

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

'JUN 28 REC'D

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-080

AN ORDER to amend Comm 83.03 (2), relating to private sewage systems.

Submitted by **DEPARTMENT OF COMMERCE**

05-07-99 RECEIVED BY LEGISLATIVE COUNCIL.

06-03-99 REPORT SENT TO AGENCY.

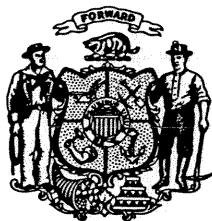
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CLEARINGHOUSE RULE 99-080

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

The stricken language in s. Comm 83.03 (2) should reflect the current rule. Therefore, "not" should be inserted after "but."

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

a. In addition to the changes proposed in s. Comm 83.03 (2), the rule should either delete or amend s. Comm 83.01 (2) (b). This rule provision, which is part of a statement of purpose for ch. Comm 83, establishes as a "basic principle" that private sewage systems must be abandoned when a public sewer is available.

b. As amended by the rule, the remaining two sentences in s. Comm 83.03 (2) determine how "abandoned" treatment tanks and seepage pits must be treated. However, nothing in the remainder of ch. Comm 83 determines when a treatment tank or seepage pit is abandoned. It may not always be clear when abandonment occurs, such as when a treatment tank is temporarily taken out of service. Also, as drafted, the rule would apparently permit a property owner, unless ordered to abandon a treatment tank or seepage pit, to continue using the private sewage system in addition to the public sewer.



State of Wisconsin \ Department of Commerce

HEARING DRAFT of PROPOSED RULES

Rule No.: Chapter Comm 83

Relating to: Private Sewage Systems

The Wisconsin Department of Commerce proposes an order to amend s. Comm 83.03 (2), relating to private sewage systems.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (1), 101.82 (1) and 145.02 (3), Stats.
Statutes interpreted: ss. 145.02 (2), Stats.

Under s. 145.02, Stats., the Department of Commerce has the responsibility of the proper siting, design, installation, inspection, and maintenance of private sewage systems.

This rule revision relates to action of JCRAR on December 8, 1998 suspending the first two sentences of s. Comm 83.03 (2) regarding current mandate for a property to abandon a private sewage system once public sewer service is available.

This revision would remove the portion of the current rule that requires owners of private sewage systems to discontinue use of such systems and connect to public sewer when public sewer becomes available.

SECTION 1. Comm 83.03 (2) is amended to read:

Comm 83.03 (2) ~~PUBLIC SEWER CONNECTION SYSTEM ABANDONMENT.~~ ~~When public sewers approved by the department of natural resources become available to the premises served, the use of the private sewage system shall be discontinued within that period of time required by the order, but to exceed one year. The building sewer shall be disconnected from the private sewage systems and be connected to the public sewer.~~ *not* All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with ch. NR 113, Wis. Adm. Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with suitable soil material.

(end)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

Office of Sen. Robert Welch
Office of Rep. Glenn Grothman
Phone 608-265-0751
Phone 608-264-8486

**Joint Committee for
Review of
Administrative Rules**

**Report to the Legislature
COMM 83.03 (2)
The Joint Committee for Review of Administrative Rules**

Produced pursuant to s. 227.26(2)(g)

COMM 83.03(2), established by the Department of Commerce relating to the discontinuation of the use of privately owned wastewater treatment systems upon the installation of a public system approved by the Department of Natural Resources.

Description of the Problem

Chapter COMM 83 of the Wisconsin Administrative Code establishes guidelines for the operation of public and private sewage systems. COMM 83.03 was brought to the attention of the Joint Committee for Review of Administrative Rules by State Representative Scott Gunderson. Under the rule as it stood prior to suspension, when public sewers approved by the Department of Natural Resources become available to a household, the use of a private sewage system must be discontinued. Many homeowners have incurred great expenses installing their private septic systems, only to have a sanitary district annex the surrounding land. After public sewers become available, the homeowner has one year to disconnect his private sewage system, and connect to the public system. This rule is enforced on the homeowner regardless of the age or operating condition of the private system. With the increased development of rural subdivisions, this is likely to become a recurring problem.

