

Chapter NR 172

STAGE 2 VAPOR RECOVERY GRANT PROGRAM

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NR 172.01 Purpose. The purpose of this chapter is to establish rules under s. 285.31 (5), Stats., for the implementation and administration of a grant program to assist retail gasoline station owners and operators to comply with the gasoline vapor recovery standards and requirements established under s. 285.31 (3) and (4), Stats.

Note: Section 285.31, Stats., was repealed by 1997 Wis. Act 27.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93; **corrections were made under s. 13.93 (2m) (b) 7., Stats.**

NR 172.02 Applicability. This chapter applies to all applicants and recipients of grant funding for the installation of stage 2 vapor recovery equipment under s. 285.31 (5), Stats. Compliance with this chapter is a prerequisite to eligibility for grant assistance under s. 285.31 (5), Stats.

Note: Section 285.31, Stats., was repealed by 1997 Wis. Act 27.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93; **corrections were made under s. 13.93 (2m) (b) 7., Stats.**

NR 172.03 Definitions. In this chapter:

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

(2) "Grant award" means a fully executed grant agreement document between the department and the owner or operator of a retail gasoline station.

(3) "Ozone nonattainment area" means an area which has been designated as an ozone nonattainment area and classified by the U. S. environmental protection agency as having moderate or worse ozone levels. The term applies to the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha.

(4) "Project" means the acquisition and installation of a vapor recovery system, that the department approves as necessary for and related to compliance with ss. NR 420.045 and 425.035, on a retail gasoline station which is located in an ozone nonattainment area identified in sub. (3).

Note: Sections NR 420.045, 425.03 and 425.035, which contain the implementation and compliance requirements for the stage 2 vapor recovery program, are expected to be published in final form on February 1, 1993.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.

NR 172.04 Eligibility for grant assistance. (1) ELIGIBLE APPLICANT. Any owner or operator of a retail gasoline station which is located in an ozone nonattainment area, is subject to the vapor recovery requirements established under s. NR 420.045 and has been in existence and operation as a retail gasoline station since on or before August 15, 1991, is eligible to apply for grant assistance under this chapter.

(2) **ELIGIBLE PROJECT.** The owner or operator of a project for which an application has been submitted by an eligible applicant is eligible for grant assistance for the project if, based on the information provided, the department determines that each of the following conditions is met:

(a) The retail gasoline station for which the vapor recovery system is installed is subject to s. NR 420.045 and has been in existence and in operation as a retail gasoline station since on or before August 15, 1991.

(b) The vapor recovery system, equipment and component parts meet the requirements of s. NR 420.045.

(c) The retail gasoline station has not claimed or obtained an exemption from the vapor recovery requirements under s. NR 420.045 (1).

Note: In accordance with s. 144.405 (5) (a) Stats., a retail gasoline station constructed after August 15, 1991, is not eligible for grant assistance under this chapter.

(3) **ELIGIBLE SCOPE AND CAPACITY.** If the stationary storage capacity of a project station is increased after August 15, 1991, the department shall prorate the grant amount based on the ratio of the storage capacity which existed on August 15, 1991 to the storage capacity after the increase.

Note: For example, if the stationary storage capacity on 8/15/91 was 100,000 gallons and subsequently increased to 125,000 gallons, the ratio would be calculated as follows:

$$100,000 / 125,000 = .80$$

(4) **ELIGIBLE COSTS.** The eligible costs for which the department may provide grant assistance under this chapter are limited to those costs incurred after August 15, 1991 which are directly related to and necessary for the acquisition and installation of a vapor recovery system which meets the requirements of ss. NR 420.045 and 425.035. The determination of grant eligible costs shall be made in accordance with s. NR 172.05 and the eligible cost tables published by the department under s. NR 172.05.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.

NR 172.05 Determination of the grant amount.

