

**CHAPTER 46**  
**PRIVATE SEWAGE SYSTEM**  
**ORDINANCE**  
**AND HEALTH ORDINANCE**

**State Law Reference:** Section 59.70, Wis. Stats.

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- 46.01 JURISDICTION.** The provisions of this chapter shall apply to all lands and waters within Dane County except as otherwise provided by Wis. Stats.
- 46.015 AUTHORITY.** This ordinance is enacted under the authority of sections 59.70(1), 59.70(5), and chapters 97, 101, 145, 250 through 254 and 281, Wis. Stats., and provisions of the Wisconsin Administrative Code adopted pursuant thereto.  
[History: am., OA 36, 1996-97, pub. 03/03/97; am., Sub. 1 to OA 8, 2007-08, pub. 10/04/07.; am., 2022 OA-39, pub. 11/21/22.
- 46.02 INTENT.** It is the intent of this chapter to regulate the location, construction, installation, alteration, design and use of all private sewage

systems, to further the maintenance of safe and healthful conditions within the county, to prevent and control pollution of surface and subsurface waters and to provide for the administration and enforcement of this chapter.

**46.025 PURPOSE. (1) General.** The underlying principles of this chapter are basic goals in environmental health and safety accomplished by proper siting, design, installation, inspection, and maintenance of private sewage systems. The prerequisites necessary for the essential protection of the public health and the environment are the same everywhere. As unforeseen situations arise which are not specifically covered in this chapter, the basic principles enumerated in this section shall serve to define the intent.

**(2) Basic principles. (a) Approved sanitary systems required.** Every building that has or is required to have plumbing fixtures and that is intended for human habitation or occupancy shall be provided with an approved method of treatment and disposal of domestic sewage and sanitary wastewater. This may be through connection to a public sewer system, a private sewage system or other means approved by the division.

**(b) Discharges prohibited.** Every private sewage system shall be designed, located, constructed and maintained to prevent any discharge of sewage, partially treated sewage or effluent into drain tiles, onto the ground surface, into the structure served, into the surface or subsurface waters of the state (including zones of seasonal saturation) or into zones of bedrock.

**(c) Maintenance.** Every private sewage system shall be maintained so as to prevent prohibited discharges designated in par. (b). Notice of maintenance requirements for each system requiring servicing more than once every three years shall be recorded with the register of deeds office prior to sanitary permit issuance.

**(d) Use and disposal of septage.** Wastes removed from every private sewage system shall be discharged into a publicly owned wastewater treatment work or other licensed facility for treatment or storage under a Wisconsin Pollution Discharge Elimination System permit or applied to agricultural lands as allowed or permitted under this chapter.

[History: 46.025 cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (2)(d) cr., Sub. 1 to OA 8, 2007-08, pub. 10/04/07.]

**46.03 DEFINITIONS. (1) Agricultural land** shall mean land on which a food crop, feed crop or

fiber crop will be grown within 12 months after septage is applied to the land. *Agricultural land* also includes range land and land used as pasture.

**(1a) Agronomic rate** shall mean the total septage application rate (dry rate basis) designed to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or other vegetation grown on land and designed to minimize the amount of nitrogen in the septage that passes below the root zone of the crop or vegetation grown on the land to the ground water.

**(1b) Applicant** shall mean a landowner or the authorized agent of a landowner.

**(1m) Approved installation** shall mean a private sewage system constructed and installed in compliance with technical standards and requirements of this chapter, the Wis. Stats., and the Wis. Admin. Code. *Approved installation* does not imply that the system will perform satisfactorily for any specified period of time.

**(2) Board** shall mean the duly appointed Board of Health for Madison and Dane County.

**(3) Department** shall mean the Department of Public Health for Madison and Dane County.

**(4) Division** shall mean the Environmental Health Division of the Department of Public Health for Madison and Dane County.

**(4d) DSPS** means Department of Safety and Professional Services of the State of Wisconsin.

**(4m) Farmer** shall mean a person who owns or leases a contiguous parcel of land of 40 acres or more that is used for agricultural purposes.

**(5) Food** shall have the meaning given in chapter ATCP 75 of the Wis. Admin. Code.

**(5d) High use field** shall mean a field that receives more than 3 complete applications of septage per year and the number of applications are limited to the crop nutrient requirements.

**(5m) Human habitation** means the act of occupying a structure as a dwelling or sleeping place, whether intermittently or as a principal residence.

**(5n) Incorporation** shall mean the mixing of septage with topsoil by means such as disking, mold-board plowing, chisel plowing or rototilling to a minimum depth of 4 inches.

**(5p) Injection** shall mean the subsurface placement of septage to a depth of 4 to 12 inches.

**(5r) Landspreading** shall mean the spraying or spreading of septage onto the land surface, the injection of septage below the land surface, or the incorporation of septage into the soil, so that

the septage can either condition the soil or fertilize crops or vegetation grown in soil.

**(5v)** *Litter free* shall mean the absence of nonbiodegradable material such as plastics or glass of 2 inches or greater in length on the soil surface.

**(6)** *Local health officer* shall mean the duly appointed Director of Public Health for Madison and Dane County.

**(6m)** *Parcel of land* shall mean property that is contiguous and under the same ownership interest. If a farmer owns a parcel of land that is split or divided by a public or private road or a railroad, the land on the other side of the road or railroad will be considered part of the same parcel of land.

**(7)** *Parties-in-interest* shall mean all abutting property owners within two hundred (200) feet of the subject site.

**(7m)** *Permeability* shall mean the rate of movement of liquid through soil.

**(8)** *Person* shall mean any individual or group of individuals associated in any form and for any purpose whatsoever, and shall include the plural as well as the singular.

**(9)** *Premises* shall mean any tract or parcel of land with or without habitable buildings, and shall include those buildings normally open to the public for the purpose of conducting business.

**(10)** *Private dwelling* shall mean any building used only for living purposes and occupied by not more than two families.

**(11)** *Private sewage system* shall mean a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. It shall also mean an alternative sewage system approved by the safety and buildings division of the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure. A system may be owned by the property owner or by special purpose district.

**(11m)** *POWTS* means a “private onsite wastewater treatment system”.

**(11n)** *Private onsite wastewater treatment system* shall have the same meaning as “private sewage system”.

**(12)** *Privy* means a structure, not connected to a plumbing system, which is used by persons for the deposition of human body wastes.

**(13)** *Public beach* means any designated body of water or portion thereof not contained in a

pool structure, basin, chamber or tank and which is used for wading, swimming, diving, water recreation, therapy or bathing. The term includes natural lakes, artificial water impoundments, ponds, rivers, streams and similar outdoor facilities that are partially natural in character and partially artificial. A public beach includes the associated land area and appurtenances designated for bather usage and serving one or more of the following: a licensed campground; a recreational camp; hotel; motel; club; association; housing development; school; religious, charitable or youth organization; and includes such designated body of water with associated land area controlled by a local government or political subdivision thereof.

**(14)** *Public buildings* shall mean any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy or use by the public or by three or more tenants.

**(15)** *Public swimming pool* has the meaning set forth in Wis. Admin. Code s. SPS 390.03(23).

**(16)** *Retail Food Establishment* shall have the meaning given in chapter ATCP 75 of the Wis. Admin. Code.

**(16m)** *Restricted public access* shall mean private property or the limiting of entry for a period of time by means such as signs, traditional agricultural fencing or remote locations.

**(17)** *Registered Sanitarian* shall have the meaning in Wis. Admin. s. SPS 174.04(7).

**(17e)** *Septage* shall mean the wastewater or contents of septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies or portable restrooms.

**(17m)** *Surface water* means those portions of lakes, bays, rivers, streams, springs, ponds, impounding reservoirs, marshes, water courses, drainage systems, and other surface water, natural or artificial, public or private, within the boundaries of Dane County but excluding puddles and bodies of water having an area of less than .25 of an acre.

**(18)** *Wastes* shall mean any materials, such as explosives, fuel, litter, paper, garbage, sewage, gas, inflammables, oil, refuse, rubbish, tar, wood ashes or other solid or liquid materials, that may cause or contribute to health hazards or a reduction in surface or subsurface water quality.

**[History:** (3) am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (2m) cr., OA 41, 1988-89, pub. 06/05/89; (2m) and (3) am., and (2n) and (3m) cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (2n) am., OA 33, 1992-93, pub. 04/14/93; (2m), (2n), (3m), (4) - (14) renum., (11) am. and (6) cr., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (2m), (5m), (11m), (11n) and

(17m) cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; 46.03 am., sub. 1 to OA 8, 2007-08, pub. 10/04/07; (5), (15), and (16) am., OA 31, 2010-11, pub. 12/30/10; (2) del., (4d) cr., and (4), (11), and (15) am., OA 23, 2012-13, pub. 11/21/12; (5) and (16) am., 2019 OA-15, pub. 11/20/19; (16) and (17) am., 2023 OA-8, pub. 07/27/23; (3), (11m), and (11n) am., 2023 OA-7, pub. 07/27/23.]

**46.04 ADMINISTRATION. (1)** The board shall provide and exercise general supervisory powers over the administration of this chapter and shall, in addition, act as an appeal body as hereinafter set forth.

**(2)** The department, under the direction of its director, shall exercise day to day control over the operation of this chapter and shall, in addition, exercise the powers set forth in sections 59.70(1), 59.70(5), 97.30, chapters 145, 250 through 254 and 281, Wis. Stats., and the provisions of the Wisconsin Administrative Code adopted thereto.

**(3)** The terms of this chapter are intended to be minimum standards; wherever higher standards are set by any other law or regulation, such standards shall prevail.

**(4)** Chapters SPS 326, 381-387, 390, 391, ADM 60, ATCP 72, 73, 75, 76, 78, 79, NR 812, 113, and 845 of the Wisconsin Administrative Code are hereby adopted by reference and made a part of this chapter as if fully set forth herein.

[**History:** (4) am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (4) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (4) am., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (2) am., Sub. 1 to OA 8, 2007-08, pub. 10/04/07; (4) am., OA 31, 2010-11, pub. 12/30/10; (4) am., OA 23, 2012-13, pub. 11/21/12; (4) am., 2023 OA-8, pub. 07/27/23.]

**46.05 COOPERATION WITH OTHER UNITS.**

The department shall cooperate with all other government units and agencies thereof in the enforcement of all state and local laws and regulations pertaining to matters related in this chapter.

**46.06 TYPES OF PRIVATE SEWAGE SYSTEMS. (1)**

Only the private sewage systems conforming to all requirements of this chapter and all other applicable laws, regulations and restrictions of this state shall hereafter be installed in Dane County.

**(2) Allowable use.** Private sewage systems or other treatment tank and effluent disposal systems may be constructed when no public sewer is available to the property to be served. The wastewater disposal system of each building shall be entirely separate from and independent of that of any other structure or

building unless a common system is specifically approved. A private sewage system may be owned by the property owner or by a special purpose district. Approval for the use of a common system or a system on a different parcel than the structure will be subject to recorded deed restrictions or easements that specify the rights and obligations of the system owner(s) and the property owner.

**(3) Domestic waste.** All water-carried wastes derived from ordinary living uses shall enter the septic or treatment tank unless otherwise specifically exempted by Wis. Admin. Code Ch. SPS 383 or this chapter.

**(4) Industrial wastes.** The department of natural resources shall be contacted for approval of systems used for the treatment and disposal of all industrial wastes including those combined with domestic waste.

**(5) Holding tanks.**

**(a) Approval. 1.** Holding tanks shall only be allowed when there are no options for any other type of POWTS as permitted under this chapter, sec. SPS 383.61, Wis. Admin. Code or Ch. 145, Wis. Stats. Plans shall be submitted in accordance with the approved package or design for each application to install a holding tank.

**2.** An application for a holding tank shall not be approved if the property contains an area of soil suitable for any other type of private sewage system as permitted under this chapter or sec. SPS 383.61, Wis. Admin. Code. Soil evaluation data reported to the division that indicates the site is unsuitable for a POWTS or an onsite waste dispersal system other than a holding tank is subject to a division verification inspection to confirm that there is no suitable area for a POWTS or an onsite waste dispersal system on the parcel.

**(b) Servicing contracts. 1.** Prior to the issuance of a sanitary permit for the installation of a holding tank the owner of the property shall, except as provided by s. 146.20(3)(d), Wis. Stats., contract with a person who is licensed under Ch. NR 113, Wis. Admin. Code, to have the holding tank serviced. The owner shall file a copy of the contract or their registration with the local governmental unit that has signed the service agreement under sub. (c) and with the division. The owner shall file a copy of any changes to the service contract or a copy of a new service contract with the division within 10 business days from the date of any change to the service contract.

**2.** The person responsible for servicing a holding tank under sub. 1. shall submit to the local government unit which has signed the service agreement under sub. (c), and to the division, a report of servicing following each service event. The service report shall include:

- a. The name and address of the person responsible for servicing the holding tank;
- b. The name of the owner of the property;
- c. The location of the property on which the holding tank is installed;
- d. The sanitary permit number issued for the holding tank;
- e. The date on which the holding tank was serviced;
- f. The volumes in gallons of the contents pumped from the holding tank for each servicing; and
- g. The disposal site(s) to which the contents from the holding tank were delivered.

**(c)** A holding tank shall not be approved for a building or facility that will discharge more than 3,000 gallons of wastewater per day, as determined by Ch. SPS 383, Wis. Admin. Code, until the owner files with the division a statement describing the method of final disposal of the septage and the written approval of the department of natural resources.

**(d)** Temporary holding tanks. A sanitary permit may be issued for the use of a temporary holding tank if circumstances warrant including, but not limited to:

1. Weather or soil conditions that do not allow the installation of the entire approved system prior to the target occupancy date for the structure.
2. A structure being built, altered, modified or repaired in an area where public sewer will be provided or extended within 12 months. A written agreement between the property owner and the sanitary district specifying when the structure will be connected to the public sewer must be provided to the division prior to issuance of a sanitary permit.

