Chapter NR 738

TEMPORARY EMERGENCY WATER SUPPLIES

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NR 738.01 Purpose. The purpose of this chapter is to provide criteria for using state moneys from the environmental fund for temporary emergency water supplies, when water supply systems have been adversely affected by environmental pollution from a site or facility subject to s. 292.31, Stats., or by a hazardous substance discharge subject to s. 292.11, Stats. This chapter is adopted pursuant to s. 227.11 (2), Stats., and ch. 292, Stats.

Note: Section 281.75, Stats., as implemented under ch. NR 123, provides for reimbursement from the well compensation fund for eligible costs associated with temporary and permanent water supply replacements. Also note, specific authority for this chapter is in s. 292.31 (3) (b) 7., Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; corrections made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12–023: am. Register October 2013 No. 694, eff. 11–1–13.

NR 738.02 Applicability. This chapter applies to actions taken by the department under ch. 292, Stats., to provide temporary emergency water supplies to an affected party with a "contaminated well" or "contaminated private water supply" impacted by environmental pollution from a site or facility subject to s. 292.31, Stats., or impacted by a discharge of a hazardous substance subject to s. 292.11, Stats. This chapter also applies to certain situations where the department provides potable water in accordance with the provisions set out in s. 281.77, Stats.

Note: Section 281.77, Stats., as implemented under ch. NR 123, provides for reimbursement from the well compensation fund for eligible costs associated with replacement of a private water supply impacted by contamination caused by an approved facility, as defined in s. 289.01 (3), Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; corrections made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12–023: am. Register October 2013 No. 694, eff. 11–1–13.

NR 738.03 Definitions. The following definitions apply to this chapter:

(1) "Advisory" means a written opinion, issued by the department, containing a specific descriptive reference to the well or water supply and recommending that the well or water supply not be used because of potential human health risks.

(2) "Affected party" means a landowner, lessee or other person utilizing a contaminated well or water supply. Affected party does not include:

(a) The state or any facility owned or operated by the state;

(b) A city, village, town, county or special purpose district;

(c) A federal agency, department or instrumentality;

(d) An interstate agency.

(3) "Connection to an existing water supply" means to join to an existing water supply that tests free from coliform bacteria, and is not a contaminated water supply.

(4) "Contaminated well" or "contaminated private water supply" means a well which is located in an area of special eligibility for compensation as declared by the department under s. NR 738.06 (1m) and meets the criteria under s. NR 738.06 (1m) (a) and (b), or which meets all of the following criteria:

(a) The well serves potable water for humans or humans and livestock.

(b) The well is not a "public water supply" as defined in ch. NR 809.

(c) The well has been determined or is suspected by the department to have been adversely affected by a site or facility subject to s. 292.31, Stats., or by a hazardous substance discharge subject to s. 292.11, Stats.

(d) The well produces water that meets one or more of the following criteria:

1. Contains one or more substances of public health concern, other than bacteria or nitrate, in excess of a primary maximum contaminant level contained in ch. NR 809.

2. Contains one or more substances of public health concern, other than nitrates, in excess of an enforcement standard established in ch. NR 140.

3. Is subject to a drinking water advisory from the department for substances other than bacteria or nitrates.

(5) "Environmental fund" has the meaning specified in s. 25.46, Stats.

(5g) "Livestock" has the meaning specified in s. 95.80 (1) (b), Stats., and includes poultry.

Note: Section 95.80 (1) (b), Stats., defines livestock to mean "cattle, horses, swine, sheep, goats, farm–raised deer and other species of animals susceptible of use in the production of meat and meat products."

(5r) "Livestock water supply" has the meaning specified in s. 281.75 (1) (e), Stats.

Note: Section 281.75 (1) (e), Stats., defines livestock water supply to mean "a well which is used as a source of potable water only for livestock and which is:

1. Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24 (Stats.); or

2. Constructed by boring or drilling."

(6) "Plumbing" means that portion of the water distribution piping extending from the well to the various distribution points of use.

(6m) "Private water supply" has the meaning specified in s. 292.31 (3) (b) 7., Stats.

Note: Section 292.31 (3) (b) 7., Stats., defines private water supply to mean a "well which is used as a source of water for humans, livestock, as defined in s. 95.80 (1) (b) (Stats.), or poultry."

(7) "Substances of public health concern" means those substances found in Table 1 of ch. NR 140 or any substance for which a health advisory is issued.

(8) "Temporary emergency water supply" means a supply of potable water obtained in bottles, by tank truck or by other similar means, or a temporary connection to an existing water supply, supplied at a capacity sufficient to satisfy water use functions impaired by the contaminated water supply.

(9) "Well" has the meaning specified in s. NR 812.07 (119).

