

**CHAPTER 11**  
**PRIVATE SEWAGE SYSTEM**

**11.01 AUTHORITY AND TITLE.** This chapter is adopted pursuant to the authority granted by Section 59.70(5) of the Wisconsin Statutes, and shall be known as the "Brown County Private Sewage System Ordinance."

**11.02 JURISDICTION.** The jurisdiction of this chapter shall include all lands and waters within Brown County as provided in Section 59.70(5) of the Wisconsin Statutes.

**11.03 PURPOSE.** The purpose of this chapter is to promote the health, safety, aesthetics and general welfare of the people and communities within Brown County through administration and enforcement of sound sanitary practices as promulgated by Chapter 145 of the Wisconsin Statutes, Department of Commerce Chapters 81, 82, 83, 84, 85, Wisconsin Administrative Code and this chapter.

**11.04 INTENT AND INTERPRETATION.** The general intent of this chapter is to regulate the location, construction, installation, alteration, design, and use of all private onsite wastewater treatment systems (POWTS) so as to protect the health of residents; to secure safety from disease and pestilence; to further the appropriate use and conservation of land and water resources, and to preserve and promote the beauty of Brown County and its communities. It is further intended to provide for the administration and enforcement of this chapter and to provide penalties for violation of this chapter.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be broadly and liberally construed in favor of Brown County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes, and is limited only by express language.

**11.05 ABROGATION AND UNIFORMITY WITH STATE REGULATIONS.** (1) 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.

(2) This chapter shall be subject to the provisions of Chapter 145, Wisconsin Statutes, and all subsequent rules and regulations promulgated there under regarding private onsite wastewater treatment systems (POWTS) as set forth in Wisconsin Administrative Code.

(3) This chapter shall not be interpreted to be more lenient than the Wisconsin Administrative Code rules and regulations promulgated pursuant to Chapter 145, Wisconsin Statutes.

(4) Incorporation of Provisions by Reference. This chapter incorporates by reference the applicable rules, regulations and laws as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code: Chapters 145, 146, Wisconsin Statutes, and Chapters NR 112, NR 113 and COMM 81, 82, 83, 84, 85, 87 of the Wisconsin Administrative Code. These rules, regulations and laws shall apply until amended and then shall apply as amended.

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**11.06 DEFINITIONS.** For this chapter definitions provided in COMM 81, COMM 82, COMM 83, COMM 84, COMM 85, COMM 87 and Sections NR 112, NR 113 of the Wisconsin Administrative Code are hereby adopted by reference. Definitions provided in the Brown County subdivision ordinance (Chapter 21) and the Shorelands, Floodplains and Wetlands regulations (Chapter 22) are hereby adopted by reference.

The following definitions shall also apply in this chapter:

(1) Community: A town, village, city or group of adjacent towns, villages or cities having common social, economic or physical interests.

(2) Department: The Department of Commerce, Division of Safety and Buildings.

(3) Effluent: Any untreated or partially treated domestic wastewater constituent, which includes the untreated discharge from any treatment tank or soil dispersal component.

(4) Failing POWTS: Defined in s. 145.245(4), Stats. as "A failing private sewage system is one which causes or results in any of the following conditions: (a) the discharge of sewage into surface water or groundwater; (b) the introduction of sewage into zones of saturation which adversely affects the operation of a private sewage system; (c) the discharge of sewage to a drain tile or into zones of bedrock; (d) the discharge of sewage to the surface of the ground; (e) the failure to accept sewage discharges and backup of sewage into the structure served by the private sewage system."

(5) Issuing agent: The Brown County Zoning Administrator shall act as the Brown County issuing agent and is hereby assigned the duties of administering the private onsite wastewater treatment system program.

(6) Limiting Factor: Estimated depth to seasonal saturation, bedrock, or high groundwater.

(7) Owner: Defined for the use of administering this chapter as the person or persons indicated as the property owner on the Brown County Land Record system, unless a signed warranty deed can be submitted to indicate otherwise.

(8) Parties-in-interest: Includes all property owners within 200 feet of the applicant's affected premises.

