State of Wisconsin \ Department of Safety and Professional Services

RULES IN FINAL DRAFT FORM

Rule No.: **Chapters Comm 81 to 84**

Relating to: **Private Onsite Wastewater Treatment Systems (POWTS)**

Clearinghouse Rule No.: **11-031**

COM-10535 (R.07/11)

The Wisconsin Department of Safety and Professional Services proposes an order to repeal Comm 81.01 (51), Comm 82.40 (8) (b) 2. and 8. and Comm 83.32 (3) (b) Note;

to renumber Comm 81.01 (51m), Comm 82.40 (8) (b) 3. and Comm 83.54 (4) (d) 2. c., d. and e.;

to renumber and amend Comm 82.40 (8) (b) 4.;

to amend Comm 82.40 (8) (b) 5. (intro.), Comm 82.40 (8) (b) 7., Comm 83.02 (1) Note [1], Comm 83.255 (1) (a) 1. and (2) (a), Comm 83.32 (1) (h), Comm 83.32 (3) (b), Comm 83.33 (2) and (3) Note, Comm 83.43 Table 83.43–1, Comm 83.54 (3) (c), Comm 83.54 (4) (b., Comm 83.55 (1) (a) and (b), Comm 83 Appendix Table A−83.43−1 and Comm 84.10 (3) (e) 3.; and

to create Comm 81.01 (209m), Comm 82.40 (8) (b) 4., Comm 82.40 (8) (b) 7. Note [2], Comm 83.54 (4) (d) 2. c. and d. and Comm 83.54 (3) (d) and Note relating to private onside wastewater treatment systems (POWTS).

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Analysis of Rule

1. Statutes interpreted.

Sections 101.02 (1), 145.02 (3) and (4), 145.12 (5) (a) and 145.20, Stats., as affected by 2009 Wisconsin Act 392.

2. Statutory authority.

Sections 101.02, 145.02 and 145.12, 145.135 and 145.20, Stats., as affected by 2009 Wisconsin Act 392.

3. Related statute or rule.

Chapter NR 113, Servicing Septic or Holding Tanks, Pumping Chambers, Grease Interceptors, Seepage Beds, Seepage Pits, Seepage Trenches, Privies, or Portable Restrooms

4. Explanation of agency authority.

Under the statutes cited, the Department of Safety and Professional Services has the responsibility to protect public health, safety, and welfare in the design and construction of public buildings, places of employment and one- and 2-family dwellings and their components. Section 145.02, Stats., specifically grants the department general authority to protect public health, safety and welfare by establishing reasonable and effective standards for Private Onsite Wastewater Treatment Systems (POWTS). Section 145.20, Stats., delineates the responsibilities and duties of governmental units administering and enforcing the laws and rules pertaining to

POWTS. In addition, 2009 Wisconsin Act 392 specifically directs the department to address the inventory and maintenance of private sewage systems.

5. Summary of proposed rules.

The proposed rules establish the requirements for the inventory and maintenance of POWTS as reflected in the statutory mandates of 2009 Wisconsin Act 392. The rules require the following:

- Governmental units shall conduct, complete and maintain an inventory of all POWTS located in their jurisdiction by October 1, 2013.
- Governmental units shall develop and implement a POWTS maintenance program by October 1, 2015.

In addition, the proposed rules include technical revisions to address code inconsistencies and new technologies.

6. Summary of, and comparison with, existing or proposed federal regulations.

An Internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* found two existing federal regulations that address some aspects of private sewage systems:

1. **40 CFR 144.80(e)** – Under federal regulations, private sewage systems are classified as Class V Wells, Shallow Injection Wells. Specifically, 40 CFR 144.3, defines "Sanitary Waste" as including domestic wastewater. Chapter Comm 83 addresses treatment and dispersal of domestic wastewater. Also, 40 CFR 144.3, defines "Wells or Injection Wells" as including certain septic systems. Class V regulations specifically address "Large Capacity Septic Systems" which are defined as systems receiving sanitary wastes from multiple dwellings or from non-residential establishments where the system has a capacity to serve 20 or more person per day. These systems are "authorized by rule" provided they meet two minimum federal requirements: a) The owner or operator submits basic inventory information, and b) the injectate (wastewater) cannot endanger underground sources of drinking water. Chapter Comm 83, Wis. Adm. Code, addresses Private Onsite Wastewater Treatment Systems (POWTS) which include septic systems that serve all structures residential and non-residential regardless of capacity. Owner information is required as part of the permitting process. Section 145.13, Wis. Stats., requires that chapter Comm 83, Wis. Adm. Code, comply with the provisions of chapter 160, Wis. Stats. Chapter NR 140, Wis. Adm. Code, contains a list of substances that have preventative action limits and enforcement standards. This list is more specific than the current federal regulations. Chapter Comm 83, Wis. Adm. Code, incorporates the applicable provisions of chapter 160, Wis. Stats., and chapter NR 140, Wis. Adm. Code.

2. **40 CFR Part 122** – Under federal regulations, large private sewage systems require National Pollutant Discharge Elimination System (NPDES) permits which currently are

administered by the Department of Natural Resources under its Wisconsin Pollutant Discharge Elimination System (WPDES) program. The WPDES permit process is modeled after the NPDES permit process.

There are no proposed federal regulations that address the inventory and maintenance of POWTS as mandated by 2009 Wisconsin Act 392 or the other matters being clarified under this proposed rulemaking project.

7. Comparison with rules in adjacent states.

An Internet-based search for private sewage system regulations in the states of Illinois, Iowa, Michigan and Minnesota found the following:

- **Illinois** administrative code, Title 77: Public Health, Chapter I: Department of Public Health, Subchapter r: Water and Sewage, Part 905 Private Sewage Disposal Code regulates all private sewage disposal systems. The Division of Environmental Health's Environmental Engineering Section reviews and approves plans for private sewage disposal systems before construction. There are about 90 local health departments in Illinois that review sewage disposal system construction plans, either by authority of a local ordinance or as an "agent" of the department. In addition, the division licenses about 2,500 individuals to either install or pump out private sewage disposal systems.

- **Iowa's** Environmental Protection Commission regulates private sewage disposal systems. Requirements relating to the design, location, installation, use and maintenance of installation private sewage systems can be found in Chapters 64 and 69 of the Iowa Administrative Code. In March 2009, the commission amended Chapter 64, "Wastewater Construction and Operation Permits," and adopted a new Chapter 69, "Private Sewage Disposal Systems." Provisions were added for tank abandonment, grease interceptors and permits by rule. A new rule was added pertaining to inspection of septic systems at the time of transfer of property. Other new provisions include requiring a final inspection on a new system installation and requiring counties to enter basic information about that system into the state onsite wastewater database system.

- **Michigan** does not have a statewide onsite sewage system code. The Michigan Department of Environmental Quality under the authority of Part 22 Groundwater Quality Rules established the 1994 version of "The Michigan Criteria for Subsurface Sewage Disposal." These criteria are used by the Michigan Department of Environmental Quality and by 44 local health departments that develop their own rules to regulate single- and two-family systems.

- **Minnesota** statute, Chapter 115 relating to water pollution control and sanitary districts, establishes rules for "Individual and Alternative Discharging Sewage Treatment Systems." The rules require counties to adopt local ordinances "containing minimum standards and criteria for the design, location, installation, use, maintenance, and closure of subsurface sewage treatment systems."

8. Summary of factual data and analytical methodologies.

In developing the proposed rules, the department reviewed the provisions under 2009 Wisconsin Act 392 in conjunction with the department's broad authority under Chapters 101 and 145, Stats., to establish building and construction codes that establish minimum standards for the protection of public health, safety and welfare.

The methodology for the proposed revisions of chapters Comm 81 to 84 relating to POWTS, included a review and assessment by staff of code issues that require clarification.

In addition, the review and assessment process involved the participation of the Private Onsite Wastewater Treatment System (POWTS) Advisory Code Council. The members represent the many stakeholders involved in the private sewage system industry including designers, contractors, regulators, academics and manufacturers. The department gathered information and recommendations from the 11-member POWTS Advisory Code Council on the potential impacts of the administrative and technical requirements of the code. (A listing of the POWTS Advisory Code Council is provided at the end of this analysis.)