Arguments in Favor of Suspension

- *Comm 83.02 compliance allows for no exceptions.* Even if a private sewage system is working and installed at the owner's expense, it still must be disconnected.
- *Comm 83.02 compliance will continue to cause problems in the future.* With the increased development of rural subdivisions, this problem is likely to recur.
- *The Department of Commerce supports a change in the rule.*
- *Local authority over the required connection of homes to public sewers is retained:* State law gives municipalities the ability to require connection to newly-installed public sewer systems. This suspension eliminates only the *state government* requirement that such interconnection occur. The local government may still, at its discretion, order such a connection within the timeframe specified in statute.

Arguments Against Suspension

- *Changes to COMM 83.03 could decrease statewide uniformity and decrease regulatory authority.*

Joint Committee for Review of Administrative Rules Action

On December 8, 1998 the Joint Committee for Review of Administrative Rules held a public hearing and executive session on COMM 83.03(2). The committee voted unanimously pursuant to s. 227.26(2)(d), stats., and for the reasons set forth in s. 227.19(4)(d) 6, stats., to suspend the first two sentences of COMM 83.03(2), Wis. Adm. Code.



SEP 14 1999

201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

9/10/99

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

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

CLEARINGHOUSE RULE NO.: 99-080

RULE NO.: Chapter Comm 83

RELATING TO: Private Sewage Systems

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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. J. Blanchard', written over a horizontal line.

Brenda J. Blanchard
Secretary



201 West Washington Avenue
P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

9/10/99

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 99-080

RULE NO.: Chapter Comm 83

RELATING TO: Private Sewage Systems

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.

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,

Brenda J. Blanchard
Secretary

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 99-080

RULE NO.: Chapter Comm 83

RELATING TO: Privatge Sewage Systems

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

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.

None applicable.

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.

None given.

3. Nature and estimated cost of preparation of any reports by small businesses.

None established.

4. Nature and estimated cost of other measures and investments required of small businesses.

None known.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

None established.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None known.

RULE REPORT

Department of Commerce

Rule No.: Chapter Comm 83

Relating to: Private Sewage Systems

Agency contact person for substantive questions:

Name Roman Kaminski

Title Program Manager

Telephone Number (715) 345-5334

Agency contact person for internal processing:

Name Jean M. MacCubbin

Title Environmental Code Consultant

Telephone Number (608) 266-0955

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
The Department authority for private sewage systems is given in s. 145.02 (2), Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
None known.
3. Citation of court decisions which are applicable to the proposed rule(s).
None known.

4. Description of the proposed rule(s).

The rule revision addresses the action taken on December 8, 1998 by the Joint Committee for Review of Administrative Rules (JCRAR). They adopted the following motion:

“Pursuant to s. 227.26 (2) (d), Stats., and for the reasons set forth in s. 227.10 (4) (d) 6., Stats., the Joint Committee for Review of Administrative Rules suspend the first two sentences of s. Comm 83.03 (2), Wis. Adm. Code.” Motion carried: **Rule suspended.**

The portion of the rule that is being repealed requires owners of private sewage systems to connect to public sewer and discontinue use of the private sewage system when public sewer becomes available.

5. Reason for the proposed rule(s).

The rule revision will formalize in the Wisconsin Administrative Code, ch. Comm 83, the action as describe in #4 above.

The department recognizes that the life of a code compliant private sewage system has not been taken into consideration under the existing policy. The existing policy places a financial burden on the property owner who may have recently installed, repaired or replaced a private sewage system or POWTS (privately-owned wastewater treatment system). The department further believes that pursuant to ss. 66.24 (3), 66.896 (3) and 281.45, Wis. Stats., municipalities and sewage districts are in the best position to determine the availability of, and require connection to, public sewers

FISCAL ESTIMATE
DOA-2048 (R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Ch. Comm 83
Amendment No. if Applicable

Subject Private Sewage 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
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

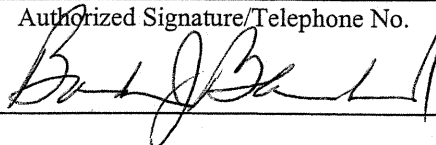
The department further believes that pursuant to s. 281.34, Wis. Stats., municipalities and sanitary districts are in the best position to determine the availability of, and require connection to, public sewer.

