

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number:		Hearing Location: Madison	
Rule Number: Chapters Comm 81 to 87		Hearing Date: November, 27, 2007	
Relating to: POWTS			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
1.	Langlade County Board	<p style="text-align: center;">-Resolution #92-2007 November 13, 2007</p> <p>Intent: Support revisions to seasonal occupancy & deferring pumping of septic tanks as proposed by Comm 81.01 & 83.255(e)1&2, POWTS maintenance program</p> <p>County currently operates a seasonal maintenance program. Code revision would put county into compliance with state code.</p>	-Support noted.
2.	Langlade County Board	<p style="text-align: center;">-Resolution #93-2007 November 13, 2007</p> <p>Intent: Oppose revisions to mandated inventory and maintenance of septic tanks as propose in Comm 83.255</p> <p>Resolution states that the county has a maintenance program retroactive to 1980. Code change would require hiring more staff, raising permit fees and charging for submittal reports placing special assessment against properties.</p>	<p>-Section 145.20, Wis. Stats., was revised under 2005 WI Act 347. Specifically, Act 347 gives direction to the department and places additional responsibilities on the department and governmental units with regard to POWTS maintenance. A key responsibility is the implementation and operation of a comprehensive POWTS maintenance program. In order to accomplish this task it is the position of the department that each governmental unit must inventory POWTS within their jurisdictional area and the information that is obtained must be placed into a database so that inspection, maintenance and servicing events can be reported, recorded and tracked. The initial inventory does not have to consist of physical visits to each property. Rather it can be accomplished by combining existing information with surveys or questionnaires sent to property owners. As inspection, maintenance or servicing events are performed, systems that are a potential public health or safety risk can be identified and corrective actions taken. Revenue sources such as permit fees utilized by all counties and maintenance reporting fees utilized by counties already administering a maintenance reporting program can be adjusted to offset operational costs. In a 1997 report to</p>

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	Langlade County Board - continued		Congress, USEPA stated that adequately managed decentralized wastewater systems are a cost-effective and long-term option for meeting public health and water quality needs. In 2003, USEPA released management guidelines for onsite systems. The Level 1(basic) management model includes an inventory and database requirement for all onsite systems within jurisdictional areas. Wisconsin's citizens and their environment would be better served if older existing systems are not ignored in the hope that they will eventually catastrophically fail causing their replacement but rather that all existing systems be inspected, monitored, maintained or serviced on a periodic basis so that there is greater potential for discovery and elimination of potential health, safety and public health concerns.
3.	Lionel Kliss [e-mail, no address]	-Concerned about lack of revision to design of septic tanks. Basic design hasn't changed in "100 years". Addition of filters seven years ago has caused problems. Need more distance between the inlet and outlet of tank.	-This issue was not addressed by the POWTS Advisory Code Council during the current code revision cycle. It will be referred to the POWTS Technical Advisory Committee for consideration and recommendation.
4.	James and Elaine Jakusz Northern Construction Inc. Stevens Point, WI	-Fully support the proposed revisions to chapters Comm 81-87 relating to private onsite wastewater treatment systems. Specific codes under review that we would like to see passed: Section 9. Comm 83.03 (6) Section 17. Comm 83.21 (3) (f) Section 69. Comm 85.02 (2)	-Support noted.
5.	Jim Koehler Chippewa Co. [e-mail, no address]	Supports the rule change regarding the vacation/use provision. Welcomes the change that will allow us to make a more common sense approach to wastewater management.	-Support noted.
6.	John Lefebvre Marinette Co. [e-mail, no address]	Marinette County is opposed to the proposed language in Comm. 83.255 which mandates Counties to complete an inventory of all POWTS (Private Onsite Wastewater Treatment Systems) located in their jurisdictional area within 2 years and to implement a comprehensive POWTS maintenance program within 5 years. This proposed code language will require Marinette County to hire additional staff to complete the inventory and administer the annual maintenance program. A special tax assessment may be necessary.	- See response to Exhibit 2.

