

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date August 7, 2020</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 113 – Servicing septic of holding tanks, pumping chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies, or portable restrooms NR 114 - Certification requirements for waterworks, wastewater treatment plant, septage servicing and water system operators</p>	
<p>4. Subject Revisions to chapters NR 113 and 114 for the purpose of clarifying and streamlining certain regulatory requirements for septage servicing. WY-18-18</p>	
<p>5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected None</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$38,000 for first year implementation plus \$4,000 per year in subsequent years after implementation plan.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule</p> <p>The rule primarily addresses clarification and streamlining of existing rule language and provides increased thresholds for septage storage. Many of the proposed rule changes clarify and clean up language making the requirements of the rule more clear and easier to understand.</p> <p>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.</p> <p>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, Department of Revenue, and the Department of Workforce Development.</p> <p>Many changes also include potential efficiencies to businesses and include the following: increased septage maximum weekly application rates for particular soil types, alternative certification statement for T-grade businesses, alternative log requirements for portable restroom servicing vehicles, and citation authority in ch. NR 114 for reducing severity of penalties and fees associated with civil enforcement cases.</p>	

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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.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Septage study group consisting of:

- Representatives from Wis. Liquid Waste Carriers Assn (WLWCA) including public affairs strategist,
- Independent septage business owners,
- Certified septage operators,
- Certified soil testers and private onsite wastewater treatment systems (POWTS) installation contractor
- Portable restroom servicing business representative,
- County sanitary code administrator(s),
- County land and water conservation department,
- DATCP representative,
- DSPS representative,
- DOA small business representatives,
- Municipal Environmental Group (MEG),

Others included:

- Other county zoning/sanitary officials
- WLWCA storage related experts
- WLWCA members
- WLWCA certified operators

The department contacted all septage businesses and members of the Septage Study Group.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

Very limited impact upon local units of government. Minor changes proposed to county delegation authority.

Ongoing discussions with Oneida County, Door County, Sauk County Zoning/Sanitary and Land Conservation departments.

Additionally, other local government units were consulted as part of the solicitation process through county and municipal associations such as the League of Wisconsin Municipalities.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will impact septage businesses and the department. There should be no impact to any other business, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

BUSINESS SECTORS

Septage business costs:

- Storage. Increased storage opportunities provide businesses generally with reduced costs to implement and maintain storage.

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- Statewide savings to business (i.e., benefit) approximated at \$25,000 per year.
- Potential increased business costs through management plan and spill plan for a one-time cost of \$500 per business for storage <25,000 gal for approximately 40 businesses. Statewide one-time cost \$20,000.
- Potential statewide business costs per year for storage inspections <25,000 gal is approximated \$1000 per year.
- Farmer Exemption Requirements:
 - Changes in rule language relating to business and land application requirements were made to conform to existing statutory requirements.
 - Little or no fiscal changes anticipated.
- Land Application Disposal Businesses:
 - Weekly Max Application Rates: Some businesses may apply greater weekly maximum loadings resulting in a significant cost reduction when land applying large volumes of septage. These savings will be realized by being able to access potentially more sites due to the decreased window for land applying septage and a savings of fuel.
 - Difficult to quantify the savings as each circumstance is different. However, increased flexibilities in the rule will allow businesses to use flexibilities for their maximum efficiencies.
- Maps: Spreading maps will be required in vehicles.
 - Photocopying and binder costs might be incurred.
 - Statewide fiscal impact estimated at \$18,000 one-time cost with \$3,000 cost per year.
- Portable Restroom Servicing Vehicle Logs.
 - Increased flexibility for maintaining logs for portable restroom servicing vehicles.
 - A statewide fiscal decrease is expected.
- Island Servicing. More flexibility included into rule relating to servicing equipment used for servicing POWTS on islands.
 - A statewide fiscal decrease ranging between \$25,000 to \$125,000 per year is expected.
- Counties: Code language was modified to conform to statutory language.
 - No fiscal changes anticipated.
- Enforcement Related: Consistent with ch. NR 113, an enforcement provision is included into ch. NR 114 to allow citations to be issued instead of implementing civil actions through the Department of Justice.
 - Fiscal benefits estimate a reduction of approximately \$78,000 per year for potential violations based on recent Department of Justice (DOJ) septage cases.
- Holds on license and certificate issuance and reissuances.
 - The departments of Revenue, Children and Family and Workforce Development have specific statutory requirements that impact the DNR by requiring DNR to verify “holds” for arrears. While this information is in statute, many individuals and business do not know about these issues. These “holds” prevent the department from issuing or reissuing certifications and licenses.
 - No fiscal changes anticipated.
- Language Clarity. Language in rules were clarified for easier understanding and transparency. These changes will improve communication between industry and the department.
 - No fiscal costs are expected.
 - Benefits are numerous, but difficult to quantify.