(9) Private onsite wastewater treatment system: A sewage treatment and disposal system serving a single structure with a treatment tank, pre-treatment component, and/or soil dispersal component located on the same parcel as the structure; an alternative sewage system approved by the department 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, and may be owned by the property owner or by a special purpose district. For purposes of this chapter, a private onsite wastewater treatment system may be referred to as a POWTS.

(10) Sanitary permit: A permit issued by the department or the issuing agent for the installation of a POWTS.

(11) Septic tank: A reservoir or tank which receives crude sewage and by bacterial action and sedimentation effects a process of clarification and decomposition of solids.

(12) Sewage: The water carried wastes (organic) created in and to be conducted away from residences, industrial establishments, and public buildings.

(13) Soil and Site Evaluation: The procedure is specified in COMM 83.09 and 83.10 conducted by a Certified Soil Tester used for the purposes of specifying, designing, and installing a POWTS to serve a structure.

(14) Soil mapping unit: Soil types, slopes, and erosion factors delineated on operational soil survey maps prepared by the USDA Soil Conservation Service for Brown County in cooperation with the Brown County Regional Planning Commission.

(15) Zoning Administrator: A person appointed by the County Executive to administer and enforce this chapter. References to the Zoning Administrator in this chapter shall be construed to include duly appointed deputy inspectors. The Zoning Administrator shall be specifically trained or experienced in performing those tests necessary to determine the feasibility of the safe disposal of sanitary works on proposed building sites and so certified by the department.

**11.07 SANITARY PERMIT.** (1) Validity. No person may install a POWTS or reconnect to an existing POWTS designed to serve a structure intended for human habitation unless the owner of the property on which the POWTS is to be installed holds a valid sanitary permit as required by Section 66.036 Wisconsin Statutes. All premises intended for human occupation or occupancy shall be provided with public sewer or POWTS.

(a) No person may sell at retail a treatment tank for installation unless the purchaser holds a valid sanitary permit and is permitted to purchase such tank under the Wisconsin State Statutes.

(b) Treatment Tanks. Treatment tanks as described in ILHR 83 Wisconsin Administrative Code, shall be installed or constructed. All applicable product approval requirements must be obtained prior to installation.

(c) A sanitary permit is valid for two years from the date of issue and renewable for similar periods thereafter subject to compliance with 145.135 Sanitary Permits.

(d) A sanitary permit must be issued to the owner of the parcel upon which the POWTS is to be installed.

(e) It shall be unlawful to construct any POWTS or use any system, land, or water in violation of any of the provisions of this chapter. In addition, it shall be unlawful to resist, obstruct or interfere with the Zoning Administrator in the discharge of his/her duties or to neglect, refuse or fail to obey the Zoning Administrator's orders pertaining to his/her duties.

(f) Any construction activities, except excavating, performed prior to the issuance of a sanitary permit shall be subject to a double fee.

(2) No POWTS or part thereof shall hereafter be located, installed, moved, reconstructed, reconnected, extended, enlarged, converted, substantially altered or their use changed without a sanitary permit and without full compliance with the provisions of this chapter and all other applicable county and state regulations.

(3) Application Forms. The issuing agent shall use the sanitary permit forms provided by the department.

(3) Application Process. (a) The issuing agent shall review the certified soil tester reports for the proposed POWTS and verify the report at the proposed site, if necessary.

(b) The issuing agent shall approve or disapprove applications for sanitary permits and assist applicants in preparing an approved application.

(c) The issuing agent shall issue written or verbal notice to each applicant whose sanitary permit application is disapproved. Each notice shall:

1. State the specific reasons for disapproval and amendments to the application, if any, which would render the application approvable.

2. Inform the applicant of the right to appeal and the procedures for conducting an appeal under the procedures of Sections 22.28 through 22.29 of the Brown County Shorelands, Floodplains and Wetlands Ordinance (Chapter 22).

**11.071 PRIVATE ONSITE WASTEWATER TREATMENT SYSTEMS** (1) Any structure designed for human habitation with pressurized water or access to a private well or municipal water supply must be served by a non-failing POWTS.