Note: Section NR 812.07 (119), defines well to mean "any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface constructed for the purpose of obtaining groundwater."

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; r. (4) (a) to (c), Register, February, 1996, No. 482, eff. 3–1–96; CR 12–023: renum. (4) to (4) (intro.) and am., cr. (4) (a) to (d), (5g), (5r), (6m), am. (9) Register October 2013 No. 694, eff. 11–1–13; correction in (9) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

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NR 738.06 Eligible and ineligible services. (1) ELIGIBLE SERVICES. The department may use environmental fund moneys to pay for any of the following eligible services:

(a) Obtaining a temporary emergency water supply for a maximum period of 6 months after the date of issuance of an advisory or until such time as the contaminated water supply has been permanently replaced by an uncontaminated supply or is determined by the department to have returned to an uncontaminated condition, whichever occurs first. The department may grant a variance to authorize the extension of the temporary emergency water supply pursuant to s. NR 738.14.

(b) Equipment used for treating the contaminated private water supply on a temporary emergency basis only if a skin contact or inhalation advisory has been issued by the department of health services.

(c) Bulk water supplied only if a skin contact or inhalation advisory has been issued by the department of health services.

(d) Other costs as deemed necessary by the department.

(1m) SPECIAL ELIGIBILITY FOR COMPENSATION. The department may approve a temporary emergency water supply funded by moneys from the environmental fund if the affected party is in a location that has been declared by the department to be an area of special eligibility for compensation for well contamination, based on contamination reported after December 31, 2005, if the following criteria are satisfied:

(a) Results of tests performed under s. NR 738.11 (3) establish that wells in the area are contaminated by fecal bacteria, and

(b) Evidence demonstrates that the bacterial contamination is caused by livestock.

Note: Special eligibility for compensation is outlined in s. 281.75 (2) (e) and (11) (ae), Stats.

(2) INELIGIBLE SERVICES. The department may not use environmental fund moneys to pay for any of the following ineligible services:

(a) Any costs incurred prior to the date of issuance of a written health advisory by the state.

(b) Any consulting, engineering or cost estimating fees.

(c) Any state, county or local permit fees.

(d) Any costs incurred for the permanent replacement or treatment of the contaminated water supply except as approved by the department pursuant to s. NR 738.14.

(e) Mileage, phone, postage and other miscellaneous costs incurred by the affected party.

(f) Any costs associated with the ownership and physical maintenance of any physical equipment constructed or provided as part of the temporary emergency water supply.

(g) Any other costs incurred which are not approved by the department.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; CR 12–023: am. (1) (a) to (c), cr. (1m), am. (2) (d) Register October 2013 No. 694, eff. 11–1–13, **reprinted to correct transcription error in (1) (c), Register November 2013 No. 695.**

NR 738.10 Request for temporary emergency water supply. Any affected party may make a request to the department for provision of a temporary emergency water supply. The written request shall be submitted to the department's section chief for the fiscal and information technology section, bureau for remediation and redevelopment, and shall contain the following information:

(1) The affected party's name, address and telephone number, including the area code.

(2) A copy of the test analyses required in s. NR 738.11 (3).

(3) A copy of the advisory which was issued or approved by the department as required in s. NR 738.11 (4).

(4) A statement requesting that the department provide a temporary emergency water supply under this chapter.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; CR 12–023: 738.10 renum. from 738.05, am. (intro.), (2), (3) Register October 2013 No. 694, eff. 11–1–13.

NR 738.11 Determination of eligibility. Except as otherwise provided in this chapter, an affected party may receive a temporary emergency water supply funded with moneys from the environmental fund if all of the following criteria are met:

(1) The source of potable water is from a contaminated well or contaminated water supply.

(2) The contamination is known or is suspected by the department to be from environmental pollution or a hazardous substance discharge subject to s. 292.11 or 292.31, Stats.

(3) Sampling is conducted in accordance with all of the following requirements:

(a) Test analyses of at least one sample shall be taken. The department may require more than one sample be taken and analyzed.

(b) The samples shall be analyzed by the state laboratory of hygiene or by a laboratory certified under s. 299.11, Stats., using a methodology specified in ch. NR 809 or from a reference method authorized by ch. NR 219.

(c) Test results shall be sufficiently recent to reflect present water quality as determined by the department.

(4) An advisory is issued or approved by the department. If the department has issued an advisory, the sampling requirements of sub. (3) may be waived.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; corrections in (2) and (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12–023: 738.11 renum. from 738.04 Register October 2013 No. 694, eff. 11–1–13.

NR 738.12 Department approval and payment. (1) GENERAL. The department shall evaluate requests for a temporary emergency water supply in accordance with the criteria in ss. NR 738.10 and 738.11.

