

Trans 233 and wastewater recycling facilities

Part of Wisconsin's Administrative Code, Trans 233 establishes requirements for land divisions that occur adjacent to state highways. The Wisconsin Department of Transportation (WisDOT) is responsible for enforcing Trans 233 to preserve traffic flow, enhance public safety, and ensure proper highway setbacks and storm water drainage.

Part of the rule, modified in 1999, indicated the department's intent to enforce a requirement that no construction of improvements occur in setback areas. Setbacks were established to be 110 feet from the centerline of a state highway or 50 feet from the right-of-way, whichever is more restrictive. That meant that no on-site wastewater recycling facilities could be built in the setback area, including those portions lying underground. The idea behind the rule was that if the systems were planned and constructed so that they did not lie within the setback area, any necessary roadway widening would not further damage the property and taxpayers would be spared the potentially significant costs associated with relocating these systems. Many times, there may not be any other site for the system and the owner may be left with a holding tank. If owners know this going into a purchase, they may decide to accept the risk or to look further to find a more acceptable property.

In January 2004, the Legislature's Joint Committee for Review of Administrative Rules suspended portions of the rule, specifically any changes between the pre-1999 rule and the then current rule. Legislation was submitted to revise the statutes to make the changes permanent. However, when the legislative session adjourned on July 18, 2006, those bills had not been acted upon and were thus adversely disposed of. This means the rule is revived, but an intervening appellate court case put limitations on the department's ability to review all land divisions. That case determined that the department only had the authority to review subdivisions and no other type of land division.

What it means is that the setback restrictions as imposed in the rule in 1999 and 2001 remain in effect (no longer suspended), but they only apply to subdivisions, not to land divisions occurring by certified survey maps, deeds, or condominium plats.

So how does a business or property owner know if a setback will impact the proposed location of a new or relocated wastewater recycling facility? It's not an easy answer. Since the portion of the rule affecting septic systems was in effect between 1999 and 2004, but not from January 28, 2004 and July 18, 2006, and is now again in effect on subdivisions, a thorough analysis of the history of the parcel needs to be done. Since 2003, the department has been developing a database that will make the review of such an issue much easier for reviewers in our regional offices. Now, an individual can find out if there is a "highway setback" on a parcel by simply calling the WisDOT regional office and providing the reviewer with the section/town/range and the section ($\frac{1}{4}$, $\frac{1}{4}$) of the parcel. The regional office should be able to provide an answer in a reasonable time frame. Additional information on the Trans 233 rule and regional contacts can be found on the WisDOT Web site at: www.dot.wisconsin.gov/business/rules/trans233.htm.