



WISCONSIN LEGISLATIVE COUNCIL

Special Committee Staff Brief 04-2

**STATUTES AND ADMINISTRATIVE RULES
RELATED TO SEPTAGE DISPOSAL**

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STAFF BRIEF 04-2

STATUTES AND ADMINISTRATIVE RULES RELATED TO SEPTAGE DISPOSAL

INTRODUCTION

The Special Committee on Septage Disposal is directed by the Joint Legislative Council to: (1) examine the current capacity and future need for disposal of septage that is pumped from septic tanks and holding tanks; (2) to review the laws related to this subject; and (3) to develop proposed legislation that will assure protection of public health and the environment, as well as the availability of disposal options for future population and business growth.

Both the Department of Natural Resources (DNR) and the Department of Commerce (Commerce) have jurisdiction over septage. The DNR has regulatory jurisdiction over the disposal of septage pumped from septic tanks and holding tanks, while Commerce and delegated counties have jurisdiction over the design, approval, maintenance, and reporting for the installation and management of septic systems and holding tanks.

Finding adequate and reliable places for septage disposal can be a challenge. Current law requires that sewage treatment plants accept septage between November 15 and April 15, but also provides exceptions to this requirement. Sewage treatment plants have used these statutory exceptions in order to refuse to accept and treat septage in many areas of the state. The difficulty of finding disposal options is exacerbated because land available for disposal of septage on land is diminishing in areas of population growth. Furthermore, septage treatment plants that are willing to accept septage must construct facilities to introduce septage in the sewage system. These facilities, however, may be underused because current law does not require septage to be taken to the sewage treatment plant. As a result, the capital costs for these facilities must then be paid by homes and businesses that are connected to the sewage treatment plant.

This Staff Brief provides the Special Committee with background information on the state statutes and regulations regarding septage disposal.

The terms “septic system,” “private sewage system,” and “private on-site wastewater treatment system” are used in the current statutes and administrative rules to refer to septic tank/soil absorption fields and holding tanks. This Staff Brief uses the term “septic system” to refer to any of these types of sewage systems.

[Mark Patronskey, Senior Staff Attorney, and Rachel Letzing, Staff Attorney, Legislative Council staff, for the Joint Legislative Council's Special Committee on Septage Disposal prepared this brief.]

PART I

STATUTE RELATING TO DISPOSAL OF SEPTAGE IN MUNICIPAL SEWAGE SYSTEMS

Current law regarding the disposal of septage in municipal sewage systems is contained in s. 281.49, Stats. The DNR regulates municipal sewage treatment plants through the Wisconsin pollutant discharge elimination system permit (WPDES) program, but does not directly administer this statute. “Septage” consists of the material pumped from a septic tank, soil absorption field, holding tank, or privy.

REQUIREMENT TO ACCEPT SEPTAGE

A municipal sewage system is required to accept and treat septage from a licensed septage disposer from November 15 to April 15 when land application of septage on frozen or snow-covered ground is restricted under ch. NR 113 in order to protect public health from unsanitary and unhealthful conditions, and to protect surface waters and groundwater from contamination. Chapter NR 113 is described in a separate section of this Staff Brief. However, notwithstanding this requirement, a municipal sewage system may refuse to accept septage under any of the following statutory exceptions:

- Treatment would cause the sewage system to exceed its operating design capacity or to violate any applicable effluent limitations or standards, water quality standards, or any other applicable requirements, including court orders or state or federal statutes, rules regulations, or orders;
- The septage is not compatible with the sewage system;
- The licensed disposer has not applied for and received approval from the sewage system to dispose of septage in the sewage system;
- The licensed disposer fails to comply with the disposal plan prepared by the sewage system; or
- The licensed disposer fails to comply with the septage disposal rules promulgated by the sewage system.

A municipal sewage system must accept any amount of septage which does not qualify for any of these exceptions. If a municipal sewage system is able to accept only a portion of the septage brought for disposal, the sewage system is allowed to accept septage generated within the system’s sewage service area before accepting septage generated outside the area.