**(6) Non-plumbing sanitation systems.** **(a)** Non-plumbing sanitation systems are devices regulated under Ch. SPS 391, Wis. Admin. Code, which are alternatives to water carried sanitation systems. These systems are not connected to a water supply and are not connected to a plumbing system. Structures served solely by a privy shall not contain any plumbing and shall not be connected to a water supply. The property owner must obtain a county sanitary permit before installing any privy

or similar device regulated by Ch. SPS 391, Wis. Admin. Code.

**(b)** In structures intended for human habitation or occupancy that are connected to a water supply and which have plumbing fixtures, at least one water closet shall be provided in addition to sanitary facilities approved under Ch. SPS 391 if such facilities are installed.

**(7) Accessibility.** Septic tanks and other treatment tanks shall be located so as to not exceed 15 feet of vertical separation and 150 feet of horizontal separation between the bottom of any treatment tank and the access point for the septage hauling vehicle. If the system design cannot accommodate this requirement, the applicant must submit an alternative plan that shows how servicing, as may be necessary due to anticipated as well as unanticipated causes, can be achieved at any time of year.

[History: 46.06 am., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (7) cr., OA 6, 2002-03, pub. 08/13/02; (3), (5), and (6) am., OA 23, 2012-13, pub. 11/21/12; (5)(b)2. and (7) am., 2023 OA-7, pub. 07/27/23.]

**46.07 PERMITS REQUIRED. (1)(a)** No person shall install, repair, modify, extend, enlarge, convert, reconnect or structurally alter a private sewage system or any component thereof unless the owner of the property on which the private sewage system is located holds a valid sanitary permit.

**(b)** Delayed connection. No person shall connect a private sewage system to a structure more than one year after installation of the private sewage system without first obtaining a new sanitary permit under sub. (a).

**(2)** Work that cannot, for valid safety or sanitary reasons, be delayed pending application for a permit may be done without first obtaining a permit provided:

- (a)** such work is reported to the department no later than the next working day;
- (b)** necessary soil work and inspections are completed as soon as practicable; and
- (c)** application for a valid permit is actually completed within 10 working days of such emergency work first being performed.

**(3)** If the system evaluation process initiated by an emergency septic tank replacement reveals the need for a replacement of the soil absorption area, the system owner shall submit a permit application within 10 working days. The department may grant additional time for compliance where a state plan approval is required.

**[History:** (1) am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (1) am. and (1)(b) cr., OA 6, 2002-03, pub. 08/13/02.]

**State Law Reference:** Sections 145.135, 145.19 (sanitary permit), 145.185 (septic tank permit), Wis. Stats., and section NR 113.07, Wis. Adm. Code (dumping of sewage).

**46.08 SANITARY PERMITS. (1)(a)** Applications for state sanitary permits shall be made on forms supplied and approved by the State of Wisconsin.

**(b)** Applications for county sanitary permits shall be made on forms supplied and approved by the division.

**(2)** Any permit issued under this subsection shall be void if any false or inaccurate statement is made or if any inaccuracy is shown on any application for such permit.

**(3)** If any permit is disapproved for reason of the applicant's failure to correct an inaccurate or incomplete application in a timely manner and as required by subsections (1) and (2), one-half of the application fee shall be retained by the department. Any re-application shall require the same fee as a new application.

**(4)** If an application is disapproved, the department shall issue written notice to the applicant stating the reasons for disapproval and the amendments to the application, if any, which would render the application approvable.

**(5)** Any permit issued under this section shall be valid for a period of two years. Renewals shall be granted upon application and tender of the required renewal fee, the department reserving the right to require a new on-site inspection upon such renewal application, at applicant's cost. Such permits may be transferred from one person to another and may be revised from one licensed master plumber to another licensed master plumber upon approval of an amended application and payment of the fee required under section 46.23 of this chapter.

**(6) Sanitary permits. (a)** The division shall establish administrative procedures for the approval, disapproval or issuance of state sanitary permits in accord with s. 145.135 and s. 145.19, Wis. Stats. A county sanitary permit shall be required for the connection or reconnection of any structure to any POWTS, any procedure or process that does not require a state sanitary permit that is intended to restore the permeability of the soil absorption or dispersal area, for any device regulated under Ch. SPS 391, Wis. Admin. Code, and for any work done on sewer piping, building sewer, system components or materials of a private on-site waste treatment system not included in the

state sanitary permit requirements in s. SPS 383.21, Wis. Admin. Code.

**(b) Enforcement.** The division shall administer the private sewage system ordinance in accordance with s. 145.20, Wis. Stats., and Ch. SPS 383, Wis. Admin. Code, and this chapter.

**(c) Application.** The application for a sanitary permit shall be made on forms furnished by DSPS for permits required by Ch. SPS 383, Wis. Admin. Code, and on forms furnished by the division for permits required by this chapter. Before a private sewage system is installed, repaired, altered, enlarged, extended, converted or re-connected, a licensed master plumber or master restricted plumber (sewer) shall sign an application for permit and assume responsibility for the work being done.

**(d) Review of applications.** The division shall approve or disapprove applications for sanitary permits and assist applicants in preparing an application that can be approved.

**(e) Notice of denial.** The division shall issue a written notice to each applicant whose sanitary permit application is denied. Each notice shall state the specific reasons for denial. The notice shall also specify any amendments to the plan that will render it acceptable. A denial notice involving other than minor drafting or technical errors shall also advise the applicant of the right to appeal under Ch. 68, Wis. Stats., and Ch. 46 of the Dane County Code of Ordinances.

**(f) Permit transfer or revision due to a change of plumber only. 1.** When there is a change of ownership, a permit transfer form shall be submitted to the division for approval prior to the installation of a private sewage system. Failure to submit transfer forms to the division shall invalidate the sanitary permit in accordance with s. 145.135(1), Wis. Stats.

**2.** When there is a change of master plumber, a permit revision application shall be submitted to the division for approval prior to the installation of a private sewage system. Any work on a POWTS system that requires a plumber revision without first obtaining such approval from the division is prohibited.

**(g) Posting.** The sanitary permit issued by the division, together with any forms furnished by DSPS, shall be displayed conspicuously so as to be visible from the road fronting the lot during construction and must remain in place until after final approval has been given by the division.

**(7) Revocation or suspension.** The division may revoke or suspend any sanitary permit issued under this section for any false statements or misrepresentations of fact or any factual inaccuracy on any application that served as the basis for issuance of the permit. The owner of the property shall be notified in writing of the reasons for revocation or suspension. No work may be done on any private sewage system after permit revocation or during a suspension. When a permit is revoked a new permit must be obtained before any work may resume.

**(8) Expiration.** A sanitary permit issued pursuant to the provisions of this section shall expire two years from the date of issuance if the system is not installed and approved within that time. A sanitary permit may be renewed if the system has not been installed if the renewal application is received by the division at least two working days prior to the expiration date. The time allowed for use of the permit shall not be construed as an extension of any corrective order requiring the repair or replacement of a private onsite waste treatment system. A renewal permit application must conform to the code in effect at the time of renewal.

[History: (3) and (4) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (1) and (5) am., (1)(b), (6), (7) and (8) cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (6)(a), (b), (c), and (g) am., OA 23, 2012-13, pub. 11/21/12.]

**State Law Reference:** Section 145.135, Wis. Stats.

#### **46.09 EXAMINATION OF PLANS AND SPECIFICATIONS.**

**(1)** Complete plans and specifications shall be submitted to the division with the application for a sanitary permit. Plans shall be submitted, on paper or electronic format not less than 8½ by 11 inches in size and shall be clear, legible and permanent copies.

**(2) (a)** Plans and specifications for variances or for private sewage systems as set forth in Table 383.22-1 or Table 383.22-2 of Wis. Code sec. SPS 383.22(1), shall be submitted to DSPS, or another authorized review agent and written approval must be received before a sanitary permit is issued.

**(b)** The issuance of a county permit shall not be construed as plan approval or as approval for any design or installation that is non-code complying. All non-code complying portions of the plumbing and private sewage system installed prior to complete plan review shall be subject to corrective action. Corrective action includes, but is not limited to, removal of non-complying materials and replacement with

approved materials and re-assembly of non-complying joints or connections.

**(3) Plan submission. (a)** Stamping and signing plans. All plans and specifications shall be sealed or stamped in accordance with Ch. A-E 2, Wis. Admin. Code, by a registered architect, engineer or registered plumbing designer. A master plumber may design and submit for approval plumbing plans and specifications for a private sewage system which the designer/submitter will install. Each sheet of plans and specifications the master plumber submits shall be signed, dated and include his or her Wisconsin master plumber license number. When more than one sheet is bound together into one volume, only the title sheet or index sheet needs to be signed and dated by the master plumber responsible for the plan preparation, provided the signed sheet clearly itemizes each of the other sheets comprising the bound volume by content and page number.

**(b) Submitting data.** Work shall not commence until written approval for the preliminary or complete plans is received from the approving agency and the sanitary permit is issued by the division. The plans submitted shall be prints or electronic copies that are clear, legible and permanent. All pertinent data shall be a part of or shall accompany all plans submitted for review. Plans will be examined in the order of receipt.

**(c) Plan details.** All plans shall include the following when applicable to the parcel(s) where the proposed POWTS is to be constructed:

**1.** Plot plan. Detailed plot plan, dimensioned or drawn to scale, showing the lot size, the location of all septic tanks, holding tanks or other treatment tanks, building sewers, sanitary and storm sewers, wells, water mains or water service, streams and lakes, dosing or pumping chambers, distribution boxes, effluent systems, dual disposal systems, replacement system areas and the location of the building served. Adjoining properties shall be checked to insure that the site location setback distances in Ch. SPS 383, Wis. Admin. Code, are complied with. All separating distances and dimensions shall be shown on the detailed plot plan. For large parcels, the proposed system site must be shown on a small scale diagram that includes all property boundaries and roads in addition to the large scale site plan showing the system details.

**2.** Reference points. A permanent vertical elevation reference point and a horizontal reference point must be established and shown on the plot plan.

**3.** Soil data. Soil boring and system elevation data shall be related to the undisturbed and finished grade elevations, vertical and horizontal elevation reference points. Surface elevations shall be given for all soil borings.

**4.** Occupancy. The type of occupancy the private onsite waste treatment system is designed to accommodate shall be indicated, along with the estimated daily wastewater flow and design wastewater flow.

**5.** Other specifications.

**a.** Complete specifications for pumps and controls including dose volume, elevation differences (vertical lift), pipe friction loss, pump performance curve, pump model and pump manufacturer.

**b.** Details and configuration layouts depicting how the system is to be constructed. This includes specifications and procedures for testing of all system components in compliance with s. SPS 383.26(5), Wis. Admin. Code.

**(d)** Plan examination fees. Fees shall be charged in accordance with s. 46.23, Dane County Code of Ordinances.

**(e)** *Revisions.* Every installer of a private sewage system who modifies or changes the design of a system must submit a revised plan to DSPS or to the designated approval agency. A copy of the approved revision must be submitted to the division within 5 working days after approval is obtained. All changes or modifications must be approved by the division authority prior to installation. After written approval is granted, plans and specifications of pumping or pressurized systems shall not be changed without written consent of the division.

**(f)** Limitations. In granting approval of plans, specifications, products, devices or materials, Dane County assumes no liability for any defects in design or construction, nor for any damages that may result from specific installation.

**(g)** Plan availability. The architect, professional engineer, registered designer, owner or plumbing contractor shall keep one original set of plans bearing the stamp of approval from the authorized reviewing agent at the construction site.

**[History:** 46.09 rep., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; 46.09 cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (2) am., OA 19, 2002-03, pub. 03/04/03; (2) and (3) am., OA 23, 2012-13, pub. 11/21/12; (1), (3)(b), and (3)(c) am., 2023 OA-7, pub. 07/27/23.]

## **46.10 SITE EVALUATION.**

**(1)** The department shall make on-site verification inspections of soils. Inspections shall be made by staff members certified by the State of Wisconsin. Such inspections shall be made only upon the filing of the appropriate forms, which shall include plan diagrams as required by sub. (a), and also indicate the applying soil tester's opinion of the soil's suitability. The failure to supply said forms or to indicate the soil tester's opinion shall release the department from any obligation whatsoever to make such inspections or to issue a sanitary permit.

**(a)** *Plan diagrams.* All plan diagrams submitted along with the soil evaluation report shall be submitted on paper or electronic copy not less than 8 ½ x 11 inches in size nor more than 8 ½ x 14 ½ inches and shall be clear, legible and permanent copies. The plan diagrams shall include the following when applicable to the parcel(s) where the proposed POWTS is to be constructed:

**1.** Plot plan. Detailed plot plan, dimensioned or drawn to scale, showing the lot size, the location of the nearest road, the location of the driveway or site access roadway, the location of any septic tanks, holding tanks or treatment tanks, building sewer location (if known), wells, water main or water service, streams and lakes, dosing or pumping chambers, distribution boxes, any existing soil absorption cells, replacement system areas, the location of the building served and other structures on the property. Adjoining properties shall be checked to ensure that the site location setback distances in Ch. SPS 383, Wis. Admin. Code, are complied with. All separating distances and dimensions shall be shown on the detailed plot plan.

**2.** For any parcel with boundaries that cannot be completely shown on a diagram on a sheet of paper not larger than 8 ½ x 11 inches at a scale not smaller than 1 inch to 100 feet, the proposed system site must be shown on a small scale diagram that includes all property boundaries and roads in addition to the large scale site plan showing the test site details.

