

State of Wisconsin  
Department of Natural Resources

SEP 08 REC'D

SEP 08 1999

NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. WT-59-98

Legislative Council Rules Clearinghouse Number 98-180

Subject of Rules WPDES permit exemptions for private  
sewage systems with a design capacity of less  
than 12,000 gallons per day

Date of Transmittal to Presiding Officers September 7, 1999

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
LC/5, 101 South Webster

266-1959

## REPORT TO LEGISLATURE

NR 200 and 206, Wis. Adm. Code  
WPDES permit exemptions for private sewage systems with a  
design capacity of less than 12,000 gallons per day

Board Order No. WT-59-98  
Clearinghouse Rule No. 98-180

### Statement of Need

The Department is proposing to revise chs. NR 200 and 206 to increase the threshold that will be used to determine whether or not to issue WPDES permits for onsite soil absorption systems (also known as private sewage systems) from 8,000 gallons per day to 12,000 gallons per day.

Over the past year, DNR and Commerce staff reached an agreement regarding the division of responsibilities over private sewage systems. Under the agreement, DNR will regulate the design and operation of large systems and the Department of Commerce will regulate smaller systems, which accept domestic wastewater and discharge via subsurface soil absorption. These rule revisions constitute one element of the implementation of this agreement. Under these proposed rule revisions, DNR will issue discharge permits for systems with designs of 12,000 gallons per day or more. Currently, chs. NR 200 and 206 state that private sewage systems with design capacities less than 8,000 gallons per day are exempt from WPDES permit issuance requirements. Consistent with the new agreement and proposed ch. Comm 83, the Department is proposing to exempt systems with designs less than 12,000 gallons per day for discharge permit requirements. This threshold level is roughly the equivalent to a subdivision development with 28 single family 3-bedroom homes, which corresponds to approximately 100 people.

### Modifications as a Result of Public Hearing

No modifications were made as a result of public comment.

### Appearances at the Public Hearings and Their Position

#### *December 14, 1998 – Madison*

Patricia Hill, WI Dept. of Commerce, 201 W. Washington Ave., Madison, WI 53701  
Richard Apfel, Ayres Associates, 2445 Darwin Road, Madison, WI 53704

#### *December 15, 1998 – Wausau*

William Baudhuin, PE, Baudhuin Inc., P.O. Box 105, 55 S. Third Ave., Sturgeon Bay, WI 54235

#### *December 22, 1998 – La Crosse*

Steve Mader, Vice President, Wis. Onsite Waste Disposal Assoc., 783 Tipperary Lane,  
Hartford, WI 53027

### Response to Legislative Council Rules Clearinghouse Report

See attached response.

### Final Regulatory Flexibility Analysis

DNR already has regulatory responsibility over owners of large scale private systems (8,000 gallons per day or larger) and can issue discharge permits to these owners without administrative rule revisions. Accordingly, one could argue that the revisions themselves would decrease the number of systems that are regulated by increasing the threshold and that total costs would not increase as a result of these code revisions.

It should be noted, however, that under the terms of the 1991 Interagency Memorandum of Understanding between DNR and Commerce, the Department has only issued permits to municipally owned large systems and refrained from issuing permits to private systems. Consequently, pursuant to the new agreement, nonmunicipal (privately owned) systems may be subject to the same DNR permit requirements as municipally owned systems such as additional monitoring and reporting.

## ATTACHMENT A

### RESPONSE TO COMMENTS SUPPLIED BY THE LEGISLATIVE RULES CLEARINGHOUSE

All suggested comments from the Clearinghouse were made except for the following:

*Comment 1: The promulgation of rules by DNR and Commerce should be coordinated to assure that systems between 8000 and 12,000 gallons per day are regulated during the transition of regulatory authority.*

Response: The Department disagrees with this comment. Large private sewage systems may be subject to two types of requirements. There are design standards (plans and specifications) for installations of systems, which are handled by Commerce, and there are discharge permit operational requirements, which are handled by DNR. DNR's proposed rule revisions change the threshold level of for WPDES permit coverage from 8000 gallons per day (existing rule) to 12,000 gallons per day (proposed change). Since DNR is the agency responsible for issuing WPDES permits, DNR is the agency that should be responsible for proposing a WPDES permit threshold change. Commerce's existing rules are silent with regard to the 8000 gallons per day threshold level of WPDE permit coverage, but for information purpose, they have mentioned the DNR's proposed WPDES permit threshold in their proposed rule changes to Comm 83.

In the event the DNR proposed rule revisions become effective and Commerce's proposed rules are delayed, the DNR's rules will simply change the WPDES threshold level to 12,000 gallons per day. There will not be a gap in regulations and there will not be any inconsistencies because Commerce's existing rules do not contain a reference to the 8000 gallons per day threshold and Commerce is not responsible for issuing WPDES permits. Regardless of whether the DNR's rule change becomes effective, Commerce will continue to conduct plan reviews for all systems. The primary change which will occur (which is being recognized through an interagency memorandum of agreement) is that Commerce, in conducting their plan reviews, will need to notify owners of proposed systems with designs of 12,000 gallons per day or more that a WPDES permit will be required from DNR. Accordingly, the system will need to be designed to accommodate DNR's WPDES permit requirements.

In the event that the opposite situation occurs and Commerce's rules, which mention the 12,000 gallons per day, go into affect and DNR's proposed change to 12,000 gallons per day is delayed or does not become effective, DNR's existing threshold of 8000 gallons per day will remain controlling because pursuant to ch. 283, Stats. DNR is the agency responsible for implementing the WPDES permit program. For many reasons, this scenario is unlikely to occur anyway.

*Comment 2: The fiscal note states that systems of 8000 gallons per day or greater are not subject to a WPDES permit however, the summary of the rules state that systems with a capacity of less than 8000 gallons per day are exempt from WPDES permits.*

Response: The Department acknowledges that privately owned systems with designs of 8000 gallons per day or more were not subject to permits. This is because the 1991 Interagency Memorandum of Understanding provided that the management of privately owned systems will be the responsibility of the

Department of Commerce and that municipally owned systems are the responsibility of DNR. Under the provisions of the revised Memorandum of Understanding, DNR will become responsible under NR 200 and 206 for permitting (management) of large scale systems.

Comment 3: *Will the methods for calculating design capacity be promulgated in the rules?*

Response: The method for calculating commercial design capacity will not be promulgated by rule. Instead, commercial design capacity will be calculated on a case-by-case basis depending on the type and size of commercial establishment served by the private sewage system. It is impossible to establish individual standards for the myriad of commercial establishments that could be served by private sewage systems.

Comment 4: *There may be problems with the definition of ownership.*

Response: The department has used similar ownership language in other rules including those rules

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

The State of Wisconsin Natural Resources Board proposes an order to amend NR 200.03(3)(d) and 206.03(17); to repeal and recreate NR 200.03(4); and to create NR 200.03(4) and (5) relating to WPDES permit exemptions for private sewage systems with a design capacity of less than 12,000 gallons per day

WT-59-98

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.

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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

SECTION 3. NR 200.03(5) is created to read:

NR 200.03(4) When calculating design capacity under sub. (4), if one private sewage system is located near another private sewage system, 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. 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. In this subsection, ownership means a person, group of persons, a partnership or corporation.

Note: Any ambiguity regarding whether a system is under the same ownership shall be resolved by the department and the department of commerce on a case-by-case basis.

SECTION 4. 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 June 30, 1999.

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)