

Comm 83, Private Onsite Wastewater treatment Systems Code - Official Code Interpretation

Code Sections: Comm 83.52 Responsibilities. (1)(a)

The owner of a POWTS shall be responsible for ensuring that the operation and maintenance of the POWTS occurs in accordance with this chapter and the approved management plan under s. Comm 83.54(1).

Comm 83.55 Reporting Requirements. (1)(a)

The owner of a POWTS or the owner's agent shall report to the governmental unit or designated agent at the completion of each inspection, maintenance or servicing event specified in the approved management plan, except for camping unit transfer containers..

Comm 83.55(2)

The inspection, maintenance and servicing reports required under sub. (1) shall be submitted to the governmental unit or designated agent in accordance with all of the following: (a) In a manner specified by the governmental unit or designated agent. (b) Within 30 calendar days from the date of inspection, maintenance or servicing. (c) By the owner or the owner's agent.

Question 1: Management requirements and responsibilities related to POWTS are addressed in chapter Comm 83, Subchapter V, Wis. Adm. Code. This subchapter contains references to the owner, and owner's agents as parties that shall report to a governmental unit upon the completion of inspection, maintenance and servicing of POWTS. The subchapter also lists credentialled individuals that may perform the inspection, maintenance and servicing of POWTS. Given the information contained in this subchapter, who is ultimately responsible for ensuring that required information is provided to the governmental unit?

Answer 1: Section Comm 83.52(1)(a), Wis. Adm. Code, states: "The owner of a POWTS shall be responsible for ensuring that the operation and maintenance of the POWTS occurs in accordance with this chapter and the approved management plan under s. Comm 83.54(1)."

Section Comm 83.55(1)(a), Wis. Adm. Code, states: "The owner of a POWTS or the owner's agent shall report to the governmental unit. ...".

Both code sections clearly state that the owner is responsible for maintaining their POWTS and to report what inspection, maintenance or servicing events took place. While the code does allow the owner to delegate the reporting function to an agent that could be the service provider, ultimately the responsibility for fulfillment of the reporting requirement rests with the owner.

Question 2: If a governmental unit establishes a fee associated with the filing of a report regarding inspection, maintenance or servicing of a POWTS, who is ultimately responsible for payment of the fee?

Answer 2: Section Comm 83.55(2)(a), Wis. Adm. Code, states "the inspection, maintenance and servicing reports required under sub. (1) shall be submitted to the governmental unit. ...in a manner specified by the governmental unit or designated agent." Section Comm 83.55(1)(a), Wis. Adm. Code, states: "The owner of a POWTS or the owner's agent shall report to the governmental unit. ...".

The owner is obligated to report to the governmental unit. If there is a fee associated with filing the report and acceptance of the report hinges on receipt of the fee, the owner is ultimately responsible to provide the fee payment in order to comply with the requirements of these code sections.

by: Kimberly R. Walker, Administrator, May 13, 2004



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TO: WLWCA members

FROM: Peter Kammer

DATE: June 14, 2004

RE: POWTS fee clarification

As you are aware, the Department of Commerce agreed at the May 2004 POWTS Code Committee to issue an official code interpretation, at the WLWCA's request, regarding the collection of POWTS maintenance fees.

This is in response to Fond du Lac County's plan to require pumpers and plumbers to be ultimately responsible for collecting the county's \$15 POWTS fee from the homeowner and forwarding it to the county. The Wisconsin Liquid Waste Carriers Association strongly opposed this effort, stating that Comm 83 clearly states that the property owner is responsible for this fee, not the pumper.

Enclosed you will find a copy of an official code interpretation by Kimberly Walker, Secretary of the Department of Commerce, Division of Building Division. Please pay special attention to Question 2 and Answer 2, which clarify that the property owner is responsible for the fee.

A copy of this code interpretation has been mailed to each county in Wisconsin.

This is a big victory for the Wisconsin Liquid Waste Carriers Association. Thank you to everyone within the association who assisted in this effort to make sure no other counties tried to follow Fond du Lac County's lead.