

Report From Agency

**STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DEPARTMENT OF SAFETY : CR 23-006
AND PROFESSIONAL SERVICES :
:**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Chapters SPS 381 to 387, referred to collectively as the “Wisconsin Plumbing Code”, apply uniformly to the design, construction, installation, supervision, maintenance, and inspection of plumbing, including POWTS, sanitary and storm drainage, water supplies, wastewater treatment, dispersal, or discharge for buildings, as well as plumbing products. The plumbing code is uniform in application, meaning municipalities may not enact ordinances that are more stringent, except as specifically permitted.

The primary focus of this rulemaking is to perform a comprehensive update of the Wisconsin Plumbing Code. These administrative rule revisions update Wisconsin’s plumbing regulations to allow Wisconsin to continue to ensure Wisconsin’s buildings are safe and sanitary. Wisconsin’s plumbing regulations were last comprehensively updated in 2018.

Pursuant to s. 145.02, Stats., the purpose of the plumbing code is to provide that all plumbing in connection with buildings and facilities in the state, including buildings owned by the state or any political subdivision shall be safe and sanitary as to safeguard the public health and the waters of the state.

While Wisconsin does not adopt a nationally recognized model plumbing code, the proposed rule incorporates several nationally recognized technical standards, most of

which are also incorporated in the model plumbing codes. This rulemaking updates technical standards, either incorporated by reference or permitted for use, to align Wisconsin's rules with national standards and best practices for safe plumbing systems.

This proposed rule was developed in consultation with the Plumbing Code Advisory Committee. The committee consists of seven individuals appointed by the Department of Safety and Professional Services (DSPS) Secretary under the authority of ss. 227.13 and 440.042 (1), Stats. The purpose of the Plumbing Code Advisory Committee is to consult with and advise the Department on plumbing standards as set forth in Wis. Admin. Code chs. SPS 381 to 387. The committee has advisory powers only.

Beginning in December 2020, the Plumbing Code Advisory Committee held several meetings to comprehensively review proposals presented by the department's Division of Industry Services Plumbing Section, committee members, stakeholders, and the public.

The committee and the Department also analyzed changes in updated versions of the technical standards incorporated by reference in the rule, while also being cognizant of costs associated with any added requirements and plumbing requirements in surrounding states. The proposed rules reflect recommendations based on these analyses and also include several proposed changes that permit flexibility for the design, construction, and installation of plumbing systems. Standards incorporated by reference in the proposed rule have been submitted to the Attorney General for approval pursuant to s. 227.21 (2), Stats.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The department held two public hearings on March 27, 2023, and on March 28, 2023. The following people either testified at the hearing or submitted written comments:

Jeffrey Beiriger, Joseph Zoulek, and Dean Petersen from Plumbing-Heating-Cooling Contractors Association (PHCC) submitted a large packet with all their suggestions. The full packet can be found in our website at the Plumbing Code Advisory Committee Meeting Dates and Agendas. They summarize their comments in six areas:

“1. Draft Section 172, 173. The first item of concern is the proposed repeal of SPS Table 382.41-1.

- a. The removal of SPS Table 382.41-1 does not aid the plumber. In fact, it will make it more difficult for the plumber to determine the device or assembly for an installation not listed on the proposed Table. The proposed SPS Table 382.41-1 & Table 382.41-2 is an updated version of a current table already in the Appendix of SPS 382, but this table does not address the hydraulic conditions and pressure duration (backpressure/back siphonage &/or continuous/non-continuous). The original table is still needed. Removing it is not recommended.

- b. The proposed changes to SPS Table 382.41-1 do not reflect the advisory committee proposed changes to this Table. Refer to the committee rule changes 6/22/2021.

2. **Draft Section 78.** The proposed draft does not include the advisory committee proposed changes to SPS Table 382.30-1.

- a. The previous advisory committee proposed SPS Table 382.30-1 had several DFU and trap size changes that reflected current water usage of today's plumbing fixtures. These changes would have the potential to reduce drain and vent sizes, which in turn would lead to building cost savings. Refer to committee rule changes 4/3/2019.
- b. The previous code package also included the "emergency floor drain" concept. Again, this idea could greatly reduce the sizes of drain and vent systems.
- c. The previously proposed changes to SPS Table 382.30-1 would also make our code current with the International Plumbing Code, the Uniform Plumbing Code, and the National Standard Plumbing Code.

3. **Draft Section 58, SPS Table 381.20-4.** We have questions regarding the adoption of certain standards as proposed for SPS 381.20.