(2) OWNERSHIP. Provision of a temporary emergency water supply shall be contingent upon the affected party entering into a written agreement with the department that the affected party shall own and be responsible for the proper maintenance of any physical equipment constructed or provided as part of the temporary emergency water supply.

(3) APPROVAL. When the department determines that the eligibility criteria in subs. (1) and (2) have been met, the department shall approve the use of environmental fund moneys and shall do all of the following:

(a) Provide the affected party with a written approval for the provision of a temporary emergency water supply within 14 days of receiving the written request.

(b) Make the necessary arrangements for provision of temporary emergency water supplies to the affected party.

(c) Select the most appropriate temporary emergency water supply.

(4) PAYMENT. The department shall pay 100% of the eligible costs for providing a temporary emergency water supply using moneys from the environmental fund as long as moneys are available in the fund.

Note: The department does not have statutory authority to use environmental fund moneys to provide temporary or permanent water supplies if the substances of public health concern are from naturally occurring sources of contamination. If the department discovers that the source of the substances is from natural processes after department funding is approved, the department will terminate funding of the temporary emergency water supply. The variance provision in s. NR 738.14 does not allow the department to continue to use environmental fund moneys where

the source of a substance of public health concern is not from a hazardous substance discharge or environmental pollution from a site or facility.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; CR 12–023: 738.12 renum. from 738.07, am. (1), (3) (intro.), cr. (3) (c) Register October 2013 No. 694, eff. 11–1–13.

NR 738.13 Denial of requests or termination of funding. The department shall deny a request or terminate the use of environmental fund moneys if one or more of the following applies to the affected party, contaminated well or contaminated water supply:

(1) The request is not within the scope of this chapter as determined by the department.

(2) The affected party submits a fraudulent request.

(3) The request is for reimbursement of costs incurred before the date of issuance of an advisory.

(4) One or more of the contaminants was introduced into the well by the plumbing connected to the well.

(5) One or more of the substances upon which the request is based was introduced into the well or water supply intentionally by an affected party or a person who would be directly benefited by the provision of the temporary emergency water supply or a person who aids and abets the introduction of the substance, or a person who is a party to a conspiracy with another to commit, advise, hire, counsel or procure another to introduce the substances into the well or water supply.

(6) All of the substances upon which the request is based are naturally occurring substances and are not a result of environmental pollution or a hazardous substance discharge subject to s. 292.11 or 292.31, Stats., as determined by the department.

(7) The water supply is contaminated by bacteria or nitrate or both and is not contaminated by any other substance. This subsection does not apply to a residential well that is in an area of special eligibility for compensation as declared by the department under s. NR 738.06 (1m).

(8) The request is submitted by an affected party who has been determined by the department to be a responsible party pursuant to s. 292.31 (8) or 292.11 (3), Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; corrections in (6) and (8) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12–023: 738.13 renum from 738.08, am. (7) Register October 2013 No. 694, eff. 11–1–13.

NR 738.14 Variances. (1) GENERAL. The department may approve variances from provisions of this chapter when it is determined that variances do not conflict with statutory requirements, are essential to effect necessary actions or department objectives, and where special circumstances make variances in the best interests of the state.

(2) FINANCIAL HARDSHIP. (a) The department may grant a variance from s. NR 738.06 to allow payment of costs under this chapter toward a permanent replacement water supply if the following conditions are met:

1. The well owner is the affected party.

2. The well owner requests a variance based upon the financial hardship criteria in par. (c) and submits evidence, including family income, to justify the financial hardship claim.

3. The well owner has submitted a claim and has been issued an award or a proceed notice under s. NR 123.23.

4. The department determines that the cost of the permanent replacement water supply would create an unreasonable financial hardship for the well owner.

(b) The variance request may be incorporated as part of a claim under ch. NR 123.

(c) If the department grants a financial hardship variance to allow payment of costs toward a permanent replacement water supply, payment shall be based on the following:

1. If the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, as determined in accordance with s. NR 123.20, the department may pay 100% of the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of $250.

2. If the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, as determined in accordance with s. NR 123.20, the department may pay 50% of the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of $250.

3. Notwithstanding sub. (2), if an award or a proceed notice has been issued under s. NR 123.23, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, the department may pay the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of 5% of the annual family income.

(d) The department may pay the greater share of the eligible costs computed under par. (c).

History: Cr. Register, October, 1995, No. 478, eff. 11–1–95; CR 12–023: 738.14 renum. from 738.09, am. (2) (c) 3., cr. (2) (d) Register October 2013 No. 694, eff. 11–1–13, **correction in (2) (c) 3. made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.**