

Report to
Legislative Council Rules Clearinghouse
NR 110, 205, 208 and 210, Wis. Adm. Code
Natural Resources Board Order No. WT-23-11

Wisconsin Statutory Authority

Sections 227.11, 281.41, 283.11, 283.31, 283.55

Federal Authority

40 CFR 122.41 (e) and 40 CFR 122.41 (m) and 33 USC 1342(q)

Comparison to Adjacent States

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) and the state of Iowa regulate SSOs through state statutes, regulations or guidance in a manner similar to past interpretation of U.S. EPA's bypass regulation. The general bypassing prohibition language and reporting requirements in these state regulations are similar to current Department of Natural Resources rules and permits. Most states, over the past several years have implemented enhancements to the reporting requirements and tracking (including making such information available to the public) of SSO releases. None of the states have rules relating to blending, though it is apparent from reviewing information available that this practice is not unusual at some sewage treatment facilities. No adjacent states issue permits to satellite sewage collection systems.

Court Decisions Directly Relevant

In response to enforcement actions by the Department for violations of permit conditions that prohibit discharges from sewage collection systems (sanitary sewer overflows), the courts have entered judgments that such discharges are a violation of state rules and have established remedies and penalties for such discharges.

Analysis of the Rule – Rule Effect – Reason for the Rule

The purpose of these proposed rule additions and amendments is primarily to establish clear regulatory requirements associated with unpermitted and potentially hazardous discharges of untreated or partially treated sewage. These discharges are included under the broad definition of "bypass" in current state and federal regulations. The changes will make Wisconsin's rules conform more closely with U.S. EPA's interpretation of federal regulations, a long-standing point of concern by that agency. The proposed rules should also address U.S. EPA's concerns regarding existing sanitary sewer overflow (SSO) and bypassing regulations. In a letter dated July 18, 2011, US EPA notified the Department that the definitions, regulations and reporting requirements for bypassing in existing state regulations appeared to be inconsistent with federal regulations.

The rules primarily establish definitions and requirements that apply to untreated or partially treated sewage discharges and create consistency in the requirements applicable to publicly owned treatment works and privately owned facilities collecting and treating primarily sanitary sewage. Section 283.31(4)(d), Wis. Stats., requires "... the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit." Because sewage collection systems are an integral part of pollution control facilities, the Department has for years regulated the operation and maintenance of these systems to prevent discharges of untreated sewage.

To interpret and implement the statutory requirement for "proper operation and maintenance", the proposed rules require that all owners of sewage collection systems (primarily municipalities) create a capacity, management, operation and maintenance (CMOM) program. The CMOM program is an effective management tool that owners use to help create sustainable sewage collection systems and prevent overflows. It helps sewage collection system owners proactively maintain this significant and valuable community infrastructure by optimizing planned maintenance and prioritizing rehabilitation or

replacement activities. These implementation activities are and have been required under the general “proper operation and maintenance” requirements of existing rules. The proposed rule revisions establish more detailed procedures for this requirement.

In addition to municipalities that own and operate both a sewage collection system and a sewage treatment facility, these rules apply to two other types of systems. Satellite sewage collection system owners do not own and operate a sewage treatment facility. Rather, these municipalities, such as an adjacent city or a sanitary district, own and operate only the sewage collection system which discharges into another municipality’s sewers for treatment and disposal. Secondly, these rules also apply to a small number of privately-owned sewerage systems in the state that collect, treat and dispose of sewage (e.g., mobile home parks) or that operate as satellite sewage collection systems. The CMOM requirement also applies to these privately-owned and satellite collection systems.

Discharges of untreated or inadequately treated sewage from any place in sewage collection systems designed to collect and transport only sanitary sewage are most commonly called sanitary sewer overflows (SSOs). Systems designed to collect and transport both sanitary sewage and storm water in the same pipes are called combined sewer systems and discharges are referred to as combined sewer overflows (CSOs). Discharges of untreated sewage are a potential hazard to human health and can have significant impacts on water quality. Typically, SSOs occur as a result of either the entry of an excessive amount of precipitation or groundwater into the sanitary sewers or because there is a mechanical, electrical or structural failure in a component of the collection system.

When a sewage collection system has insufficient capacity to transport the sewage and the I/I entering the sewers, the system will relieve itself by discharging the excess flow as a SSO in one or more ways. Sewage may back up into buildings or basements through the building sewer. Sewage may also be discharged to nearby drainage-ways, to surface waters or to the land surface from sewage collection system components such as overflowing manholes or lift stations overflow pipes. In some instances, sewage may be discharged, usually into surface waters through a gravity overflow structure or a portable or permanently installed pump. Once wastewater enters the sewage treatment facility, an overflow to the land surface and into nearby surface waters may occur if a treatment unit is too small to accommodate the quantity of flow. This rule-making is intended to establish specific requirements applicable to sewage collection system owners that will prevent or reduce the potential for SSOs and, thereby, prevent water quality impairment and human health hazards associated with such discharges. Effective development and implementation of a CMOM program will reduce the costs incurred by a permittee when building backups cause damage to property.

Agency Procedures for Promulgation

The process includes holding 3 public hearings, solicitation of written comments, final adoption by the Natural Resources Board, Legislative Review and final promulgation. The Department consulted with an outside technical advisory group when it drafted the proposed rules that will now be subject to public participation procedures.

Description of any Forms (attach copies if available)

The rule requires that permittees report all sanitary sewer overflows on Form 3400-184 (available at http://dnr.wi.gov/org/water/wm/ww/sanitary%20sewer%20overflow%20reporting%20form_files/3400184.pdf)

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