequate description of the variance and the circumstances in which it will be used, including any pertinent background information which is relevant to making a determination of justification; and

(d) A statement as to whether the same or a similar variance has been requested previously, and if so, circumstances of the previous request.

(4) **APPROVAL OF VARIANCE.** Variances may be approved only by the natural resources board. A copy of each such written approval shall be retained in the department grant file.

History: Emerg. cr. eff. 4-20-81; cr. Register, August, 1981, No. 308, eff. 9-1-81; am. (1), (2) and (3) (b), Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.30 State grants for individual septic tank replacement or rehabilitation.** (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 private sewage systems under enforcement orders.

Note: These eligibilities are separate and apart from those identified in s. NR 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.

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(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 "principal residences."

(d) "Private sewage system" means a sewage treatment and disposal 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 a "private sewage system," a system cannot be connected to any conventional municipal treatment works, or have municipal treatment facilities available to the property.

(e) "Small commercial establishments" means a commercial establishment or business place which has average total sewage flows of less than 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 a private sewage system, the department shall determine:

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

(b) That all requirements of sub. (6) have been met.

(4) ELIGIBLE SYSTEMS. Private sewage systems which replace or rehabilitate existing systems are eligible for grant assistance if they meet the eligibility criteria set forth in s. 144.24 (10) (e), Stats.

(5) ELIGIBLE AND INELIGIBLE COSTS. The following cost eligibility criteria shall apply to applications for private sewage systems 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.

(c) Acquisition of land on which the private sewage system is located is not grant eligible.

(d) Toilets, sinks, tubs, drains and other wastewater generating fixtures, associated plumbing and modifications to a principal residence or small commercial establishment are not grant eligible.

(e) Only reasonable costs of construction site restoration to preconstruction conditions are eligible; however, costs of improvement or deco-



ration occasioned by the installation of a private sewage system are not grant eligible.

(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.

(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 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 preapplication assistance including technical assistance from the department.

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

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

1. Certification by the applicant that grants will be used to replace or rehabilitate private sewage systems 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 sub. (5) (a) or (b);

2. Certification by the applicant that grants provided to counties, shall be disbursed 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 commercial establishment owner shall not be less than 25% of the total cost of the project.

4. Certification by the applicant that the grants will be used for private sewage systems that will be properly installed and maintained.

5. Documentation of an approvable regulatory program to insure proper installation and maintenance of all new or replacement private sewage systems constructed in that county. An approvable regulatory program must include the following:

a. 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 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 program, which includes at least one inspection during installation of a system.

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  $\frac{1}{2}$  full of sludge and scum.

e. A central record keeping system.

f. Where considered appropriate, by the county, 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 costs. User charges and cost recovery may include the cost of the grant application fee and the cost of supervising installation and maintenance.

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.

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.

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

9. A description of the nature and scope of the project and an itemized description of the estimated or actual costs for the project.

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

11. 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 scoring will be used to determine the funding priority for state grant assistance under s. 144.24 (10), Stats.:

1. Pollution severity score. 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. 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.

2. Health or pollution hazard severity score. 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. Applications with 30 or more failing private sewage systems will be assigned 8 points for each system included in the application.

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

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 ch. NR 120, 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.

(c) In case 2 or more applications have the same priority number, the application having the most private sewage systems will be considered to have a higher priority.

(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.

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

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

(b) The grantee shall be paid the state grant share of eligible project costs, 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 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 subchapter and the grant agreement, the department shall pay to the grantee any unpaid balance of the state share of the eligible project cost. 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.

(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 s. NR 128.18 (6).

(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 for private sewage system projects under this section are governed, where applicable, by general administration requirements of this subchapter.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. Register, May, 1980, No. 293, eff. 6-1-80; am. (8) (f) and (10), Register, April, 1982, No. 316, eff. 5-1-82.

