

98-180 - NE 200⁺ 206 WPDES PERMIT
EXEMPTION FOR PRIVATE SEWAGE SYS.

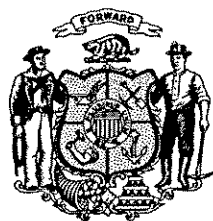
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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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 98-180

AN ORDER to amend NR 200.03 (3) (d) and 206.03 (17); and to repeal and recreate NR 200.03 (4), relating to WPDES permit exemptions for private sewage systems with a design capacity of less than 12,000 gallons per day.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

11-06-98 RECEIVED BY LEGISLATIVE COUNCIL.

12-07-98 REPORT SENT TO AGENCY.

RNS:MCP:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

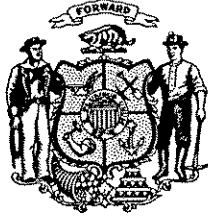
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-180

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 "summary of rules" in the fiscal estimate indicates that the size threshold for department regulation of private sewage systems will correlate with similar rules promulgated by the Department of Commerce. The department will regulate systems at or over the threshold, and the Department of Commerce will regulate systems under the threshold. However, the rules do not contain any indication that the timing of rule promulgation will be coordinated with the promulgation of revisions to ch. Comm 83. If the promulgation of these rules is not coordinated, and this rule is promulgated first, there may be a period of time when systems with a design capacity of more than 8,000 gallons per day but less than 12,000 gallons per day will not be regulated. Promulgation of the rules by the two agencies can be coordinated by a properly drafted effective date provision. The Revisor of Statutes should be consulted regarding the best method for drafting an effective date provision.

Also, an inconsistency in the fiscal estimate should be noted. The "summary of rules" states that systems with a capacity of less than 8,000 gallons per day are exempt from Wisconsin Pollutant Discharge Elimination System (WPDES) permits but the "assumptions" in the fiscal estimate state that systems of 8,000 gallons per day or greater are not subject to a WPDES permit.

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

a. The introductory paragraph of s. NR 200.03 (4) provides that “one of the following methods” shall be used to calculate design capacity of a private sewage system. This introductory paragraph is followed by three paragraphs that constitute methods for calculating design capacity. The fourth paragraph, relating to multiple systems, could apply to any of the three methods. For organizational clarity, s. NR 200.03 (4) (d) should be placed in a separate subsection.

b. The introductory paragraph to s. NR 200.03 (4) refers to calculation of “the design capacity in sub. (3) (d).” However, s. NR 200.03 (4) (d) refers to calculation of “the threshold design capacity under this subsection.” This latter provision is merely an application of the design capacity calculation under specific circumstances, and the terminology should be the same as the introductory paragraph.

c. Section NR 200.03 (4) (b) and (c) refer to “methods approved by the department.” Will these methods be promulgated as rules? [See s. 227.01 (13) and 227.10 (1), Stats.] If not promulgated as rules, how will a person be able to ascertain what methods have been approved by the department?

d. Section NR 200.03 (4) (d) is difficult to understand. The phrase “located on the same property or properties” causes problems because the sentence can be read: “If more than one subsurface soil absorption system is located on the same properties” It appears that this sentence could be modified without losing any of its meaning by deleting the phrase “located on the same property or properties.”

e. Another problem with s. NR 200.03 (4) (d) is the definition of “ownership.” That word should be included in quotation marks. The form of the definition should be changed to state that “ownership” means “ownership by a person, group of persons” The phrase “group of persons” is so vague that it is almost meaningless. The word “ownership” may not be adequate to deal with all of the circumstances meant to be addressed by the rule, such as situations in which private sewage systems in a large group are owned as limited common elements in a condominium. The variety of ways that private sewage systems may be designed and owned makes it virtually impossible to describe with precision all of those circumstances, and to maintain a seamless regulation between the department and the Department of Commerce. The department should consider whether this portion of the rule should contain a process that triggers a case-by-case review of the applicability of the rule. For example, if the design capacities of systems within a certain radius exceeded a threshold, the department could be required to review the ownership status of those systems to determine whether a WPDES permit is required.

f. Another element that is missing from this part of the rule is a process for addressing the situation where a project may be developed in stages, and the threshold is not met until substantially well into the project. If this occurs, is a WPDES permit only required when the threshold is met, or would it be more appropriate to require a WPDES permit at an earlier stage in the project?

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND REPEALING AND RECREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to amend NR 200.03(3)(d) and 206.03(17) and to repeal and recreate NR 200.03(4) relating to WPDES permit exemptions for private sewage systems with a design capacity of less than 12,000 gallons per day

WT-51-98

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 283.31, 283.37 and 227.11(2)(a), Stats.

Statutes interpreted: ss. 283.31 and 283.37, Stats.

Pursuant to existing regulations, the Department of Natural Resources has exempted private sewage systems with a design capacity of less than 8,000 gallons per day from the WPDES program. The proposed code revisions increase this threshold design capacity to 12,000 gallons per day. Specifically, under the proposed revisions, private sewage systems which are 12,000 gallons per day or less and which receive only domestic wastewater will not have to apply for a WPDES permit. All private sewage systems with a design capacity of greater than 12,000 gallons per day will have to apply for a WPDES permit.

SECTION 1. NR 200.03(3)(d) is amended to read:

NR 200.03(3)(d) Discharges of domestic sewage to disposal systems, such as to septic tanks and drain fields, defined as private sewage systems in s. 145.01(12), Stats., with a design capacity of ~~less than 8,000~~ 12,000 gallons per day or less;

SECTION 2. NR 200.03(4) is created to read:

NR 200.03(4) For the purpose of calculating the design capacity in sub. (3)(d), one of the following methods shall be used:

(a) Residential design capacity. The design capacity of 12,000 gallons per day for private sewage systems serving residential dwellings shall be deemed equivalent to 85 bedrooms. Residential dwellings include one- and 2-family dwellings, multi-family dwellings and mobile homes.

(b) Commercial design capacity. The design capacity of 12,000 gallons per day for private sewage systems serving commercial facilities shall be calculated on a case-by-case basis using methods approved by the department.

(c) Combined dwellings design capacity. The design capacity of 12,000 gallons per day for private sewage systems serving dwellings with combined residential and commercial uses shall be calculated by prorating the number of bedrooms on the basis of 85 bedrooms equaling 12,000 gallons per day for the residential dwellings and the estimated commercial wastewater flow calculated on a case-by-case basis using methods approved by the department.

(d) Multiple systems. 1. In calculating the threshold design capacity under this subsection, if more than one subsurface soil absorption system is located on the same property or properties,

rule 1
multiple systems
sub-section

!!

the design capacities of each of the systems shall be added together if the perimeter of the distribution cell of one system is less than 1,500 feet from the perimeter of a distribution cell of another system and the systems are under the same ownership.

2. In this paragraph, a distribution cell is the dimensional zone that is part of a private sewage system's treatment or dispersal component where wastewater is disseminated into in situ soil or engineered soil.

3. In this paragraph, "ownership" means a person, group of persons, a partnership or corporation.

Wagner

in situ?

SECTION 3. NR 206.03(17) is repealed and recreated to read:

NR 206.03(17) "Large scale soil absorption system" means a private sewage system or subsurface soil absorption system which has a design capacity of more than 12,000 gallons per day where design capacity is calculated in accordance with s. NR 200.03(4).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

*What if added to
to extend
treatment*