- a. Proposed SPS Table 381.20-4, Line 19, includes ASSE 1024. The ASSE 1024 standard, although originally created in 1979, was not adopted by DILHR, Commerce or DSPS. The adoption of ASSE 1024 does not reflect the advisory committee changes to SPS Table 381.20-4. Refer to committee rule changes 10/17/2018.
- b. Proposed SPS Table 381.20-4, Line 20, includes ASSE 1032. The ASSE 1032 standard, although originally created in 1980, was not adopted by DILHR, Commerce or DSPS. The adoption of ASSE 1032 does not reflect the advisory committee changes to SPS Table 381.20-4. Refer to committee rule changes 10/17/2018.
- c. Proposed SPS Table 381.20-4, Line 13. Although a few the ASSE standards being adopted identify the most current edition (ASSE 1003-2020, ASSE 1022-2021), the ASSE 1013-2011 and ASSE 1015-2011 are proposed, but ASSE 1013-2021 and ASSE 1015-2021 are the current editions. The draft would be adopting a decade old standard for no apparent reason. Recommend adopting the current edition of ASSE 1001-2021, ASSE 1012-2021, ASSE 1013-2021, ASSE 1015-2021, ASSE 1047-2021, ASSE 1048-2021, and ASSE 5000-2022e1.
- d. Proposed SPS Table 381.20-4, Line 26. The proposed adoption of ASSE 1049 "Air Admittance Valves for Chemical Waste Systems" potentially conflicts with draft Section 87, SPS 382.31 (17m) (c) 4. "The AAV may not serve..." "A

fixture serving a chemical waste system...". If the adoption of ASSE 1049 permits an AAV to be installed conforming to ASSE 1049, but not installed serving a chemical waste system, would the adding of a "Note" be advisable?

4. **Draft Section 149.** The proposed draft relating to SPS 382.40 (5) (bm) is significantly different than the advisory committee language.

- a. Proposed draft reads, SPS 382.40 (5) (bm) "Temperature maintenance..." All public buildings as defined by s. 101.01 (12) Stats., except for those buildings 3 stories or less in height above grade plane..."
- b. Refer to committee rule changes 9/28/2021. The committee proposed language reads, "For application to all commercial buildings. Inclusive of residential buildings with 3 tenants or more, which are 4 stories in height or greater above grade plan."
- c. The proposed draft seems to exempt all "public buildings" 3 stories or less. Would not this exempt approximately 80% of all commercial buildings in Wisconsin from the water efficiency requirements?

5. A few of the proposed draft Sections may lead to confusion. Some would need modest editing. More importantly, these items will require code clarifications in the future, but could be addressed prior to the legislative review.

- a. **Draft Section 216.** The draft proposes to repeal SPS Table 384-30-10, but SPS 384 (5) (a) states, "Pipe fittings shall conform to the pipe material standards listed in Table 384.30-10. The proposed draft in its current form does not amend this code section.
- b. **Draft Section 58 & 200.** In the proposed draft, ASSE 1006, 1007 and 1009 are repealed (primarily because these standards are inactive). SPS 384.20 (5) (a) requires residential clothes washer to conform to ASSE 1007. SPS 384.20 (5) (e) 1. requires a residential dishwasher to conform to ASSE 1006. SPS 384.20 (5) (h) 1. requires a commercial food waste grinder to conform to ASSE 1006. These code sections are not being proposed for amending in the Draft.
- c. **Draft Section 200.** The proposed draft for Table 384.11, Note "e." and "f." read, "Reduced pressure backflow preventers and... are not permitted for cross connection control." (Same statement is identified for the double check assembly. The RP valve assembly as well as the DC assembly are cross connection control assemblies. Delete Note "e" and "f." The advisory committee recommended to remove the notes. Refer to advisory committee rule changes 5/26/2021.
- d. **Draft Section 163.** The proposed update includes moving the PVC Sch 80 Tables from the Appendix of SPS 382 to SPS 382.40 (creating SPS Table 382.40-12 & 382.40-13). This might suggest the use of PVC Sch 80 for water distribution piping; yet PVC Sch 80 is not identified as approved water distribution material for SPS Table 384.30-8 in the proposed draft. If the

rationale is the approved use of PVC Sch 80 for water distribution piping with the limitation of SPS 384.30 (4) (e) 2. "Cold water distribution pipe installed underground...shall conform to one of the standards in Table 384.30-7 or 384.30-8...", would the adding of a "Note" be advisable?