#### Subchapter II Combined Sewer Overflow Abatement

**NR 128.35 Purpose.** The purpose of this subchapter is to establish rules under s. 144.242, Stats., for the administration of a financial assistance program to implement the legislative finding that state financial assistance for the elimination of combined sewer overflow to the waters of the state is a public purpose and a proper function of state government.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

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**NR 128.36 Applicability.** This subchapter shall apply to all applications for funding under s. 144.242, Stats., for the abatement of combined sewer overflow to the waters of the state. Compliance with this subchapter and all other applicable requirements identified herein is necessary for satisfying qualification requirements prior to grant assistance.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.37 Definitions.** In this subchapter the definitions in s. 144.242, Stats., and s. NR 128.03 shall apply except:

(1) "Construction" means any one or more of the following activities: erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works; or professional services necessary to accomplish any of the foregoing.

(2) "Initiation of construction" means the issuance of a notice to proceed under a construction contract or, if a notice to proceed is not required, execution of the construction contract.

(3) "Multi-purpose project" means any project which will result in combined sewer overflow abatement and one or more additional objectives being satisfied.

(4) "Project" means any discrete contract or subitem for the construction of a treatment works described in an approved facilities plan.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.38 Severability.** Should any section, paragraph, phrase, sentence, clause or word of this subchapter be declared invalid or unconstitutional for any reason, the remainder of this subchapter shall not be affected thereby.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.39 Eligibility for a state grant.** (1) **ELIGIBLE MUNICIPALITIES.** Only a municipality with a sewerage system which is violating ch. 147, Stats., or title III of the federal water pollution control act, as amended, 33 USC 1251 to 1376, because of combined sewer overflow is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(2) **ELIGIBLE PROJECTS.** Projects for the abatement of combined sewer overflow are eligible for participation in the financial assistance program established by this subchapter. Grant assistance may be awarded by the department for those projects that:

(a) Are the most cost-effective means of abating combined sewer overflow and have completed facility planning and engineering design requirements under s. 144.242 (4), Stats.

(b) Are entitled to priority in accordance with s. NR 128.40 and ch. NR 160.

(3) **INELIGIBLE PROJECTS.** Projects funded under this subchapter are not eligible for participation in the financial assistance program established under subch. I.

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(4) **ELIGIBLE COSTS.** The grantee's allocable project costs which are reasonable and necessary are eligible. These costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material the grantee incurs for the project except as provided in sub. (5);

(b) Those costs identified in s. NR 128.05 (4) (c), (d), (j), (k), (l), (n), (p), (q), (r) and (7).

(c) Pre-award professional services and bid advertisement publication as approved by the department.

(d) Costs associated with multi-purpose projects as determined by the department are eligible up to the amount necessary for the abatement of combined sewer overflows. Costs shall be determined by prorating the design capacity necessary to abate combined sewer overflows to the design capacity of the proposed project.

(5) **INELIGIBLE COSTS.** Costs which are not necessary for the construction of a combined sewer overflow abatement project are ineligible. Such costs include, but are not limited to:

(a) Those costs identified in s. NR 128.05 (5) (b) to (i) and (q).

(b) Costs of project construction work performed prior to the approved date of initiation of construction established in the grant agreement except as allowed under sub. (4) (c).

(c) Costs associated with percentage-of-cost type contracts.

(6) **DISPUTES CONCERNING ELIGIBLE COSTS.** The grantee should seek to resolve any questions relating to cost eligibility or allocation at the earliest opportunity before execution of the grant agreement. Disputes regarding determination of cost eligibility shall be resolved in accordance with s. NR 128.49.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.40 Distribution of grant funds. (1) GENERAL.** Grant funds distributed under this program will be allocated to those projects placed on a funding list. Project sequence will be by priority value as identified on the project priority list established under ch. NR 160.

