



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1816
TDD: Contact Through Relay

Scott Walker, Governor
Dave Ross, Secretary

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM
OF ADMINISTRATIVE RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 11-031

RULE NO.: Chapters Comm 81 to 84

RELATING TO: Private Onsite Wastewater Treatment Systems (POWTS)

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wisconsin Act 21. The statement of scope for this rule was published in *Administrative Register*, No. 655, on July 15, 2010, and was sent to LRB before the effective date of 2011 Wisconsin Act 21.

Respectfully submitted,

Dave Ross
Secretary

COM-10536 (R. 07/11)



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Scott Walker, Governor
Dave Ross, Secretary

Senator Michael Ellis
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Jeff Fitzgerald
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Ellis and Representative Fitzgerald:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 11-031

RULE NO.: Chapters comm 81 to 84

RELATING TO: Private Onsite Wastewater Treatment Systems (POWTS)

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wisconsin Act 21. The statement of scope for this rule was published in *Administrative Register*, No. 655, on July 15, 2010, and was sent to LRB before the effective date of 2011 Wisconsin Act 21.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

Dave Ross
Secretary

COM-10537 (R. 07/11)



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1816
TDD: Contact Through Relay

Scott Walker, Governor
Dave Ross, Secretary

Bruce Hoesly, Code Editor
1 East Main Street, Suite 200
Madison, Wisconsin 53703

Dear Mr. Hoesly:

NOTIFICATION OF RULE REFERRAL

This letter is to notify you that pursuant to section 227.19, Stats., the Department of Commerce has referred:

CLEARINGHOUSE RULE NO.: 11-031

RULE NO.: Chapters Comm 81 to 84

RELATING TO: Private Onsite Wastewater Treatment Systems (POWTS)

to the presiding officers of the Senate and Assembly of the Legislature for referral to the appropriate standing committees for Legislative review.

This rule is not subject to s. 227.135 (2), as affected by 2011 Wisconsin Act 21. The statement of scope for this rule was published in *Administrative Register*, No. 655, on July 15, 2010, and was sent to LRB before the effective date of 2011 Wisconsin Act 21.

Respectfully submitted,

Dave Ross
Secretary

RULE REPORT

Department of Safety and Professional Services

Clearinghouse Rule No.: 11-031

Rule No.: Chapters Comm 81 to 84

Relating to: Private Onsite Wastewater Treatment Systems (POWTS)

Contact person for substantive questions:

Contact person for internal processing:

Name Roman Kaminski

Name Roman Kaminski

Title Program Manager

Title Program Manager

Telephone Number (715) 345-5334

Telephone Number (715) 345-5334

1. Basis and purpose of the proposed rule.

The basis of the proposed rules are sections 101.02, 145.02 and 145.12, 145.135 and 145.20, Stats., as affected by 2009 Wisconsin Act 392. 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.

The proposed rules consist of revisions to chapters Comm 81 to 84, Uniform Plumbing Code, that clarify the existing rules by modifying technical requirements within the standards, reorganizing current requirements and incorporating editorial changes. In addition, 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.

2. How the proposed rule advances relevant statutory goals or purposes.

Sections 101.02 and 145.02 Stats., grant the Department of Safety and Professional Services general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the design, installation or construction, inspection and maintenance of plumbing. In accordance with s. 145.13, Stats., the Department also is responsible for safeguarding the waters of the state. To fulfill this responsibility, the Department has promulgated chapters Comm 81 to 84 relating to Private Onsite Wastewater Treatment Systems (POWTS).

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes have occurred for the rule analysis or the fiscal estimate.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Safety and Professional Services

CLEARINGHOUSE RULE NO.: 11-031

RULE NO.: Chapters Comm 81 to 84

RELATING TO: Private Onsite Wastewater Treatment Systems (POWTS)

Final regulatory flexibility analysis not required. (Statement of determination required.)

Pursuant to s. 227.19 (3m), Stats., the Department of Safety and Professional Services has determined that the proposed rules to update chapters Comm 81 to 84 will not have a significant impact on a substantial number of small businesses.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

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.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

(Continued on next page)

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Safety and Professional Services

CLEARINGHOUSE RULE NO.: 11-031

RULE NO.: Chapters Comm 81 to 84

RELATING TO: Private Onsite Wastewater Treatment Sections (POWTS)

Agency contact person for substantive questions.