(1) **GENERAL.** The amount of each grant shall be calculated using the tables of eligible costs established by the department under this section and the percentages and maximum amounts specified in s. 285.31 (5) (c), Stats. Within 30 days of May 1, 1993 and as needed thereafter, the department shall prepare and distribute the current cost tables and an explanation of how the cost tables are to be used in calculating the grant amount for each type of vapor recovery system which meets the requirements of s. NR 420.045. The explanation provided shall include sufficient specificity to allow an owner or operator to calculate the estimated total eligible cost and approximate grant amount for the installation of a vapor recovery system at the station.

Note: Section 285.31, Stats., was repealed by 1997 Wis. Act 27.

(2) **COST TABLE DEVELOPMENT.** The department shall develop a standard table of usual and customary unit costs for each type of stage 2 vapor recovery system which meets the requirements of s. NR 420.045. The cost tables values shall, to the extent practicable, be based on actual stage 2 installation cost experience within the state, as well as cost information from stage 2 equipment manufacturers and suppliers, the U.S. environmental protection agency studies and analyses and other states.

(3) **COST TABLE CHANGES.** The department may, from time to time, revise the cost tables or add new tables to reflect actual cost experience or additions or changes in the stage 2 systems or components which meet the requirements of s. NR 420.045. When changes or additions are made, the department shall prepare revised tables and an explanation of the revisions and make them available to interested parties at least 45 days prior to the effective date of the new or changed cost tables.

Note: A copy of the cost tables and an explanation of them is available upon request from the Wisconsin Department of Natural Resources, Bureau of Community Assistance, P.O. Box 7921, Madison, WI 53707.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93; **corrections were made under s. 13.93 (2m) (b) 7., Stats.**

NR 172.06 Award of grant assistance. (1) GENERAL.

The department shall award grant funds to eligible projects through a contractual agreement between the department and the eligible applicant. The grant award document is a commitment of a certain grant amount by the department and an agreement by the grantee to meet specified grant conditions regarding the installation and operation of the vapor recovery system. When signed by the department and the grantee, the grant award provides the basis for the payment of grant funds. In its award of grant funding under this chapter, the department may not exceed the funding level currently available to the department for vapor recovery grants. In the event that currently available funding is not sufficient for all eligible projects for which the department has applications pending, grant awards shall be made on the basis of the compliance date by which the project shall meet the stage 2 installation requirements.

(2) GRANT APPLICATION. An eligible applicant shall prepare and submit a grant application on the forms developed and provided by the department. In its determination of the information to be included in the grant application, the department shall take into account the record keeping and reporting requirements under ss. NR 420.045 and 425.035, and may, to the extent practicable, not require submittal of information which has already been provided for compliance purposes. The department may, however, require updates to information already provided or resubmission of certain information if it determines that this will expedite grant award or payment to the applicant.

Note: A copy of the grant application forms and instructions is available upon request from the Wisconsin Department of Natural Resources, Bureau of Community Assistance, P.O. Box 7921, Madison, WI 53707.

(3) GRANT AWARD. The department shall prepare the grant award document after it has determined that the project is an eligible project and that all application requirements have been met. The grant award shall be signed by the authorized official of the department and shall set forth the terms and conditions of the grant. Acceptance of the grant award shall be made by signature of the authorized representative of the applicant on the award documents provided by the department. Each grant award shall specify an effective date and the date on which the grant will expire.

(4) GRANT CONDITIONS. Each grant awarded under this chapter shall be subject to the following conditions:

(a) The grant award is subject to s. 285.31, Stats., and this chapter.

(b) The grantee commits to completion of all project work and agrees to pay, from other funds, the cost of all project work which is not paid for under the grant.

(c) The grantee agrees to comply with all requirements of ss. NR 420.045 and 425.035 regarding the installation, operation, testing and maintenance of vapor recovery systems.

(d) The grantee shall obtain any permits or approvals required by law to construct, install and operate the vapor recovery system covered by this grant.

(e) The grantee agrees that department representatives will have access to the project site during the preparation, construction and post-construction phases of the project. The grantee further agrees to allow department representatives access to any books, documents, plans, reports, papers and other records which are pertinent to the project, whether these records are maintained by the grantee or its contractor.

