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Chapter ILHR 87

PRIVATE SEWAGE SYSTEM REPLACEMENT OR
REHABILITATION GRANT PROGRAM

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Note: Chapter NR 124 as it existed on February 29, 1992 was repealed and a new Chapter ILHR 87 was created effective March 1, 1992.

ILHR 87.01 Purpose. The purpose of this chapter is to establish rules under s. 145.245, Stats., for the implementation and administration of a financial assistance program to replace or rehabilitate failing private sewage systems.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. Register, June, 1991, No. 426, eff. 7-1-91; am. Register, February, 1992, No. 434, eff. 3-1-92.

ILHR 87.02 Applicability. (1) This chapter applies to applications received by the department on or after June 1, 1990.

(2) Applications received by the department prior to June 1, 1990 are governed by this chapter as it existed on May 31, 1990.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (1), r. (2) (intro.), renum. (2) (a) and (b) to be (4) and (2) and am. (4), cr. (3), Register, June, 1986, No. 366, eff. 7-1-86; am. (1), r. and recr. (2), r. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

ILHR 87.03 Definitions. The following definitions apply to this chapter.

(1) "Department" means the department of industry, labor and human relations.

(1m) "Determination of failure" has the meaning found in s. 145.245 (1) (a), Stats.

(2) "Failing private sewage system" means a private sewage system which causes or results in any of the following conditions:

(a) The discharge of sewage into surface water or groundwater.

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

(c) The discharge of sewage to a drain tile or into zones of bedrock.

(d) The discharge of sewage to the surface of the ground.

(e) The failure to accept sewage discharges and backup of sewage into the structure served by the private sewage system.

(2m) "Farm" means a parcel of 35 or more acres of contiguous land which is devoted primarily to agricultural use, as defined in s. 91.01 (1) and (5), Stats.

(3) "Governmental unit" means the local governmental unit responsible for the regulation of private sewage systems. This unit is the county, except that towns, cities and villages are the responsible unit of government in any county with a population of 500,000 or more. "Governmental unit" also includes a federally recognized American Indian tribe or band.

(4) "Indian lands" means lands owned by the United States and held for the use or benefit of Indian tribes or bands or individual Indians, and lands within the boundaries of a federally recognized reservation that are owned by Indian tribes or bands or individual Indians.

(5) "Participating governmental unit" means a governmental unit which applies to the department for financial assistance under s. ILHR 87.07, and which meets the conditions specified under s. 145.245 (9), Stats.

(6) "Person" means:

(a) Any individual including the estate of an individual; or

(b) Two or more individuals having a joint or common interest in a principal residence which uses a private sewage system; or

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

(7) "Principal residence" means a residence which is occupied at least 51% of the year by the owner. Principal residence includes a residence owned by a trust or estate of an individual, if the residence is occupied at least 51% of the year by a person who has an ownership interest in the residence as a beneficiary of the trust or estate.

(8) "Private sewage system" has the meaning as given in 145.01 (12), Stats.

(9) "Small commercial establishment" means a commercial establishment or business place with a maximum daily wastewater flow rate of less than 5,000 gallons per day as determined from the design criteria of the state plumbing code. Small commercial establishment includes a farm, including a residence on a farm, if the residence is occupied by a person who is an operator of the farm and if the maximum daily wastewater flow rate of the farm and the residence on the farm is less than 5,000 gallons per day as determined from the design criteria of the state plumbing code.

(10) "State plumbing code" means chs. ILHR 81 to 87.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; renum. (2) (a) to (d) and (4) to (9) to be (2) (e), (d), (a), (b) and (5) to (10) and am. (2) (a), (d), (e) and (7), cr. (2) (c) and (4), am. (3), Register, June, 1986, No. 366, eff. 7-1-86; cr. (2m), am. (7) and (9), Register, August, 1988, No. 392, eff. 9-1-88; cr. (1m) and am. (9), Register, June, 1991, No. 426, eff. 7-1-91; r. and recr. (1), (8) and (10), am. (1m) and (5), Register, February, 1992, No. 434, eff. 3-1-92.

ILHR 87.035 Categories of failing private sewage systems. The department and the participating governmental unit shall use the following categories of failing private sewage systems to determine grant eligibility under s. 145.245 (5), Stats., and s. ILHR 87.04 and to prorate grant funds under s. 145.245 (11m), Stats., and s. ILHR 87.08.

(1) Category 1: Failing private sewage systems defined in s. ILHR 87.03 (2) (a) to (c).

(2) Category 2: Failing private sewage systems defined in s. ILHR 87.03 (2) (d).

(3) Category 3: Failing private sewage systems defined in s. ILHR 87.03 (2) (e).