**(b)** *Reference points.* A permanent vertical elevation reference point and a permanent horizontal reference line must be established and shown on the plot plan. If the horizontal reference line is not a lot line, the line must be established using two points that can reasonably be expected to endure as originally identified for a prolonged period of time (i.e., a tree, fence line or water well).

(c) *Elevation data.* Soil boring and system elevation data shall be related to the undisturbed and finished grade elevations and vertical elevation reference points. Surface elevations shall be given for all soil borings. In flood plain areas, site elevations must be related to local flood plain elevation data to ensure compliance with Ch. SPS 383.

(2) After making such inspections, the department shall indicate, in writing, the suitability of the soils evaluated for the installation of a sanitary system. Such approval or nonapproval shall in no way bind the department to grant a sanitary permit which may be thereafter applied for.

(3) Any applicant for a preliminary soils approval shall be deemed to know that such approval or nonapproval is only preliminary and in no way binds the department, Dane County, its officers, employees or agents in any way whatsoever.

(4)(a) *General.* Site evaluation shall be conducted in accordance with Ch. SPS 385, Wis. Admin. Code, or acts amendatory thereto, by a certified soil tester. The evaluation shall include soil conditions, properties and permeability, depth to zones of soil saturation, depth to bedrock, slope, landscape position, all setback requirements and the potential for flooding. Soil test data shall relate to the undisturbed elevations and a vertical reference point shall be reported on forms provided by the division and signed by the certified soil tester. Reports shall be filed for all sites investigated within 30 days of the completion of the fieldwork for the soil evaluation.

(5) *Specific system designs.* Where a more restrictive land slope is to be observed for a soil absorption system other than a conventional system, the more restrictive land slope specified in the approved design sections or approved design packages of Chs. SPS 383 or SPS 384, Wis. Admin. Code, shall apply.

(6) *Soil absorption site location.* The surface grade of all soil absorption systems shall be located so that surface water drainage from the site is not directed toward a well or reservoir. The soil absorption area shall be located not less than 5 feet from any lot line; 10 feet from a water service swimming pool or any building or dwelling, or any water main or cistern; 50 feet from the high water mark of any lake, reservoir, stream or other water course. Setbacks from wells are specified in Ch. NR 812, Wis. Admin. Code. Soil absorption areas shall not be located in compacted areas such as parking lots or

driveways. Surface drainage shall be diverted away from soil absorption areas on the same or adjacent lots.

(7) *Groundwater or bedrock.* There shall be a minimum of three feet of suitable soil between the bottom of the soil absorption area and any groundwater or bedrock for all systems that rely solely on soil treatment of effluent. There shall be a minimum of 48 inches of suitable soil from original grade for a below grade gravity flow soil treatment system.

(8) *Soil permeability.* Permeability and infiltration rates used to size private sewage systems shall be derived using procedures specified in Ch. SPS 385, Wis. Admin. Code. Existing sites with division approved percolation tests must be reevaluated using current soil evaluation procedures specified in Wis. Admin. Code Ch. SPS 385.

(9) *Soil evaluation.* (a) A soil evaluation shall be conducted on all sites regardless of the type of private sewage system planned. The evaluation shall extend to a depth of 3 feet below the bottom of the proposed soil absorption or dispersal area. Bore pit data shall be used to determine the suitability of the soils at the site in respect to permeability, zones of permanent or seasonal saturation and the depth to bedrock. At least three soil pits large enough to allow visual evaluation of the in situ soil profile shall be constructed for each proposed soil absorption or dispersal area.

(b) Soil evaluations are prohibited when the soil in or immediately adjacent to the soil evaluation pit is frozen within 4 inches above or below the proposed infiltrate surface.

[History: (3) am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (1) and (2) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; caption am. and (4) – (9) cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (1) am., OA 6, 2002-03, pub. 08/13/02; (1), (4), (5), and (8) am., OA 23, 2012-13, pub. 11/21/12; (1)(a) and (8) am., (4)(b) resc., 2023 OA-7, pub. 07/27/23.]

**State Law Reference:** Section 145.20, Wis. Stats. (Chapter 34, Laws of 1979, section 994p).

#### 46.11 INSPECTIONS.

(1) The division shall inspect all private sewage systems and non-plumbing sanitary systems after construction but before backfilling no later than the end of the next workday, excluding Saturdays, Sundays and holidays, after receiving notice from the plumber in charge. Notice from the plumber in charge shall be given by 9:00 A.M. of the day the system is anticipated to be ready for inspection. Inspections shall be reported on forms furnished by the division or on forms included as part of the approved system

design. The plumber in charge or an authorized journeyman plumber must be present during the inspection. The plumber in charge must provide all necessary equipment to conduct the inspection and provide assistance to the inspector as requested. The inspection shall not proceed if a properly licensed master or journeyman plumber is not present on the site.

**(2)** Notification of testing for system components as required by Chs. SPS 382, 383 or 384, Wis. Admin. Code, or as a condition of plan approval, shall be made to the division in the same manner as notification for system inspections. Verification of testing shall be accomplished by means of inspection during the test, written verification of testing and test results from the master plumber or responsible person, or both.

**(3)** Testing of systems components that is required by s. SPS 383.26(5) and Chs. SPS 382 and 384, Wis. Admin. Code, or as a condition of plan approval shall be performed by a properly licensed individual in accordance with Ch. SPS 305, Wis. Admin. Code.

**(4)** No private sewage system shall be used until the proper sanitary permit, inspection and a revised plan, if required, have been accepted and filed by the division.

**(5)(a)** The department shall place all septic tanks on a periodic maintenance program. Private sewage systems including aerobic treatment units or other technology intended to treat wastewater shall be placed on an inspection program cycle appropriate to the component per Ch. SPS 383.54(4), Wisconsin Administrative Code. Pumping reports for holding tanks shall be submitted following service per s. 46.06(5)(b). All other private sewage systems shall be placed on a three-year inspection program in conformance with Wis. Admin. Code s. SPS 383.54(4). Notices of the maintenance due shall be sent by the department to the system owner at least 30 days prior to the due date. All such owners, or their successors or assigns, shall demonstrate compliance with this chapter by returning report forms prepared by the department, or certifications approved by the department, prior to the due date identified in the notice, duly signed by a person authorized in s. 145.245(3), Wis. Stats., or Ch. SPS 305, Wis. Admin. Code.

**(b)** *Final reports.* When a private sewage system that is subject to the requirements of this section is abandoned, the property owner shall file a final report that includes verification that the contents of the septic tank were removed by a

properly licensed septic waste hauler, that the tank was crushed and filled or was removed in accordance with Ch. SPS 383, Wis. Admin. Code, along with the fee required by sec. 46.23(12).

**[History:** (3) rep., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (4) am., OA 41, 1988-89, pub. 06/05/89; (4) am., Sub. 1 to OA 1, 1992-93, pub. 07/01/92; (4) am., OA 36, 1996-97, pub. 03/03/97; (2) am., (3) and (3m) cr., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (4) am., Sub. 1 to OA 1, 1999-2000, pub. 06/01/99; 46.11 am., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (5) am. and (5)2. cr., OA 6, 2002-03, pub. 08/13/02; (5)1. am., OA 38, 2009-10, pub. 11/25/09, eff. 01/01/10; (2), (3), and (5) am., OA 23, 2012-13, pub. 11/21/12; (5) am., 2023 OA-7, pub. 07/27/23.]

**State Law Reference:** s. 145.20, Wis. Stats.

**46.12 RANDOM INSPECTIONS.** The department may make random inspections of all information reported on sanitary permit applications and shall report errors found to the state agency in charge of licensing the person making the error.

**46.13 ACCESS TO PREMISES: SPECIAL INSPECTION WARRANTS.** The department shall have access to premises during reasonable hours to make necessary inspections. In the event any owner or occupant of any premises shall refuse entry for inspection purposes, the department may obtain a special inspection warrant under section 66.122, Wis. Stats.

**46.14 ISSUANCE OF BUILDING PERMITS.**

**(1)** Pursuant to s. 66.036, Wis. Stats., building permits issued by any municipality for the construction of any structure not served by a public sewer and requiring connection to a private sewage system shall be issued in accordance with the provisions of this section.

**(2)** New construction. A city, village or town may not issue a building permit for construction of a new structure that requires the installation of a private sewage system unless a sanitary permit for the installation of the private sewage system has been obtained by the owner.

**(3)** Reconnections.

**(a)** The owner of a property shall obtain approval from the division for the following conditions prior to applying for a zoning or building permit and shall provide all documentation required prior to receiving an approval for:

**1.** Construction of a structure to be connected to an existing private sewage system;

2. Disconnection of a structure from an existing private sewage system and connection of another structure to the system;

3. Reconstruction of a structure that is connected to a private sewage system and that has been damaged as a result of fire, wind or other manmade or natural disasters.

4. Addition, alteration or remodeling of a structure that involves 25% or more of the existing living space.

**(b)** Documentation shall be provided to verify:

1. That the existing private sewage system is not a failing system and has sufficient size and soil conditions to accommodate the wastewater flow or contaminant load as specified in s. 46.175(4)(c); and

2. That the structure meets the set back requirements as specified in Ch. SPS 383, Wis. Admin. Code.

**(c)** Determinations of approved documentation shall be in the form of a sanitary permit or in writing from the division.

**(4)** Construction affecting wastewater flow or contaminant load.

**(a)** General. Prior to obtaining a building permit for any addition, alteration, remodeling or other construction for any structure connected to a private sewage system that will affect the wastewater flow to an existing private sewage system or that may interfere with a functioning system as specified in this subsection, the property owner shall:

1. Obtain a sanitary permit to either modify the existing private sewage system or construct a new private sewage system to accommodate the modification of wastewater flow or contaminant load; or

2. Provide written documentation verifying that the existing private sewage system has sufficient size and soil conditions to accommodate the increased wastewater load, as in sub. (c).

**(b)** Determination of modified wastewater flow or contaminant load. For the purpose of this section:

1. Modified wastewater flow or contaminant load in public buildings and places of employment results from any change in use of the structure from the original use that results in a change in the volume of wastewater above or below that for which the system was originally designed.

2. Modified wastewater flow or contaminant load in dwellings results from a change in the number of bedrooms or from any addition, alteration or remodeling that exceeds 25% of the

total gross area of the existing dwelling unit. Modified wastewater load in dwellings does not result from construction of decks, patios, garages, porches, re-roofing, painting, wiring, re-siding, window replacement or replacement of equipment or appliances.

3. Additional criteria for determining modified wastewater flow or contaminant load are as set forth in the Appendix to Ch. SPS 383, Wis. Admin. Code.

**(c)** *Documentation.* Documentation to verify whether the size and condition of the existing private sewage system can accommodate the modified wastewater flow or contaminant load and to verify whether the system is installed in suitable soils shall include all of the following:

1. Information on the soil conditions of the soil absorption system. The information may consist of a valid existing soil report or new soil evaluation report for the system, prepared by a certified soil tester showing conformance with the applicable vertical separation above bedrock and groundwater for the POWTS;

**a.** At least one soil pit is required to verify the existing distribution system is in suitable soils if no valid soil report for the system exists. Soil evaluation of pits dug for this purpose will conform with sec. 46.10 of the Dane County Ordinances.

2. Information provided by a licensed master plumber or master plumber-restricted sewer, a certified soil tester, or plumbing inspector II for:

**a.** Sizing of the system relative to the existing usage, existence of an evaluated replacement area, the proposed construction usage and the type of system; or

**b.** A copy of an affidavit signed by the owner and recorded with the register of deeds indicating that the existing private sewage system capacity serving a one or two family dwelling is undersized and indicating whether a replacement area is available;

3. A plan prepared by a licensed master plumber or master plumber-restricted sewer, certified soil tester or plumbing inspector II setting forth the dimensions of the existing soil absorption area, tank location and related setbacks;

4. Information provided by a licensed master plumber or master plumber-restricted sewer, septic hauler or plumbing inspector II relative to the construction, structural condition, capacities, baffles and manhole covers for the existing treatment tanks and the capacity of any additional treatment tanks required to

accommodate the increased wastewater load; and

**5.** Information provided by a certified soil tester, a licensed master plumber, master plumber–restricted sewer or plumbing inspector II showing that the system is not causing backup of sewage into the structure served, nor discharge of sewage to the surface of the ground or to a drain tile, nor discharge of sewage to any surface waters of the state.

**(d) Determination on soil conditions.**

**1.** If the existing private sewage system is a failing system, the division shall order the system to be replaced.

**2.** If the existing private sewage system is installed in mottled soils, the owner may request a variance to use the existing system and perform groundwater monitoring to verify seasonal saturation conditions under Ch. SPS 385, Wis. Admin. Code.

**(e) Determination on tanks. 1.** If the existing treatment tank(s) have no manhole opening, are cracked, deteriorated or constructed of materials that are not watertight or are not approved materials listed in Ch. SPS 384, then the tanks shall be ordered replaced.

**2.** If the baffles in the tank(s) are deteriorated or missing, the baffles shall be ordered replaced.

**3.** If any exposed manhole opening has no manhole cover or the cover is not locked or labeled, the cover shall be ordered replaced, locked and labeled.

**4.** If the treatment tank services a 1 or 2 family dwelling and the capacity is:

**a.** Less than 500 gallons, the tank shall be ordered replaced or additional tank capacity shall be ordered;

**b.** At least 750 gallons, the existing tank may be used provided there are no more than 3 bedrooms total;

**c.** At least 750 gallons, additional tank capacity shall be ordered if there are more than 3 bedrooms or 2 or more bedrooms are added.

**5.** For any tank serving any structure other than a 1 or 2 family dwelling, additional tank capacity shall be ordered if the tank is less than 750 gallons.

**(f) Setback determinations.** All determinations on setbacks involving an increase in wastewater loads shall conform to Ch. SPS 383, Wis. Admin. Code.