(a) By December 31 of each year, each municipality intending to apply for a combined sewer overflow abatement project during the next calendar year shall notify the Department of Natural Resources, Bureau of Water Grants, Box 7921, Madison, Wisconsin 53707, of its intent in writing. For those municipalities that notify the department by December 31, the department shall annually compile a funding list which ranks those municipalities in the same order as they appear on the project priority list established under ch. NR 160. If there are not sufficient funds available under this section to fund all grant requests that year, the department shall award available funds to projects in the order in which they appear on the funding list. The department may provide a notice entitled a "ready to allocate notice" to municipalities which appear on the funding list and which fulfill the requirements of sub. (2). The department may presume that a municipality which has not submitted complete plans and specifications for review by June 30, 1982, and each

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March 31 thereafter and a state grant application by July 31, 1982, and each April 30 thereafter will not be able to receive a "ready to allocate notice" prior to December 31 and receive funding under this paragraph.

(b) As of January 1 of each year, the list created under this section in the prior year expires. The department may allocate funds to a municipality on the list after the expiration of the list if the municipality received a "ready to allocate notice" before the expiration of the list and the requirements of sub. (2) are met.

(2) ALLOCATION PROCEDURE. (a) The allocation procedure identified in s. NR 128.09 (2) applies here except for the references to the lists compiled under s. NR 128.09 (1). The lists used shall instead be taken from sub. (1).

(b) The distribution procedure identified in s. NR 128.09 (4) applies to advance commitments except for the reference to s. 144.24 (9m), Stats. The procedure identified in s. 144.242 (8), Stats., shall be used instead.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82; renum. (2) to be (2) (a) and cr. (2) (b), Register, December, 1982, No. 324, eff. 1-1-83.

NR 128.11 Grant application. (1) PROCEDURE. An application must be submitted to the Department of Natural Resources, Bureau of Water Grants, Box 7921, Madison, Wisconsin 53707, for each group of proposed projects. Submissions required for subsequent related projects may be provided in the form of amendments to the basic application. Each such submission shall be complete. If any information required under sub. (2) has been furnished with an earlier application, the applicant need only incorporate by reference and if necessary, revise the information utilizing the previous application.

(2) CONTENTS OF APPLICATION. Prior to the award of a grant or grant amendment for a project, the applicant shall furnish the following:

(a) The information and materials identified in s. NR 128.10 (2) (a) 1, d. and 2., (b) 7. and (c) 2.;

(b) An approved facilities plan as required under s. 144.242 (4) (b) and (c), Stats.;

(c) A schedule or evidence that the applicant has made satisfactory provision to assure the efficient operation and maintenance of the combined sewer overflow abatement project, including a preliminary plan of operation;

(d) Statements that the applicant has complied with the provisions of s. NR 128.11 (4) (a), (b) and (5); and

(e) Evidence that the project will meet applicable effluent limitations or such limitations as the department and municipality may stipulate in a state court of law.

(f) A sewer use ordinance or evidence that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the project before the completion of construction.

(3) GRANT CONDITIONS. (a) Each combined sewer overflow abatement project grant shall be subject to the provisions of s. NR 128.12 (1), (4), (5), (6), (7), (8) (a) and (b), (10) and (12).



(b) No approval of a project change shall obligate the state of Wisconsin to increase the amount of the grant or payments made under a grant agreement unless a grant increase is also approved under s. NR 128.46. Failure to receive prior approval does not preclude submission or consideration of a request for a grant amendment.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.42 Procurement.** (1) **APPLICABILITY.** Procurement of architectural or engineering services and construction contracts by grantees for construction of a combined sewer overflow abatement project shall be in accordance with state and local law and the provisions of s. NR 128.14 (2), (3), (4), (5), (6) and (8).

(2) **FORCE ACCOUNT WORK.** (a) A grantee shall secure prior written approval from the department for utilization of the force account method.