(2) A structure not served by a well or municipal water supply that is intended for human habitation may be served by a privy.

(a) A vaulted privy constructed of a State approved holding tank must be used where a 36" separation can not be maintained to a limiting factor.

(b) An open pit privy may be used where there is a 36" minimum separation from the bottom of the proposed pit to a limiting factor.

(3) An existing septic tank may be used as a holding tank until such time as sanitary sewer becomes available if:

(a) The Zoning Office receives written verification from the Sanitary District that sewer is to become accessible and when the structure will be required to be connected.

(b) The existing tank is modified and inspected by the Brown County Zoning Office to assure that effluent is not being discharged. The Zoning Office may require the addition of a high water warning device, additional servicing risers, locking covers, or a service drive terminating less than 25' from any manhole.

(c) A servicing contract is obtained.

(d) Additional tank capacity may be required to be added. A sanitary permit is required for installation of additional holding tank capacity.

(4) Holding Tanks. (a) Holding tanks shall be allowed only as a last possible alternative as determined by the Brown County Zoning Administrator. Any soil tests dictating the installation of a holding tank may require a county inspection to confirm that there is no suitable area for an onsite dispersal POWTS.

(b) A sanitary permit may be issued for a temporary holding tank with written verification from the Sanitary District when the structure will be required to be connected to a sanitary sewer.

**11.072 EMERGENCY REPAIRS AND INSTALLATIONS.** (1) Emergency tank installations may be performed provided the owner obtains a sanitary permit within 30 days from the date of installation. If this is not possible, it is the owner's responsibility to make acceptable and expeditious arrangements with the Brown County Zoning Office to have a permit issued. This may include a scheduled plan review date and number.

(2) The sanitary permit fee must be received by the Zoning Office prior to an emergency installation.

(3) Emergency repairs or removal of stoppages may be performed without a sanitary permit provided such work is reported to the Zoning Administrator as soon as possible to determination as to whether a sanitary permit is required.

(4) The installer must notify the Zoning Office prior to performing any work.

**11.073 PUMPING AND MAINTENANCE.** (1) Pumping. (a) Pumpers. All persons who remove effluent from holding tanks shall be licensed/registered by the State of Wisconsin.

(b) Field-Spreading. Any holding tank wastes to be field-spread shall be limited to those sites that have been inspected and approved by written permit from the Wisconsin Department of Natural Resources.

(c) Semi-Annual Pumping Reports. 1. All holding tank pumpers who pump holding tanks in Brown County shall submit semi-annual pumping reports to the office of the Brown County Zoning Administrator and the local municipalities. (Brown County forms to be supplied by the Brown County Zoning Administrator's Office).

(2) These semi-annual pumping reports shall include the following information:

- (a) Date of servicing and total gallons pumped.
- (b) User's/owner's name, address, phone number.
- (c) Location of holding tank in Brown County including parcel number.
- (d) Tank pumper name, address and phone number.
- (e) Pumper license number.
- (f) Location where wastes are/were disposed.

(3) These semi-annual pumping reports shall be received by the Brown County Zoning Administrator by January 15 and July 15.

(4) Effluent from a septic tank or holding tank must be disposed of in accordance with NR 113 of the Wisconsin Administrative Code as amended from time to time.

(5) Maintenance. Maintenance applies to septic tanks and all other treatment tanks, including holding tanks.

(a) All new or replacement sewage systems installed after 01-17-90 shall have the treatment tanks pumped by a licensed pumper within three years of the date of 1/12/09

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installation and at least once every three years thereafter, or when the sludge level reaches one-third of the liquid capacity of the tank.

(b) At three-year intervals after the installation of a POWTS, the BROWN COUNTY ZONING OFFICE shall provide the owner a certification form. The form shall be signed and accurately completed by either of the following: a licensed plumber, a licensed septic tank pumper, or a licensed septic tank inspector (POWTS inspector). The inspector must certify that the POWTS is in proper working condition and that the tank(s) was either recently pumped by a licensed pumper or that it was inspected and is less than one-third full of sludge or scum.