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Statewide Costs

<u>Businesses: Phase-in</u>		<u>Ongoing: Following Years</u>
Mapping:	\$18,000	\$3,000 per year
Storage: Management Plans:	\$ 12,000	\$ 0 per year w/ no changes to operations
Storage: Spill Plan-Storage:	\$ 8,000	\$ 0 per year w/ no changes to operations
Storage: Tank Inspections:	<u>\$ 0</u>	<u>\$1,000 per year</u>
	\$38,000	\$4,000 per year

Local Government, Public Utility and Individual Rate Payers:

The department does not anticipate negative impacts to local governmental entities, individual rate payers and public utilities.

State Economy:

The department does not anticipate negative impact to the state's economy.

Fiscal Impacts:

This rule may require additional staff hours: First year is estimated at 190 statewide hours. Subsequent years workload is estimated at approximately 25 statewide hours. Additional staff time can be absorbed in the current work schedule of department employees. As a result, the department does not anticipate a negative fiscal impact to the agency or state.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

There are numerous benefits to septage businesses in this rule: Increased clarity, improved transparency, additional flexibilities to businesses that both land-apply and dispose at treatment facilities, decreased logging requirements for portable restroom servicing vehicles and significantly more opportunities for businesses wishing to add septage storage. The department anticipates the decrease in compliance costs that will be gained by businesses impacted to be between \$128,000 and \$165,000 per year.

Benefits include:

-Increased septage storage opportunities.

- Statewide business cost savings for increased storage thresholds from 25,000 gal to 50,000 gal and from 25,000 gal to 550,000 gal is approximately \$25,000 per year.
- These opportunities allow businesses to invest in storage and to predict administrative code certainty to continue to use their investment.
- Increased storage allows for land application during appropriate weather conditions to reduce the impacts of runoff to lakes and streams.
- Provides clarity to septage storage permitting process.

-Clarifies significant number of areas of code language.

- These updates will reduce frustrations by industry.
 - Improves communication between industry and the department.
 - Provides additional direction to licensed businesses and certified operators in a variety of sections throughout rules.
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- Repairs errors relating to using an incorrect UW-Extension bulletin.

-Provides alternative operating scenarios

- Potential increase in weekly maximum application rates to facilitate emptying large septage storage when soil conditions can accept increased rates.
 - Assumes additional sites may be contracted or purchased by septage businesses resulting in additional acres for land application.
 - Assumes reduction in fuel and equipment costs as fewer passes are required to meet the 39,000 gal/ac/yr limitation or alternative annual application rate. Difficult to quantify savings as each business and each situation is different.
- An alternative certification statement is provided for “T” grade businesses to more accurately certify their activities.
- Provides exemptions from certain daily logging requirements for portable restroom servicing vehicles.
 - Undetermined fiscal benefit is expected. Each business expected to achieve varying amounts.
- Provides flexibility for equipment, including equipment used for servicing private onsite wastewater treatment systems located on islands.
 - A statewide fiscal decrease of \$25,000 to \$62,500 is expected.

-Provides transparency and provides clarity to statutory language into rule.

- Farmer exemption requirements are updated for consistency to 2005 statutory language.
- Department licensing and certification issuance and reissuance requirements relating to “holds” and verifications relating to the Department of Revenue, Department of Children and Families, and Department of Workforce Development are included for transparency purposes to individuals who may be faced with delays.

-Moves business-related language from ch. NR 114 relating to certification into ch. NR 113 relating to businesses for clarifying purposes.

The alternative to promulgating this rule is to regulate compliance of septage entities using the existing chs. NR 113 and 114. The current rules have less flexibility, have less clarity surrounding numerous sections of code, lack transparency relating to “hold” requirements for issuing licenses and certifications required by other agencies, and most importantly lack additional flexibility and increased thresholds for septage storage. Further, the derived benefits from this proposed rule will not be available for entities impacted if this rule is not promulgated. This will decrease the opportunities for compliance and efficiencies.

16. Long Range Implications of Implementing the Rule

The long-range implication of this rule will be the same as the short range. In the longer term, the rule will increase the opportunities for compliance and efficiencies for entities regulated under chs. NR 113 and 114.