There are no changes to department workload or revenue with regard to this proposed rule revision.

Long-Range Fiscal Implications
None enumerated.

Agency/Prepared by: (Name & Phone No.)
Jean M. MacCubbin, code consultant
608-266-0955

Authorized Signature/Telephone No.



Date

5/4/09

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect
DOA-2047(R02/97)

ORIGINAL
 CORRECTED
 UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Ch. Comm 83
Amendment No.

Subject
Private Sewage 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	\$ 00	\$ -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 Increased Costs	\$ -0 Decreased Costs
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.)		
GPR Taxes	\$ 0 Increased Rev.	\$ -0 Decreased Rev.
GPR Earned	0	-0
FED	0	-0
PRO/PRS	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.)

Jean M. MacCubbin, code consultant
608-266-0955

Authorized Signature/Telephone No.

Burt J. Burt

Date

5/4/99

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 83
 RELATING TO: Private Sewage Systems--public sewers
 LOCATION: 2400 Post Road, 1st Fl Conf Rm
 DATE: 6/29/99
 TIME: 10:00 a.m.
 CITY: Plover, WI

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
Dennis Johnson	Aurora Sanitary Dist #1	Aurora WI			
Jack Raymond	Aurora Sanitary Dist #1	Aurora wis.			
JAMES P. CLARK	WIS. COUNTY CODE ADMINISTRATORS	WATERLOO WI		X	
Amy Turuski	Municipal Environmental Group	Madison, WI		X	
Ralph Loeffler	Portage County Zoning Dept	Stevens Point WI		X	
Ralph MacLennan	Commerce,				
Ronald Kaniwiski	Commerce				

DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE

Clearinghouse Rule No.:		Hearing Location: Plover, WI	
Rule Number: Ch. Comm 83		Hearing Date: June 29, 1999	
Relating to: Private Sewage Systems			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
4.	James P. Clark WI COUNTY CODE ADMINISTRATORS 5675 Mary Lake Rd Waunakee WI 53597	<p>1. On 6/11/99, the Bd. of Directors of WCCA met and a unanimous vote was taken in opposition to the proposed revision [of s. Comm 83.03(2)].</p> <p>a. WCCA strongly supports this portion of the code as sound public policy.</p> <p>b. The policy decision to extend public sewer is in the best interest of all affected property owners. (WCCA agrees that private sewage systems are perfectly acceptable methods for disposing of domestic wastewater.) This is the appropriate time for all properties to hook up.</p> <p>c. The Statutes provide authority to sanitary districts to require property owners to connect to public sewer. However, as with many enabling Statutes, this authority looks better in "black and white" than it does when trying to implement it.</p> <p>2. Sanitary districts, with limited resources, will have few remedies for failure, to enter into legal action; this establishes a "lose-lose" situation. District orders thereby go unenforced. A special warrant may be needed; recovery of these costs is long term. Civil remedies are also problematic, costly and time consuming. Currently, county orders are compiled with.</p> <p>3. The Department does not feel that it is appropriate for county code administrators, acting as its agents, to have the power to enforce provisions delegated to sanitary districts. History reveals that counties are working with sanitary districts; WCCA sees no evidence to demonstrate a need to change, as indicated by Department characterization that this provision interferes with sanitary district's authority is a distortion at best. Rather, this section provides meaningful support in carrying out local policy decisions.</p> <p>4. Section Comm 83.03 (2) is a commendable example of intergovernmental cooperation; the proposal creates cause for concern about the Department's commitment to their charge to protect public health and the environment.</p> <p>5. WCCA believes that s. Comm 83.03(2) is an important aspect of the private sewage code.</p>	<p>1.a No response needed</p> <p>1.b The determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service.</p> <p>1.c The authority to require connection is clear and enforceable.</p> <p>2. Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>3. Disagree. The department has not stated that it is inappropriate for county code administrators to assist local municipal entities that provide public sewer services. Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>4. Disagree. The department has not stated that it is inappropriate for county code administrators to assist local municipal entities that provide public sewer services. Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>5. Disagree. The determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is</p>

