

Report From Agency

REPORT TO LEGISLATURE
NR 113 and 114, Wis. Adm. Code
Board Order No. WY-18-18
Clearinghouse Rule No. CR 20-046

Basis and Purpose of the Proposed Rule

The proposed rule primarily addresses increased thresholds and corresponding code language for septage storage. The rule also provides clarification and streamlining of existing rule language. Many of the proposed rule changes clarify and clean up language, making the requirements of the rule more clear and easier to understand.

- Increased thresholds for septage storage allow more cost-efficient storage alternatives to businesses wishing to install septage storage. Increased septage storage allows for more appropriate periods of land application which reduce runoff of nutrients to surface waters. Additionally, proposed rule changes provide significant clarity to multiple storage situations including: new, conversion of existing storage, and when mixing septage with manure.
- Several sections of the proposed rule changes include transparencies associated with statutory requirements relating to other requirements of agencies such as the Department of Children and Families, the Department of Revenue, and the Department of Workforce Development.
- Many changes also include potential efficiencies to businesses and include the following: increased septage maximum weekly application rates for particular soil types, removing certification statement requirements for businesses that do not land apply septage, allow alternative log requirements for portable restroom servicing vehicles, provide flexibilities associated with truck identification and other display requirements, add more flexibilities for storing portable restroom hoses, increased flexibilities for equipment used for servicing septage on islands, and citation authority in ch. NR 114 for reducing severity of penalties and fees associated with civil enforcement cases.
- Definitions were updated for more clear understanding within the rules as well as when crossing over into other agency code requirements. Business related requirements were moved from ch. NR 114 and inserted into ch. NR 113 with other business requirements for ease of understanding.

Summary of Public Comments

See attached response to comments document. In addition, the department made revisions to the rule in response to comments received at the Natural Resources Board (NRB) meeting on February 24, 2021 and subsequent meetings with stakeholders. See “Modifications Made” below.

Modifications Made

See attached response to comments document.

In addition, the following change were made in response to comments received at the NRB meeting on February 21, 2021 and subsequent meeting with stakeholders:

- Portable Restroom Servicing Related
 - NR 113.06(2)(k) – Hoses: No caps if 2 valves.
 - NR 113.06(2)(m)1. – Alternate License Sticker Display Location.
 - NR 113.06(2)(m)3. – Tank Capacity Display Exemption for Tanks less than 1,000 gallons.
 - NR 113.11(3)(c)2.b. – Exemption from in-vehicle log/invoice records.
 - NR 113.11(3)(c)3.d. – Logs: Gallons collected at each location instead of each unit.
- Other Changes
 - NR 113.06(3)(c) – Updates and clarifications to spill related requirements.
 - NR 113.06(3)(f) – Clarification on record keeping and reporting water used for flushing.
 - NR 113.11(3)(c)3.a. – Alternative site recording options when an address is not available.
 - NR 113.11(3)(c)8. – Added clarity to certification statement including the option for allowing annual reporting signed statements in-lieu of daily signed statements for daily logs and loading summaries.

- NR 113.06(2)(m)2. – Truck lettering for all septage servicing vehicles, change the word “paint” to “display” when providing truck identification information.
- NR 113.06(2)(m)2. – Specify to display lettering “on at least one side of the vehicle”.
- NR 113.07(3)(b)8. – Remove proposed language relating to changes to 10 month limitation prior to planting a crop.
- NR 113.07(3)(b)12. -- Remove proposed language relating to exceeding particular slope limitations.
- NR 113.11(3)(a) – Add clause to the end of the amended provision to state, “...by those businesses that land apply.”
- NR 113.11(3)(c)3.b. – Add clause to the date and time requirement that states, “for each service location.”
- NR 113.11(3)(c)3.g. and 113.11(3)(c)7. – Revert to existing certification statement requirements for pathogen reduction when land applying septage and remove certification requirements for when disposing at a wastewater treatment facility.
- Certification related
 - NR 114.23(2) – Codifies the use of industry trade show attendance to meeting continuing education requirements under specific conditions.
 - NR 114.23 Note. – Details the difference between compliance education and general education relating to septage continuing education requirements.