Note: Under s. 145.245 (5), Stats., only category 1 or category 2 failing private sewage systems are eligible for grant funding. Category 3 systems, those that fail only as a result of back up of sewage into the structure served, are not grant eligible.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. Register, February, 1992, No. 434, eff. 3-1-92.

ILHR 87.04 Eligibility of owners. (1) **GENERAL.** A person who owns a principal residence which was constructed prior to and inhabited on July 1, 1978 or a business which owns a small commercial establishment which was constructed prior to July 1, 1978 is eligible for grant assistance under this chapter if the person or business:

(a) Meets the eligibility requirements set forth in s. 145.245, Stats., and this chapter.

(b) Submits an application to the participating governmental unit in which the failing private sewage system is located;

(c) Has completed all rehabilitation or replacement work in accordance with the enforcement order and the state plumbing code. Any variances or petitions to modify specific state plumbing code requirements shall be approved in writing by the department of industry, labor and human relations prior to the installation of the system.

(2) **PRIVATE NONPROFIT ENTITIES.** For the purposes of this chapter a small commercial establishment may be owned by a private nonprofit corporation as defined in s. 181.02 (4), Stats.

(3) **INELIGIBLE ENTITIES.** Structures owned by the following entities are not eligible for grant assistance:

(a) The state;

(b) An office, department, independent agency, institution of higher education, association, society or other body in state government;

(c) An authority created under ch. 231 or 234, Stats.;

(d) A city, village, town, or county;

(e) A federal agency, department or instrumentality;

(f) An interstate agency.

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

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

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

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

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

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

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

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; cr. (4), Register, June, 1991, No. 426, eff. 7-1-91; am. (1) (a) and (4) (a) (intro.), Register, February, 1992, No. 434, eff. 3-1-92.

ILHR 87.05 Maximum state share. (1) **ELIGIBLE REHABILITATION OR REPLACEMENT WORK.** Except as provided under sub. (4) (a), private sewage system work eligible for grant funding shall be limited to those activities listed in the grant funding tables under sub. (3).

(2) **LEAST COSTLY METHODS.** Only eligible work necessary to meet the minimum requirements of the state plumbing code by the least costly methods may be allowable in determining grant funding under this chapter.

(3) **GRANT FUNDING TABLES.** The following tables shall be used to determine the maximum state grant share for eligible work involved in the rehabilitation or replacement of a category 1 or 2 failing private sewage system. The maximum state grant share for each principal residence or small commercial establishment to be served by the private sewage system may not exceed the sum of the grant amounts for eligible work or \$7,000, whichever is less.

(a) Site evaluation and soil testing.

Grant Amount
\$200

(b) Installation of a replacement or additional septic tank.

| Minimum Gallons Required | Grant Amount |
|--------------------------|--------------|
| 750 | \$ 400 |
| 975 | 450 |
| 1,200 | 500 |
| 1,425 | 575 |
| 1,650 | 625 |
| 1,875 | 700 |
| 2,100 or more | 750 |

(c) Installation of a pump chamber and lift pump or siphon.

| Number of Bedrooms | Grant Amount |
|--------------------|--------------|
| 1 or 2 | \$ 875 |
| 3 or 4 | 950 |
| 5 or more | 1,000 |

(d) Installation of a non-pressurized or in-ground pressure soil absorption area.

1. The following table shall be used for systems sized according to soil morphological conditions specified s. ILHR 83.09 (4m).

| Design Loading Rate in Gallons per Square Foot per Day. | Grant amount by Number of Bedrooms | | | | | For Each Additional Bedroom |
|---|------------------------------------|--------|--------|---------|---------|-----------------------------|
| | 1 | 2 | 3 | 4 | 5 | |
| 0.7 or more | \$ 375 | \$ 600 | \$ 825 | \$1,025 | \$1,150 | \$125 |
| 0.6 | 575 | 875 | 1,200 | 1,450 | 1,650 | 200 |
| 0.5 | 600 | 900 | 1,250 | 1,500 | 1,750 | 250 |
| 0.4 or less | 625 | 950 | 1,375 | 1,625 | 1,850 | 250 |

2. The following table shall be used for systems sized according to percolation tests under s. ILHR 83.09 (5).

| Percolation Rate in Minutes for Water to Fall One Inch. | Grant Amount by Number of Bedrooms | | | | | For Each Additional Bedroom |
|---|------------------------------------|--------|--------|---------|---------|-----------------------------|
| | 1 | 2 | 3 | 4 | 5 | |
| 0 to less than 10 | \$ 375 | \$ 600 | \$ 825 | \$1,025 | \$1,150 | \$125 |
| 10 to less than 30 | 575 | 875 | 1,200 | 1,450 | 1,650 | 200 |
| 30 to less than 45 | 600 | 900 | 1,250 | 1,500 | 1,750 | 250 |
| 45 to 60 | 625 | 950 | 1,375 | 1,625 | 1,850 | 250 |