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.:		Hearing Location: Plover, WI
Rule Number: Ch. Comm 83		Hearing Date: June 29, 1999
Relating to: Private Sewage Systems		
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Agency Response
	Comments/Recommendations	
	<p>6. By not requiring connection at the time of sewer availability, costs to connect in the future increase, presenting an inequity issue.</p> <p>7. Comments with regard to Commerce's representation at JCRAR hearing(s) as well for two bills to achieve the same purpose-- AB 96 and S 102, were also mentioned. Testimony at these hearings was compelling and the 'no action votes' (other than referral) were taken. These events indicate, to WCCA, more opposition than support for these changes.</p> <p>8. WCCA asks the department to reconsider and withdraw the proposed revision for the following reasons:</p> <ol style="list-style-type: none"> 27 years of successful intergovernmental cooperation; problems associated with delayed connections and continuance of potential failing systems; unsound public policy; proposed reversal is not founded in support by local governmental units; simple and prudent action is to 'leave well enough alone'; proposal will create an atmosphere of adversarial interaction and multiply the costs of legal actions to achieve local policy decision goals. <p>9. WCCA strongly urges the department to also restore this text in the proposed new ch. Comm 83.</p>	<p>best made by the local municipal entity that will be providing the service.</p> <p>6. Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service. Real estate transfer disclosure requirements will reveal the presence of a private sewage system to prospective buyers.</p> <p>7. No response needed.</p> <p>8.a Nothing will preclude a county sanitary permit issuing agent from continuing to cooperate with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>8.b Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>8.c Disagree. The department relies upon the local authority provided by the Statutes.</p> <p>8.d No response needed.</p> <p>8.e The department has a responsibility to respond to legislative actions and requests.</p> <p>8.f Nothing will preclude a county sanitary permit issuing agent from continuing to cooperate with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer</p>

DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE

Clearinghouse Rule No.:		Hearing Location: Plover, WI	
Rule Number: Ch. Comm 83		Hearing Date: June 29, 1999	
Relating to: Private Sewage Systems			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
8.	Amy Tutwiler MUNICIPAL ENVIRONMENTAL GROUP 10 E. Doty St Madison WI 53703	<p>1. Municipal Environmental Group (MEG) is strongly opposed to the proposed change. MEG represents most of the smallest wastewater treatment plants as well as the larger ones, like Green Bay, for example. MEG has gone on record in opposition to both AB 96 and S 102.</p> <p>2. The reasons for opposition are as follows:</p> <ol style="list-style-type: none"> the proposal eliminates cost-effective means for treating wastewater; planning for sewer extension would be compromised by having no assurance of how many properties would become users; few if any municipality could adequately plan for new or extended public sewer; the proposed change would create a situation where hospitals or other medical facilities either would not have access to sewer or would have to provide such in other than a cost-effective manner; protection of the environment is compromised-- municipal sewer is required to conduct detailed monitoring and operating procedures, they are strictly scrutinized; the public would not longer have the assurances with private systems that similar monitoring is being conducted, thus less protection of the environment. <p>3. Section 281.45, Stats., provides municipalities to pass ordinances to require or mandate sewer hook up upon availability, but few have enacted ordinances and these types of ordinances are more political</p>	<p>system or seeks assistance in making that determination or obtaining compliance.</p> <p>9. Disagree. The department has consistently stated that the determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service.</p> <p>1. No response necessary.</p> <p>2.a Disagree. Private sewage systems are a cost-effective means of treating wastewater on a long-term basis.</p> <p>2.b Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>2.c The proposed rule revision will have no significant impact on the ability of local municipal entities to plan, design and build public sewer services.</p> <p>2.d Section 66.036, Wis. Stats., requires that prior to permitting the construction of any habitable structure, assurances must be made that a code compliant private sewage system is available or that connection to a public sewer system can be made.</p> <p>2.e Disagree. Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local</p>