Appearances at the Public Hearing

The following people spoke at the public hearing:

- Cory Bowen, a board member of the Wisconsin Liquid Waste Carriers Association, and
- Megan Taylor, Cans-to-Go, LLC spoke at the public hearing.

Kurt VandenPlas completed a hearing appearance form, but did not intent to provide oral comments.

Written comments were also received by:

- Jeffrey J. Beiriger, Executive Director of the Wisconsin Liquid Waste Carriers Association,
- Dale Stanford,
- John Bowen, President of Ken-Way Services of Rice Lake, Inc.
- Lance Petrasek, Associates Soil testing, Inc
- David Kons
- Alan L. Kaddotz, PATS Services, Inc.

Changes to Rule Analysis and Fiscal Estimate

No significant changes to the plain language rule analysis contained in the Board order were made as a result of the public hearing. These minor changes included typos and minor word edits..

No changes were made to the economic impact analysis. Proposed rule changes after the public hearing resulted in reduced requirements and more flexibilities. This resulted in minor, but undeterminable cost reductions.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style and placement in administrative code; and clarity, grammar, punctuation and use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

1. Statutory Authority

LCRC Statement:

Section NR 114.245 (2) provides. “Deposit amounts, not including applicable court costs, surcharges, and assessments, for violations of ss. NR 114.16 to 114.23 are \$500.00 for each violation”. This does not appear to comply with s. 281.48 (5s) (b), Stats., which provides “Notwithstanding s. 23.66 (4), the

department shall promulgate rules establishing the basic amount of the deposit that may be made under s. 23.66 (1) by a person to whom a citation is issued under par. (a). The rules shall specify a different amount for each offense under subs. (2) to (5)". The department should explain the authority to create a single, uniform deposit amount or revise that provision to list separate, applicable deposit amounts.

DNR Response:

DNR is authorized to create a single and uniform deposit amount for violations of ss. NR 114.16 to 114.23 because these violations constitute one single offense under subs. (2) to (5) of s. 281.48, which is the offense to sub. (3)(e) for the operator certification requirement.

The LCRC's comment stated that under s. NR 114.245 (2) the single and uniform deposit amount for violations of ss. NR 114.16 to 114.23 does not comply with s. 281.48 (5s) (b), Stats., which requires DNR to promulgate rules to specify a different amount for each offense under subs. (2) to (5). By this comment, the LCRC misconstrued the "violations of ss. NR 114.16 to 114.23" as different offenses under s. 281.48 (2) to (5).

Instead, Section 1 of the draft rule clearly states that the department may issue a citation under the authority of s. 281.48 (3) (e) and (5s). Wis. Stat. s. 281.48 (3) (e) is an offense to the operator certification requirement under subs. (2) to (5). All the violations of ss. NR 114.16 to 114.23 are violations to the operator certification requirement under s. 281.48 (3) (e). In other words, all violations of ss. NR 114.16 to 114.23 constitute an offense under subs. (2) to (5) of s. 281.48, which is the offense to subs. (3)(e). By setting a \$500 deposit for violations of ss. NR 114.16 to 114.23, DNR is setting a single and uniform amount for this specific offense under subs. (3)(e). DNR is not setting a single amount for multiple offenses under subs. (2) to (5). As such, s. NR 114.245 (2) complies with s. 281.48 (5s) (b). No change has been made to the proposed rule.

Draft Proposed Rule:

NR 114.245 is created to read:

NR 114.245 Enforcement. (1) Citations. Under **s. 281.48 (3) (e)**, and (5s), Stats., the department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99, Stats., to collect a forfeiture for a violation of ss. NR 114.16 to 114.23. Deposit amounts are listed under sub. (2).