9. Effect on small business including analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

The department believes the proposed rules will have a minimal additional impact on small business. The proposed rules implement the mandates imposed by 2009 Wisconsin Act 392. The Act affects governmental units (counties) and establishes deadlines for the completion of an inventory of private sewage systems within their jurisdictions. The department does not believe the rules will increase the effect on small businesses more than that imposed by the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency contact person.

Roman Kaminski, Program Manager, roman.kaminski@wisconsin.gov, (715) 345-5334

11. Place where comments are to be submitted and deadline for submission.

A public hearing was scheduled for June 27, 2011. The hearing record on this proposed rulemaking remained open until July 11, 2011. Written comments on the proposed rules were submitted to Roman Kaminski, at the Department of Safety and Professional Services, P.O. Box 2689, Madison, WI 53701-2689, email roman.kaminski@wisconsin.gov.

Council Members and Representatives

The proposed rules have been developed with the assistance of the Private Onsite Wastewater Treatment Systems (POWTS) Advisory Code Council. The members of this citizen advisory council are as follows:

Name	City	Organization
James C. Converse	Madison	Professor Emeritus UW–Madison, Biological Systems Engineering Department
Steven Crosby	Dane	Septic Specialist & Excavating Inc. representing the Wisconsin Builders Association
Dale Dimond	Wausau	Marathon County Zoning Department representing the Wisconsin County Code Administrators
Jim Eberhardt	Adell	Eberhardt Plumbing & Heating representing the Wisconsin Association of Plumbing, Heating & Cooling Contractors
Thomas A. Gilbert	Madison	Wisconsin Department of Natural Resources, Bureau of Watershed Management
Don Murphy	Eagle	Murphy's Complete Septic Service representing the Wisconsin Liquid Waste Carrier Association Inc.
Chris Olson	Sturgeon Bay	Door County Sanitarian Office representing Wisconsin County Code Administrators
Sue Schambureck	Reedsville	Madson Tiling & Excavating, Inc., representing Wisconsin Onsite Wastewater Recycling Association, Inc.
Todd Stair	Oconomowoc	Herr Environmental, Inc., representing Wisconsin Onsite Wastewater Recycling Association, Inc.
E. Jerry Tyler	Oregon	Tyler & Associates Inc., Professor Emeritus UW–Madison, Department of Soil Science representing Citizens at Large
Bryon Wooten	Brookfield	Lake Shore Burial Vault Co., Inc. representing Wisconsin Precast Concrete Association

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SECTION 1. Comm 81.01 (51) is repealed.

SECTION 2. Comm 81.01 (51m) is renumbered Comm 81.01 (51).

SECTION 3. Comm 81.01 (209m) is created to read:

Comm 81.01 (209m) "RV transfer tank" means a type of stationary container used to collect and hold wastewater discharges generated by an individual camping trailer or recreational vehicle.

SECTION 4. Comm 82.40 (8) (b) 2. and 8. are repealed.

SECTION 5. Comm 82.40 (8) (b) 3. and 4. are renumbered Comm 82.40 (8) (b) 2. and 3. and Comm 82.40 (8) (b) 3., as renumbered, is amended to read:

Comm 82.40 (8) (b) 3. Except as permitted in ~~subd.~~ subds. 4. and 5., private water mains and water services shall be installed at least 5 feet horizontally from any sanitary sewer.

SECTION 6. Comm 82.40 (8) (b) 4. is created to read:

Comm 82.40 (8) (b) 4. Private water mains and water services may be installed less than 5 feet horizontally from a pressurized sanitary sewer if all of the following conditions are met:

a. The bottom of the water piping is installed at least 18 inches above the pressurized sewer.

b. The water piping is installed at least 3 feet horizontally from the pressurized sewer.