(b) The department's approval shall be based on the grantee's certification that the grantee possesses the necessary competence required to accomplish such work and the work can be accomplished more economically by the use of the force account method, or emergency circumstances so dictate.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.43 Subagreements for architectural or engineering services.** Administration or management of the construction of a combined sewer overflow abatement project may be performed by negotiated procurement of architectural or engineering services. Subagreements for such services shall be negotiated with candidates selected on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices. To the maximum extent practicable all negotiated procurement shall be conducted in a manner to provide open and free competition.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.44 Construction contracts (subagreement) of grantees.** The provisions of s. NR 128.16 (1), (3) and (4) shall apply.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.45 State share.** The state share of the project cost shall be no greater than 50% of the eligible construction costs as provided in s. 144.242 (7), Stats.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.46 Grant payments.** (1) The provisions of s. NR 128.18 (2), (3), (4) and (6) shall apply to this subchapter.

(2) The grantee shall be paid the state 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), subject to the limitations of s. NR 128.39 (4) (d), up to the grant amount set forth in the grant agreement and any approved amendments thereto.

(3) After completion of final inspection, 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

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subchapter and the grant agreement, the provisions of s. NR 128.18 (5) with the exception of the references to s. NR 128.12 (11), shall apply to this subchapter.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.47 Suspension or termination of grant.** (1) In accordance with the provisions of this section the department may, for good cause, suspend state liability for work done after notification is given to the grantee. Suspension of state liability under such a grant shall be termed for purposes of this subchapter as a "stop-work order".

(2) The provisions of s. NR 128.21 (1) (b), (c), (d), (e), (f), (g), (h), (2) (a), (b), (c), (d), (e) and (f) shall apply to this subchapter.

(3) Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute, and the grantee may appeal a termination or annulment of a grant under s. NR 128.49.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.48 Grant amendments.** The provisions of s. NR 128.22 shall apply to this subchapter.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.49 Disputes.** The provisions of s. NR 128.23 (2) and (3) shall apply to this subchapter.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.50 Enforcement.** Noncompliance with the provisions of this subchapter or any grant or grant amendment made under this subchapter shall be cause for the imposition of one or more of the following sanctions at the discretion of the department:

(1) The grant may be terminated or annulled under s. NR 128.47.

(2) The sanctions in s. NR 128.24 (1) (b), (e) and (f).

(3) Payment otherwise due to the grantee of up to 10% may be withheld under s. NR 128.46 (1).

(4) Project work may be suspended under s. NR 128.47.

(5) The department may seek recovery of some or all grant payments made under s. 144.242, Stats., unless the conditions set forth in the grant agreement have been fully satisfied.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

**NR 128.51 Grantee accountability.** (1) The provisions of s. NR 128.25 (1) (a), (b), (c), (d), (f), (g), (h), (2) and (3) shall apply to this subchapter.

(2) The grantee is responsible for maintaining a financial management system which shall adequately provide for procedures for determining the eligibility and allocability of costs in accordance with the provisions of s. NR 128.39.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

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**NR 128.52 Variances.** The provisions of s. NR 128.26 shall apply to this subchapter.

History: Cr. Register, April, 1982, No. 316, eff. 5-1-82.

### Subchapter III Advance of Allowance

**NR 128.60 Purpose.** The purpose of this subchapter is to establish rules under the municipal wastewater treatment construction grant amendments of 1981 (33 U.S.C. 1251 et seq.) for the implementation and administration of a financial assistance program for facilities planning and engineering design of point source pollution abatement facilities.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.61 Applicability.** This subchapter shall apply to any advance of allowance for facilities planning and engineering design of point source pollution abatement facilities. Compliance with this subchapter and all other applicable requirements identified herein is necessary to receive and retain funding under the advance of allowance provision of the municipal wastewater treatment construction grant amendments of 1981.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.62 Definitions.** For the purposes of this subchapter the definitions in s. NR 128.03 (2), (3), (5), (7), (9) and (24) shall apply and in addition:

(1) "Allowance" means funding intended to assist communities in defraying costs incurred for facilities planning and engineering design.