(2) Deposit schedule. Deposit amounts, not including applicable court costs, surcharges, and assessments, for **violations of ss. NR 114.16 to 114.23** are \$500.00 for each violation.

Relevant Law:

Section 281.48 (5s) CITATIONS.

(a) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of subs. (2) to (5).

(b) Notwithstanding s. 23.66 (4), the department shall promulgate rules establishing the basic amount of the deposit that may be made under s. 23.66 (1) by a person to whom a citation is issued under par. (a). The rules shall specify a different amount for **each offense under subs. (2) to (5)**.

2. Form, Style and Placement in Administrative Code

LCRC Statement:

j. NR 113.07 (1) (b) "...In addition, it appears that sub. (1) (b) 2. and 3. should be renumbered as sub. (1) (b) 1. a. and b. ..."

Dept. Response:

The treatment listed in Sec 63 stated the following:

NR 113.07 (1) (b) (intro.), 1., 2., 3., and 3. (Note)... This is incorrect. As a result, the suggestion made by WLCRC is incorrect.

The treatment has been changed to:

NR 113.07 (1) (b) (intro.), 1. (intro), 2., 3., and 3. (Note).

There already was an a., b., c., and d., as part of 1.

Therefore, s. NR 113.07 (1) (b) 2. and 3. should remain as numbered in the board order and the “repair” is by adding (intro.) to s. NR 113.07 (1) (b) 1.

LCRC Statement:

k. In s. NR 113.08 (1) (b) 3., the period after the stricken “of testing” should be removed, and the final period should be shown without underscoring.

Dept. Response:

The period after “of testing” is required to complete the sentence and has not been removed. The final period remains underscored, as it is new material.

LCRC Statement:

aa. Section NR 113.12 is rather lengthy, and the department could consider separating the material into multiple sections for easier readability. For example, the current s. NR 113.12 could be repealed, and ss. NR 113.121 to 113.128 could be created.

Dept. Response:

The department agrees this is a rather lengthy section. The department considered breaking this into multiple sections as suggested. Due to the number of cross references that would change and some additional confusion to the reader with respect to breaking into sections, it is determined that the outcome is not likely worth the effort.

5. Clarity, Grammar, Punctuation and Use of Plain Language

LCRC Statement:

q. The following comment apply to s. NR 113.12 (3):

(6) In par. (d) 4. F., “the” should be inserted before “submittal” and before “plumbing system”.

Dept. Response:

Persons able to submit require specific credentialing. The allowed credentials include the following:

- Professional Engineer.
- Designer of Engineering Systems-Plumbing,
- Designer of Engineering Systems-Private Sewage Systems,
- Master Plumber,
- Master Plumber Restricted Service

The LCRC comment referred to the installation of the storage facility as a “plumbing system.” While a tank that is approved by DSPS through ch. SPS 384 is approved as a plumbing and/or POWTS approval, ch. 145, Stats., does not classify the installation of a tank for holding septage as a plumbing system. Because there was some confusion, the language has been changed to the following:

“The index and cover sheet shall be included with the submittal for approval by the: designer of engineering systems-plumbing, designer of engineering systems-private sewage, master plumber, master plumber restricted service, or professional engineer.”

Also, par. (d) 4. b., was changed for consistency. It now reads,

“The index and cover sheet shall be included with the submittal by the: designer of engineering systems-plumbing, designer of engineering systems-private sewage, master plumber, master plumber restricted, or professional engineer.”

Final Regulatory Flexibility Analysis

The agency anticipates that all businesses impacted are small business. NR 113 focuses on small businesses.

Cumulative septage businesses costs:

- Year 1* – \$38,000 increased costs.
- Anticipated annual costs thereafter* – \$4,000.

*Refer to Form 2049 for details.

Anticipated benefits to small business:

- Cumulative statewide septage compliance business savings relative to existing NR 113/NR 114:
- Anticipated savings per year ~\$100,000.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.