- e. **Draft Section 144.** The proposed draft language concerning SPS 382.40 (3) (e) 3. reads, "Materials for multipurpose shall be acceptable under NFPA 13D or ss. SPS 384.30 (4) (e) and SPS 384.30 (5)." NFPA 13D covers fire sprinklers systems for one and two-family dwellings. It includes stand-alone systems and multipurpose piping systems. NFPA 13D Table 5.2.2 permits black welded and seamless steel pipe, which is not an approved water distribution material as per SPS 384.30 (4) and (5). SPS 384.30 (4) and (5) permit water distribution material not listed or approved as specified in NFPA 13D Table 5.2.2 or Table 5.2.3.2. The existing wording of SPS 382.40 (3) 1. Note 1 seem to more in line with NFPA 13D 6.3.3 and 6.3.3.1.
- f. **Draft Section 15.** The proposed draft language concerning SPS 305.92 (1) reads, "A person may obtain a license as a master plumber-restricted service by taking..." SPS 305.92 refers to master plumber restricted license, both types of restricted, restricted service and restricted appliance. SPS 305.92 includes eight subsections' categories. To apply SPS 305.92 (1) to one of the two types of restricted license contradicts the structure of SPS 305.92. Do not add "service" to SPS 305.92 (1).

6. The advisory committee and a few plumbing contractors agree with the previous proposed draft: "Master Plan Review Exemption Proposal." In light of ongoing discussions regarding plan review, we continue to believe that proposals such as these, where we look at ways to improve processes while still maintaining public health and safety, should be adopted. As always, we stand ready to work with the Department on other innovations regarding the plan review process."

Bruce Meiners, Plumbing Consultant, expressed the following:

"Hot water distribution systems may not include a heat recovery system, and shall be installed and maintained to provide bacterial control disinfection by one of the following methods: a method approved by the Wisconsin department of natural resources for public drinking water. SECTION 189. SPS 382.50 (3) (b) 6. a., b., and c. are repealed.

Repealing 382.50 (3) (b) 6. a., b., and c. are repealing thermal disinfection and also relying on the DNR for sections that I believe cannot be easily found if at all. The proposed code language published is not what was approved at code council.

382.50(3)(b)6. Should read per code council meeting:

382.50(3)(b)6. Hot water distribution systems may not include a heat recovery system, and shall be installed and maintained to provide disinfection by one of the following methods:

- a. Water stored and circulation initiated at a minimum of 140° and with a return of a minimum of 124°.

- bm. Chlorine Dioxide
- d. 0.5 Chlorine
- e. Monochloramine
- f. Another Disinfection system approved by the department or utilizing disinfectant provided by the municipality per individual site approval by the department.”

Steve Breitlow, Business Manager of the Plumbers Local #75, commented the following:

“Plumbers Local 75 thanks DSPS and the Plumbing Code Advisory Committee for its hard work to update our state plumbing code. Code updates are substantial undertakings and we recognize and value the efforts from both the department and the private sector volunteers who serve to ensure that our state regulations reflect safety, best practices, and recognized standards both nationally and in industry.

Plumbers 75 worked with the Plumbing Heating and Cooling Contractors Association (PHCC) and the Master Plumbers/Heating & Cooling Contractors of WI (MP/HC) on comments to CR 23-006 as originally drafted. We are pleased that that the issues raised are being strongly considered by the department and we look forward to seeing those modifications in the final rule draft that is submitted to the legislature.

Again, Plumbers 75 thanks DSPS and the Plumbing Code Advisory Committee for its hard work and its commitment to seeking vital industry and public comment and input.”

Fernando Fernandez, Sr. Director Codes and Standards of TOTO USA, stated the following:

“I have been made aware today is the last day for public comment. I have reviewed the proposed language concerning the addition of language in relation to the items below and find no objection to the inclusion of terms and language related to personal hygiene devices covered by the reference standard below:

- standard ASME A112.4.2 / CSA B45.16 in Table 384.11
- definition of bidet sprayer

The goal of these additional references shall serve to facilitate local building authorities validation of compliance of referenced product to industry standards via product markings /labelling required by the standard and via 3rd party certification.”

