

CR 88-215

RULES CERTIFICATE

RECEIVED
4:36 pm 027
JUL 14 1989

Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Gerald Whitburn, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to issuance of building permits were duly approved and adopted by this department on July 14, 1989.
(Subject) *(Date)*

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 4:15p.m. in the city of Madison, this 14th day of July A.D. 1989.

Gerald Whitburn
Secretary

7-1-89

4:36 pm 09

RECEIVED

JUL 14 1989

4:36 pm 09
Revisor of Statutes
Bureau

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 66.036, 145.02 and 145.20., Stats., the Department of Industry, Labor and Human Relations creates; amends; repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter (x):

ILHR 83 (Number) Private Sewage Systems (Title)

The attached rules shall take effect on the first day of the month following publication in the Wis. Adm. Register pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin, this
date: July 14, 1989

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS
Joel Whitson
Secretary



RECEIVED

JUL 14 1989
4:36 pm ON
Revisor of Statutes
Bureau

RULES in FINAL DRAFT FORM

Rule: ILHR 83.055 and 83.056

Relating to: Issuance of building permits

Clearinghouse Rule No.: 88-215

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to create sections ILHR 83.055 and ILHR 83.056, relating to the issuance of building permits.

* * * * *

Analysis of Proposed Rules

Statutory Authority: s. 145.02 and 145.20, Stats.
Statutes Interpreted: s. 66.036, Stats.

Under section 66.036 (2), Stats., no county, city, town or village may issue a building permit for construction of any structure requiring connection to a private sewage system unless it can be determined that the proposed construction does not interfere with a functioning private sewage system.

Pursuant to section 227.26 (2) (b), Stats., the Joint Committee for Review of Administrative Rules adopted a motion directing the Department to promulgate an emergency rule codifying the Department's interpretation of section 66.036, Stats. An emergency rule is currently in effect.

The Joint Committee for Review of Administrative Rules concurred with counties that the rules should require inspections of existing private sewage systems only when the construction increases the volume of wastewater load in order to determine if the existing system can accommodate the additional wastewater load.

Sections 66.036 and 145.20 (2) (h), Stats., relate to the issuance of building permits for structures which require connection to a private domestic sewage treatment and disposal system. The statutory sections are interpreted to have 2 objectives: First, to reduce the possibility of erecting a structure and then later not having any means available to dispose of the building's domestic wastes to either a new or existing private sewage system; Second, to reduce the possibility of locating a structure where it would interfere with a functioning private sewage system.

The rules specify the procedures that a county, city, village or town must follow in order to achieve the above two objectives. The rules apply only to municipalities that issue building permits. Under the rules, a municipality may not issue a building permit for a new building which requires connection to a private sewage system unless the building owner possesses a sanitary permit for the installation of the private sewage system. For additions or construction which may increase the volume of wastewater load to an existing private sewage system, the owner must possess a sanitary permit for system modifications or for a new system, or the owner must document that the existing system is of sufficient capacity to handle the added wastewater load. The rules require either the Department or the county to make the determination of adequate capacity.

A municipality also may not issue a building permit until it is determined that the proposed construction does not interfere with a functioning private sewage system.

* * * * *

SECTION 1. ILHR 83.055 is created to read:

ILHR 83.055 ISSUANCE OF BUILDING PERMITS. Pursuant to s. 66.036, Stats., building permits issued by a county, city, village or town for construction of any structure not served by a public sewer and requiring connection to a private sewage system shall be issued in accordance with the procedures of this section.

(1) NEW CONSTRUCTION. A county, city, village or town may not issue a building permit for construction of a new structure which requires the installation of a private sewage system unless a sanitary permit for the installation of the private sewage system has been obtained by the owner.

Note: Section ILHR 83.06 outlines the procedures for the issuance of sanitary permits. Section 145.19, Stats., mandates that no private sewage system may be installed unless the owner of the property holds a valid sanitary permit.

(2) RECONNECTIONS. (a) A county, city, village or town may not issue a building permit for the following conditions unless the owner provides the information specified in par. (b):

1. Construction of a structure to be connected to an existing private sewage system;

2. Disconnection of a structure from an existing private sewage system and connection of another structure to the system; or

3. Reconstruction of a structure that is connected to a private sewage system and that has become uninhabitable due to damage resulting from fire, wind or other manmade or natural disasters.

(b) Documentation shall be provided to verify:

1. That the existing private sewage system is not a failing system and has sufficient size and soil conditions to accommodate the wastewater load as specified in sub. (3); and

2. That the structure meets the set back requirements as specified in sub. (4).

(c) Determinations of approved documentation shall be in the form of a sanitary permit or in writing.