SECTION 7. Comm 82.40 (8) (b) 5. (intro.) is amended to read:

Comm 82.40 (8) (b) 5. Private water mains and water services may be installed less than 5 feet horizontally from a non-pressurized sanitary sewer if any of the following conditions are met:

SECTION 8. Comm 82.40 (8) (b) 7. is amended to read:

Comm 82.40 (8) (b) 7. No private water main or water service may be installed within 6~~"~~ inches of a storm sewer.

SECTION 9. Comm 82.40 (8) (b) 7. Note [2] is created to read:

Comm 82.40 (8) (b) 7. **Note [2]:** See ch. Comm 83 Table 83.43–1 for setback distances to POWTS components.

SECTION 10. Comm 83.02 (1) Note [1] is amended to read:

Comm 83.02 (1) Note [1]: Section Comm 82.10 ~~(8)~~ (2) (d) states that where plumbing fixtures exist in a building which is not connected to a public sewer system, suitable provision shall be made for ~~treating, and recycling the sewage and wastewater by a method of~~ treating, recycling, dispersing or holding ~~or treatment and dispersal~~ the wastewater in a manner satisfactory to the department.

SECTION 11. Comm 83.255 (1) (a) 1. and (2) (a) are amended to read:

Comm 83.255 (1) (a) 1. A governmental unit shall conduct, complete and maintain an inventory of all POWTS located in ~~their~~ its jurisdictional area ~~within 3 years after~~ by October 1, ~~2008~~ 2013.

(2) (a) A governmental unit shall develop and implement a comprehensive POWTS maintenance program ~~within 5 years after~~ by October 1, ~~2008~~ 2015.

SECTION 12. Comm 83.32 (1) (h) is amended to read:

Comm 83.32 (1) (h) The use of ~~camping unit~~ RV transfer ~~containers as a POWTS holding component~~ tanks shall be restricted to any of the following sites:

1. Campgrounds permitted by the department of health services under ch. DHS 178.

2. Properties where the use of the ~~camping unit~~ RV transfer ~~container~~ tank is permitted by an adopted governmental unit ordinance and monitored by the governmental unit.

SECTION 13. Comm 83.32 (3) (b) is amended to read:

Comm 83.32 (3) (b) ~~Storm and clear water may be introduced into a POWTS, if the POWTS is designed to accept that wastewater.~~ A POWTS may accept wastewater permitted under s. Comm ~~82.36 (3)~~ 82.38 (3) (a) and Table 82.38–1.

SECTION 14. Comm 83.32 (3) (b) Note is repealed.

SECTION 15. Comm 83.33 (2) and (3) Note are amended to read:

Comm 83.33 (2) Sealing all disconnected piping to the tanks and pits ~~in accordance with s. Comm 82.21 (2) (h)~~.

(3) Note: The removal and disposal of the contents from treatment tanks, distribution tanks, seepage pits and holding components is addressed in ch. NR 113 which is administered by the department of natural resources.

SECTION 16. Comm 83.43 Table 83.43–1 is amended to read:

Table 83.43−1
Horizontal Setback Parameters

Physical Feature	POWTS Treatment Component Consisting in Part of In Situ Soil or Dispersal Component	Exterior Subsurface Treatment Tank or Holding Tank Component	Forcemains Servicing, Suction Lines and Pump Discharge Lines
Building	10 feet	5 feet[a]	none[b]
Property Line[c]	5 feet	2 feet	2 feet
Swimming Pool	15 feet	none[b]	none[b]
OHWM of Navigable Waters	50 feet	10 feet	10 feet
Water Service and Private Water Main	10 feet	10 feet	~~10~~ 5 feet
Public Water Main	ch. NR 811	ch. NR 811	ch. NR 811
Well	chs. NR 811 & 812	chs. NR 811 & 812	chs. NR 811 & 812

OHWM = Ordinary High−Water Mark
[a] Except ~~camping unit~~ RV transfer ~~containers~~ tanks.
[b] See s. Comm 83.43 (8) (f) relative to accessibility.
[c] Road−right−of−way lines may be more restrictive than property lines.
Note: See s. Comm 82.365, Table 82.365−4 relative to horizontal setback distances to subsurface infiltrative systems.
Note: The department of transportation under s. Trans 233.08 establishes setback limits from the centerline of state trunk highways or connecting highways to structures and improvements which include septic systems.