**(5) Construction not affecting wastewater loads. (a)** No sanitary permit shall be required for construction that conforms to the setback requirements and that does not affect wastewater flow or contaminant load.

**(b)** The county, a city, village or town may issue a building permit for construction of:

**1.** Any structure on a property with an existing private sewage system, if the construction does not increase the wastewater load as specified in sub. (4)(b); or

**2.** An accessory structure not intended for human habitation or occupancy and not connected to a private sewage system.

**(c)** The completed construction of structures referred to in sub. (a) shall conform to the setback requirements of Ch. SPS 383, Wis. Admin. Code.

**(d)** Documentation shall be provided by the owner, licensed master plumber or master plumber–restricted sewer, certified soil tester or POWTS inspector showing the location and setback distances for the proposed construction of any structure relative to the components of the private sewage system.

**(e)** Determination of whether the location and setback distances of a proposed structure will interfere with an existing private sewage system shall be made by the division. On-site inspections may be made to verify the location and setback distances. Determinations shall be made in writing by the division and provided to the agency responsible for issuing the zoning and/or building permit.

**(f)** No building permit may be issued where setback requirements cannot be met unless:

**1.** A petition for variance is obtained from the Department of Safety and Professional Services after review and approval by the division; or

**2.** The owner agrees in writing to correct any deficiencies discovered during construction for a system that cannot be located before construction begins.

[History: 46.14 cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (3), (4), and (5) am., (4)(c)1.a. cr., OA 23, 2012-13, pub. 11/21/12; (4)(d)3. resc., 2023 OA-7, pub. 07/27/23.]

#### **46.15 PUBLIC SEWER AVAILABILITY.**

**(1)** Every building intended for human habitation or occupancy, for which public sewer is available, shall be connected to the public sewer by means of individual connections or private interceptor mains. The local sanitary district shall determine whether public sewer is available.

**(2)** When connection to a public sewer is required by sub. (1), the use of a private sewage system shall be discontinued within the period required by order of the sewer district or the division.

[History: 46.15 am., Sub. 1 to OA 8, 2000-01, pub. 04/30/01.]

**46.16 STOP WORK ORDERS.** Whenever the department finds that any activity regulated by the department under this chapter is in progress without the issuance of the required permit, the department shall post, in a conspicuous place on the premises, a stop work order which shall cause all activity to cease until the required permit is issued. Such order shall also be issued if the department determines that there is in progress any significant deviation from the requirements of an otherwise valid permit, and no further activity, as otherwise authorized by the permit, shall continue until the order is removed by the department.

[History: am., Sub. 1 to OA 8, 2007-08, pub. 10/04/07.]

**46.17 APPEALS.** Any person who feels that enforcement of this ordinance is detrimental to him or her or would create a severe hardship, or any person denied a permit by the department, may appeal such enforcement or denial to the director of environmental health who shall then hold an informal hearing, make findings of fact and either direct enforcement or the issuance of a permit or confirm its denial. The findings may be appealed to the director of the department whose review shall be confined to the record made before the director of environmental health. The appellant may appeal the decision of the director of the department to the board which may then decide the matter on the record or hold an informal hearing, make findings of fact and either direct the issuance of a permit or confirm its denial. The findings of the board shall be final. In making such determinations, the director of environmental health, the director of the department and the board shall at all times consider the best interests of the public, Dane County and public health.

[History: am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; am., OA 41, 1988-89, pub. 06/05/89.]

**46.175 PERFORMANCE STANDARDS.**

(1) *General.* The division shall implement procedures to ensure that discharges from private sewage systems are in compliance with groundwater law contamination limits. The implementation steps will follow the parameters in this section. See s. A-383.43 (7) *Estimating contaminant loads* in Ch. SPS 383, Wis. Admin. Code.

(2) The final effluent quality standards for effluent discharging from a POWTS may not exceed the limits established in this section. The standards shall be applied downstream of the last treatment component that is upstream of any

further treatment unit not capable of removing the specified contaminant.

(3) *Application.* Application for a sanitary permit for all POWTS systems must include information on the design and maintenance provisions that will achieve the quality standards, as well as the monitoring procedures that will assure proper operation of the system. Permit applications with designs that do not include this information are subject to denial.

(4) *Management.* The owner of a POWTS shall operate and maintain the system in compliance with the approved system design and maintenance provisions that were submitted with the permit application.

(a) Any POWTS that is not maintained in accordance with the approved management plans shall be considered a failing private sewage system. The use, maintenance or operation of a failed private sewage system is prohibited.

(b) Each POWTS design shall include a management plan for maintaining the design performance and operational standards required by this chapter. The management plan shall be a part of the sanitary permit application. The plan shall include all necessary information, which may include:

1. Accumulated solids or byproduct removal;
2. Influent and effluent volume and characteristics;
3. Groundwater monitoring well location(s);
4. Monitoring well construction requirements and sample procedures;
5. Monitoring/sampling port location;
6. Metering, sampling and monitoring schedules;
7. Site vegetative cover maintenance;
8. Load and rest schedules;
9. Contingency plans for events involving component or operational failure;
10. Alarms or other systems to alert owner when system is not operating properly;
11. Odor and nuisance control;
12. All maintenance requirements in terms of processes and their frequency;
13. Reporting frequency and designated reporting agent;
14. Septage disposal plan;
15. Other pertinent information as deemed necessary.

(c) Monitoring influent and effluent loads.

1. The influent loads discharging to a POWTS and/or the effluent loads from a POWTS shall be sampled and evaluated for contaminants as required in the approved package or design.

The results of the analysis shall be reported to the division by the POWTS owner or their designated agent as specified in the management plan. Dane County reserves the right to require sampling and evaluation criteria in addition to the criteria in a plan approved by the Wisconsin Department of Safety and Professional Services.

**2.** The division may require monitoring of additional constituents not originally included in the management plan.

**3.** The samples shall be collected and handled in accordance with the requirements of the approved management plan or when no procedure is specified, in accordance with published sampling procedures.

**(d)** Systems that do not utilize the natural in-situ soil for final treatment shall not be approved unless the maintenance and monitoring criteria include a special assessment by the city, village or town where the system is located. The special assessment shall be sufficient to cover the anticipated or known costs related to the maintenance and monitoring of the system on an annual basis. The funds will be transferred to a special account maintained by the division. Payment will be authorized to the contracted service provider upon proof of the maintenance or monitoring event from the provider.

**(5) Contingency plan.** All applications for a sanitary permit shall include a contingency plan that describes the procedures that must be followed at any time when the POWTS is not operating in accordance with the approved design. The plan must include specifics about the system characteristics or other safeguards that will assure that the system will not discharge untreated or partially treated effluent during any component malfunction.

**(6) Service reports.** **(a)** Reports of system servicing or maintenance shall be submitted to the division by the owner or owner's agent within 10 business days from the date of service.

**(b)** Reports shall include, but are not limited to, the following information:

1. The system owner's name, address and legal description;
2. The name and certification number of the licensed individual performing the service;
3. Information of any malfunction of system components and any repairs that were made;
4. Meter readings;
5. Pumping information;
6. Results of analysis of any effluent sampling;
7. General observations of overall system condition and performance; and

**8.** Amount of septage pumped and the time, date, location and method of disposal.

[History: 46.175 cr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (4)(b) and (6)(b) am., Sub. 1 to OA 8, 2007-08, pub. 10/04/07; (7) rep., OA 4, 2008-09, pub. 06/19/08; (1) and (4) am., OA 23, 2012-13, pub. 11/21/12.]

**46.18 MALFUNCTIONING SYSTEMS. (1)** The department may order any person owning, using, operating or installing any malfunctioning system, or any unsafe system, to repair, modify, replace or otherwise place such system in safe operating condition, provided however, that the department shall give thirty (30) days advance written notice before any such person shall be deemed in violation of this section. Failure to take substantial steps to effect a cure within the thirty (30) day period shall operate to cause a violation from the date of delivery of the notice. The thirty (30) day notice period shall be computed as beginning on the date of mailing of the required notice.

**(2)** Any malfunctioning system which results, or may reasonably be expected to result, in the pollution of any navigable body of water shall be rendered non-polluting within ten (10) days of actual notice by the department.

**(3)** In addition to the provisions of subsections (1) and (2) above, the department may issue a stop-usage order on any malfunctioning system which order shall take effect upon issuance. Issuance of such an order shall not relieve any violator from complying with orders issued under subsections (1) and (2) above. A stop-usage order shall only be issued after the department determines that a significant health hazard is presented by the malfunctioning system.

**(4)** A malfunctioning system is one which causes or results in any of the following conditions:

**(a)** The failure to accept sewage discharges and backup of sewage into the structure served by the system.

**(b)** The discharge of sewage to the surface of the ground or to a drain tile.

**(c)** The discharge of sewage to any waters of the state.

**(d)** The introduction of sewage into zones of saturation which adversely affects the operation of a system.

[History: (1) am., OA 44, 1987-88, pub. 05/28/88; (1) and (2) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97.]

#### **46.19 WATER SAMPLES.**

**(1)** Upon the request of any person or governmental agency, the department may collect water samples and deliver the same to a

laboratory for analysis. A fee as provided for in 46.23(14) may be charged for the collection of water samples under this section.

(2) The department shall forward the results obtained from the laboratory to the requesting person or agency, along with a report indicating the department's observation on the well system when also requested.

(3) The department shall not evaluate or rate the quality of the construction or physical condition of any water supply system, in any manner whatsoever, except that the department may perform a survey related to such system. Such system survey shall not involve any judgment on the quality or fitness of any water supply system. Such survey shall only be reported in a format prescribed by the board whose approvals shall be recorded in its minutes.

[History: (2) and (3) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (1) and (2) am., OA 23, 2012-13, pub. 11/21/12.]

#### **46.195 WATER SUPPLY.**

(1) Water closets, urinals, dishwashers, clothes washers, lavatories, sinks, food waste grinders and other plumbing fixtures shall be served by public water system where available. Where such public water system is not available and will not be available within a reasonable time, a private water supply system may be used.

(2) All premises intended for human occupation or occupancy shall be provided with a supply of pure and wholesome water; such supply shall not be cross-connected with an unsafe water supply nor with a waste pipe. Buildings in which water closets and other plumbing fixtures exist shall be provided with a supply of water adequate in volume and pressure for flushing purposes.

**46.20 CONSUMER INFORMATION REQUESTED.** The department shall at all times actively seek to inform the private sewage users of required maintenance standards for such systems. In so doing, the department shall have personnel available for such public service programs, panels or other means of disseminating information to the public.

[History: (1) rep., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (2) am. (unnumbered), OA 6, 2002-03, pub. 08/13/02.]

#### **46.21 FACILITIES REGULATED.**

(1) Public swimming pools and water attractions, beaches, campgrounds, hotels, motels, recreational and educational camps, tourist rooming houses, bed and breakfasts; retail food establishments, manufactured home

communities; wells; servicing of septic tanks, seepage pits, grease traps or privies; and vending machines shall be constructed, operated, performed and maintained in accordance with chapters ATCP 72, ATCP 73, ATCP 75, ATCP 76, ATCP 78, ATCP 79, SPS 390, SPS 326, NR 812, NR 113 and NR 845 of the Wis. Admin. Code, as appropriate. Each facility identified herein shall be considered a regulated facility under this chapter.

(2) Facilities regulated shall be inspected at least once every license year or as required by the applicable provisions of the Wisconsin Administrative Code, by PHMDC for compliance with the applicable Wisconsin Administrative Code and/or County Ordinance. Violations shall be noted and compliance dates set. A reinspection shall be made for all priority violations. Repeat violations shall be grounds for fines, legal action or suspension of permit. The board is authorized to adopt reasonable regulations from time to time pursuant to s. 251.135, Wis. Stats., which shall have the force of ordinance. Regulations so adopted shall be referred to the county board for incorporation into this ordinance as soon as practicable.

(3) Public beaches shall be considered to be regulated facilities under this chapter and shall be subject to the requirements hereof.

[History: (1) am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (1) through (4) am., OA 41, 1988-89, pub. 06/05/89; (1) and (4) am., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (1) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; 46.21 am., OA 31, 2010-11, pub. 12/30/10; (1) am., OA 23, 2012-13, pub. 11/21/12; (1) am., 2019 OA-15, pub. 11/20/19; (1) and (2) am., 2023 OA-8, pub. 07/27/23.]

#### **46.22 NUISANCES.**

(1) A nuisance under this section is any condition of lands or buildings which:

(a) has resulted in or has the potential to result in harm to any individual, whether by accident, disease or sickness occurring as a result of contact with such conditions, and

(b) is not required to be maintained in order to support any useful activities of the owner or user of said lands or buildings.

(2) Every owner, tenant or other user of property within Dane County shall maintain his or her lands and buildings in such a condition that they shall not become a nuisance.

(3) The department shall notify the owner, occupant or other user of lands or buildings where a nuisance is located to abate or remove such nuisance within thirty (30) days of receipt of said notice. Said notice shall be either hand delivered or be deemed given as of the second

attempted delivery date as to those letters not actually delivered.

(4) Whenever after investigation a sanitarian determines that a nuisance poses imminent danger to the health of persons unless ameliorated promptly, the department may order remedial action by the owner or occupant of the premises within 48 hours. Notice of any hazardous nuisance shall be by personal service and the department may request the services of the Dane County Sheriff's Department. A notice under this section shall clearly state the facts upon which it is based, identify the property involved and specify the remedial action to be taken.

#### **46.225 HUMAN HEALTH HAZARDS.**

(1) The department may declare housing that is dilapidated, unsafe or unsanitary to be a human health hazard.

(a) For purposes of this section, *human health hazard* has the definition set forth in s. 254.01(2), Wis. Stats.

(2) If the local health officer finds a human health hazard, he or she shall follow the procedures set forth in s. 254.59, Wis. Stats., and the procedures set forth in said section of the statutes, and acts amendatory thereto, are adopted by reference as though fully set forth herein.