(3) CONSTRUCTION INVOLVING AN INCREASE OF WASTEWATER LOAD. (a) General. A county, city, village or town may not issue a building permit for construction of any structure connected to a private sewage system which will increase the wastewater load to an existing private sewage system or interfere with a functioning system as specified in this subsection, unless the owner of the proposed structure:

1. Possesses a sanitary permit to either modify the existing private sewage system or construct a new private sewage system to accommodate the increased wastewater load; or

2. Provides written documentation from the department or county verifying that the existing private sewage system has sufficient size and soil conditions to accommodate the increased wastewater load.

(b) Determination of Increased Wastewater Load. For the purpose of this section:

1. Increased wastewater load in public buildings and places of employment results from any change in use of the structure from the original use that results in an increased volume of wastewater above that for which the system was originally designed.

2. Increased wastewater load in dwellings results from an increase in the number of bedrooms or from construction of any addition or remodeling which exceeds 25% of the total gross area of the existing dwelling unit. Increased wastewater load in dwellings does not result from construction of decks, patios, garages, porches, reroofing, painting, wiring, residing, window replacements or replacement of equipment or appliances.

3. Counties may establish additional criteria for determining increased wastewater load by ordinance.

(c) Documentation. Documentation to verify whether the size of the existing private sewage system can accommodate the increased wastewater load and to verify whether the system is installed in suitable soils shall include all of the following:

1. Information on the soil conditions of the soil absorption system. The information may consist of a valid existing soil report or new soil evaluation report for the system, prepared by a certified soil tester showing conformance with the minimum 3-foot vertical separation above bedrock and groundwater specified in s. ILHR 83.10 (2);

2. Information provided by a licensed master plumber or master plumber restricted sewer, a certified soil tester, or plumbing inspector II for:

a. Sizing of the system relative to the existing usage, replacement area, and the proposed construction usage and the type of system; or

b. A copy of an affidavit signed by the owner and recorded with the register of deeds indicating that the existing private sewage system capacity serving a one- or 2-family dwelling is undersized and indicating whether a replacement area is available.

3. A plan prepared by a licensed master plumber or master plumber restricted sewer, certified soil tester or plumbing inspector II setting forth the dimensions of the existing soil absorption area, tank location and related setbacks;

4. Information provided by a licensed master plumber or master plumber restricted sewer, septic hauler or plumbing inspector II relative to the condition, capacities, baffles, and manhole covers for the existing treatment tanks, and the capacity of any additional treatment tanks required to accommodate the increased wastewater load; and

5. Information provided by a certified soil tester, a licensed master plumber, master plumber restricted sewer, or plumbing inspector II showing that the system is not causing backup of sewage into the structure served, or discharge of sewage to the surface of the ground or to a drain tile, or discharge of sewage to any surface waters of the state.

(d) On-site inspection. If it cannot be determined from the information provided that an existing private sewage system can accommodate the increased wastewater load, the department or county may require additional information to be submitted to make the determination or the department or county shall inspect the system for:

1. The failure to accept sewage discharges and the backup of sewage into the structure served by the private sewage system;

2. The discharge of sewage to the surface waters of the ground or to a drain tile;

3. The discharge of sewage to any surface waters of the state; and

4. Conformance with the minimum 3-foot vertical separation above bedrock and groundwater specified in s. ILHR 83.10 (2).

(e) Determinations by department or county. 1. Determination of whether an existing private sewage system is of an adequate capacity to accommodate additional wastewater loads involving one- and 2-family dwellings shall be made by the county. A county may make determinations of whether an existing private sewage system is of an adequate capacity to accommodate additional wastewater loads generated by construction other than one- and 2-family dwellings involving less than 3,000 gallons per day of wastewater load.

2. Determination of whether an existing private sewage system is of an adequate capacity to accommodate additional wastewater loads generated by construction involving structures other than one- and 2-family dwellings and 3,000 gallons or more per day of wastewater load shall be made by the department.

(f) Determination on soil conditions. 1. If the existing private sewage system is a failing system, the system shall be ordered replaced.

2. If the existing private sewage system is installed in mottled soils, the owner may request a variance to use the existing system and perform groundwater monitoring to verify seasonal saturation conditions under s. ILHR 83.09 (7).

3. If the construction affects the only soil replacement area, written notice shall be provided to the owner indicating future wastewater options the owner may have available.

(g) Determination on tanks. 1. If the tanks are leaking, the tanks shall be ordered replaced.