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7.	CeCe Tesky Rusk Co. Ladysmith, WI	<p>1) Comm 83.255 opposed - The retroactivity of this requirement will impose a large financial burden on taxpayers, without providing much additional protection of public health. While proper maintenance of POWTS is vital, the proposed requirement fails to require proper evaluation of existing systems in order to find failing systems and have them replaced or repaired. The proposal merely extends the life of existing systems that may be discharging to bedrock, groundwater or surface water by requiring that they be maintained.</p> <p>A much more responsible way to address the concerns would be to implement a retroactive inventory requirement and require a comprehensive maintenance program for systems installed since a county's adoption of the Wisconsin Fund program. In addition to this, there should be comprehensive evaluation requirements during real estate transfers for existing POWTS. The proposed rules are already requiring that evaluations be reported to the counties (83.55(2)), however, there should be minimum requirements for how these are performed. Governmental units could do enforcement on these types of reports much easier than the whole county at once. In addition, public and environmental health will be protected when systems are replaced and/or repaired.</p> <p>Along with that, the Department of Commerce and the Department of Natural Resources needs to find funding for counties to implement such mandates.</p> <p>2) Comm 83.55 – The Department needs to have definitions for all of the terms that are used in these sections. (i.e. what is the difference between an inspection and an evaluation?)</p>	<p>-See response to Exhibit 2.</p> <p>-The WI Fund program is a voluntary program that governmental units may adopt. Currently not all governmental units participate. It would be inappropriate to use WI Fund program participation as the “trigger” for implementation of a maintenance program. Act 347 added adoption and enforcement of a maintenance program to the list of governmental unit responsibilities which are state-wide in application. [s.145.20(2)(i), Wis. Stats.]</p> <p>-The POWTS Advisory Code Council reviewed the use of this terminology and did not recommend adding definitions to chapter Comm 81. The terms are self-explanatory as used in the applicable code section.</p>

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	CeCe Tesky - continued	<p>3) Comm 84.25(7) opposed – This proposal indicates that covers will not have to be locked if they have some other measure of preventing unauthorized entry. What ‘measures’ might this include? It is very dangerous to relax this standard and instead, there needs to more stringent requirements in this area. A good way to address this is to have the manufacturer of a product indicate what measures are needed to ENSURE unauthorized entry. The installer and property owner must then follow these measures. Without that type of oversight, more tragedies are imminent.</p> <p>Comm 84.30(6)(j) opposed - Removing this standard for systems-in-fill and other individual site designs could prove to be very detrimental. The filtering medium could consist of a whole host of materials that one could call ‘sand’. We need to continue to protect the public’s interest in the process.</p>	<p>-This code section is being revised to recognize that there are other ways to prevent unauthorized access other than a padlock. The department’s product review process does include a review of how an access opening is to be secured.</p> <p>-Approved POWTS component manuals include reference to the ASTM C33 standard in the specification tables. Individual Site Design submittals must include justification for use of media other than ASTM C33 which would be evaluated as part of the plan review process.</p>
8.	Dale Dimond, Chris Olson and Brian Cunningham representing the WI County Code Administrators	<p>The Wisconsin County Code Administrators support the changes in the Hearing Draft of these proposed rules, except for portions of proposed Section 36 [Comm 83.255(1)].</p> <p>A majority of WCCA members are opposed to changes in Section 36, which mandate a governmental unit (county) inventory of <u>ALL</u> POWTS in their jurisdiction and implementation of a comprehensive maintenance program for these systems. While we support development and implementation of maintenance programs for POWTS installed in 1980 or later (or after the date a county adopts the Wisconsin Fund program), we do not support the proposed mandate for maintenance of older systems. Requiring maintenance of and prolonging the life of POWTS which are over 30 years old, may have no records and may meet the statutory definition of a failing system (i.e., discharging sewage to surface water, groundwater and/or bedrock) does little to protect the public health and the waters of the state. Additionally, many counties have</p>	<p>-See response to Exhibit 2.</p> <p>-The WI Fund program is a voluntary program that governmental units may adopt. Currently not all governmental units participate. It would be inappropriate to use WI Fund program participation as the “trigger” for implementation of a maintenance program which Act 347 requires to be state-wide in application.</p>