Fred Gardner, Plumbing Consultant, submitted the following comments:

“I was a member of each of the two advisory committees convened to review and recommend changes to the Wisconsin Plumbing Code (#PS 381-387). I want to point out three specific items in my testimony and add a general remark or two. For reference, I am using the letter submitted by the PHCC Wisconsin on Monday, March 27 for reference. That letter contained six items that would amend the draft code that is the subject of

today's hearing. I support the inclusion of all the items in that letter in the final draft, but wish to specifically address the following:

#6 "Master Plan Review Exemption Proposal"

There is a plumbing plan review problem in Wisconsin. When plans are not approved quickly, the bottleneck results in delays for the entire construction process. While I appreciate the DSPS efforts to address the issue, I believe that the Master Plan Exemption Proposal should be adopted because it provides another tool. Essentially, this would provide that small plumbing projects (less than 15 fixtures) that are part of a larger project (e.g., strip mall tenant buildout) would not require plan review. The idea is that projects of less than 15 fixtures do not require plan review generally and requiring review for these small projects results in more plans going into the review process than necessary.

#2 DFUs

As a member of the first code advisory committee, I fully supported this proposal. I was surprised that this did not make its way into the final draft rule. If it did not get carried over from the first advisory committee to the second, I view that as an oversight and not an intentional act of the second advisory committee. This proposal has the support of the industry and has been reviewed and modified by an advisory committee. The practical side of this is that with less water going into pipes, we need this change in the field to make drains function more effectively and reducing/eliminating the need for callbacks resulting from poor drain line carry.

Not part of that letter, but important to me, and to the industry I have the following:

382.34 (5) (c) Grease trap sizing

A plumbing code change proposal was submitted 5/18/21 for a hydromechanical sizing method for grease interceptors. This is already presently accepted as an alternate approval however It appears this did not appear in the final draft as a standard code item.

Finally, I would ask that all the alternate approval be incorporated into the final draft. It was my understanding that after a period – five years, as I recall – these approvals would become part of the Wisconsin plumbing code. I don't see them included in the draft and wonder if they should be or whether they are made part of the code in another way. Minimally, these approvals should be made more available to the industry. Greater transparency is needed and there needs to be a clear understanding within the Department, agent municipalities, and the industry with respect to the application of these alternate approvals. I believe some of the others testifying mentioned ongoing meetings with the Department to improve communications. I support this recommendation completely.

Thank you for your work on this code package. The code matters to me and to the industry and I am looking forward to a successful conclusion to this project."

Corey Gall, President of the Wisconsin Pipe Trades Association, communicated the following:

“The Wisconsin Pipe Trades Association would like to thank DSPS and the Plumbing Code Advisory Committee for their work and efforts committed to updating our state plumbing code. We understand and appreciate the time that goes into ensuring our state regulations recognize standards both nationally and in industry, follow best practices, and demonstrate safety.

The Wisconsin Pipe Trades Association consists of eight Locals representing plumbers, steamfitters, sprinkler fitters, and HVAC service technicians, among others in the mechanical trades. We worked closely with industry stakeholders to submit comments on CR23-006 as originally drafted. We appreciate that the feedback and issues we have raised are being strongly considered by the department. We look forward to seeing those modifications incorporated into the final rule draft that is sent to the Legislature.

We again thank you for your time and your continued efforts to work collaboratively.”

Please see Attachment 1 for the Department’s response to the public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2 i: SECTION 5 of the proposed rule replaces the colon at the end of s. SPS 305.10 (1) (intro.) with a period. Generally, introductory material should end with a colon and each subunit should complete the idea and result in a complete sentence when read with the introduction. [See s. 1.11, Manual.] In this case, the format of an introduction and subunits might not be the most appropriate format because not all of the subunits are dependent on the introductory material to form a complete idea and a complete sentence. Given that, it might be preferable to renumber existing sub. (1) (intro.) as sub. (1) (a), and renumber existing sub. (1) (a) as sub. (1) (am).

Response 2 i: The Department accepted the portion of the recommendation related to introductory materials ending with a colon by reverting to the last sentence as it exists in the current code. The Department determined that retaining the existing structure was appropriate and no additional revisions were made.

Comment 2 ww: In SECTION 130 of the proposed rule, it is not clear how the new subdivision paragraphs relate to s. SPS 382.36 (13) (b) 1. Should these instead be new subs. 8. to 11. of s. SPS 382.36 (13) (b)? In addition, add a period at the end of subpar. a. and do not capitalize “construction” in subpar. b.

Response 2 ww: The Department accepted the punctuation and capitalization recommendations in this comment. The Department rejected the proposed recommendation regarding numbering because it was determined that the newly created sections were properly placed.