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

Clearinghouse Rule No.:		Hearing Location: Plover, WI	
Rule Number: Ch. Comm 83		Hearing Date: June 29, 1999	
Relating to: Private Sewage Systems			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		<p>than one to protect public and the environment.</p> <p>4. The scope of ch. 281, Stats., references town sanitary districts, but is silent on "special sanitary districts." (A follow-up e-mail message from the presenter clarified that "special sanitary district" was meant as "metropolitan sewerage district".)</p> <p>5. Some sewer districts cross municipality lines and encompass more than one jurisdiction, thus creating burden on their ability to have compliance.</p> <p>6. Largest concern by MEG is the inability to adequately plan for sewer extension and the resulting increased costs to all users.</p> <p>7. MEG urges the department to maintain the current rule, which MEG understands has been working properly for 27 years.</p> <p align="right">(end)</p>	<p>municipality providing the service.</p> <p>3. The Statutes provides home rule authority relating to these issues.</p> <p>4. Section 66.24(3), Wis. Stats., clearly states that metropolitan sewerage districts can order connection to their public sewer systems.</p> <p>5. The proposed rule revision does nothing to eliminate or hinder cross jurisdictional cooperation.</p> <p>6. The proposed rule revision will have no significant impact on the ability of local municipal entities to plan, design and build public sewer services.</p> <p>7. No response necessary.</p>

DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE

Clearinghouse Rule No.: 99-080		Hearing Location: Not applicable	
Rule Number: Ch. Comm 83		Hearing Date: WRITTEN	
Relating to: Private Sewage Systems			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
1.	Tim Mirkes, Pres. WISC ENVIRONMENTAL HEALTH ASSOC INC PO BOX 8565 MADISON WI 53708-8565	<p>1. On 6/7/99 the WEHA Board voted unanimously to oppose the changes for the following reasons:</p> <p>a. By not requiring connection (to sewer) simply asks for problems at a future date and complicates steps necessary to achieve resolution to these problems. The delay of connection would be more expensive than if connected at time of availability.</p> <p>b. Review of the Stats. reveals the authority to allow sanitary districts to mandate connection if they so desire.</p> <p>c. Re: s. Comm 83.03(2) currently allows local units of government to support the decision of the sanitary district to mandate connection; an example of intergovernmental cooperation. The proposed change appears the Department is turning its back on this cooperation.</p> <p>d. The proposal to eliminate exiting language does not require that the owner provide evidence that the system is not failing.</p> <p>e. Re: s. 60.726(2), Stats. already provides an owner protection from final harm, the Board agrees that this is an equitable method.</p> <p>f. Concern is about the future harm of existing systems and when adjoining property is connected to public sewer have no knowledge that a private sewage system nearby is being used. Concern is also raised about new owners inheriting older sewage systems vs. having a connection to sewer.</p> <p>g. A potential of adversarial relations between local units of government may develop where none currently exist. This is contrary to sound public policy.</p> <p>2. The Board is convinced that current authority in s. Comm 83.03(2) is an important aspect of private sewage regulation in the state of Wisconsin.</p>	<p>1.a Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>1.b No response needed.</p> <p>1.c Intergovernmental cooperation can continue to exist. The sanitary district or other local municipal entity is in the best position to initiate the connection requirement.</p> <p>1.d Determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>1.e No response needed.</p> <p>1.f Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity. Real estate transfer disclosure requirements will reveal the presence of a private sewage system to prospective buyers.</p> <p>1.g Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>2. The determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service.</p>

DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE

Clearinghouse Rule No.: 99-080		Hearing Location: Not applicable	
Rule Number: Ch. Comm 83		Hearing Date: WRITTEN	
Relating to: Private Sewage Systems			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
2.	Donald A. Doule, Wm. C. Helein, Laurie J. Fulcer WAVERLY SANITARY DISTRICT W7191A HWY 10 & 114 MENANSHA WI 54952	<ol style="list-style-type: none"> On 6/9/99 the Waverly Sanitary District discussed this item and would like to go on record of concern and non-support of this amendment. The proposed revision of eliminating the language [s. Comm 83.03(2)] does not appear to be in the public interest. The proposed revision negates any progress that has been made on this issue and would be considered a step "backwards" rather than forward. 	<ol style="list-style-type: none"> No response needed. The determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service. See response in #2 above.
3.	Gerald Ramsden KEGONSA SANITARY DISTRICT 2240 US HWY 51 PO Box 486 Stoughton WI 53589	<ol style="list-style-type: none"> The Kegonsa Sanitary District strongly urges the department not to amend s. Comm 83.03(2). <ol style="list-style-type: none"> Due to the lack of monitoring of private sewage systems, one faulty system could pollute the watertable for nearby wells. The district believes that it is wise use of agency rule making authority to protect the environment for current and future generations. The district urges the Committee (department) not to eliminate this important rule. 	<ol style="list-style-type: none"> a Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service. <ol style="list-style-type: none"> Agree. However, in this case the determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service. No response needed.
5.	Dr. Armond Start DANE COUNTY BD OF HEALTH (no address given)	<ol style="list-style-type: none"> At their meeting of 6/22/99, the Dane County Board of Health voted unanimously in opposition to the proposal [to delete portions of s. Comm 83.03(2)]. The decision to extend sewer into unsewered areas is frequently in response to problems of malfunctioning or failing private sewage systems. This decision is made in the best interest of the environment, protection of public health and the property owners. The department (Commerce) has made it known that it believes sanitary districts have specific statutory authority to require connection and the current proposed language is an infringement on 	<ol style="list-style-type: none"> No response needed. Agree. However, in this case the determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service.

**DEPARTMENT OF COMMERCE
PUBLIC HEARING COMMENT AND AGENCY RESPONSE**

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Comments/Recommendations	Agency Response
<p>those rights.</p> <p>a. Dane County strongly opposes this (change) as it will eliminate support they utilize when owners refuse or neglect to comply with orders.</p> <p>b. The net result will be problematic systems will continue in use and require action later when they fail hydraulically.</p> <p>4. The Board cannot support this proposed change when the outcome is clearly antithetical to principles of preventing health hazards, especially when reasonable alternatives exist.</p> <p>5. Section Comm 83.03(2) currently allows the County to assist the sanitary district to assure all (properties) connect.</p> <p>a. Orders from the County are taken seriously.</p> <p>b. Compliance is met without need for additional expenses (legal and contractor).</p> <p>c. This section provides an opportunity for intergovernmental cooperation.</p> <p>6. Commerce efforts thwart cooperative efforts and borders on abdication of powers of county in the protection of public health and safety.</p> <p>7. The Board strongly supports reinstating current language [in s. Comm 83.03(2)].</p>	<p>3.a Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>3.b Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>4. The determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service.</p> <p>5.a Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>5.b Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>5.c Intergovernmental cooperation can continue to exist. The sanitary district or other local municipal entity is in the best position to initiate the</p>

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6.	Frank G. Matteo & Pete Salm WISC ASSOC OF LOCAL HEALTH DEPTS & BDS (no address given)	<p>1. The proposed change to s. Comm 83.03(2) will have a detrimental impact on public health for the following reasons:</p> <ul style="list-style-type: none"> a. allow use and maintenance of existing private sewage systems which discharge untreated or partially treated effluent to the ground surface, ground water or bedrock; b. would transfer enforcement to the public health officers, until and unless provisions have been made to ensure resources are available to handle increased workload. <p>2. The protection of groundwater resources and public health must be paramount. Wisconsin's long tradition of maintaining these priorities is at a risk.</p> <p>3. WALHDB opposes the proposed change as written and urges the department to restore public health and groundwater protections.</p>	<p>connection requirement.</p> <p>6. Disagree. Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>7. No response necessary.</p> <p>1.a Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>1b. Nothing will preclude a county sanitary permit issuing agent from cooperating with a local municipal entity if the local municipal entity determines that a property must be connected to a public sewer system or seeks assistance in making that determination or obtaining compliance.</p> <p>2. Disagree. Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>3. No response necessary.</p>