SECTION 17. Comm 83.54 (3) (c) is amended to read:

Comm 83.54 (3) (c) The servicing frequency of a holding tank for a POWTS~~, except for camping unit transfer containers,~~ shall occur at least when the wastewater of the tank reaches a level of one foot below the inlet invert of the tank.

SECTION 18. Comm 83.54 (3) (d) and Note is created to read:

Comm 83.54 (3) (d) The servicing of a RV transfer tank shall be performed in a manner to prevent the discharge of wastewater into the surrounding soil or onto the ground surface.

Note: Section NR 113.03 (57) defines "servicing" as "…removing the scum, liquid, sludge or other wastes from a private sewage system such as septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies or portable restrooms and properly disposing or recycling of the contents as provided in this chapter."

SECTION 19. Comm 83.54 (4) (b) is renumbered Comm 83.54 (4) (b) 1. and as renumbered is amended to read:

Comm 83.54 (4) (b) 1. The servicing of a holding tank for a POWTS existing prior to July 1, 2000~~, except for camping unit transfer containers,~~ shall occur at least when the wastewater of the tank reaches a level of one foot below the inlet invert of the tank.

SECTION 20. Comm 83.54 (4) (b) 2. and Note are created to read:

Comm 83.54 (4) (b) 2. The servicing of a RV transfer tank shall be performed in a manner to prevent the discharge of wastewater into the surrounding soil or onto the ground surface.

Note: Section NR 113.03 (57) defines "servicing" as "…removing the scum, liquid, sludge or other wastes from a private sewage system such as septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies or portable restrooms and properly disposing or recycling of the contents as provided in this chapter."

SECTION 21. Comm 83.54 (4) (d) 2. c., d. and e. are renumbered Comm 83.54 (4) (d) 2. e., f. and g.

SECTION 22. Comm 83.54 (4) (d) 2. c. and d. are created to read:

Comm 83.54 (4) (d) 2. c. A licensed journeyman plumber.

d. A licensed journeyman plumber−restricted service.

SECTION 23. Comm 83.55 (1) (a) and (b) are amended to read:

Comm 83.55 (1) (a) The owner of a POWTS or the owner's agent shall report to the governmental unit or designated agent at the completion of each inspection, evaluation, maintenance or servicing event specified in the approved management plan~~, except for camping unit transfer containers~~.

(b) The owner of a POWTS existing prior to July 1, 2000 or the owner's agent shall report to the governmental unit or designated agent at the completion of each inspection, evaluation, maintenance or servicing event required under s. Comm 83.54 (4)~~, except for camping unit transfer containers~~.

SECTION 24. Comm 83 Appendix Table A−83.43−1 is amended to read:

A−83.43 (6) COMMERCIAL FACILITIES. Table A−83.43−1 may be used to estimate wastewater flows from a commercial building.

Table A−83.43−1
Public Facility Wastewater Flows

Source	Unit	Estimated Wastewater Flow (gpd)
Apartment or ~~Condominium~~ condominium	Bedroom	100
Assembly hall (no kitchen)	Person (10 sq. ft./person)	1.3
Bar or cocktail lounge (no meals served)	Patron (10 sq. ft./patron)	4
Bar or cocktail lounge~~*~~[a] (w/meals – all paper service)	Patron (10 sq. ft./patron)	8
Beauty salon	Station	90
Bowling alley	Bowling lane	80
Bowling alley (with bar)	Bowling lane	150
Camp, day and night	Person	25
Camp, day use only (no meals served)	Person	10
Campground or ~~Camping Resort~~ camping resort	Space, with sewer connection and/or service building	30
Campground sanitary dump station	Camping unit or RV served	25
Catch basin	Basin	65
Church (no kitchen)	Person	2
Church~~*~~[a] (with kitchen)	Person	5
Dance hall	Person (10 sq. ft./person)	2
Day care facility (no meals prepared)	Child	12
Day care facility~~*~~[a] (with meal preparation)	Child	16
Dining hall~~*~~[a] (kitchen waste only without dishwasher and/or food waste grinder)	Meal served	2
Dining hall~~*~~[a] (toilet and kitchen waste without dishwasher and/or food waste grinder)	Meal served	5
Dining hall~~*~~[a] (toilet and kitchen waste with dishwasher and/or food waste grinder)	Meal served	7
Drive−in restaurant~~*~~[a] (all paper service with inside seating)	Patron seating space	10
Drive−in restaurant~~*~~[a] (all paper service without inside seating)	Vehicle space	10
Drive−in theater	Vehicle space	3
Employees (total all shifts)	Employee	13
Floor drain (not discharging to catch basin)	Drain	25
Gas station/convenience store	Patron	3
Gas station (with service bay) Patron Service bay	 Patron Service bay	 3 50
Hospital~~*~~[a]	Bed space	135