APPLICATION AND DISPOSAL PLAN

Licensed septage disposers apply to a municipal sewage system before September 1 of each year for permission to dispose of septage in that system. The municipal sewage system must review these applications and provide written denial or approval to the license disposer by October 1 of each year. The municipal sewage system is then required to develop a disposal plan

for each licensed disposer approved for septage acceptance. At a minimum, a disposal plan must contain the following terms and conditions:

- Specific quantities, locations, times, and methods for discharge of septage into the sewage system.
- Requirements to report the source and amount of septage placed in the sewage system.
- Requirements for the licensed disposer to analyze representative samples of septage, other than exclusively residential septage, placed in the system in order to determine the characteristics and compatibility of the septage with the sewage system.
- Actual and equitable disposal fees based on the volume of septage introduced into the sewage system and calculated at the rate applied to other users of the sewage system, and including the costs of additional facilities or personnel necessary to accept septage at the point of introduction into the sewage system.
- All of the terms and conditions imposed on the licensed disposer.
- The licensed disposer's approved application to discharge septage at the municipal sewage system.

The septage disposal statute was created by 1983 Wisconsin Act 410 and took effect on July 1, 1984. With only minor changes, this statute has remained in its present form since it was enacted in the 1983 Legislative Session.

PART II

STANDARDS FOR SEPTIC SYSTEM SERVICE

Chapter NR 113, Wis. Adm. Code, sets forth the standards for servicing septic tanks, holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies or portable restrooms, and the use and disposal of wastewaters from these systems. After being pumped by a licensed operator, septage must either be discharged into a municipal sewage system, or publicly owned treatment works (POTW), or other facility for treatment or storage under a WPDES permit, or applied to approved agricultural lands. [s. NR 113.07 (1) (a).]

DISPOSAL AT A POTW

Section 281.49, Stats., requires a septic system to accept septage from a licensed septage disposer from November 15 to April 15, subject to certain exceptions. Furthermore, between April 16 and November 14, ch. NR 113 requires licensed septage disposers to discharge septage to a POTW, and a POTW to accept and treat septage, from either of the following types of systems:

- Large commercial, industrial, recreational, or residential development holding tank systems that singly or when added together or increased by successive additions generate 3,000 gallons of septage per day.
- Wastewater pumped from small holding tank and septic tank systems that generate less than 3,000 gallons of septage per day if the following conditions apply: (1) the holding tank is in the POTW's sewer service or holding tank service areas; (2) the septic tank is in the POTW's sewer service area; (3) the holding tank is outside the POTW's sewer service and holding tank service area, if the POTW agrees to accept the wastewater and if the cost to the septage hauler is less than or equal to \$20 per 1,000 gallons; (4) the holding tank or septic tank is outside the state and the point at which the wastewater is brought into the state is within 20 miles of a POTW willing to accept, treat, and dispose of the wastewater at a cost of \$20 per 1,000 gallons or less; and (5) the holding tank is located within 20 miles of a POTW that is willing to accept, treat, and dispose of the wastewater at a cost of \$20 per 1,000 gallons or less. This provision only applies to holding tank systems located in specific counties.¹ [s. NR 113.07 (1) (f).] The requirement that wastewater pumped from small holding tank and septic tank systems that generate less than 3,000 gallons of septage per day under these conditions be taken to a POTW does not apply if storage has been utilized

¹ Brown, Calumet, Dane, Dodge, Door, Fond du Lac, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha, and Winnebago.

and the wastewater will be landspread or treated and disposed of in accordance with a WPDES permit, or if the owner is exempt from licensing under s. 281.48, Stats.²

[s. NR 113.07 (2) (a) 3.]

In addition, ch. NR 113 specifies that waste removed from septic systems due to routine pumping during months when the ground is frozen or snow-covered must be taken to a septic system, rather than applied to land. [s. NR 113.07 (1) (a) 3.]

If a POTW is unable to accommodate all requests from licensed septage disposers to accept septage, a POTW is required to use a priority system for septage acceptance as a condition of their WPDES permit.³ [s. NR 113.07 (2) (c).] Chapter NR 113 requires licensed septage disposers to cooperate with POTWs to implement a priority acceptance system.