(f) The grantee understands and accepts that the final payment under the grant may not be made until the department has determined that the vapor recovery system is operating at a level which meets vapor emission standards under s. NR 420.045.

(g) The grantee agrees that the department is not responsible for the operation or performance of the vapor recovery system. Approval of the type of system or its installation does not constitute any form of warranty of operation or performance of the system installed.

(h) The grantee shall save, keep harmless and defend the department and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property, state or other, occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this grant, acts or omissions by the applicant's employees, agents or representatives.

(i) The grantee or its employees or agents may not be deemed to be employees or agents of the department for any purpose, including worker's compensation.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93; correction in (4) (a) was made under s. 13.93 (2m) (b) 7., Stats.

NR 172.07 Grant payment. (1) ADVANCE PAYMENT.

An advance payment of 75% of the grant award amount may be made to grantees who have not installed the vapor recovery system. Grantees who have completed installation of the vapor recovery system are not eligible to receive an advance payment. In order to obtain an advance payment, the grantee shall have met the compliance plan requirements of s. NR 425.035, and shall have begun the installation of the system.

(2) FINAL PAYMENT. Final payment shall be made to a grantee after the vapor recovery system has been installed, the applicable requirements of s. NR 425.035 have been met and the system has been approved by the department under s. NR 420.045 (3). All projects that are eligible for a grant will be subject to an on-site inspection and emission testing of the vapor recovery system before final payment is made. For projects where installation of the vapor recovery system was completed before grant award, the final payment will be the only grant payment. For projects that receive a 75% advance payment, the final payment will be made after the project has been completed and approved. Requests for final payment shall be submitted on the forms provided by the department.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.

NR 172.08 Records retention and auditing.

The grantee shall retain all records pertaining to the project for a period of 3 years after the date of final payment and, upon request, shall make the records available to the department. Records requests by the department shall allow at least 48 hours for the records to be made available by the grantee.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.

NR 172.09 Variances. (1) GENERAL.

The department may approve a variance from any nonstatutory requirement of this chapter. In its consideration of a variance request, the department shall take into account such factors as good cause, circumstances beyond the control of the grantee, whether the variance is essential to effect necessary actions or departmental objectives, and whether special circumstances make the variance in the best interest of the state.

(2) REQUEST FOR VARIANCE. A request for a variance shall be submitted by a grantee in writing to the department, as far in advance as the situation will permit. Each written variance request shall contain the following:

(a) The name of the person or entity requesting the variance and the name and telephone number of a contact person who is familiar with the variance request.

(b) An explanation of why the variance is needed, including the factual basis for the variance request and the specific provision of this chapter from which a variance is being sought.

(3) VARIANCE DECISION. The department shall respond in writing, within 30 days of receipt, to each request for a variance. The department's response shall state its decision on the request and the reasons or basis for the decision.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.

NR 172.10 Grant termination. The department may terminate any grant made under this chapter under either of the following circumstances:

(1) The department and the grantee may enter into an agreement to terminate the grant at any time under this section. The termination agreement shall establish the effective date of termination of the grant, the basis for settlement of award termination costs, and the amount and date of payment of any sums due either party.

(2) The department may terminate the grant in whole or in part, with a requirement for the grantee to repay all or part of the grant amount, if the department determines that:

- (a) There has been no substantial performance on the project by the grantee;
- (b) There is substantial evidence that the grant was obtained

on the basis of inaccurate or erroneous information or by fraud; or

(c) The grantee has failed to comply with the provision of this chapter.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.

NR 172.11 Enforcement. The department may impose the following sanctions for noncompliance by a grantee with the provisions of this chapter:

(1) The grant award may be terminated in accordance with s. NR 172.10.

(2) Project costs directly related to the noncompliance may be declared ineligible for grant funding.

(3) The department may seek recovery of grant payments made under the grant.

History: Cr. Register, April, 1993, No. 448, eff. 5-1-93.