Comment 2 III: In SECTION 157 of the proposed rule, is there a reason that the designation for s. SPS 382.40 (7) (g) 4. is used, and numbering as subd. 3. is skipped?

Response 2 III: The department numbered the new subd. 382.40 (7) (g) 4. because subd. 382.40 (7) (g) 3. reading “3. Fixture supplies serving emergency eye wash or shower outlets shall be not less than recommended by the manufacturer.” is already present in the code.

Comment 2 hhh: Would the proposed rule benefit from an initial applicability clause? [s. 1.03 (3), Manual.] For instance, would the new requirements apply to an installation if the department or an agent municipality had approved plumbing plans on the date the rule takes effect, but installation had not yet begun or was not yet complete? Or what if plumbing plans had been submitted but were not yet approved on the date the rule takes effect?

Response 2 hhh: The Department determined that an initial applicability clause would not be beneficial. Plans submitted to the Department or agent municipalities are evaluated and approved or denied based on the code as it exists when a completed submission is received.

Comment 4 d: In SECTION 176 of the proposed rule, in s. SPS 382.41 (4) (o) (intro.), the reference to “this section” covers all of s. SPS 382.41. Is that the intent? Alternatively, is a more precise reference desired, such as “this paragraph”, which would cover only s. SPS 382.41 (4) (o)?

Response 4 d: The Department has determined that the reference to all of SPS 382.41 is correct.

Comment 5 b: In SECTIONS 9 and 10 of the proposed rule, the department should examine for clarity s. SPS 305.90 (1) (b) 3. (intro.), especially as it relates to s. SPS 305.90 (1) (b) 3. a., which is created in SECTION 10. As currently proposed, these two provisions would read as follows (with the opening language paraphrased for simplicity): “[Plumbing activities that may be undertaken by specified persons] shall be limited to connections with an existing water distribution system which do not require a direct connection to the drain system for the installation and modification of the following: Items requiring connection with a water distribution system”. First, overall this language is difficult to understand. Second, it is confusing that both “connections with an existing water distribution system” and “items requiring connection with a water distribution system” appear in the same sentence. Are they different? Third, are “stormwater use or reclaimed water supply systems” listed in subd. 3. b. already covered by the more generic “items” listed in subd. 3. a.? If not, perhaps “items” in subd. 3. a. needs clarification. Fourth, it is not clear whether “connections with an existing water distribution system” as it appears in subd. 3. (intro.) is meant to modify each of the items appearing in subd. 3. a. to c.

Response 5 b: The Department has determined that “connections with an existing water distribution system” and “items requiring connection with a water distribution system” are distinct and would be understood by a professional reading the code. “Items requiring connection with a water distribution system” are physical objects such as water heaters, and water softeners, while “connections with a water distribution system” encompasses the materials and labor required to connect such an object to the water

system. Additionally, “Stormwater use or reclaimed water supply systems” are listed to ensure clarity in the code. Finally, yes, “connections with an existing water distribution system” does apply to each of the items, as it authorizes the credential holder to install or modify each of those items and materials.

Comment 5 i.(1): In SECTION 38 of the proposed rule, in s. SPS 381.01 (117): The inserted word “function” should probably be changed to “functioning”.

Response 5 i.(1): The Department rejected the proposed change. “Function” in this context refers to the purpose or natural function of the item rather than as a synonym for its physical operation.

Comment 5 i. (2): In SECTION 38 of the proposed rule, in s. SPS 381.01 (117): Avoid the use of the slashed alternatives “washer/disinfector” and “appliances/fixtures”. [s. 1.08 (1) (d), Manual.] In addition, the use of the word “fixtures” is awkward in a definition that relates only to “appliances”.

Response 5 i. (2): The Department accepted the proposed change with regard to slashed alternatives. The Department rejected the proposed change regarding fixtures vs. appliances because it was determined that the change would lead to potential confusion based on the usage of those terms in the industry.

Comment 5 i. (4): In SECTION 38 of the proposed rule, in s. SPS 381.01 (117): Should “public lavatory fixtures” be changed to “public lavatories” in the second sentence? “Public lavatory fixtures” is not a defined term.

Response 5 i. (4): The Department has determined that the language is accurate as presented in the preliminary rule draft and is less likely to cause confusion than the proposed revision. “Public lavatory” is defined in newly created SPS 381.01 (197m), and in this context is modifying the term “fixture” which is a commonly understood phrase in the plumbing industry.

All remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A