LAND APPLICATION OF SEPTAGE

The DNR has the authority under s. 281.48, Stats., to regulate the land application of septage. Chapter 113, Wis. Adm. Code, implements this program and provides requirements for vehicles and equipment, business licenses, payment of fees, spill and cleanup requirements, and allowable methods of disposal.

According to the DNR, during months when the ground is frozen or snow-covered, the land application of waste from septic systems is strongly discouraged, and hauling septic system waste to a POTW is the preferred method of disposal. [s. NR 113.07 (1) (b) Note.] However, ch. NR 113 allows land application of waste removed from septic systems on frozen or snow-covered ground under the following conditions:

- Septic system wastes pumped due to emergencies, including freeze-ups, if no other reasonable disposal methods are available, such as hauling the waste to a nearby treatment plant. In an emergency situation, the person applying the septage must obtain written approval from the DNR in advance to determine the specific sites which may be used for emergency situations. In addition, there are minimum restrictions on emergency land application, including applying the waste at a rate of

² Under s. 281.48 (3) (d), Stats., a farmer who disposes of septage on land is exempt from the licensing requirement if all of the following apply: (a) the farmer removes the septage from a septage system that is located on the same parcel of land on which the septage is disposed; (b) the farmer disposes of no more than 3,000 gallons of septage per week on the same parcel of land; (c) the farmer complies with all statutes and rules applicable to servicing; and (d) the farmer has sufficient land that is suitable for septage disposal.

³ The priority system for septage acceptance at POTWs in s. NR 205.07 (2) (e) is as follows: (a) "First priority." Wastes from existing or new holding and septic tanks within the POTW's sewer service area and holding tanks within the POTW's holding tank service area; (b) "Second priority." Wastes from existing holding tanks for residential or commercial establishments outside the POTW's sewer service area and holding tank service area but inside the POTW's planning area where the holding tank was installed to replace an inadequate private sewerage system; (c) "Third priority." Wastes from existing septic tanks and holding tanks that were installed not as a replacement to an inadequate sewer system for residential or commercial establishments outside the POTW's sewer service and holding tank service areas but inside the POTW's planning area; and (d) "Fourth priority." Wastes from new or existing septic and holding tanks for residential or commercial establishments outside the POTW's planning area.

less than 10,000 gallons per acre, prohibiting application within 750 feet of any surface water or wetland, and prohibiting application in a floodplain.

- Waste removed from septic tanks which are regularly pumped more frequently than once every six months, subject to minimum restrictions, including applying the waste at a rate of less than 10,000 gallons per acre, prohibiting application within 750 feet or any surface water or wetland, and prohibiting application in a floodplain.

[s. NR 113 (2) (a) 3.]

Land application of holding tank waste⁴, is also generally allowed during months when the ground is frozen or snow-covered. Minimum restrictions include application of the waste at a rate of less than 10,000 gallons per acre, prohibiting application within 750 feet or any surface water or wetland, and prohibiting application in a floodplain.

Land application of septic tank waste or holding tank waste during months when the ground is *not* frozen or snow-covered is allowed under ch. NR 113, but is subject to all of the following conditions:

- Septage may not be landspread on soils which have a permeability rate greater than six inches per hour within the top 36 inches, unless the soil has a water holding capacity of greater than five inches above the groundwater and bedrock.
- Septage may not be landspread on soils that have a permeability of less than 0.2 inches per hour within the top six inches of soil.
- Septage may not be landspread or discharged into or on any wetlands or in areas subject to ponding, including any ditch, dry run, pond, lake, stream, flowage, floodplain, cave, sinkhole, mine, gravel pit, or quarry.
- Septage may not be landspread on any land without the owner's permission.
- Septage may not be landspread in any manner that does not prevent surface runoff or on saturated soils during rainfall events or in areas of ponded water. All landspreading fields must be left in a litter-free condition.

⁴ However, as noted previously, wastewater pumped from small holding tank and septic tank systems that generate less than 3,000 gallons of septage per day must be disposed of at a POTW if the following conditions are met: (a) the holding tank is in the POTW's sewer service or holding tank service areas; (b) the septic tank is in the POTW's sewer service area; (c) the holding tank is outside the POTW's sewer service area, if the POTW agrees to accept the wastewater and if the cost to the septage hauler is less than or equal to \$20 per 1,000 gallons; and (d) the holding tank or septic tank is outside the state and the point at which the wastewater is brought into the state is within 20 miles of a POTW willing to accept, treat, and dispose of the wastewater at a cost of \$20 per 1,000 gallons or less; the holding tank is located within 20 miles of a POTW that is willing to accept, treat, and dispose of the wastewater at a cost of \$20 per 1,000 gallons or less if the holding tank systems located in specific counties. [s. NR 113.07 (1) (f).]