[History: cr., Sub. 2 to OA 1, 1997-98, pub. 07/18/97.]

#### **46.23 FEES.**

(1)(a) The county fee for each inspection block required for the installation of a POWTS shall be \$199.00. Inspection blocks for POWTS will be assigned according to the following:

1. A POWTS system reconnection, septic tank or pump chamber only, a repair of an existing POWTS system, a process or activity intended to restore the absorptive capacity of the soil treatment or dispersal surface, or similar technologies, requires a 0.71 inspection block for the installation or process inspection.

2. A holding tank, a gravity fed or dosed below grade soil treatment POWTS system that does not include any other treatment or dispersal component, or similar technology, requires one inspection block for the system installation.

3. A POWTS system incorporating pressurized in-ground soil treatment or the repair or reconstruction of an existing mound, requires 2 inspection blocks for the system installation. This subsection shall not apply to a drip line effluent dispersal component.

4. A single pass sand filter, recirculating sand filter, split bed sand filter or similar technology requires 4 inspection blocks for the system installation.

5. A POWTS system incorporating a pressurized mound, any at-grade mound, a drip-line effluent dispersal component, or similar technology, requires 4 inspection blocks for the system installation.

6. A nonpressurized POWTS system incorporating chemical or mechanical treatment or disinfection component(s) with discharge into a soil treatment or soil dispersal component or similar technology requires 2 inspection blocks for the system installation.

7. A system component authorized in Ch. SPS 391, non-plumbing sanitation units (NPSU) or similar technology requires 1 inspection block for installation of the component.

8. A POWTS system that utilizes a technology that is added to the approved system list under s. SPS 383.61 after July 1, 2000 shall require the number of inspection blocks included as part of the approved system design, approved system package or the number of inspection blocks necessary to provide adequate assurance of proper installation as established in procedures approved by the Dane County Board of Health.

9. A POWTS system that incorporates a design for wastewater discharge less than 2,000 gallons per day shall qualify for a county fee equal to the sum of the permit review and processing fee plus the associated inspection block fee.

10. A POWTS system that incorporates a design for wastewater discharge between 2,001 and 12,000 gallons per day shall qualify for a county fee equal to the sum of the permit review fee plus the associated inspection block fee plus one additional inspection block fee for each 2,000 gallon per day increment in wastewater discharge.

(b) The county fee for the review and processing of a sanitary permit application shall be assigned according to the following:

1. The county fee for review and processing of a sanitary permit application for a POWTS system reconnection, septic tank/pump chamber only, repair of existing POWTS system, a holding tank, a gravity fed below grade soil treatment POWTS system that does not include any other treatment or dispersal component, a system component authorized in Ch. SPS 391, non-plumbing sanitation units, or other similar technologies or activities shall be \$170.00.

- 2.** The county fee for review and processing of a sanitary permit application with a POWTS design incorporating a drip line effluent dispersal component, aerobic treatment unit, dosing apparatus not connected to a pressurized distribution network or similar technology shall be \$198.00.
- 3.** The county fee for review and processing of a sanitary permit application with a POWTS design incorporating a pressurized distribution network shall be \$227.00.
- 4.** The county fee for review and processing of a sanitary permit application with a POWTS design incorporating a component claiming nitrate reduction credit, chemical or mechanical sewage treatment credit, sewage discharge disinfection credit or any treatment component that will allow final discharge into soil that is not intended to be part of the final sewage treatment process shall be \$357.00.
- 5.** The county fee for review and processing of a sanitary permit application with a POWTS design incorporating a technology that is added to the approved system list under s. SPS 383.61 after July 1, 2000, shall be \$198.00 in addition to the fee for the review and processing category closest to the POWTS design the technology is incorporated into.
  - (2)** Fees for the issuance or renewals of sanitary permits shall not be reduced below the sum specified by s. 145.19(2), Wis. Stats., or acts amendatory thereto.
  - (3)** There shall be a county fee of \$201.00 for the transfer of permits under section 46.08(5), when such transfers do not involve any site changes relating to the location of the private sewage system, and for the revision of a sanitary permit due to a change in plumber.
  - (4)** There shall be a county fee of \$227.00 for the preliminary on-site inspections of soils by the department as provided for in sections 46.10, 46.14(4)(c), and 46.45. Fees paid under this subsection shall not be used to reduce or offset the fee for the issuance of any permit under this chapter.
  - (5)** There shall be a county fee of \$239.00 for any private sewage system inspections or re-inspections which are either not included in the sanitary permit fee or are not specifically required by the plumbing code, or both.
  - (6)** There shall be a county fee of \$71.00 for a verification from the department's files of data relating to water and private sewage systems. This fee shall also be applied for review performed under s. 46.14(3)(a)4.

- (7)** There shall be an additional county fee of \$184.00 for any inspection performed after normal work hours and at the request of any person for whom performed.
- (8)** There shall be a county fee of \$148.00 for an on-site verification of a private sewage system when requested in connection with securing financing of the subject property.
- (9)** The county fee for the collection of a water sample for bacteriological analysis shall be \$148.00 plus the current analysis fee charged by the Department laboratory.
- (10)** The county fee for the collection of a water sample for fluoride and nitrate chemical analysis shall be \$148.00 plus the current analysis fee charged by the Department laboratory.
- (11)** The county fee for all services listed in subsections (8) through (10) above, when requested to be performed in one site visit, shall be \$296.00 plus the current analysis fee charged by the Department laboratory.
- (12)** Each owner of a private sewage system shall annually be charged a fee of \$12.00 for administration of the inspection programs required by s. 46.11(5). Such fee is authorized by WIS. STAT. s. 145.20(4) and will be collected in the same manner that municipalities may make property assessments pursuant to WIS. STAT. s. 66.0703.
- (13)** There shall be a county fee of \$159.00 for the application for a Wisconsin Fund grant from the department of commerce.
- (14)(a)** There shall be a county fee of \$159.00 for the revision of an issued sanitary permit that has been reviewed and approved by the department as part of a sanitary permit application. The fee in sub. (3) shall apply when the revision is due to a change of plumber.
- (b)** There shall be a county fee of \$113.00 for the review of revisions to a previously approved plan that is submitted to the county pursuant to Wis. Admin. Code s. SPS 383.22(1)(c).
- (15)(a)** The fee for the review of a holding tank plan for a residential structure shall be as follows:

<u>Holding tank capacity:</u>	<u>Fee</u>
0-5,000 gallons	\$ 99.00
5,001-10,000 gallons	\$ 165.00
more than 10,000 gallons	\$ 248.00
- (b)** The fee for the review of a holding tank for a commercial structure shall be as set forth in sub. 16(a).

**(16)(a)** The fee for review and processing of a plan that is submitted to the county pursuant to Wis. Admin. Code sec. SPS 383.22(1)(c), shall be as follows:

<u>Design wastewater flow</u>	<u>Fee</u>
1,000 gpd or less	\$ 275.00
1,001-2,000 gpd	\$ 358.00
2,001-5,000 gpd	\$ 440.00

**(b)** There shall be a fee of \$88.00 per hour for review and processing of a plan to replace a septic tank, add effluent filters or other pretreatment devices, or otherwise alter an existing system that was approved under Wis. Admin. Code s. SPS 383.22(1)(c).

**(17)** The fee for the review and processing of an application for an annual septage landspreading permit shall be \$65.00.

**(18)** Where work has begun to install, repair, modify, extend, enlarge, convert, reconnect or structurally alter a private sewage system or any component thereof before a sanitary permit has been obtained, and s. 46.07(2) has not been complied with, the fee shall be doubled.

**[History:** (1) through (18) am., (22) cr., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (3) am., OA 41, 1988-89, pub. 06/05/89; (19) am., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (6) am., Sub. 1 to OA 1, 1992-93, pub. 07/01/92; (1), (2), (4) - (18) and (22) am., and (19) - (21) rep., OA 24, 1994-95, pub. 01/18/95; (17) am., OA 36, 1996-97, pub. 03/03/97; (9) - (12) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; 46.23 am., OA 24, 1997-98, pub. 03/17/98; 46.23 am., OA 33, 2000-01, pub. 04/17/01; 46.23 rep. & recr., Sub. 1 to OA 8, 2000-01, pub. 04/30/01; (15) cr., OA 6, 2002-03, pub. 08/13/02; (15) (see footnote below) cr., OA 19, 2002-03, pub. 03/04/03; (15) am. and error of Art. 3 of OA 19, 2002-03, corrected to correctly reference 46.23(16) instead of duplicating (15) and readopted as (16), OA 8, 2003-04, pub. 09/12/03; 46.23 am., OA 37, 2003-04, pub. 04/28/04; 46.23 am., OA 25, 2006-07, pub. 12/29/06, eff. 01/01/07; (4) am. and (17) cr., Sub. 1 to OA 8, 2007-08, pub. 10/04/07; 46.23 am., OA 31, 2009-10, pub. 11/25/09, eff. 01/01/10; (12) am., OA 38, 2009-10, pub. 11/25/09, eff. 01/01/10; (1), (3)-(5), (7)-(11), (14) and (16) am., OA 23, 2012-13, pub. 11/21/12; 46.23 am., 2019 OA-15, pub. 11/20/19; 46.23 am., 2023 OA-67, pub. 01/02/2024.]

#### **46.24 REDUCED FEES.**

**(1)** All fees required by this chapter are to be paid in advance. The department may require payment by cash, certified check or money order in the event of any prior adverse credit experience with any applicant.

**(2)** Any person may apply to the board to have any fees reduced or waived under this section. No reduction of fees or waiver of fees shall be made unless the board shall find that the imposition of the fees required by this chapter will work an unnecessary hardship upon the applicant.

**(3)** Fees for the issuance or renewals of sanitary permits shall not be reduced below the

sum specified by s. 145.19(2), Wis. Stats., or acts amendatory thereto.

**[History:** (3) am., OA 41, 1988-89, pub. 06/05/89.]

**46.25 PROHIBITED PRACTICES.** It shall be a violation of this chapter to:

**(1)** Refuse or neglect to obey any lawful order of the department.

**(2)** Construct, install, extend, enlarge, convert, reconnect, structurally alter or modify any private sewage system without first obtaining a sanitary permit, except as provided in section 46.07(2).

**(3)** Construct, extend, enlarge, convert, reconnect, structurally alter, modify or maintain any private sewage system in such a manner that untreated sewage enters any surface or subsurface waters or flows onto any surface land.

**(4)** Continue construction or alteration of any private sewage system after a stop work order has been issued under section 46.16.

**(5)** Install a private sewage system or use or maintain a private sewage system when public sewer is available.

**(6)** Construct or maintain any private sewage system within any area designated as a floodplain within Dane County.

**(7)** Install or permit or direct others to install any private sewage system unless such installer or person acting under his or her direction is properly licensed by the State of Wisconsin to install such systems.

**(8)** Leave exposed and unfilled any on-site bore pits for more than thirty (30) days, regardless of request for on-site soil evaluation, or after notification of approval or disapproval of the site by the department, with possible extension, after application, at the discretion of the department.

**(9)** Remove or mutilate any stop work orders signed and posted on any premises by the department.

**(10)** Continue to use any malfunctioning system after issuance of a stop-usage order, under section 46.18(3).

**(11)** Fail to remove or abate any nuisance within thirty (30) days after receipt of a notice from the department.

**(12)** Fail to have a private sewage system inspected and/or serviced as required by section 46.11(4).

**(13)** Operate any facility licensed by the State of Wisconsin without first obtaining the required license.

(14) Operate any facility licensed by the County of Dane without first obtaining the required license.

(15) Fail to pump any septic tank or holding tank when required to do so by an order of the department.

(16) Fail to maintain adequate pumping records when required to do so by order of the department.

[History: (5) am., OA 33, 1992-93, pub. 04/14/93; (2), (3) and (8) am., Sub. 2 to OA 1, 1997-98, pub. 07/18/97.]

**46.26 COMPLAINTS.** The department shall inspect any premises complained of and shall keep a written record of all such complaints except that the name of any complaining individual shall not be noted therein if such individual requests anonymity.

**46.27 PENALTIES.** (1) Except as provided in sub. (2), any person violating any provision of this chapter shall forfeit not less than \$50 nor more than \$200 for each day that a violation exists.

(2) Any person violating any provision of section 46.45(7) shall forfeit not less than \$10 nor more than \$5,000 for each day that a violation exists.

(3) Any person who has the ability to pay any forfeiture entered against him or her under this chapter but refuses to do so may be confined in the county jail until such forfeiture is paid, but in no event to exceed thirty (30) days. In determining whether an individual has the ability to pay a forfeiture imposed under this section all items of income and all assets may be considered regardless of whether or not such income or assets are subject to garnishment, lien or attachment by judgment creditors under the laws of this state.

[History: (1) am., OA 17, 2000-01, pub. 01/16/01, eff. 01/17/01; am., sub. 1 to OA 8, 2007-08, pub. 10/04/07.]

**46.28 ENFORCEMENT.**

(1) The corporation counsel shall prosecute all violations of this chapter at the request of the department or of the board.

(2) The corporation counsel may seek an injunction in any case it deems appropriate, in addition to an action to collect a forfeiture.

**46.29 ABROGATION AND GREATER RESTRICTIONS.** It is not intended by this chapter to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or

issued pursuant to law. However, wherever this chapter imposes greater restrictions, the provisions of this chapter shall govern.

**46.30 INTERPRETATION.** In their interpretation and application, the provisions of this chapter shall be held to minimum requirements and shall be liberally construed in favor of the county and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

**46.31 CONFLICTS WITH OTHER REGULATIONS.** In any case where a provision of these regulations is found to be in conflict with a provision of any other regulation of the County of Dane or the State of Wisconsin, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. These regulations shall be construed liberally in favor of the County of Dane and for the utmost protection of the public health.