(e) Installation of an at-grade or mound soil absorption area.

| Type of Design | Grant Amount by Number of Bedrooms | | | | | For Each Additional Bedroom |
|--|------------------------------------|--------|---------|---------|---------|-----------------------------|
| | 1 | 2 | 3 | 4 | 5 | |
| At-Grade | \$ 700 | \$ 900 | \$1,200 | \$1,450 | \$1,650 | \$200 |
| High Groundwater Mound | 1,625 | 1,875 | 2,200 | 2,400 | 2,600 | 200 |
| High Bedrock Mound | 1,875 | 2,125 | 2,450 | 2,600 | 2,825 | 225 |
| Slowly Permeable Soil Mound | 2,125 | 2,375 | 2,575 | 2,700 | 2,950 | 250 |
| Mound for sites with less than 24 inches of suitable soil or greater than 12% slope. | 2,300 | 2,500 | 2,800 | 3,100 | 3,400 | 300 |

(f) Installation of a holding tank.

| Number of Bedrooms | Grant Amount |
|----------------------------------|--------------|
| 1,2 or 3 | \$1,250 |
| 4 | 1,575 |
| 5 | 1,875 |
| 6 | 2,125 |
| 7 | 2,300 |
| 8 | 2,500 |
| For each additional bedroom add: | \$ 175 |

(g) In order to use these tables for small commercial establishments, divide the estimated daily wastewater flow rate in gallons per day by 150, round off to the next highest whole number and use the result in place of the number of bedrooms.

(4) **EXCEPTIONS TO THE GRANT TABLES.** (a) The department may determine the maximum state share for types of private sewage systems which are not covered by the grant tables on a case by case basis.

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

(5) **INELIGIBLE WORK.** Ineligible work includes the following items or projects:

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

(b) Except for site evaluation and soil testing under sub. (3) (a), rehabilitation or replacement of a failing private sewage system done before the determination of failure was made;

(c) Rehabilitation or replacement of a failing private sewage system where it is determined by the governmental unit that public sewer is available to the property;

(d) Connection to a municipal sewage treatment works;

(e) Installation of a small sewage treatment plant with a surface discharge;

(f) Installation of a private sewage system to replace a privy;

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; am. (3) (intro.), (4) (b) and (5) (b), r. and recr. (3) (a) to (f), r. (5) (g), Register, June, 1991, No. 426, eff. 7-1-91.

ILHR 87.06 Individual application. (1) **CONTENTS.** In order to be eligible to receive grant assistance under this chapter, the owner of a failing private sewage system shall submit an application to the participating governmental unit in which the failing private sewage system is located. The application for individuals shall be made on forms provided by the department and shall include:

(a) Evidence of annual family or business income.

1. A person who owns a principal residence shall provide the evidence of income required under s. 145.245 (5) (c) 2. and 3., Stats., or the alternate evidence of income under sub. (3).

2. A business which owns a small commercial establishment shall provide the evidence of income required under sub. (2).

(b) Sanitary permit number and date of issuance.

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

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

2. A copy of the sale contract; escrow agreement or other documentation which shows that the applicant has or will incur the cost of replacing the failing private sewage system.

Note: Under s. 145.245 (5) (a) 1. and 2., Stats., the applicant for a grant must, among other things, be the owner of a principal residence or small commercial establishment which is served by a category 1 or 2 failing private sewage system. A person does not meet this condition if he or she did not own the property at the time the private sewage system was failing and subject to a determination of failure. Therefore, the buyer of a property is not eligible if the failing private sewage system was replaced prior to the date of sale. Similarly, the seller of a property is not eligible if the determination of failure was made after the date of sale.

(d) Other information as requested by the department or participating governmental unit.

(2) **SMALL COMMERCIAL ESTABLISHMENTS.** A business which owns a small commercial establishment shall provide one of the following as evidence of annual gross revenue.

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

(b) If the small commercial establishment is owned by a private non-profit corporation as defined in s. 181.02 (4), Stats., the nonprofit corporation shall provide a profit and loss statement for the commercial establishment for the tax year prior to the year in which the determination of failure was made or for the tax year in which the determination of failure was made, whichever is required by the governmental unit to which the application is submitted.

Note: Under s. 145.245 (5) (a), 2, Stats., a business must own the small commercial establishment in order to be eligible for a grant. A business which leases a small commercial establishment is not eligible. Therefore, the application and income eligibility requirements must be met by the owner of the property.