- Landspreading vehicles must be moving forward at all times while septage is being spread; ponding of septage is prohibited.
- Septage may not be landspread on fields that are receiving or have received POTW sludges in the last crop year.
- Septage that is land applied based on the agronomic crop requirements may not be applied more than 10 months prior to the crop planting.
- A minimum two-foot wide grass strip must be maintained at the property line down slope from all land application sites.
- Fields discontinued for more than one year of crop production must be revegetated with grass or other appropriate cover.
- Each business proposing to use a high use field must establish the nitrogen need of the crop to be grown there, as determined by the analysis of soil samples. This site analysis and a site evaluation must be conducted by a soil scientist. A site evaluation is required for high use fields and for low-use fields where detailed soil conservation or survey maps are not available. Site evaluation data must be reported to the DNR within 30 days of completing the required testing. [s. NR 113.08 (1).]
- Land application of septage must comply with the minimum separation distances and maximum slope requirements provided in ch. NR 113.
- Septage may not be landspread where it is likely to adversely affect a threatened or endangered species or its designated critical habitat or a historical site.

[s. NR 113.07 (3) (b).]

These restrictions also apply to situations when waste is applied on frozen or snow-covered ground due to an emergency or if regular pumping occurs more frequently than once every six months.

DNR NOTIFICATION AND SITE INFORMATION

At least seven days prior to using a disposal field for land application of septage, a business must submit certain information to the DNR or a county that is authorized to regulate land disposal of septage. This information includes a plat map or aerial photograph or U.S. geologic survey topographic map with the field outlined; a detailed soil survey map, or soil investigation data collected, validated and signed by a soil scientist; a completed DNR landspreading site evaluation form, and any other information required by DNR to make a determination as to the adequacy of the proposed site. Chapter NR 113 provides an exception to this seven-day submittal requirement. Under this exception, a licensed business may service and spread wastewater on a farm where the septage was generated without prior DNR field approval. Under these circumstances, the business may only landspread on soils that meet the requirements set forth in NR 113 and must record the method of disposal and the type and volume of waste disposed. [s. NR 113.11 (1) and (2).]

RECORD KEEPING AND REPORTING

Septage servicing businesses that land apply septage or dispose of septage by other methods must submit an annual report to the DNR. An annual land application report must include a completed record of the fields used, gallons and type of septage applied on each field, and the number of acres used; the crop grown on each field used; actual annual nitrogen application rates in pounds per acre for high use fields; and an agricultural soil analysis for each high use field once every four years of use if required by the DNR. An annual report to DNR for other methods of septage disposal must include the method of disposal utilized, the name and permit or license number of the receiving facility, if applicable, and the type and volume of waste disposed. In addition, each licensed business and any person who services a septage system must maintain a daily log book or invoice records system and make these records available to DNR representatives upon request. [s. NR 113.11 (3).]

COUNTY REGULATION

Chapter NR 113 allows counties to request from the DNR the authority to regulate land application of septage through a county ordinance. A county request must include a complete description of the countywide program, the proposed county ordinance and regulations, which must be consistent with s. 281.48, Stats., and s. NR 113 and be applied uniformly to the entire county; plans for personnel, budget, equipment, records systems, and forms; authority and capability to regulate and enforce the proposed program; a description of the mechanism for generating money to finance the program; a description of the records system, including county inspection, annual field licenses and enforcement actions; and enforcement mechanisms with penalties identical to those provided in s. 281.48, Stats. [s. NR 113.10 (2).] Chapter NR 113 prohibits a county septage ordinance from voiding existing contracts between a holding tank system owner and a POTW. In addition, a county septage ordinance may not direct the disposal of wastewater from large holding tank systems from one POTW to another POTW without the consent of both POTW's and the owner of the holding tank system. [s. NR 113.10 (4) and (5).]