**46.32 NON-LIABILITY.** The county does not guarantee, warrant or represent the safe and proper operation of waste disposal systems located, constructed and maintained in accordance with this chapter, and hereby asserts that there is no liability on the part of the board of supervisors, its agencies or employees for any health hazards or damages that may occur as a result of reliance upon, and compliance with, this chapter.

**46.33 RETAIL FOOD ESTABLISHMENTS, LODGING FACILITIES, PUBLIC SWIMMING POOLS, BEACHES, CAMPGROUNDS, MANUFACTURED HOME COMMUNITIES, AND RECREATIONAL AND EDUCATIONAL CAMPS.**

(1) *Introduction.* Dane County does hereby adopt the following regulations governing the inspection, maintenance and operation of vending machines, swimming pools and water attractions, beaches, manufactured home communities, campgrounds, hotels, motels, recreational and educational camps, tourist rooming houses, bed and breakfasts, retail food establishments, construction of wells; servicing of septic tanks, seepage pits, grease traps or privies; and the issuance, suspension and revocation of permits to operators of such facilities or persons engaging in such activities.

(2) *Types of facilities and activities regulated.* All vending machines, swimming pools and

water attractions, beaches, manufactured home communities, campgrounds, hotels, motels, recreational and educational camps, tourist rooming houses, bed and breakfasts, retail food establishments, construction of wells and the servicing of septic tanks, seepage pits, grease traps or privies, subject to the provisions of the Wisconsin Administrative Code, shall also be governed by this section. Hereafter, in this section, such facilities are referred to as regulated facilities and regulated activities, respectively.

**(3) Effect of regulations.** The inspection and examination of regulated facilities within the County of Dane, the issuance and revocation of permits for regulated facilities, and the fixing of penalties shall be done in accordance with the terms of this section.

**(4) Permits required.** From and after the date on which this section takes effect, no operator of any regulated facility shall operate, maintain or establish any such facility unless he or she first has in his or her possession a valid permit issued by the health officer. Within 30 days after receiving a completed application, the department shall either approve the application and issue a permit or deny the application. If the application for a permit is denied, the department shall give the applicant reasons, in writing, for the denial. Any applicant denied a permit may appeal such denial to the panel established by subsection (7) of this section and according to the procedures specified therein.

**(5) Revocations.** Whenever any regulated facility or regulated activity fails to meet the standards established by chapters ATCP 72, ATCP 73, ATCP 75, ATCP 76, ATCP 78, ATCP 79, SPS 326, SPS 390 of the Wisconsin Administrative Code or any provision of the Dane County Ordinances, the health officer is authorized to seek revocation of the operator's permit. In addition, the health officer is authorized to initiate legal action against the operator, in conjunction with the corporation counsel's office.

**(6) Notice required.** Prior to seeking revocation the health officer shall give a notice to the operator of the officer's intention to seek revocation, specifying the basis for the proposed revocation and the remedies which may be undertaken by the operator to avoid revocation. Said notice shall also specify the date, time and place of the revocation hearing which shall be at least twenty (20) days from the date of the notice. Issuance of a revocation notice does not preclude suspension under subsection (8) of this

section and suspension may be imposed during the pendency of revocation proceedings.

**(7) Revocation hearing.** All revocation proceedings shall be conducted before a three (3) member panel comprised of members of the board of health appointed by the board's chairperson. The health officer and the operator may present evidence in the form of testimony and exhibits, may cross-examine witnesses, make objections and make argument to the panel. The panel shall receive evidence having a reasonable bearing upon the case and may give such weight to the evidence as is warranted under all the facts of the case. Any operator aggrieved by a decision of the panel may appeal such decision in the manner provided for by law.

**(8) Suspensions for imminent danger.** In cases where the continued operation of any regulated facility poses a threat of imminent danger to the health or safety of the public, the health officer may immediately suspend the operator's permit and such a suspension shall require that the regulated facility be immediately closed to the public. Any operator of a regulated facility whose permit has been suspended may request a reinspection at any time when he or she believes that his or her facility no longer poses a threat of imminent danger to the public health or safety. The health officer shall maintain adequate records specifying the facts and reasons for his or her actions in suspending the operating permit of any regulated facility and such record shall be available to the operator upon request. No suspension shall remain in effect longer than reasonably necessary to protect the public health and safety.

**(9) Hearing on suspension.** Any operator aggrieved by an order of suspension issued by the health officer may appeal such a decision to the board of health. The chairperson of the board of health is authorized to appoint a three (3) member panel to hear such appeal in the same manner as appeals under subsection (6) above. Such appeals shall be heard as quickly as possible and in any event not later than ten (10) days, exclusive of Saturdays, Sundays and legal holidays, of the date of receipt of a request for such appeal, or within such extension thereof as the operator may request.

**(10) Violations, how prosecuted.** In addition to the suspension and revocation provisions of this section, violations of this section and pertinent state and county laws shall be prosecuted and punished as provided by the Wisconsin Statutes or by any ordinances passed by Dane County adopting this section by reference. When an act

is a violation of both this section, any ordinance or an applicable statute, the person committing such act may be prosecuted under not more than one provision. Each and every violation of this section shall constitute a separate offense. Each day of violation shall constitute a separate offense.

**[History:** (1), (2) and (5) am., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (4) am., Sub. 1 to OA 1, 1992-93, pub. 07/01/92; (1), (2), and (5) am., OA 31, 2010-11, pub. 12/30/10; (5) am., OA 23, 2012-13, pub. 11/21/12; 46.33 title and (5) am., 2016 OA-48, pub. 11/25/16; (1), (2), and (5) am., (11) resc., 2023 OA-8, pub. 07/27/23.]

**46.34 COUNTY FEES.**

**(1)** Public Health Department license fees shall be determined by the Board of Health. County fees for permits required by s. 46.33 shall be established by the County Board and published in the Public Health Madison and Dane County Fee Schedule, which shall be publicly available at the County Clerk’s Office and posted on the Department’s website.

**(a)** Inspection. Public Health Madison and Dane County may charge a transient operator licensed with the State of Wisconsin or another Wisconsin municipality an inspection fee of \$25 per day.

**(b)** Reinspection. If Public Health Madison and Dane County reinspects a regulated business because Public Health Madison and Dane County finds a violation of this Chapter, Public Health Madison and Dane County shall charge the operator a reinspection fee. The reinspection fee for the food and drink permit shall be based upon the anticipated gross annual food and drink sales for the licensing year as set forth in the table below. The reinspection fee for a hotel, motel, tourist rooming house, bed and breakfast establishment permit; a public swimming pool permit; or a recreational and educational camp, manufactured home community, beaches or campground permit shall be \$150 for the first reinspection and \$250 for subsequent reinspections. There is no reinspection fee for micromarkets. A reinspection fee is payable when the reinspection is completed, and is due upon written demand from Public Health Madison and Dane County.

<i>Anticipated Gross Annual Food and Drink Sales</i>	<i>First Re-inspection Fee</i>	<i>Subsequent Reinspection Fee</i>
\$0 - \$10,000	\$25	\$50
\$10,001 - \$100,000	\$50	\$75
\$100,001 - \$250,000	\$75	\$150
\$250,001 - \$500,000	\$150	\$250

\$500,001 - \$1,000,000	\$250	\$500
\$1,000,001 - \$5,000,000	\$500	\$750
Greater than \$5,000,000	\$750	\$1,000

**(c)** Plan Review Requirement and Fee. Public Health Madison and Dane County shall require an operator of a new or extensively remodeled food establishment to submit equipment layout plans, equipment schedules, detailed descriptions of food processing operations, and menus for review as requested. Public Health Madison and Dane County shall charge the establishment owner or operator of a new food establishment the plan review fee based upon the anticipated gross annual food and drink sales for the licensing year as set forth in the table below. The plan review fee for a new hotel, motel, tourist rooming house, bed and breakfast establishment permit; a public swimming pool permit or a recreational and educational camp, manufactured home community, beaches or campground permit shall be \$375 and \$250 for an existing establishment that will be extensively remodeled. Micromarkets are exempt from plan review fees.

<i>Anticipated Gross Annual Food and Drink Sales</i>	<i>Plan Review/Pre-inspection Fee</i>
\$0 - \$10,000	\$375
\$10,001 - \$100,000	\$400
\$100,001 - \$250,000	\$450
\$250,001 - \$500,000	\$500
\$500,001 - \$1,000,000	\$600
\$1,000,001 - \$5,000,000	\$700
Greater than \$5,000,000	\$800

**(d)** Fees for Special Conditions Inspections. Public Health Madison and Dane County may charge for any inspection or consultation services that are not directly related to Public Health Madison and Dane County’s permitting and licensing responsibilities. Public Health Madison and Dane County may charge the operator or owner of an entity requesting the inspection or consultation a fee of \$250.

**(e)** Fees for Hazard Analysis and Critical Control Point (“HACCP”) Plan Review. Public Health Madison and Dane County may charge a fee of \$100 for any HACCP plan review or subsequent annual verification to the operator or entity required by law to submit an HACCP plan

for approval. A separate HACCP plan review fee shall be paid for each HACCP plan.

(2) Pre-inspections. Pursuant to the authority set forth in s. 97.615, Wisconsin Statutes, the fee for a pre-inspection shall be based upon the anticipated gross annual food and drink sales for the licensing year as set forth in the table in 46.34(6)(g)3. A separate pre-inspection fee shall be paid for each category of permit or license. The pre-inspection fee for food and drink establishments that are primarily retail and do not engage in food processing shall be \$100 for each pre-inspection. The pre-inspection fee for a hotel, motel, tourist rooming house, bed and breakfast establishment permit; a public swimming pool permit; or a recreational and educational camp, manufactured home community, beaches or campground permit shall be \$375. Micromarkets are exempt from pre-inspection fees.

(3) *Fees for operating without a license.* Any operator of an enterprise requiring a food and drink license; a hotel, motel, tourist rooming house, bed and breakfast establishment license; a public swimming pool license; or recreational and educational camp, manufactured home community, beaches, or campground license; a tattooing and body piercing license, found to be operating without a license, shall pay to the department a forfeiture of \$250.00, in addition to applicable fees.

(4) *Fee for operating without a Wisconsin certified food manager.* The department shall charge the operator of a restaurant a forfeiture of \$150.00 for operating without a Wisconsin certified food manager.

**[History:** (1)-(13) am., sub. 1 to OA 11, 1987-88, pub. 10/03/87; (6) am., OA 44, 1987-88, pub. 05/28/88; (6), (6)(a), (13) and (14)(a) & (b) am., OA 41, 1988-89, pub. 06/05/89; (13) and (14)(a) am., OA 2, 1990-91, pub. 06/01/90; (1) am., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (1)-(13) am., OA 24, 1994-95, pub. 01/18/95; (1)-(9), (11) and (13) am., OA 24, 1997-98, pub. 03/17/98; (6), (7) and (13) am., Sub. 1 to OA 1, 1999-2000, pub. 06/01/99; 46.34 am., OA 33, 2000-01, pub. 04/17/01; (4) am., OA 6, 2002-03, pub. 08/13/02; (6) and (6)(a) am., OA 9, 2003-04, pub. 09/12/03; 46.34 am., OA 37, 2003-04, pub. 04/28/04; 46.34 am., (11) and (12) rep., OA 25, 2006-07, pub. 12/29/06, eff. 01/01/07; 46.34 am., OA 40, 2007-08, pub. 02/01/08; (6)(f) am., (11) and (12) cr., OA 31, 2010-11, pub. 12/30/10; (2), (6)-(10) am, OA 24, 2012-13, pub. 11/21/12; (6)(c) am., 2015 OA-08, pub. 07/10/15; (6), (8)-(10) am., 2016 OA-48, pub. 11/25/16; (6)(d)3. am., 2018 OA-4, pub. 10/2/18; (1) and (3) – (10) am., 2019 OA-16, pub. 11/20/19; (1), (3) – (5), (6)(c), (6)(e), (6)(g)2., (7) – (9) am., 2020 OA-43, pub. 12/31/20; 46.34 am., 2022 OA-39, pub. 11/21/22; (1)(a)-(c), (2), (3), am., 2023 OA-8, pub. 07/27/23.]

**[History:** 46.345 cr., Sub. 1 to OA 1, 1999-2000, pub. 06/01/99; 46.345 resc., 2023 OA-8, pub. 07/27/23.]

### **46.35 LATE CHARGES, PERMIT RENEWALS, DUPLICATE PERMITS.**

(1) In each instance where a fee required under subsections (1) through (5), inclusive, of section 46.34 is not paid when due, the director of environmental health shall collect a late fee equal to 15% of the applicable permit fee.

(2) As used in this subsection, permit refers to any annual permit required by section 46.34 and permitted facility refers to any facility the operation of which requires any such permit. Between June 30 and July 31 of any year, the department shall not issue a permit unless the applicant submits payment of the required renewal fee and penalty. After July 31, the department shall not renew expired permits and all applications for permits received after that date shall be treated as applications for new permits. Any person who conducts, maintains, manages or operates any permitted facility between June 30 and July 31 is obligated to pay the appropriate permit fee, and the corporation counsel is authorized to commence an action for the recovery of the fee. After July 31 no person may conduct, manage, maintain or operate any permitted facility unless a current permit is in effect. In order to assist permittees in the renewal of permits, the department shall annually, on or before July 15, send notice of delinquent status to permittees who have not renewed expired permits, however, failure to send such notice shall not create any right to continued operation of the facility after July 31.

(3) A \$5.00 fee shall be collected for issuing a duplicate permit to any facility that has previously been issued an operating permit during the current permit year.

