

Report From Agency

REPORT TO LEGISLATURE

NR 110, 205, 208, & 210, Wis. Adm. Code

Board Order No. WT-23-11
Clearinghouse Rule No. 12-027

Basis and Purpose of the Proposed Rule: The primary purpose of these rule additions and amendments is to establish clear regulatory requirements associated with unpermitted and potentially hazardous discharges of untreated or partially treated sewage. The rule also responds to U.S. Environmental Protection Agency (U.S. EPA) concerns about current rules on this matter. The rules establish a requirement that all sewage collection system owners develop and implement a capacity, management, operation and maintenance (CMOM) program to reduce and eliminate sanitary sewer overflows (SSOs) and assure the long-term integrity of this community infrastructure component.

Summary of Public Comments: All parties who provided comments are generally supportive of the proposed rules, but requested modest revisions to improve implementation. U.S. EPA provided comments requesting changes that would, in their view, address inconsistencies between federal regulations and the proposed rules.

Modifications Made: Modifications made following comments from the public/regulatory community include: additional provisions that recognize operations of combined sewage treatment facilities; modification of the public notice requirement for SSO events; removal of SSO scoring within the Compliance Maintenance Annual Reporting system; clarification of requirements to eliminate potential redundancies when sewage collection system owners are required to evaluate these systems to address excessive wastewater volume. In response to U.S. EPA comments, the following changes were made: rather than "authorization" to operate blending at a sewage treatment facility, the rule was changed such that the Department will "approve" blending; the rule was modified to allow controlled diversions only for essential maintenance; other clarifying language was incorporated to address perceived deviations from federal regulations.

Appearances at the Public Hearing: Three public hearings were held at Oshkosh, Eau Claire and Milwaukee. There were 2 non-Department attendees at each of the Oshkosh and Eau Claire hearings and 12 non-Department attendees at the Milwaukee hearing. Four attendees at the hearings (all representing municipalities potentially affected by the rules) provided verbal comment, all in support of the proposed rule. Specific support was given to the inclusion of the blending provisions, the treatment in the rule to building backups, the requirement to develop capacity, management, operation and maintenance (CMOM) programs and the flexibility in the rules. Seven written comments were received on the rule proposal. The entities providing written comment were: City of Brookfield, City of Superior, Milwaukee Metropolitan Sewerage District (MMSD), Milwaukee Riverkeeper, Municipal Environmental Group (MEG), Villages of Elm Grove and Thiensville (joint letter) and U.S. EPA (Region 5).

Changes to Rule Analysis and Fiscal Estimate: Changes to the rule analysis were made so as to conform to the modifications to the rule as noted above. No changes were made to the Fiscal Estimate and Economic Impact Analysis.

Response to Legislative Council Rules Clearinghouse Report: LCRC comments on the draft rule were primarily recommendations that improve or correct the clarity, grammar and form and have been incorporated into the final rules. A few comments were misunderstandings of technical matters and changes to the rule language were not made as recommended. Specifically, changes were not made in response to comments 2.o., 2.p., 2.r., 2.t., and 5.a.

Final Regulatory Flexibility Analysis: Implementation of this rule will primarily occur through actions of municipal and privately operated sewage collection system owners. The primary cost associated with implementation of these rules is the requirement that permittees develop a CMOM program. The rules contain provisions that allow different size sewage collection system owners to tailor the CMOM to correspond to their individual needs.

Because of the small number of privately-owned sewage collection systems in the state, the direct statewide economic impact of this rule on these small businesses will be low. Costs to these private businesses to develop a CMOM will be minimal due to the relatively small size of these types of sewage collection systems. Individual private owners may experience significant costs if the collection system has not been constructed or maintained in a manner to prevent overflows and a SSO occurs. In these cases, the owner will eventually need to upgrade the private collection system. In addition, small businesses that are connected to a municipal sewage collection system may experience costs associated with collection system improvements by municipalities through their user fees and other local taxing authorities for sewage collection system maintenance and improvements. It is difficult to determine the statewide or individual system effect of small business due to the variability in requirements that may occur in each municipality.