After investigating the county's capability of successfully implementing its proposed regulatory program, the DNR must approve, conditionally approve, or deny the county's proposed program. If a county's program is approved, the DNR must monitor and evaluate the county's performance after the first 12 months, but before 18 months, of the program approval. If this evaluation is satisfactory, future DNR evaluations of the program must occur once every two years. If a county fails to adequately enforce its septage disposal ordinance, the DNR must conduct a public hearing within 30 days' notice to the county clerk and issue a written decision as soon as practicable after the hearing. If DNR determines that the county has failed to adequately enforce the ordinance, the DNR must issue an order requiring modifications to the county program administration or revoke the county's authority to adopt and enforce a septage disposal ordinance. A county may submit a new application to regulate land disposal of septage at any time after the DNR issues such an order. [s. NR 113.10 (3).]

SEPTAGE STORAGE FACILITIES

In-ground or above-ground septage storage facilities constructed before September 1987 that have a volume capacity greater than 25,000 gallons are allowed under ch. NR 113 if the facilities meet the requirements for sludge storage facilities in ch. NR 110.⁵ An existing facility must also have received DNR acceptance of the facilities' plan, and a WPDES permit. [s. NR 113.12 (1).]

A new septage storage facility, which singly or when added together provides a volume capacity greater than 25,000 gallons, may be built if DNR has approved of the plan, the facility is designed in accordance with the requirements in ch. NR 110, a WPDES permit is issued, and an inspection and adequacy of sealing report is submitted and accepted by the department. [s. NR 113.12 (2).]

Chapter NR 113 also regulates new or existing septage storage facilities with a volume capacity of less than 25,000 gallons. The use of this type of storage facility requires approval under ch. Comm 83 or meeting the requirements in ch. NR 110 and submitting the required form to the DNR. The DNR may, on a case-by-case basis, also require a WPDES permit for the facility if DNR determines it is necessary to protect public health or the environment. [s. NR 113.12 (3).]

Septage may also be stored at manure storage facilities and sludge storage lagoons. Chapter NR 113 specifies that the mixture of any combination of septage and domestic wastewater sludge will be classified as domestic sludge, and its use or disposal will be governed by ch. NR 204. Prior to using a combined septage and other wastes facility, the facility must submit an operations report to the DNR and receive DNR approval. [s. NR 113.12 (4).]

Chapter NR 113 prohibits any of these facilities from storing a batch of septage for longer than two years.

⁵ Section NR 110.26 (10) (a). Sludge storage shall be provided by facilities in accordance with ch. NR 204. A detailed description of the wastewater treatment process and design data shall accompany the plans for the proposed storage facility. Sludge storage facilities shall be designated and operated to maintain compliance with the groundwater quality standards in ch. NR 140. In the event a sludge storage facility is temporary, it shall be abandoned in such a manner so as to prevent safety, environmental, and aesthetic problems from occurring. The department shall be notified in writing if the storage facility is to be abandoned and how abandonment will be accomplished; (b) Separation distances. 1. Sludge storage facilities may not be located within the following distances of a water supply well: (1) 1,000 feet from a community public water supply well; (2) 250 feet from a private water supply well; (3) separation distances from residential and commercial buildings shall be maintained as required in s. NR 110.15 (3) (d); (4) a minimum separation distance of 1.25 meters (4 feet) shall be maintained between the bottom of storage lagoons and the highest recorded or indicated seasonal groundwater table elevation; and (5) A minimum separation distance of 3 meters (10 feet) shall be maintained between the bottom of storage lagoons and bedrock., DNR approval of the facility's plan, issuance of a site-specific WPDES permit, and submittal and DNR approval of an inspection and adequacy of sealing report.

SUSPENSION, REVOCATION, AND ENFORCEMENT

A licensed business which engages in improper servicing or violates ch. NR 113 or s. 281.48, Stats., may have their license suspended or revoked by DNR, be subject to a forfeiture of at least \$10 but no more than \$5,000 for each violation, or both.

