

(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) Preaward 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 sub. (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 recommendation 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

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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.

(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 decoration 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 employe 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) (1) 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.

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. **History:** Cr. Register, April, 1982, No. 316, eff. 5-1-82; r. under s. 13.93 (2m) (b) 16, Stats., Register, October, 1985, No. 358.

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.

(4) **ELIGIBLE COSTS.** The grantee's allocable projects 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), (v), (w) 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), (r) to (w).

(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) **COSTS ELIGIBLE IF APPROVED.** Certain direct costs are sometimes necessary for the construction of a treatment works. Those costs identified in s. NR 128.05 (6) (g) are eligible if reasonable and if the department approves them in the grant agreement or a grant amendment.

(7) **CONSTRUCTION CONTRACT CLAIMS.** Reasonable and necessary legal, technical and administrative costs associated with further assessing the merits of construction contract claims are eligible provided:

(a) The grantee issues a written notification to the department prior to incurring costs;

(b) The claim arises from work within the scope of the grant;