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<p>7.</p> <p>Phillip C. Everson SOUTHEASTERN WISC REGIONAL PLAN COMM 916 N East Ave., PO Box 1607 Waukesha, WI 53187-1607</p>	<p>1. The revision would remove from the code (Ch. Comm 83) the provision which requires inhabited structures to be connected to a public sanitary sewer when such a system is available. The change is without merit and would make it very difficult to provide public sewer service to areas with failing onsite sewage disposal systems.</p> <p>2. Since not all systems simultaneously fail, all lands within the affected area typically have to be provided simultaneously in order for the (sewer) service to be cost effective.</p> <p>3. It is recommended that the department withdraw the current proposed rule revision.</p>	<p>1. Failing private sewage systems can be ordered replaced or removed and a connection made to a public sewer system by the local municipal entity whenever it is deemed necessary. In addition, a determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>2. All property within a public sewer service area can be ordered to connect by the local municipality providing the service. A determination of failure is not a requirement if an order to connect to a public sewer system is issued by a local municipality providing the service.</p> <p>3. Disagree. The determination of when a private sewage system should be disconnected and properly abandoned and the property connected to a public sewer system is best made by the local municipal entity that will be providing the service.</p>
		(end)

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 99-080

RULE NO.: Chapter Comm 83

RELATING TO: Private Sewage Systems

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 reverse side)

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



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 83

Relating to: Private Sewage Systems

Clearinghouse Rule No.: 99-080

The Wisconsin Department of Commerce proposes an order to repeal s. Comm 82.10 (7) and 83.01(2)(b); renumber ss. Comm 82.10(8) to (15) as Comm 82.10 (7) to (14) and Comm 83.01 (2)(c) to (f) as Comm 83.02 (2)(b) to (e); and repeal and recreate Comm 83.03(2), relating to private sewage systems.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (1), 101.82 (1) and 145.02 (3), Stats.
Statutes interpreted: ss. 145.02 (2), Stats.

Under s. 145.02, Stats., the Department of Commerce has the responsibility of the proper siting, design, installation, inspection, and maintenance of private sewage systems.

This rule revision relates to an action of JCRAR on December 8, 1998 suspending the first two sentences of s. Comm 83.03 (2) regarding the current mandate to abandon a private sewage system once public sewer service is available to the premises served.

This revision would repeal the portions of the current rules that require owners of private sewage systems to discontinue use of such systems and connect to public sewer when public sewer becomes available. This revision repeals and recreates s. Comm 83.03 (2) to clarify the requirements for abandonment of subsurface tanks or pits no longer in use. In addition, a note containing statutory text has been added to indicate the authority provided to municipalities and sanitary districts in requiring connection to public sewer.

SECTION 1. Comm 82.10 (7) is repealed.

SECTION 2. Comm 82.10 (8) to (15) are renumbered as Comm 82.10 (7) to (14).

SECTION 3. Comm 83.01 (2) (b) is repealed.

SECTION 4. Comm 83.01 (2) (c) to (f) are renumbered as Comm 83.01 (2) (b) to (e).

SECTION 5. Comm 83.03 (2) is repealed and recreated to read:

Comm 83.03 (2) ABANDONMENT. A subsurface tank or pit that is no longer used as part of private sewage system shall be abandoned by complying with all of the following:

- (a) Disconnecting all piping to the tanks and pits.
- (b) Sealing all disconnected piping to the tanks and pits in accordance with s. Comm 82.21 (2) (h).
- (c) Pumping and disposing of the contents from all tanks and pits.

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

(d) Removing all tanks or removing the covers of the tanks or pits and filling the tanks and pits with soil, gravel or an inert solid material.

Note: Pursuant to s. 281.45, Stats., municipalities and sanitary districts may determine the availability of, and require connection to, public sewers. Section 281.45, Stats., reads in part: "HOUSE CONNECTIONS. To assure preservation of public health, comfort and safety, any city, village or town or town sanitary district having a system of waterworks or sewerage, or both, may by ordinance require buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of these systems extend, to be connected with either or both in the manner prescribed. If any person fails to comply for more than 10 days after the notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property."

(end)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