(2) "Building cost" means:

(a) For step 1 advance of allowance the amount indicated in the U.S. environmental protection agency needs survey as required by s. 516 (b) of the federal water pollution control act, as amended (33 U.S.C. 1375 (b) ) or an amount submitted by the small community;

(b) For step 2 advance of allowance the amount indicated in the facilities plan; or

(c) For step 3 the allowable cost of the initial award of all subagreements for building the project.

(3) "Enforceable requirements of the act" means those conditions or limitations of s. 147.02, Stats., or s. 402 or 404 permits (33 U.S.C. 1342 and 1344 respectively) which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under s. 147.29, Stats., or s. 309 of the federal water pollution control act (33 U.S.C. 1319). If a permit has not been issued, the term shall include any requirements which in the United States' environmental protection agency regional administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the regional administrator determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(4) "Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of 2 or more of the foregoing entities) created under state law, or an Indian tribe or an

authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the federal water pollution control act (33 U.S.C. 1288).

(a) This definition includes a special district created under state law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201 (e) of the federal water pollution control act (33 U.S.C. 1281 (e) ), which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(b) This definition excludes the following:

1. Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

2. Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under state law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(5) "Small community" means any municipality having a population of 3500 or less as determined by the most recent U.S. census.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.63 Severability.** Should any section, paragraph, phrase, sentence, clause or word of this subchapter be declared invalid or unconstitutional for any reason, the remainder of this subchapter shall not be affected thereby.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.64 Eligibility for advance of allowance.** (1) **ELIGIBLE PARTICIPANTS.** (a) Small communities are eligible to participate in the financial assistance program established by this chapter.

(b) Only an applicant which is eligible to receive financial assistance for subsequent phases of construction (steps 2 and 3) and which has the legal authority to subsequently construct and manage the facility may apply for a step 1 advance of allowance.

(2) **ELIGIBLE PROJECTS.** Projects for the construction of publicly owned treatment works, and privately owned treatment works meeting the requirements of s. NR 128.08, are eligible for participation in the financial assistance program established by this subchapter. Advance of allowance may be awarded for the following types of projects.

(a) Step 1 projects for facilities planning required to apply for step 2 financial assistance.

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(b) Step 2 projects for engineering design required to apply for step 3 financial assistance.

(3) INELIGIBLE PROJECTS. (a) Projects not in conformance with approved area-wide waste treatment management plans are not eligible.

(b) Projects meeting the enforceable requirements of the act are not eligible.

(c) Projects with step 1 advance of allowance applications received after the department's facilities plan approval date are not eligible.

(d) Projects with step 2 advance of allowance applications received after the department's engineering design approval date are not eligible.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.65 Distribution, adjustment and repayment of advance of allowance.** (1) DISTRIBUTION. (a) An advance of allowance will be given after the department determines that the project is eligible. The advance of allowance will be paid to the small community after the department receives a copy of the advance of allowance agreement signed by the small community's authorized representative.

(b) The amount of the advance of allowance will be determined using the percentage of total project costs as established in 40 CFR part 35, subpart I, appendix B, as amended, and may not exceed the federal share of the estimated allowance.

(2) ADJUSTMENT. Any adjustment to a step 1 or step 2 advance of allowance because of changes in the building cost shall be made at the time of the step 3 grant award.

(a) If a federal step 3 grant award is made, it will include an adjustment for step 1 and step 2 advance of allowance based on actual building costs.

(b) If a state step 3 grant award is made and actual building costs exceed the estimated building costs used for the advance of allowance, an additional allowance shall be made.

(3) REPAYMENT. (a) Repayment of a step 1 advance of allowance may be requested by the department if an acceptable facility plan is not completed within 3 years.

(b) Repayment of a step 2 advance of allowance may be requested by the department if engineering design work is not completed within 2 years.