(c) All POWTS installed on or after 7-1-00 shall be maintained and serviced in accordance with the approved management plan on file with the Zoning Office.

**11.074 ALTERNATE AND EXPERIMENTAL SYSTEMS.** This section regulates the use of all POWTS designed to operate with less than 36 inches of separation between the system elevation and seasonally saturated soils, bedrock, or groundwater.

(1) Final effluent standards for all experimental and alternate systems must meet or exceed the levels for which designed and approved to operate.

(2) All plans submitted to the county for issuance of a sanitary permit must include a prescribed schedule of maintenance from all system component manufacturers and/or installers.

(3) A Maintenance Contract furnished by the Zoning Office must be submitted prior to issuance of a sanitary permit that includes:

(a) The signature of the owner and contracted POWTS Maintainer.

(b) A reference to the maintenance required to be completed by the POWTS Maintainer as part of the approved management plan.

(c) Penalties provided for failure of the owner to follow the schedule of maintenance prescribed by the manufacturer of any system component and/or installer.

**11.08 VARIANCES.** Upon appeal by the applicant, the Board of Adjustment may grant variances from the sanitary provisions of this chapter in the manner provided in the Brown County Shoreland-Floodplain and Wetlands Ordinance (Chapter 22) where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done. No variance shall be permitted which does not meet minimum Department of Commerce or other state requirements or which will threaten health or safety or cause nuisances.

**11.09 FEES.**

(1) Sanitary Permit Fees  
As established in the annual County budget.

(2) Permit Renewal, Transfer, and Inspection Fees.

As established in the annual County budget.

- (3) Plan Approvals  
As established in the annual County budget.

**11.10 INSPECTION.** (1) The issuing agent shall inspect or cause the inspection of all POWTS after construction, but before backfilling, no later than the end of the next work day, excluding Saturdays, Sundays, and holidays, after receiving notice from the plumber in charge.

(2) The issuing agent shall file reports and conduct surveys and inspections as required by the county or the department.

- (3) The County must be notified 24 hours in advance of any inspection appointment.

**11.11 SERVICING SEWERAGE DISPOSAL FACILITIES.** Septic tanks, seepage pits, grease traps, privies and other disposal facilities shall be serviced in accordance with Chapter NR 113 of the Wisconsin Administrative Code and relevant provisions of the Wisconsin Statutes.

**11.13 RELATION TO PUBLIC SEWER SYSTEMS.** Structures served by a failing POWTS shall be connected to a public sanitary sewer system where available in such time deemed necessary by the Zoning Administrator, not to exceed one year from the date of notice of first violation. Where such a public sewer system is not available a replacement POWTS shall be used.

**11.14 ZONING ADMINISTRATOR.** (1) Creation. There is hereby created a Zoning Administrator for Brown County.

(2) Duties. It shall be the duty of the Zoning Administrator to enforce the provisions of this chapter and to:

(a) Record all permits issued, inspections made, work approved, and other official actions.

(b) Inspect all existing and new POWTS periodically, and all new work shall be given a final inspection before it is closed.

(c) Investigate all complaints made relative to POWTS.

(d) The issuing agent shall perform any other duties not specifically enumerated regarding private sewage systems as considered appropriate and necessary by the county or as required by the rules of the department.

(3) Powers. The Zoning Administrator shall have all the powers necessary to enforce the provisions of this chapter without limitation by reason of enumeration including the following:

(a) Access to any structure or premise between 8:00 a.m. and 6:00 p.m. for the purpose of performing his/her duties.

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(b) Prohibit the use of any POWTS until he/she has inspected, and approved such systems.

(c) Order any person owning, using, operating, or installing a POWTS to modify it, repair it or place it in a safe or sanitary condition if he/she finds such system to be in a defective, unsafe or unsanitary condition.

(d) Recommend to the County Board any additional sanitary measures as shall seem to him/her necessary.

(e) Request assistance and cooperation from the County Health Department when necessary in the management of all POWTS.

