

Report to
Legislative Council Rules Clearinghouse
NR 113 and 114, Wis. Adm. Code
Natural Resources Board Order No. WY-18-18

1. Wisconsin Statutory Authority

Sections 281.41, 281.48 and 281.17 (3), Stats.

2. Federal Authority

US EPA regulates septage as though it is sewage sludge and applies many exemptions to septage through federal sewage sludge regulations 40 CFR 503. While the requirements of 40 CFR 503 were previously included in ch. NR 113, Wis. Adm. Code, Wisconsin is not delegated by US EPA to regulate septage servicing and disposal on behalf of US EPA, as Wisconsin has not requested the delegation. The purpose of including the federal regulations in ch. NR 113, Wis. Adm. Code, was to create a more consistent regulatory program for Wisconsin's septage haulers.

3. Comparison of Adjacent States

Similar to Wisconsin, Illinois, Iowa, Michigan and Minnesota are not delegated by US EPA to regulate septage servicing and disposal on behalf of US EPA. Each of the adjacent states have varying septage regulatory programs but generally include the requirements of 40 CFR 503 within their regulations.

Iowa. Iowa Department of Natural Resources regulates septage servicing companies through an annual licensing requirement. Each business entity designates one person to be the representative for the company. Each business must submit a waste management plan detailing the volume of septage collected, historical and proposed disposal at publicly operated treatment works (POTW), letters of acceptance from each POTW, location and areas of sites that are used for land application, crop type, septage application methods, and anticipated volumes of septage to be applied. Iowa has specific change in ownership and change in address requirements. Continuing education is required prior to renewal. Prior to using additional or different sites, the management plan must be amended. Annual fees are required. Septage servicing and disposal equipment must meet specific requirements to avoid public health and nuisance related issues. Equipment when used for land application is required to meet additional requirements related to application and pathogen controls. Land application sites require annual inspection. Waste from toilet units (portable restrooms and privies) is required to be treated at a POTW. Required records and records retention is similar to 40 CFR 503. Civil penalties are used. The department may suspend, revoke and deny licenses. Land application sites require prior department approval and required a soil fertility test (nutrient soil testing.)

Illinois. The Illinois Department of Public Health (IDPH) regulates the installation of private sewage disposal systems with no surface discharge and those that discharge up to 1,500 gallons per day to the ground surface. Approximately 90 local health agencies regulate these same plans as agents of IDPH and also regulate pumping contractors, portable sanitation businesses, portable sanitation technicians and portable sanitation technician trainees. Local ordinances vary between health departments.

Michigan. Septage is regulated by the Michigan Department of Environmental Quality. Michigan

issues septage waste servicing licenses and requires a licensing package that includes written approvals from each receiving facility where the septage is treated and a location of sites where the septage will be disposed. A representative must be designated to represent the business. The representative is required to show successful continuing education completion. The septage servicing equipment is required to be licensed. Identification of the vehicle is similar to Wisconsin with required lettering on each side of the vehicle. Setbacks from wells range from 150 feet minimum to 2,000 feet to Type I and IIa wells and are further based on application methods. Michigan requirements include frozen ground prohibitions. Land application sites require prior department approval and required a soil fertility test (nutrient soil testing). Required records and records retention is similar to 40 CFR 503. Storage is allowed. An operating permit with logging requirements is required for greater than 50,000 gallons. Enforcement includes criminal (imprisonment and monetary) and civil penalties.

Minnesota. The Minnesota Pollution Control Agency (MPCA) licenses septage maintenance businesses that pump out solids from septic tanks. Individuals performing the work require individual certifications and require continuing education. The licensing and certification program is part of the design and installation for onsite wastewater treatment systems. Disposal is allowed at treatment plants if willing to accept. Bonding is required. Land application of septage is allowed with many regulations following 40 CFR 503. Local ordinances have specific requirements and vary across the state. Storage less than 50,000 gallons is allowed by obtaining local construction permits and may include operating permits at local discretion. Storage greater than 50,000 gallons is allowed through MPCA with initial plan review fee of \$9,300, an annual operating fee of \$500 and permit renewal fee of \$1,240. Enforcement includes penalties, revocations, and suspensions.

4. Court Decisions Directly Relevant

None.

5. Analysis of the Rule - Rule Effect - Reason for the Rule

This rule package updates the current rules by streamlining, clarifying, and providing more detail relating to current requirements. The rules detail septage storage requirements and provide additional options to businesses desiring to use septage storage.