(c) If a state step 3 grant award is made and actual building costs are less than the estimated building costs used for the step 1 and step 2 advance of allowance, the small community shall repay the excess advance of allowance.

(d) The department may require repayment of step 1 or step 2 advance of allowance if a project does not proceed to step 3, except in cases where a no-action alternative is approved by the department.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.66 Advance of allowance application.** (1) **PROCEDURE.** An application must be submitted to the Department of Natural Resources, Bureau of Water Grants, Box 7921, Madison, Wisconsin 53707, for an advance of allowance for facilities planning or engineering design. If any information required under sub. (2) has been furnished with an earlier application, the applicant need only incorporate that information by reference.

(2) **CONTENTS OF APPLICATION.** (a) *Step 1.* An application for a step 1 advance of allowance shall include the following:

1. The information and materials identified in s. NR 128.10 (2) (a) 1.a., b., and c.;

2. A resolution from the governing body designating an authorized representative.

(b) *Step 2.* An application for a step 2 advance of allowance shall include the following:

1. An approved facilities plan in accordance with ss. NR 110.09 (1) to (6), 128.19 (3) and (4). Where a federal step 1 grant was awarded prior to September 30, 1978, the facilities planning requirements of s. NR 110.09 (1) (b) 11., (2) (1) and (m) need not be met by the applicant. For projects where a federal step 1 grant was awarded prior to June 26, 1978, the facilities planning requirements of ss. NR 110.09 (2) (j) and 110.10 (2) need not be met by the applicant. Where a federal step 1 grant was awarded prior to May 12, 1978 the planning requirements of s. NR 110.09 (2) (k) need not be met.

2. The nature and scope of the proposed step 2 project, including a schedule for the completion of specific tasks.

3. A resolution from the governing body designating an authorized representative.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.67 Limitations and conditions.** Before awarding an advance of allowance, the department shall determine that the requirements of s. NR 128.66 (2) (a) and (b) have been met and shall also determine that:

(1) The provisions of ss. NR 128.11 (2), (4) (a) and (b), (6) (b) and (c), (11) and 128.12 (1) apply to step 1.

(2) The provisions of ss. NR 128.11 (2), (4) (a) and (b), (6) (b) and (c), (7), (10) (a) through (f), (11) and 128.12 (1) apply to step 2.

(3) The small community agrees to complete the project in accordance with the advance of allowance application.

(4) The applicant is a small community.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.68 Suspension or termination of advance of allowance.** (1) In accordance with the provisions of this section the department may, for good cause, suspend state liability for work done after notification is given to the small community. Suspension of state liability under an ad-

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vance of allowance shall be identified as a "stop-work order" for the purposes of this subchapter.

(2) Good cause for issuance of a stop-work order includes, but is not limited to, default by the small community, failure to comply with the terms and conditions of the advance of allowance agreement, or lack of adequate funding.

(3) Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute, and the small community may appeal a suspension or termination of an advance of allowance under s. NR 128.69.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.69 Disputes.** The provisions of s. NR 128.23 shall apply to this subchapter.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.70 Enforcement.** Noncompliance with the provisions of this subchapter or any advance of allowance made under this subchapter shall be cause for the imposition of one or more of the following sanctions at the discretion of the department:

(1) The advance of allowance may be suspended or terminated under s. NR 128.68.

(2) The sanctions in s. NR 128.24 (1) (e) and (f) may be applied.

(3) State liability for project work may be suspended under s. NR 128.68.

(4) The department may seek repayment of all advance of allowance payments made under this subchapter unless the conditions set forth in the advance of allowance agreement have been fully satisfied.

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

**NR 128.71 Variances.** The provisions of s. NR 128.26 shall apply to this subchapter except that the term "advance of allowance" shall be substituted for the word "grant" and the term "small community" shall be substituted for the word "grantee".

History: Cr. Register, April, 1983, No. 328, eff. 5-1-83.

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