2. If the baffles in the tank are deteriorated or missing, the baffles shall be ordered replaced.

3. If the exposed tank cover has no cover or is not locked or labeled, the cover shall be ordered replaced, locked and labeled.

4. If the tank capacity serves a one- and 2-family dwelling and is:

a. Less than 500 gallons, the tank shall be ordered replaced or additional tank capacity shall be ordered added;

b. At least 750 gallons, the existing tank may be used provided no more than one additional bedroom is added;

c. At least 750 gallons and 2 or more bedrooms are being added, additional tank capacity shall be ordered added.

5. If the tank serves any structure other than a one and 2-family dwelling, additional tank capacity shall be ordered.

(h) Determinations on setbacks. All determinations on setbacks involving an increase in wastewater loads shall conform to sub. (4)(c) and (d).

(4) CONSTRUCTION NOT INCREASING WASTEWATER LOADS. (a) A county, city, village or town may issue a building permit for construction of:

1. Any structure on a property containing a private sewage system if the construction does not increase the wastewater load as specified in sub. (3);
or

2. An accessory structure not connected to a private sewage system.

3. The completed construction shall conform to the setback limitations specified in ss. ILHR 83.10 (1), 83.15 (4) (a) or 83.18 (7) (a).

(b) Documentation shall be provided by the owner, licensed master plumber or master plumber restricted sewer, certified soil tester or plumbing inspector II showing the location and setback distances for the proposed construction of any structure relative to the components of the private sewage system.

(c) Determinations of whether the location and setback distances of a proposed construction will interfere with an existing private sewage system shall be made by the department or the county. On-site inspections may be made to verify the location and setback distances. Determinations shall be made in writing and provided to the agency responsible for issuing the building permit.

(d) No sanitary permit shall be required for construction that conforms to the setback requirements and that does not involve an increase in wastewater load.

(e) No building permit may be issued where setback requirements cannot be met unless:

1. A petition for variance is obtained from the department; or
2. The owner agrees in writing to correct any deficiencies discovered during construction for a system that cannot be located.

(f) Any variance submitted under this section shall be reviewed by the county prior to submitting to the department. The county may submit any information relative to the variance.

(5) FEES. The department or county may assess and collect a fee to defray the cost of administering this section.

SECTION 2: ILHR 83.056 is created to read:

ILHR 83.056 PETITIONS FOR VARIANCES FOR EXISTING SYSTEMS. Pursuant to s. 145.24, Stats., an owner may petition the department for a variance to replace a private sewage system that serves an existing structure and is located in soils that do not meet the criteria specified in s. ILHR 83.23 for mound systems.

(1) DEFINITIONS. For the purpose of this section:

(a) 'A horizons' means mineral horizons that formed at the surface and are characterized by an accumulation of humidified organic matter intimately mixed with the mineral fraction.

(b) 'B horizons' means horizons that formed below A or E horizons and are dominated by illuvial concentrations of silicate clay, iron, aluminum, gypsum or silica.

(c) 'E horizons' means mineral horizons in which the main feature is the loss of silicate clay, iron, aluminum, or a combination of these leaving a concentration of sand and silt particles of quartz or other resistant minerals.

(2) SOIL INVESTIGATIONS. Detailed soil investigations shall be performed in accordance with s. ILHR 83.09 (4).

(3) FILING REQUEST. The owner shall file a petition for variance and provide information to the department necessary to evaluate the request.

(4) VERIFICATION. On-site inspections shall be performed by the department or county to verify the soil conditions reported. A detailed profile description shall be prepared and submitted with the variance.

(5) DETERMINATIONS. The department will not approve variances for replacement mound systems:

(a) In soils:

1. With less than 24 inches to bedrock; or
2. That contain mottles or are gleyed in the E or B horizon within four inches of the bottom of the A horizon.

(b) To replace holding tanks serving structures constructed after the effective date of this section.

(END)

* * * * *

EFFECTIVE DATE

Pursuant of 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.

* * * * *

11681:mn

Tommy G. Thompson
Governor
Gerald Whitburn
Secretary



RECEIVED

JUL 14 1989
JUL 14 1989 4:36 PM
Revisor of Statutes
Bureau of Statutes
Mailing Address:
201 E. Washington Avenue
Post Office Box 7946
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin Department of Industry, Labor and Human Relations

July 14, 1989
Gary Poulson
Assistant Revisor of Statutes
Suite 702
30 West Mifflin Street
Madison, Wisconsin 53703

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 88-215

RULE NO. ILHR 83.055 and 83.056

RELATING TO: Issuance of Building Permits

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

Handwritten signature of Gerald Whitburn in cursive.

Gerald Whitburn
Secretary