Name: Roman Kaminski

Title: Program Manager

Telephone No. (715) 345-5334

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

(Continued on next page)

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

COMMENTS ON LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Clearinghouse Rule No. 11-031

Rule No.: Chapters Comm 81 to 84

Relating to: Private Onsite Wastewater Treatment Systems (POWTS)

2. Form, Style and Placement in Administrative Code

- a. The department combines heading 9, "Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report" and heading 10, "Effect on small business" into one heading: "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 has done this for several years when developing rule packages because heading 9 and 10 are redundant and the answer for both would be the same. The department prefers continuing to combine heading 9 and 10 as it has historically done.
- b. The department has never inserted "TEXT OF RULE" at the beginning of the rule text in any of its rule packages. Also, in researching online what other Wisconsin state agencies do, it was noted that none of them inserted "TEXT OF RULE" at the beginning of rule text. Furthermore, in reading the Administrative Procedures Rule Manual relating to "TEXT OF RULE" on page 6 it does not say that the heading should be inserted before the rule text. This is the first time any of the department's rule packages have returned from the Legislative Council Clearinghouse with the comment that "TEXT OF RULE" should be inserted at the beginning of the rule text. The department prefers continuing to format the rule text as it has historically done.
- c. The department realizes there are several ways to interpret and handle rule changes. The department had considered the changes that it was making to s. Comm 81.01 (51) as amendments. To facilitate rule development, the department will repeal s. Comm 81.01 (51) (see In SECTION 1) and create a new definition (see SECTION 3). The new definition, however, should be numbered s. Comm 81.01 (209m) and not (201m). In addition, the department is renumbering s. Comm 81.01 (51m) as (51) and is not deleting SECTION 2.
- f. The Note in SECTION 8 for s. Comm 82.40 (8) (b) 7. is new and is in addition to the current note. The department has added [2] to denote that it is the second note.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- c. In SECTION 16, s. Comm 83.54 (3) (d), the department has clarified the frequency question by adding the words "be performed in a manner" so that it now reads "...shall be performed in a manner to prevent the discharge of..." The Note referencing s. NR 113.03 (57) lists "holding tanks" which are defined in NR 113.03 (26) and includes RV transfer tanks.
- d. In SECTION 17, s Comm 83.54 (4) (b) has been renumbered s. Comm 83.54 (4) (b) 1. and as renumbered amended. A new Section 18 has been added for the creation of s. Comm 83.54 (4) (b) 2. and Note.
- e. (2) The asterisks in Comm 83 Appendix Table A-83.43-1 are deleted. The strike through falls beneath the asterisk and is hard to see. For consistency, the department prefers to use letters for footnotes.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chs Comm 81 to 84
Amendment No. if Applicable

Subject

Private Onsite Wastewater Treatment Systems

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation
 Decrease Existing Appropriation
 Create New Appropriation
 Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Not applicable

Assumptions Used in Arriving at Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing rules relating to the design, installation or construction, inspection and maintenance of private onsite wastewater treatment systems. The proposed rules consist of updates of chapters Comm 81 to 84 relating to private sewage systems.

The proposed rules implement the mandates imposed by 2009 Wisconsin Act 392. The Act affects governmental units (counties) by setting deadlines for the completion of an inventory of private sewage systems within their jurisdictions. However, Act 392 does not impose any additional responsibilities that would have a fiscal effect.

The proposed rules will not have a significant effect on the private sector.

Long-Range Fiscal Implications

No long-range fiscal implications are anticipated.

Agency/Prepared by: (Name & Phone No.)
Commerce/Roman Kaminski 715-345-5334

Authorized Signature/Telephone No.

Date

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED
 UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 Chs Comm 81-84

Subject
 Private Onsite Wastewater Treatment Systems

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
	Increased Rev.	Decreased Rev.
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
0 SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0	\$ -0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

Commerce/Roman Kaminski, 715-345-5334

Department of Safety and Professional Services
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 11-031		Hearing Location: Madison, WI	
Rule Number: Chapters Comm 81 to 84		June 27, 2011	
Relating to: Private Onsite Wastewater Treatment Systems (POWTS)			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Exhibit 1	Jeffrey J. Beiriger Executive Director Plumbing-Heating-Cooling Contractors – Wisconsin Association Master Plumbers/Heating & Cooling Contractors of Wisconsin 600 East Mason Street Milwaukee, WI 53202	Supports the proposed rules. Endorses the department's POWTS Code Advisory Council because it provides the opportunity to work in partnership with the state in developing building-related codes.	Support noted.