Long range implications include:

- **Additional Storage Opportunities.** Additional septage storage opportunities for businesses will allow predictability for businesses. Opportunities include more clarity on how to permit and construct storage, how to convert storage from other types of storage and how to mix septage into existing manure storage facilities. These opportunities in turn will reduce potential runoff as land application can be completed at more environmentally friendly times.
 - **Improved Compliance.** Clarity to the code will lead to better compliance as requirements are more easily stated for easier understanding.
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- Indirect Storage Benefits. Increased maximum weekly application rates will support septage storage as spreading windows can be reduced. This alleviates conflict between farmers and spreaders and likely will allow additional sites to be used.
- Island POWTS servicing. Increased flexibility for servicing islands and other non-typical POWTS installations in more cost-effective manners. Many septage businesses find servicing islands to be difficult and time consuming. Additional options will reduce those difficulties.
- Improved Portable Restroom Facilities. Improved portable restroom facilities will be utilized more frequently. Questions relating to portable restrooms integrated onto trailers have been prevalent. Businesses now have direction from code to follow manufacturers recommendations for servicing the holding tanks on these mobile units.
- Electronic Logs. Allowing the use of electronic logs and reporting requirements to meet industry needs for electronic storage of data and reporting.
- Improved Level Playing Field. Improved level playing field for businesses to comply with rules and regulations for servicing and disposal of septage.
- Improved Transparencies. Improved transparency for “holds” that may be attached to applications or renewals of businesses and certifications from the Department of Revenue, Department of Children and Families, and Department of Workforce Development.
- Daily Log Flexibility. Increased flexibility relating to the certification of daily activity logs for “L” grade and “T” grade businesses and for exceptions for portable restroom servicing vehicles.
- Reduced Enforcement Costs. Reduced enforcement costs associated with penalties and fees when a violation occurs within the certification requirements.
- Variance Request Communication. Applications for variance will provide additional contact information to discuss details and improve upon the variance outcomes. Written determinations will provide the applicant with documentation of the outcome.

17. Compare With Approaches Being Used by Federal Government

Land application requirements of the federal rule 40 CFR 503 are included in ch. NR 113 including: pathogen control, vector attraction reduction, nutrient application and balancing of nutrients with crop needs, and record keeping.

Wisconsin also operates a business licensing program, a certified operator program with a continuing education component, a vehicle licensing requirement, storage facility requirements and an annual reporting requirement program. These are not part of the federal requirements. The requirements of 40 CFR 503 limit pollutants to the soil and nitrogen to groundwater. The groundwater protection is similar to Wisconsin requirements relating to ch. 160, Wis. Stats., for nitrogen.

Service event reporting is required and implemented by the Department of Safety and Professional Services (DSPS) through their local governmental units to track servicing events. The DSPS program and the reporting required by ch. NR 113 work together to ensure POWTS are serviced and the septage removed are disposed of in compliance with federal requirements.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Each of the four states refer to the federal standards for septage land application [40 CFR 503].

Iowa (DNR) and Michigan (DEQ) operate similar statewide programs with business licenses, certification requirements, and mix of vehicle requirements.

Similar to Wisconsin, Illinois, Iowa, Michigan and Minnesota are not delegated by the U.S. Environmental Protection

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Agency (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 1500 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 require 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 they are willing to accept the material. 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 an initial plan review fee of \$9,300, an annual operating fee of \$500 and a permit renewal fee of \$1240. Enforcement includes penalties, revocations, and suspensions.

19. Contact Name Frederick J. Hegeman (DNR)	20. Contact Phone Number 608-267-7611 Frederick.Hegeman@Wisconsin.gov
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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The agency anticipates that all businesses impacted are small business. Refer to form 2049 for details.

The department estimates that all septage businesses are small businesses. 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.

Detailed assessment of these avoided compliance costs are presented in the DOA 2049 form attached.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Data for this analysis was estimates gathered from business and local governmental entities.

Septage study group members and various members of the Wisconsin Liquid Waste Carriers Association were consulted for data and to validate assumptions used in this analysis by phone and emails.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe: Nearly 100% of septage businesses are considered small businesses. NR 113 focuses around small businesses and the necessary requirements for assisting small businesses to comply.
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

A) Increased ability by septage businesses to increase septage storage volumes to:

- 50,000 gallons without requiring detailed plans and specs as required of ch. NR 110 and
- 550,000 gallons without requiring a WPDES permit.

→Statewide savings expected of about \$25,000 per year.

B) Increased the ability of septage businesses to increase the maximum application rate according to site conditions such as soil texture.

→Maximum annual statewide savings of approximately \$375,000 per year.

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C) Inserted enforcement provision into ch. NR 114 consistent with ch. NR 113 to reduce the need to utilize DOJ.
→ Estimated annual business savings of \$78,000 per year.

D) Clarity and transparencies were incorporated into rules so that businesses are more aware of the rules and regulations that they face.

→ These are numerous and many are unquantifiable.

→ Undetermined annual savings.

5. Describe the Rule's Enforcement Provisions

Chapter NR 113 and NR 114 are civil rules. No criminal provisions.

Chapter NR 113 currently has citation authority. Chapter NR 114 is proposed with citation authority to reduce expensive and time consuming DOJ alternative relating to civil suits.

Both chapters allow the department to request enforcement from DOJ.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