Specific proposed changes in ch. NR 113, Wis. Adm. Code, include:

- Purpose and Applicability sections are updated.
- The Definition section is modified to include several definitions that were formerly notes within the existing ch. NR 113. Additional definitions were added, modified, and removed to provide additional clarity.
- The General Requirements section is updated to include clarifying details surrounding business operation requirements including moving several requirements relating to business requirements from ch. NR 114.
- The Licensing section changes include clarity relating to:
 - Applications for new businesses relating to non-sole proprietorships;
 - The requirement to name an operator-in-training for the business with valid credentials;
 - Statutory requirements required of the department by the Departments of Children and Family, Workforce Development, and Revenue;
 - Servicing the wastewater generated at campgrounds including portable restrooms; and

- Farmer exemption requirements where the changed language is now consistent with statutory requirements.
- The Vehicle Inspections and Servicing section changes include additional detailed language for clarity purposes. This includes providing:
 - More detailed language for using septage vehicle operations for non-septage wastes;
 - Flexibility for servicing septage on islands;
 - Clarity relating to spill plans and spill reporting;
 - Details associated with trailer mounted portable restrooms; and
 - Additional cab required documents for clarifying land application disposal details.
- The Disposal of Septage section changes clarify:
 - Disposal consistencies associated with WPDES permitted facilities;
 - Differences between private onsite wastewater treatment tanks non-holding tanks (septic tanks and similar) and private onsite wastewater treatment holding tanks, as the characteristics are commonly different;
 - Application rates associated with high-use fields;
 - Non-frozen, non-snow covered situations as compared to the term winter;
 - The department's authority relating to site approvals and the information used to evaluate the site approval request;
 - pH measurements when using lime.
- The Site and Soil Evaluations section improves and clarifies the language relating to morphological soil testing for soil characteristics such as texture and structure, and nutrient soil testing requirements used for determining crop need. Soil saturation requirements are included to clarify existing department requirements.
- The Application Rates section clarifies language and specifies the proper UW-Extension bulletin. Increased weekly applications are allowed when using incorporation and injection on sites that have soils suitable for the increased application rate. The purpose for this increase in weekly allowance is in line with increased septage storage and the need to land apply septage within specific windows on agricultural lands.
- The County Regulation section has slight modifications for consistency and clarity.
- The Department Regulation section clarifies:
 - Land application site request submittal requirements for businesses;
 - Land application requirements for those farmers who intend to land apply septage through the farmer exemption allowed by statute;
 - Record keeping and reporting requirements; and
 - Electronic record keeping is allowed.
 This section also provides:
 - Increased flexibility in record keeping for portable restroom servicing, and
 - An alternate certification statement for non-land application businesses.
- The Septage Storage Facilities section is completely rewritten to provide increased options to businesses for septage storage. This section also details submittal, review, management plan, inspection and reporting requirements for a wider variety of situations including using new and existing storage facilities as well as using manure storage facilities. Thresholds for specific requirements have increased from 25,000 to 50,000-gallon capacities.
- The Variance section is modified to:
 - Include more contact information during the submittal process;
 - Require the department to approve or deny the variance in writing; and
 - Clarify that the variance may be cancelled due to noncompliant activities.

Specific proposed changes in ch. NR 114, Wis. Adm. Code, include:

- The Definition section is updated by adding and modifying definitions for clarity and consistency with ch. NR 113.
- The General Requirements section includes:
 - Added flexibility for operators-in-training to be rehired after the initial 12-month registration period expires;
 - Clarifications and details for operators-in-training registration;
 - Removed language that was inserted into ch. NR 113; and
 - Clarifications on portable restroom servicing assistant.
- The Certification Grades section is updated to reflect current practices and provides flexibility to operators to convert grades.
- The Operator-in-Charge and Master Operator section includes:
 - Minor clarifications and increased flexibility to master operators to reduce their certification to a certified operator; and
 - Clarifications for the department to reduce a master operator to a certified operator through sanctions consistent with statutes.
- The Examinations and Applications sections clarify master operator exam registration requirements.
- A new section for Non-delinquency Certification from the Department of Children and Families and the Department of Revenue is added. This section includes the multiple statutory requirements required of the department before the department issues or renews operator certifications. The section combines these requirements to provide more transparency to the and provides clear instruction to the department.
- The Fees and Issuances of Certifications sections are clarified.
- The Certificate Renewals section is clarified. Language is added to clarify requirements for reissuance of master operator certifications when those certifications have lapsed for more than one year, but less than five years.
- The Continuing Education and Training Requirements and the Sanctions sections are clarified.
- A new Enforcement section is added to ch. NR 114, subchapter II. This section is inserted consistent with ch. NR 113.
- The Variance section is modified for consistency to ch. NR 113 changes.

6. Agency Procedures for Promulgation

The department will hold a hearing online on Thursday, November 12, 2020 at 9:00 a.m. The hearing will be followed by board adoption, expected in early 2021, followed by a request for the governor's approval and legislative review.

7. Description of any Forms (attach copies if available)

No new forms are proposed in this rule. Some forms will require updates.

8. Name and Telephone Number of Agency Contacts

Processing: Emma Esch, (608) 266-1959

Technical: Fred Hegeman, (608) 267-7611