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	Dale Dimond, Chris Olson and Brian Cunningham - continued	<p>limited budgets and may not be able to implement an unfunded mandate such as this.</p> <p>We recommend that proposed Comm 83.255(1)(d) be revised so that mandatory maintenance program requirements apply to all POWTS installed after the date on which the county adopts the Wisconsin Fund program. We also suggest giving counties the authority, as an individual county option, to include POWTS installed before that date. Such a change would be consistent with statutes. <i>[§145.20(5)(a) states "At a minimum the maintenance program is applicable to all.." POWTS constructed "...on or after the date on which a governmental unit adopts this program" ("this program" referring to the Wisconsin Fund)].</i></p> <p>If you are unwilling or unable to make such a change to proposed language in sub. (d), we would recommend a change to proposed 83.255(1)(c) extending the 5 year deadline. This would allow counties more time to phase in a maintenance program for older systems, and would accommodate programs which provide full evaluation of a POWTS prior to inclusion in a maintenance program (such as real estate evaluation programs).</p>	<p>-It is the department's position that that a two year timeline to conduct an inventory and a five year timeline to establish a maintenance reporting program recommended by the POWTS Advisory Code Council is reasonable to address the risks associated with undocumented older existing POWTS. Chapter Comm 83 since 2000 has contained a requirement that all systems be maintained and that reports of inspection, maintenance or servicing events be submitted to the counties. The department has encouraged counties for the past eight years to upgrade their maintenance reporting programs. Act 347 adds emphasis to completing this task.</p>
9.	Matt Stohr representing the WI Counties Association	<p>-WCA has concerns about the proposed code language in s. Comm 83.255(1)(a) – (f). County government is not in a position to effectively administer the proposed changes on its own. The state should provide a financial commitment and demonstrate a lasting and consistent commitment to Comm 83 for the environmental benefits of the rule change to be recognized.</p> <p>-WCA requests that the proposed rule language be revised to allow 4 years for the inventory of POWTS be completed and 10 years for the maintenance programs to be phased-in.</p>	<p>-See response to Exhibit 2.</p> <p>-See response to Exhibit 8.</p>
10.	Dave Mundigler	-Comm 83.22(4)(e) requiring revisions to be submitted for changes to orientation	-Provision has been changed.

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	Racine Co. Sturtevant, WI Dave Mundigler - continued	<p>of a POWTS dispersal component relative to slope should be retained.</p> <p>-Opposes the proposed language in s. Comm 83.255. Creating an inventory of all existing POWTS and operating a maintenance program is an unfunded mandate. Creating or raising a fee to cover the costs of this program is not the answer. Maintaining older systems that may be discharging into draintile or zones of saturation is not the answer.</p> <p>-Table 83.43-1 Footnote “c”. Would like to see a directive that road right of way lines must be used for measurement of horizontal setback distances.</p> <p>-Also, would like to see stormwater infiltration systems added to the table.</p> <p>-Comm 83.45(6) Sees no reason to change “floodfringe” to “floodplain”. This would mean that floodway is now included.</p>	<p>-See response to Exhibit 2.</p> <p>-Footnote “c” is intended to alert interested parties that road right of way lines should be considered when designing a POWTS. Whether the road right of way line or a property line is more restricted will depend on the specific circumstance.</p> <p>- The department agrees that this issue needs attention. It will be addressed in the future as part of a code package related to stormwater.</p> <p>-The change to “floodplain” was reviewed by DNR staff and was found to be consistent with chapter NR 116 and how it is administered by their staff.</p>
11.	Waushara County Planning & Zoning Committee and Zoning Administrator Wautoma, WI	Opposed to s. Comm 83.255(1)(a) – (f) as an unfunded mandate that should not even be suggested unless it is accompanied by adequate funding. Would prefer to add properties into their existing maintenance program as systems fail.	-See response to Exhibit 2.
12.	Terri Dopp Paukstat Neshkoro, WI	As the assistant Zoning Administrator in Waushara County is opposed to s. Comm 83.255(1)(a) because it will force counties to inventory old, outdated and pollution causing systems. Would prefer that old existing systems be evaluated at time of real estate transfer and added to a maintenance reporting program at	-See response to Exhibit 2.

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		that time.	