**[History:** cr., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (3) cr., OA 44, 1987-88, pub. 05/28/88; (1) - (4) am., Sub. 1 to OA 1, 1992-93, pub. 07/01/92, am. of (1) and (2) eff. 01/01/93; 46.35 am., OA 37, 2003-04, pub. 04/28/04; (1), (3) and (4) am., OA 25, 2006-07, pub. 12/29/06, eff. 01/01/07; (1) – (4) am., OA 40, 2007-08, pub. 02/01/08; (2) resc., (3) and (4) renum., 2023 OA-8, pub. 07/27/23.]

### **46.36 RELATIONSHIP OF COUNTY FEES TO OTHER FEES.**

(1) The fees set forth in sections 46.23, 46.34 and 46.35 are county fees and are in addition to any state fees which may be imposed for the same activity or subject matter. No part of any state fee which is refunded to the county or which is allowed to be retained by the county shall be included in calculating the county fee under this ordinance.

**[History:** cr., Sub. 1 to OA 11, 1987-88, pub. 10/03/87.]

**46.37 TRANSIENT RETAIL FOOD ESTABLISHMENT.** Without regard to whether a transient retail food establishment operation is required to obtain a license under state law, the department is authorized to inspect any such operation at any time and to issue a cease operations order if unsanitary conditions are found to exist. The department shall cause any such order to be posted in a prominent and conspicuous place on the premises.

[History: cr., Sub. 1 to OA 11, 1987-88, pub. 10/03/87; (1) am., OA 17, 2000-01, pub. 01/16/01, eff. 01/17/01; (1) and (2) am., 2016 OA-48, pub. 11/25/16; 46.37 am., 2023 OA-8, pub. 07/27/23.]

**46.38 RETURNED CHECKS.** In the event a check accepted in payment of a fee is returned as NSF (insufficient funds in account) or because the account is closed, the applicant shall pay a Twenty Dollar (\$20.00) handling fee. Failure to reimburse the county for the returned check or to pay the handling fee shall result in the revocation of the applicant's license effective ten (10) days after mailing, by certified mail, of a revocation notice to the applicant at his or her last known address. A permittee whose license is revoked under this section shall submit an application for and obtain a new license before recommencing operations.

[History: cr., OA 44, 1987-88, pub. 05/28/88.]

[46.39 reserved.]

[History: 46.40 cr., Sub. 2 to OA 1, 1997-98, pub. 07/18/97; (2)(b) and (4) am., Sub. 1 to OA 1, 1999-2000, pub. 06/01/99; (1) am., OA 6, 2002-03, pub. 08/13/02; 46.40 rep., OA 38, 2009-10, pub. 11/25/09, eff. 01/01/10.]

**46.40 PREVENTION, SUPPRESSION AND CONTROL OF COMMUNICABLE DISEASES.**

(1) *Duty of Director, Public Health Madison and Dane County.* Pursuant to Wis. Stat. ss. 252.03(1) & (2) the Director of Public Health Madison and Dane County shall promptly take all measures necessary to prevent, suppress and control communicable diseases within Dane County, including forbidding public gatherings when deemed necessary to control outbreaks or epidemics.

(2) *Public Health Orders.* It shall be a violation of this chapter to refuse to obey an Order of the Director of Public Health Madison and Dane County entered to prevent, suppress or control communicable disease pursuant to Wis. Stat s. 252.03.

(3) *Physicians to Report Existence of Communicable Diseases.* A physician knowing or having reason to know that a person treated

or visited by him or her has a communicable disease, or having such disease, has died, shall report the same to the Director of Public Health Madison and Dane County within 24 hours in compliance with Wis. Stat. s. 252.05(1).

(4) *Quarantine.* No person, whether afflicted with any communicable disease as defined in chapter 252 of the Wisconsin Statutes, or not, shall visit or depart from any premises which shall have been quarantined by the Director of Public Health Madison and Dane County until given permission by such Director of Public Health Madison and Dane County.

(5) *Removal of Persons Afflicted With Communicable Disease.* The Director of Public Health Madison and Dane County is authorized to order the removal of a person afflicted with a communicable disease to a place of quarantine or other separate place if it can be done without danger to the person's health.

[History: cr., 2020 OA-2, pub. 06/01/20.]

[46.41 – 46.44 reserved.]

[History: 46.42 cr., Sub. 1 to OA 1, 1999-2000, pub. 06/01/99; 46.42 rep., OA 38, 2009-10, pub. 11/25/09, eff. 01/01/10.]

**46.45 LAND DISPOSAL OF SEPTAGE.** This section is enacted under the authority of section 281.48(5m), Wis. Stats.

(1) Except as provided in sub. (3), no person may dispose of septage by landspreading unless the person is certified as an operator of a septage servicing vehicle by the Wisconsin Department of Natural Resources.

(2) Except as provided in sub. (3), no person may dispose of septage by landspreading except upon lands for which an annual septage landspreading permit has been issued by the department.

(3) A farmer may dispose of septage by spreading it upon land owned or leased by the farmer if all of the following criteria are met:

(a) The septage is removed from a septic tank that is located on the same parcel where the septage is landspread;

(b) Prior to landspreading the septage, the farmer provides the department with documentation that there is sufficient land area available for disposal; and

(c) The removal and disposal of the septage complies with all applicable statutes, administrative rules and the provisions of this chapter governing the removal and landspreading of septage including, but not limited to, soil requirements, the set back, timing

and seasonal restrictions, and pathogen control and vector reduction requirements included therein.

**(4) Site approval application.** Except as provided in sub. (3), at least seven days prior to disposing of septage by landspreading, the following information shall be provided to the department:

**(a)** A map delineating property boundaries or aerial photograph or U.S. geological survey topographic map with the field outlined and a scale attached for easy reference.

**(b)** A soil evaluation report. The soil evaluation report must be in writing and completed by a certified soil tester. The soil evaluation report shall include, at a minimum:

1. A report on soil conditions, properties and permeability, depth to zones of soil saturation, depth to bedrock, and potential for flooding;

2. Soil borings for all high use fields and for low use fields that have a high degree of variability or where detailed and reliable soil conservation or survey maps are not available. Department staff shall be notified at least three working days prior to the scheduled borings and shall be on-site to verify that the process by which the soil borings are obtained is in accordance with the requirements of Chapter Comm. 85, Wis. Admin. Code; and

3. Soil investigation data must be collected, validated and signed by a certified soil tester and submitted to the department within 30 days of the completion of soil testing.

**(c)** A site evaluation report that complies with the requirements of Chapter Comm. 85.40(3)(a), Wis. Admin. Code, and also includes the location of any designated critical habitat where there are or may be endangered or threatened species and the location of any designated historical sites. The site evaluation shall be completed by a certified soil tester.

**(d)** Completed department landspreading site evaluation form.

**(e)** Any other information or documentation determined necessary by the department to adequately evaluate the suitability of a proposed site for the land spreading of septage.

**(5) Septage landspreading permit.** Within seven days after receipt of the forms and documents described in sub. (4), the department shall either issue a septage landspreading permit, issue a written decision denying the permit or, if the reports are not acceptable, notify the applicant in writing of the deficiencies in the report and the actions necessary to bring the report into compliance with this chapter. Failure of the

department to respond as set forth in this subsection within seven days indicates that landspreading is allowed until and unless the permit is denied by the department under this section. The department's determination shall be based upon the criteria established by Wisconsin Statutes, administrative rules and the provisions of this chapter. If the permit is denied, the department shall mail written notice of the denial to the permit applicant explaining the reasons for the denial and notifying the person or business of the procedure for seeking a review of the denial decision, as provided in § 46.055 of this chapter.

**(6) Pathogen and vector attraction reduction requirements.** **(a)** Pathogens shall be reduced by one of the following methods:

1. At least 30 minutes prior to landspreading, the pH of the septage in each container that will be spread shall be raised to 12 or higher by the addition of alkali, and without the addition of more alkali, the pH shall remain at 12 or higher for at least 30 minutes prior to spreading; or

2. The following harvesting time and site restrictions shall be followed:

**a.** Food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface may not be harvested for 14 months after application of septage.

**b.** Food crops with harvested parts below the surface of the land may not be harvested for 20 months after application of septage when the septage remains on the land surface for four months or longer prior to incorporation into the soil.

**c.** Food crops with harvested parts below the surface of the land may not be harvested for 38 months after application of septage when the septage remains on the land surface for less than four months prior to application into the soil.

**d.** Animals may not be allowed to graze on the land for 30 days after application of septage.

**e.** Fiber crops and feed crops may not be harvested for 30 days following application of septage.

**f.** Turf grown on land where septage is applied may not be harvested for one year after application of the septage when the harvested turf is placed either on land with a high potential for public exposure or a lawn.

**g.** Public access to land with a high potential for public exposure shall be restricted for one year after the application of septage.

**h.** Public access to land with a low potential for public exposure shall be restricted for 30 days after the application of septage.

**(b)** One of the following vector attraction reduction requirements shall be met when septage is applied to land:

1. Septage is injected below the surface of the land such that no significant amount of the septage shall be present on the land surface within one hour after septage is injected; or
2. Septage applied to the land surface shall be incorporated into the soil within six hours after application to, or placement on, the land; or
3. At least 30 minutes prior to landspreading, the pH of the septage in each container that will be spread, shall be raised to 12 or higher by the addition of alkali, and without the addition of more alkali, the pH shall remain at 12 or higher for at least 30 minutes prior to spreading.

**(7) Prohibited practices. (a)** Septage may not be landspread except as permitted or allowed under the authority of this chapter.

**(b)** Septage may not be landspread except on agricultural land.

**(c)** Septage may not be spread on any land without the owner's permission.

**(d)** Septage may not be landspread on soils that fail to meet the permeability rates or water holding capacities provided in Chapter NR 113, Wis. Admin. Code.

**(e)** Septage may not be landspread or discharged into or on any wetlands or areas subject to ponding, including any ditch, dry run, pond, lake, stream, flowage, floodplain, cave, sinkhole, mine, gravel pit or quarry.

**(f)** Septage may not be landspread on or into soils with a seasonal high ground water level at a depth from the surface of less than one foot.

**(g)** Septage may not be landspread on or into soils with a seasonal high groundwater level of less than three feet from the land surface unless the landspreading is limited to times when the soil is not saturated within three feet of the surface.

**(h)** Septage may not be landspread on saturated soils during rainfall events or in areas of ponded waters.

**(i)** Septage may not be spread on frozen or snow covered ground.

**(j)** Septage may not be landspread except within the minimum separation and maximum slope requirements found in Chapter NR 113, Wis. Admin. Code.

**(k)** Septage may not be landspread unless there is maintained at least a two-foot wide grass strip at the property line down slope from the application site.

**(L)** Septage may not be landspread where it is likely to adversely affect a threatened or

endangered species or its designated critical habitat.

**(m)** Septage may not be landspread where it is likely to adversely affect a designated historical site.

**(n)** Septage that is land applied based upon the agronomic crop requirements may not be applied more than ten months prior to the planting of the crop.

**(o)** Septage may not be landspread on hay fields after the new growth of hay has reached six inches.

**(p)** Landspreading vehicles shall be moving forward at all times while spreading septage.

**(q)** Septage shall not be permitted to pond on the surface of the land at any time.

**(r)** All litter from the landspreading of septage shall be removed immediately.

**(s)** Septage may not be landspread at rates which will supply available nitrogen at amounts greater than the agronomic need for the crop grown as calculated pursuant to Chapter NR 113, Wis. Admin. Code.

**(t)** The hydraulic loading rate of septage application shall be limited by soil characteristics but under no conditions shall it exceed 13,000 gallons per acre per week.

[History: 46.45 cr., Sub. 1 to OA 8, 2007-08, pub. 10/04/07.]

[46.46 - 46.49 reserved.]

**46.50 DEFINITIONS.** As used in sections 46.51 through 46.59, inclusive, the following words and phrases have the meanings indicated:

**(1) Sanitary survey** means an inspection and water sampling of the swimming area and the entire watershed contributing to the body of water on which the beach is located in order to determine the bacteriological, biological, chemical and physical quality of the water using generally accepted parameters and, specifically, those included in this ordinance.

[History: cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90.]

**46.51 SANITARY SURVEY REQUIRED.**

**(1)** With respect to public beaches existing before the effective date of this subchapter, a sanitary survey may be conducted at any time and may be required when the water quality at the beach does not comply with s. 46.54(1) through (3), inclusive.

**(2)** A sanitary survey shall be conducted by the division or a person acceptable to the division before construction or development of a new beach is started.

(3) The sanitary survey shall include the entire watershed if possible. For a large watershed, the area to be surveyed shall be based on knowledge of the area. A complete survey may not be required if a lack of water quality has a known and verifiable source. In all cases, any source of discharge into the surface water in the shed which may have an effect on the water quality of the swimming area shall be included in the survey. Other agencies monitoring water in the watershed shall be contacted for information on possible contaminating discharges. Included shall be any other notable conditions in the watershed or swimming area which may contribute to unacceptable water quality or unsafe conditions as may be determined by the inspecting agency.

[History: cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90.]

[46.52 reserved.]

#### 46.53 BEACH WATER SAMPLING.

(1) At least one set of bacteriological samples shall be collected from representative locations throughout the swimming area one time per week during the swimming season and at periods of peak usage. The samples shall be submitted to a laboratory certified under chapter HSS 165 to perform water microbiological analysis. A set of samples shall be all samples collected during any one day. The required samples may be collected by the beach operator or the division.

(2) Samples shall be collected within one foot of the surface in knee-deep water.

[History: cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (1) am., OA 33, 1992-93, pub. 04/14/93; am. OA 25, 2012-13, pub. 11/14/12.]

#### 46.54 CLOSING OF PUBLIC BEACHES.

When one or more of the following subsections are not complied with, the beach shall be closed to the public until compliance is achieved.