(3) **ALTERNATE EVIDENCE OF INCOME.** A participating governmental unit may disregard the evidence of income under sub. (1) (a) and consider the following criteria as satisfactory evidence of income.

(a) A copy of the owner's Wisconsin income tax return for the taxable year in which the enforcement order was issued and, if married and filing separately, a copy of the owner's spouse's Wisconsin income tax return for that year; or

(b) In conjunction with the evidence of income required under sub. (1) (a), an affidavit from the owner. The affidavit shall state the reason that a reduction in net income or adjusted gross income is expected in the year in which the enforcement order is issued, the estimated amount of that reduction, and a complete listing of taxable income and adjustments since January 1 of the year in which the enforcement order is issued; or

(d) An affidavit from the owner stating the reason that he or she was not required to file a Wisconsin income tax return in the year prior to the year of the enforcement order. If a person who owns the principal residence was a non-resident or part-year resident of Wisconsin in the year prior to the enforcement order, the affidavit shall include a statement that the owner is a permanent resident of Wisconsin, the date on which permanent residency began, and the owner's estimate of Wisconsin adjusted gross income in the year in which the enforcement order was is-

(b) The department may withhold funds allocated to a governmental unit and initiate enforcement under s. ILHR 87.10, if a governmental unit does not meet the conditions specified under s. 145.245 (9), Stats.

(c) The department may reallocate any withheld or recovered funds in the following fiscal year.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; r. (1) to (4) and am. (5) (a), Register, November, 1985, No. 359, eff. 12-1-85; cr. (1) and (2), renum. (5) to be (3), Register, June, 1986, No. 366, eff. 7-1-86; am. Register, February, 1992, No. 434, eff. 3-1-92.

ILHR 87.09 Payments. (1) Grant payments shall be made to the participating governmental unit which shall be responsible for disbursing all funds received from the department for the purposes for which the grant award was made.

(2) A participating governmental unit shall request payment on forms provided by the department and shall include such information as required by the department to document satisfactory completion of eligible work. Payments shall be requested in accordance with the payment schedule included in the grant award conditions.

(3) The total grant amount payable to a participating governmental unit is limited to the amount of funds awarded to the participating governmental unit under this chapter. The specific grant amounts for individual owners of private sewage systems are limited to the maximum state share under s. ILHR 87.05. Payment based on a prorated grant amount shall constitute a complete payment for that individual.

(4) At any time before final payment of the grant, the department may review and audit any request for payment. Based on the review or audit, any payment may be reduced for prior overpayment or increased for prior underpayment.

(5) The participating governmental unit shall return to the department any funds, including any interest derived therefrom, received under this chapter which are not disbursed to eligible owners.

(6) The department may authorize the withholding of a grant payment where it determines in writing that a participating governmental unit has failed to comply with project objectives, grant award conditions, or reporting requirements. Such withholding shall be limited to only that amount necessary to assure compliance.

(7) The department shall withhold payment to the extent of any indebtedness of the participating governmental unit 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.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

ILHR 87.10 Enforcement. If the department has reason to believe that a violation of the provisions of this chapter or of any grant or grant amendment made under this chapter has occurred, the department may take action as follows:

(1) Under s. 145.245 (14), Stats., the department may cause written notice to be served upon the alleged violator, and in conjunction with that notice:

Register, February, 1992, No. 434

(a) Issue an order that corrective action be taken by the alleged violator within a reasonable time, or;

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

(2) Under s. 145.02, Stats., the department may terminate or annul a grant made under this section and seek recovery of some or all grant funds previously paid to the participating governmental unit, if an order issued under s. 145.245 (14), Stats., is violated.

(3) Under s. 145.245 (14) (d), Stats., the department may suspend or terminate additional grants made under this chapter if the department finds that a private sewage system previously funded by the participating governmental unit with a grant awarded under this chapter is not being or has not been properly rehabilitated, constructed, installed or maintained.

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

(6) The department may seek an injunction or other appropriate relief under s. 145.02 (3) (f), Stats.

(7) The department may seek the imposition of a forfeiture for each violation, pursuant to s. 145.245 (15), Stats.

Note: Section 145.245 (15) reads: Any person who violates this section or a rule or order promulgated under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; r. (5), am. (1) (intro.), (2), (3), (6) and (7), Register, February, 1992, No. 434, eff. 3-1-92.

ILHR 87.11 Variances. The department may approve variances from requirements of this chapter upon the request of a participating governmental unit when it is determined that such variances are essential to effect necessary grant actions or department objectives, and where special circumstances make such variances in the best interests of the state. Before granting a variance, the department shall take into account such factors as good cause, circumstances beyond the control of the participating governmental unit or owner of a failing private sewage system, and financial hardship. The department may not approve a variance from statutory requirements.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