PART III

ADMINISTRATIVE RULES REGARDING SEPTIC SYSTEM MAINTENANCE

Administrative rules promulgated by Commerce set standards for the design, construction, and management of private onsite wastewater treatment systems, which are referred to as “POWTS” in the rule. The rules are found in ch. Comm 83, Wis. Adm. Code. These administrative rules are often referred to as the Plumbing Code.

These rules include requirements for the periodic pumping of the contents of septic tanks and the routine pumping of the contents of holding tanks. A septic tank is a treatment unit that disperses partially treated wastewater to a system of pipes for final disposal in the soil. A septic tank must be pumped and the contents removed for offsite disposal when the combined volume of sludge and scum in the tank equals 1/3 of the tank volume. A holding tank retains untreated wastewater that is removed when the tank is nearly full and disposed off-site.

In general, ch. Comm 83 is a uniform statewide standard. There are a few exceptions to the uniformity of the rules. One of the exceptions is that counties (the governmental unit responsible for the regulation of POWTS on the local level) are given express authority in the rule to establish a mandatory POWTS maintenance program, including a management or maintenance program undertaken directly by the county. In addition, the county may require metering or monitoring of a holding tank as part of the maintenance and monitoring tracking program.

The owner of a POWTS is responsible for proper maintenance of the POWTS. The administrative rules require that maintenance be undertaken so as to avoid creation of a human health hazard. The rules specify that failure to follow a management plan for the POWTS, if one is established, or failure to have pumping done at the required intervals, is deemed a human health hazard. The statutory penalty for violation of the rules is a forfeiture (civil penalty) of not less than \$10 or more than \$1,000.

If any component of a POWTS requires servicing or pumping on an interval of less than 12 months (i.e., holding tanks), the owner must have a service contract with a certified septage servicing operator. The owner, or the owner’s agent, is required to report to the county when servicing or pumping is done. This means, for example, that a report must be submitted to the county each time a holding tank is pumped. In most cases, the servicing operator submits this report on behalf of the owner.

PART IV

SEPTAGE OPERATOR CERTIFICATION

The DNR has promulgated administrative rules that establish a certification program for septage servicing operators. The person who engages in septage servicing is required to have a valid certificate issued by the DNR. “Septage servicing” is defined in the rule as “removing septage from a septic tank, soil absorption field, holding tank, grease trap, privy, or portable restroom and disposing of or recycling the septage.” These administrative rules are found in subch. II of ch. NR 114, Wis. Adm. Code.

The rules provide for three certification grades. A grade 2 operator may serve as the operator-in-charge of all septage servicing activities for a septage servicing business, and may undertake the land spreading of septage. A grade 1 operator may engage in all aspects of septage servicing including the land spreading of septage. A grade 1 (restricted) operator may engage in all aspects of septage servicing except for the land spreading of septage.

A septage servicing certificate expires three years after it is issued. In order to renew a certificate, the operator is required to obtain continuing education in the amount of 18 hours for the grade 2 certification, and three hours for either grade 1 certification. A grade 1 (restricted) operator who is designated as an operator-in-charge must obtain 18 hours of continuing education every three years.

After nine years of continuous certification, a person may obtain a septage servicing certificate that is permanent for the grade that the person currently holds. In order to obtain the permanent certification, the person must have had no violations of chs. NR 113 and 114 (the administrative rules related to septage servicing) or s. 29.601, Stats., the statute related to the prohibition on placing deleterious substances in lakes or streams, during the previous nine years. The permanent certificate must be renewed every five years, but renewal does not require continuing education credits or a renewal fee. The permanent certificate is subject to revocation for violations of the administrative rules or statutes.

Sanctions are provided for violations of administrative rules related to septage. The DNR is required to revoke the certificate and may not issue or renew a certificate for septage servicing for a period of two years if a person has three or more violations of ch. NR 113 or s. 29.601, Stats.

The DNR is currently in the process of making changes to subch. II of ch. NR 114. The rules are in final draft form and have been submitted to the Legislature for review by standing committees. The modifications to the rule include the following: eliminate the lifetime certificate classification; increase in fees, which will be used for administration of the program; reduce certification grades from three to two; establish minimum experience requirements, education requirements, and a mandatory examination in order to be designated as an operator-in-charge; and establish a variance procedure within the rules to allow for administrative flexibility.