Source	Unit	Estimated Wastewater Flow (gpd)
Hotel, motel or tourist rooming house	Room	65
Medical office building[b] Doctors, nurses, medical staff Office personnel Patients	 Person Person Person	 50 13 6.5
Migrant labor camp (central bathhouse)	Employee	20
~~Mobile Home (~~Manufactured home~~)~~ (served by its own POWTS)	Bedroom	100
~~Mobile home park~~ Manufactured home community	~~Mobile~~ Manufactured home site	200
Nursing, ~~Rest Home, Community Based Residential Facility~~ rest home, community-based residential facility[a b]	Bed space	65
Outdoor sport facilities (toilet waste only)	Patron	3.5
Parks (toilets waste only)	Patron (75 patrons/acre)	3.5
Parks (toilets and showers)	Patron (75 patrons/acre)	6.5
Public shower facility	Shower taken	10
Restaurant~~*~~[a], 24−hr. (dishwasher and/or food waste grinder only)	Patron seating space	4
Restaurant~~*~~[a], 24−hr. (kitchen waste only without dishwasher and/or food waste grinder)	Patron seating space	12
Restaurant, 24−hr. (toilet waste)	Patron seating space	28
Restaurant~~*~~[a], 24−hr. (toilet and kitchen waste without dishwasher and/or food waste grinder)	Patron seating space	40
Restaurant~~*~~[a], 24−hr. (toilet and kitchen waste with dishwasher and/or food waste grinder)	Patron seating space	44
Restaurant~~*~~[a] (dishwasher and/or food waste grinder only)	Patron seating space	2
Restaurant~~*~~[a] (kitchen waste only without dishwasher and/or food waste grinder)	Patron seating space	6
Restaurant (toilet waste)	Patron seating space	14
Restaurant~~*~~[a] (toilet and kitchen waste without dishwasher and/or food waste grinder)	Patron seating space	20
Restaurant~~*~~[a] (toilet and kitchen waste with dishwasher and/or food waste grinder)	Patron seating space	22
Retail store	Patron (70% of total retail area + 30 sq. ft. per patron)	1
School~~*~~[a] (with meals and showers)	Classroom (25 students/classroom)	500
School~~*~~[a] (with meals or showers)	Classroom (25 students/classroom)	400
School (without meals or showers)	Classroom (25 students/classroom)	300
Self−service laundry[c] (toilet waste only)	Clothes washer	33
Self−service laundry[c] (with only residential clothes washers)	Clothes washer	~~200~~ 400
Swimming pool bathhouse	Patron	6.5

~~*~~[a] ~~=~~ May be high ~~strength waste~~ in Biochemical Oxygen Demand (BOD) and Fats, Oils or Grease (FOG).

[b] May be high in medication and personal care products.

[c] May contain a high level of lint.

SECTION 25. Comm 84.10 (3) (e) 3. is amended to read:

Comm 84.10 (3) (e) 3. If the department receives a significant amount of public comment under subd. 2., the department may elect to recognize the specific method or technology through the rule−making process under ch. 227, Stats.~~, and to cite the recognition in s. Comm 83.61.~~

END

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