(1) *Microbiological quality.* A beach must be closed when a beach water E.coli density of a single sample exceeds 1,000 MPN per 100 mL. When it is determined that a beach is closed, a daily sample shall be collected and analyzed during the period of closure. A beach is also closed when:

(a) A waterborne (suspected or confirmed) illness outbreak is linked to the beach;

(b) A sanitary sewer break or leak that is likely to impact a beach is reported;

(c) A sewerage or other hazardous spill impacting a beach takes place;

(d) Excessive rainfall (> 0.5 inches) during preceding 24 hours;

(e) Potentially toxic cyanobacteria population density is high and/or cyanotoxin testing determines unsafe conditions.

(2) *Chemical quality.* The water shall be free of chemical substances capable of creating toxic reactions or irritations to the skin or membranes of swimmers.

(3) *Physical quality.* As determined by visual examination the water shall be free of excessive debris, growths, oils, greases, weeds, algae or other substances capable of creating a health or safety hazard or a nuisance to swimmers. A black and white Secchi disc 6 inches in diameter on a white field placed at a depth of at least 4 feet of water may be used as a guide when determining the visibility in the water.

[History: cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (1) and (3) am., OA 33, 1992-93, pub. 04/14/93; (1) and (3) am., OA 25, 2012-13, pub. 11/14/12.]

**46.55 WATER TREATMENT.** The application of chemicals for water treatment shall be approved by the department of health and social services and the department of natural resources and shall be applied by properly trained applicators.

**46.56 REQUIREMENTS FOR NEW PUBLIC BEACHES.** (1) Prior to development, the suitability of a beach shall be established by a sanitary survey.

(2) The land boundary of a beach shall be designated by the posting of signs.

(3) The total water surface area upon which a beach is established shall be at least one acre. When the area is less than 2 acres and natural flowthrough is lacking, a source of acceptable dilution water having at least the quality specified in subs. (5) through (7) above, of at least 100 gallons per day per patron, based on the maximum bather capacity, shall be provided.

(4) A minimum of 25 square feet of water surface per swimmer shall be provided in areas less than 4 feet in depth. At least 75 square feet per swimmer shall be provided in the areas over 4 feet in depth.

(5) At least 35 square feet of open land area per patron shall be provided.

(6) For depths up to 4 feet of water, the bottom slope of the beach shall be uniform and not drop more than one inch for every 12 inches. There shall be no underwater obstructions, dropoffs or radical changes between the depths of 4 feet and 7 feet.

(7) The bottom, to a water depth of at least 6 feet, shall consist of sand, pea gravel or other approved material.

(8) The perimeter of the beach shall be clearly designated by navigation buoys approved by the United States Coast Guard as a warning to water craft. The shallow part of the swimming area should be separated from the rest of the area by means of lines attached to buoys located at a depth of 3 to 4 feet.

(9) Floating and fixed diving platforms shall be constructed with a visible 12 inch air space under the platform at the maximum feasible patron load. There shall be as little underwater construction as is consistent with adequate support and all braces and struts shall be designed to prevent entrapment of patrons.

(10) The minimum water depth surrounding floating or fixed diving platforms without special diving apparatus shall be at least 8 feet within a distance of 12 feet from the platform. For platforms with special diving apparatus such as diving boards, towers or similar devices that are 3 feet or less above the water, the depth at the end of the device shall be at least 10 feet within a 12 foot radius. For heights above water greater than 3 feet, the depth at those locations shall be at least 12 feet. No diving apparatus may be installed more than 10 feet above the water.

(11) The maximum water depth for any swimming or diving area shall be 15 feet.

(12) A supply of potable water meeting the standards of the department of natural resources, including ss. NR 109 and NR 812, shall be provided at all beaches. The water shall be obtained from a municipal water supply if it is available. At least one drinking water supply outlet for every 1,000 patrons or fraction thereof shall be provided. The supply outlet shall be protected against backflow and backsiphonage.

(13) Waste water from a bathhouse or a related facility shall be discharged to a municipal sewerage system if one is available. If one is not available, discharge shall be to a system approved by the department of industry, labor and human relations.

(14) Toilet facilities shall be provided within 500 feet of all public swimming beaches.

(15) When a bathhouse is provided, construction shall be in accordance with chapters COMM 60 to 66 and COMM 90, Wisconsin Administrative Code.

**[History:** cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (8) rep. and recr., OA 33, 1992-93, pub. 04/14/93; (12) and (15) am., OA 31, 2010-11, pub. 12/30/10.]

#### **46.57 SAFETY REQUIREMENTS FOR PUBLIC BEACHES.**

(1) At a beach designed to accommodate more than 25 swimmers where no lifeguard is on duty, a legible sign or signs reading "NO LIFEGUARD ON DUTY" shall be posted. Where lifeguards are provided, the requirements of subsections (1a), (2) and (3) shall apply.

(1a) Lifeguards shall not be in the water except in the line of duty. Lifeguards shall be isolated from beach crowds by occupying elevated seats on stands or towers, high enough to give them a complete and unobstructed view of the swimming and beach area for which they are responsible. All lifeguards on duty shall be identified by distinguishing apparel or emblem. Lifeguard stations shall be located as close as practical to the swimming area shoreline and within at least 30 feet of the shoreline.

(2) Lifeguards shall be certified in compliance with Wisconsin Administrative Code chapter HSS 172.05(2)(a)3, or acts amendatory thereto.

(3) Each lifeguard stand shall be provided with a whistle or megaphone and an umbrella.

(4) At least one 24 unit Red Cross first aid kit shall be provided at each swimming beach where a lifeguard is on duty.

(5) A spine board and 2 durable blankets shall be provided at each beach where a lifeguard is on duty.

(6) Each lifeguard stand shall be provided with at least one of the following: a ring buoy not less than 20 inches in outside diameter, a rescue buoy, a rescue tube or a torpedo buoy. The ring buoy shall be attached to a 75 foot length of 1/4 inch rope.

(8) All lifesaving equipment shall be maintained in good repair and be readily available.

(9) No glass containers for beverages shall be permitted on the beach.

(10) Swimming or bathing shall not be permitted during inclement weather as determined by the responsible person in charge of the beach operation.

**[History:** cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90; (1) and (2) rep. and recr., (1a) cr., (4) and (5) am., and (7) rep., OA 33, 1992-93, pub. 04/14/93.]

*[46.58 reserved.]*

**46.59 NIGHT SWIMMING REGULATED.** Night swimming is not permitted unless the beach area is adequately lighted. All electrical facilities shall be in compliance with chapter ILHR 16, Wisconsin Electrical Code.

**[History:** cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90.]

**46.595 VEHICLES.** No motorized vehicles except emergency and maintenance vehicles shall be permitted on the beach.

[History: cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90.]

**46.596 REGULATION OF NON-SWIMMING ACTIVITIES.** No boating, water skiing, surfboarding or sailboarding shall be permitted in the swimming area.

[History: cr., Sub. 1 to OA 7, 1990-91, pub. 07/18/90.]

**46.60 AUTHORITY; PURPOSE.** Sections 46.60 through 46.71, inclusive, are created under the authority of section 101.935, Wis. Stats., for the purpose of promoting the public health.

[History: cr., OA 41, 1988-89, pub. 06/05/89; am., OA 31, 2010-11, pub. 12/30/10; 46.60 am., 2023 OA-8, pub. 07/27/23.]

**46.61 MANUFACTURED HOME COMMUNITY PERMITS.** (1) Before a manufactured home community is opened for public use, the operator shall obtain a permit from the department by application made upon a form furnished by the department.

(2) Within 30 days after receiving a completed application, the department shall either approve the application and issue a permit or deny the application. If the application for a permit is denied, the department shall give the applicant reasons, in writing, for the denial.

[History: cr., OA 41, 1988-89, pub. 06/05/89; (1) am., OA 31, 2010-11, pub. 12/30/10.]

[History: 46.62 cr., OA 41, 1988-89, pub. 06/05/89; 46.62 resc., 2023 OA-8, pub. 07/27/23.]

*[46.62 reserved.]*

**46.63 LOCATION.** No manufactured home community or manufactured home within the community may be located in any area that is situated so that drainage of contaminated liquids or solids can be deposited on its location.

[History: cr., OA 41, 1988-89, pub. 06/05/89; am., OA 31, 2010-11, pub. 12/30/10; 46.63 am., 2023 OA-8, pub. 07/27/23.]

[History: 46.64 cr., OA 41, 1988-89, pub. 06/05/89; am., OA 31, 2010-11, publ. 12/30/10; 46.64 resc., 2023 OA-8, pub. 07/27/23.]

*[46.64 reserved.]*

**46.65 WATER SUPPLY.**

(1) When a public water supply is available to the manufactured home community, connection and use are required.

(2) A private well is permitted as a source of water when a public water facility is not available to the premises. The well shall be located on the premises and shall be constructed and the pump installed in accordance with ch. NR 112 of the Wisconsin Administrative Code rules governing well drilling and pump installation. Whenever safe water cannot be obtained consistently from a well constructed in apparent compliance with ch. NR 112 of the Wisconsin Administrative Code, as evidenced by unsafe laboratory reports, the well shall be reconstructed or a new well constructed in accordance with the requirements of the department of natural resources. However, if the reconstruction or new construction is determined to be impractical or is found to be ineffective, the use of the well shall be discontinued and water transported on a temporary basis from a source and in a manner approved by the department.

(3) The water supply shall be sampled at least annually for microbiological and chemical contamination in accordance with ch. NR 109.

(4) Bottled and packaged potable water, if used, shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

[History: cr., OA 41, 1988-89, pub. 06/05/89; (1) am., OA 31, 2010-11, pub. 12/30/10.]

[History: 46.66 cr., OA 41, 1988-89, pub. 06/05/89; (1) am., OA 31, 2010-11, pub. 12/30/10; (2) am., OA 23, 2012-13, pub. 11/21/12; 46.66 resc., 2023 OA-8, pub. 07/27/23.]

*[46.66 reserved.]*

**46.67 PLUMBING.** A separate water service shall extend to each site.

[History: cr., OA 41, 1988-89, pub. 06/05/89; (1) am., OA 23, 2012-13, pub. 11/21/12; 46.67 am., 2023 OA-8, pub. 07/27/23.]

[History: 46.68 cr., OA 41, 1988-89, pub. 06/05/89; 46.68 resc., 2023 OA-8, pub. 07/27/23.]

*[46.68 reserved.]*

**46.69 MANAGEMENT.** The operator shall cooperate with health officers in all cases of persons or animals infected or suspected of being infected with any reportable communicable disease under s. HSS 145.03(2) of the Wisconsin Administrative Code.

**[History:** cr., OA 41, 1988-89, pub. 06/05/89; am., OA 31, 2010-11, pub. 12/30/10; (1)-(3) resc., 2023 OA-8, pub. 07/27/23.]

**[History:** 46.70 cr., OA 41, 1988-89, pub. 06/05/89; am., OA 31, 2010-11, pub. 12/30/10; 46.70 resc., 2023 OA-8, pub. 07/27/23.]

*[46.70 reserved.]*

#### **46.71 ENFORCEMENT.**

**(1)** Any employee of the department, upon presenting proper identification, shall be permitted to enter any manufactured home community at any reasonable time for the purpose of inspecting the manufactured home community to determine compliance with this chapter. The department's authorized employee or agent shall be permitted to examine the records of the manufactured home community including manufactured home community registration records.

**(2) (a)** If upon inspection of a manufactured home community the authorized employee or agent of the department finds that the manufactured home community is not planned, operated or equipped as required by this chapter, the employee or agent shall, except as provided under par. (b), notify the operator in writing and shall specify the changes required to make the manufactured home community conform to the standards established in this chapter and the time period within which compliance shall take place. If the order to correct violations is not carried out by the expiration of the time period stipulated in the order, or any extension of time granted for compliance, the department may issue an order suspending or revoking the permit to operate the manufactured home community. The suspension or revocation order shall take effect 15 days after the date of issuance unless a request for a hearing has been received under sub. (3).

**(b)** Where there is reasonable cause to believe that any construction, sanitary condition, operation or method of operation of the premises of a manufactured home community or of equipment used on the premises creates an immediate danger to health, the department may without advanced written notice, issue a temporary order to remove the immediate danger to health. That order shall take effect on delivery to the operator or other person in charge

of the manufactured home community. The order shall be limited to prohibiting the continued operation or method of operation of specific equipment, requiring the premises to cease other operations or methods of operations, or a combination of these, except that if a more limited order will not remove the immediate danger to health the order may direct that all operations authorized by the permit shall cease. If, before scheduled expiration of the temporary order, the department determines that an immediate danger to health does in fact exist, the temporary order shall remain in effect. The department shall then schedule and hold a hearing under s. 46.17 unless the immediate danger to health is removed or the order is not contested and the operator and the department mutually agree that no purpose would be served by a hearing. The temporary order is effective for 14 days and may be extended for another 14 days to permit the department to complete its examination. The order expires at the end of the 14-day or 28-day period unless it is terminated by the department by notice to the operator within that period, or is kept in effect beyond that period, pending a hearing, by department notification to the operator. The hearing is to be held no later than 15 days after the notice is served on the operator unless the department and the operator agree on a later date, and the hearing officer or body must issue a final decision on the matter within 10 days after the hearing.

**(3)** Any operator aggrieved by an order of the department under this section may request a hearing under this subsection to challenge the order. A request for a hearing under this subsection or for an appeal thereof shall be received by the director of environmental health within 15 days after issuance of the order. Procedures for the hearing shall be as set forth in section 46.17. After the hearing, the presiding officer or body shall affirm, set aside or modify the order.

**[History:** cr., OA 41, 1988-89, pub. 06/05/89; am., OA 31, 2010-11, pub. 12/30/10.]

*[46.72 – 46.99 reserved.]*

**END OF CHAPTER**