

STATEMENT OF SCOPE

DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Rule No.: SPS 302, 305 and 383

Relating to: POWTS Maintainer Credentials

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The objective of this rulemaking project is to review and consider updating rules relating to the department's credential for maintainers of private onsite wastewater treatment systems (POWTS). This subject is primarily contained in Wis. Admin. Code ch. SPS 305. The department, in consultation with the POWTS Technical Advisory Committee, will review the administrative code covering this subject and determine if updates or clarification are needed. Updates may be needed to protect public health, safety, and welfare through these systems, protect the waters of the state, and to modernize and increase efficiency of credentialing. Rule revisions may also require changes to chs. SPS 302 and 383, as those chapters have provisions that relate to POWTS maintainers.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wis. Admin. Code ch. SPS 305 contains requirements for being credentialled to evaluate, monitor and maintain POWTS components. Specifically, the POWTS maintainer credential is contained in Wis. Admin. Code § SPS 305.36. The code gives details of activities allowed to be performed and the requirements for credentialing.

The primary purpose of this rulemaking project is to protect public health, safety, and welfare, protect the waters of the state, and modernize and increase efficiency of credentialing. Periodic review and update of the rules is necessary to ensure that the rules still achieve that purpose. This project allows for the opportunity to recognize and stay current with industry practices and products. General responsibilities, scope of practice, credential application requirements, renewal requirements, and other topics related to POWTS maintainers will be considered during this project.

The alternative of not reviewing and updating the code could result in rules which may be a risk to the public.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 101.02 (1) (b), Stats.: "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings..."

Section 145.02 (1), Stats.: "The construction, installation and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, shall be safe, sanitary and such as to safeguard the public health and the waters of the state."

Section 145.02 (2) (a), Stats.: “The department shall have general supervision of all plumbing described under sub. (1). The department shall promulgate rules that shall uniformly apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision. The rules promulgated by the department shall constitute the state plumbing code. The state plumbing code shall comply with ch. 160. To the extent that the historic building code applies to the subject matter of these standards, the standards do not apply to a qualified historic building if the owner elects to be subject to s. 101.121. The standards do not apply to a primitive rural hunting cabin, as defined in s. 101.61 (3).”

Section 145.20 (5) (a), Stats.: “The department shall establish a maintenance program to be administered by governmental units responsible for the regulation of private on-site wastewater treatment systems. The department shall determine the private on-site wastewater treatment systems to which the maintenance program applies. At a minimum the maintenance program is applicable to all new or replacement private on-site wastewater treatment systems constructed in a governmental unit after the date on which the governmental unit adopts this program. The department may apply the maintenance program by rule to private on-site wastewater treatment systems constructed in a governmental unit responsible for the regulation of private on-site wastewater treatment systems on or before the date on which the governmental unit adopts the program.”

Section 145.20 (5) (b), Stats.: “The maintenance program shall include a requirement of inspection or pumping of the private on-site wastewater treatment system at least once every 3 years if the private on-site wastewater treatment system does not have a maintenance plan as prescribed by rule by the department. Inspections may be conducted by a master plumber, journeyman plumber or restricted plumber licensed under this chapter, a person licensed under s. 281.48 or by an employee of the state or governmental unit designated by the department, and the department may determine by rule other persons who are qualified to undertake required inspection, maintenance, or repairs. The department shall specify the methods to establish the required frequency of inspection, maintenance, and pumping for each type of private on-site wastewater treatment system that does not have a maintenance plan and shall periodically update the methods.”

Section 227.11 (2) (a), Stats.: “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 hours.

6. List with description of all entities that may be affected by the proposed rule:

This rule project may affect municipalities who inspect POWTS and any business or other entity that is involved in the ownership, design, installation, use, maintenance, alteration, or inspection of POWTS in Wisconsin.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are several existing federal regulations that address activities related to POWTS.

40 CFR 144.80(e) addresses Class V Wells also known as Shallow Injection Wells. 40 CFR 144.3 defines “Sanitary Waste” as including domestic wastewater. Chapter SPS 383, Wis. Admin. Code, addresses treatment and dispersal of domestic wastewater. Also, 40 CFR 144.3 defines “Septic System” as a well that is used to emplace sanitary waste below the surface. The federal 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 persons per day. These systems are “authorized by rule” provided they meet two minimum federal requirements: 1. The owner or operator submits basic inventory information. 2. The injectate (wastewater) cannot endanger underground sources of drinking water. In Wisconsin, chapter SPS 383, Wis. Admin.

Code, addresses treatment and dispersal of domestic wastewater and 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 145.02, Wis. Stats., requires that chapter SPS 383, Wis. Admin. Code, comply with the provisions of chapter 160, Wis. Stats. Chapter NR 140, Wis. Admin. 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 SPS 383, Wis. Admin. Code, incorporates the applicable provisions of chapter 160, Wis. Stats., and chapter NR 140, Wis. Admin. Code.

40 CFR Part 122 addresses National Pollutant Discharge Elimination System (NPDES) permits. Chapter SPS 383, Wis. Admin. Code, addresses large POWTS systems which are covered by Wisconsin Pollutant Discharge Elimination System (WPDES) permits that are issued by the Department of Natural Resources. The WPDES permit process is modeled after the NPDES permit process.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule is not likely to have a significant economic impact on small businesses and the state's economy as a whole.

Contact Person: Jake Pelegrin, Administrative Rules Coordinator, DSPSAdminRules@wisconsin.gov, (608) 267-0989.

Approved for publication:



Authorized Signature

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Date Approved

Approved for implementation:

Authorized Signature

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