(f) Condemn and prohibit the use of any POWTS which he/she finds so constructed, operated or maintained as to be a menace or direct hazard to the health of the users, neighbors or community.

(g) Enforce any or all of rules or orders and amendments thereto of the State Department of Commerce applicable to all POWTS.

**11.18 REMEDIAL ACTION.** The issuing agent shall investigate violations of the private sewage system ordinance and Section 245.59, Wisconsin Statutes, issue orders to abate the violations and submit orders to the Corporation Counsel or Attorney General for enforcement.

**11.185 VIOLATIONS.** The following procedures shall be followed to aid and allow an owner of a failing POWTS to bring the POWTS into compliance.

(1) First Notice. In the case of an existing POWTS deemed failing by the Zoning Administrator, a first notice of violation shall be given certified mail return receipt requested to the owner of the failing POWTS. Failure by the owner to abate the violation within the timeframe allowed will result in immediate submittal to Corporation Counsel for legal action.

(a) Upon initial notice of violation from the Zoning Office, the owner will be required to obtain a soil test for replacement of the failing POWTS. The soil test must be on file at the Zoning Office within 30 days upon first notice of violation.

(b) Upon initial notice of violation from the Zoning Office by certified mail, the owner of the failing POWTS will be required to obtain a valid sanitary permit for replacement of the failing POWTS. The sanitary permit must be issued within 30 days upon first notice of violation. If this is not possible, it is the owner's responsibility to contact the Zoning Office to arrange a reasonable date by which time the sanitary permit must be obtained.

(c) Upon initial notice of violation from the Zoning Office by certified mail, the owner of a failing POWTS will be required to replace the failing POWTS with a code compliant POWTS within one year of first notice of violation.

(d) If the failing POWTS must be replaced by a holding tank system, the code compliant holding tank installation must be complete within six months upon the first notice of violation.

(2) Second Notice. A second notice of violation will be sent regular mail thirty days after the owner receives the first notice of violation if orders specified in the first notice of violation have not been complied with.

(a) If a soil test is not received within thirty days from the date the owner received the first notice of violation, the owner shall receive a second notice of violation by regular mail. The second notice of violation will allow ten working days to obtain a soil test or contact the Zoning Office to arrange a reasonable date by which the soil test must be on file.

(b) If a valid sanitary permit has not been issued within thirty days from the date the owner received the first notice of violation, the owner will receive a second notice of violation by regular mail. The second notice of violation will allow ten working days for the owner to obtain a valid sanitary permit or contact the Zoning Office to arrange an acceptable date by which a valid sanitary permit will be obtained.

(c) The owner of a failing POWTS must have a code compliant replacement system installed within one year of first notice of violation regardless of when the Zoning Office receives a soil test or sanitary permit.

(3) Final Action. If a code compliant system has not been installed to replace a failing POWTS after one year, or six months in the case of a holding tank replacement, from the date of first notice of violation, the matter will immediately be submitted to Corporation Counsel for enforcement action. In any case of violation, the County, the local boards of health or any property owner who would specifically be damaged by such violation may institute appropriate legal action or proceeding to enjoin a violation of this chapter.

(4) Failure to Accept or Receive a Violation Notice. If any owner refuses to accept a violation notice by certified mail, the violation notice(s) will be sent regular mail. Service by mail is complete upon mailing.

(5) If, by finding of the Zoning Administrator, there is reason to believe there is a direct danger to the health or welfare of any person, the use of a failing POWTS may be required to immediately cease, or the violation be abated in such time less than specified in 11.18(1)(a-d).

**11.19 PENALTIES.** (1) Any violation of any provision of this ordinance by any person, firm, association, corporation or their agent, employee, or officer, shall be unlawful. In addition, every violation of this ordinance is deemed to be a public nuisance. The creation and/or continuance of any such nuisance may be enjoined and/or abated by legal action of the county, the state, or any citizen whose interests are adversely affected.

(2) Any owner who fails to have a failing POWTS replaced as required by this chapter shall be subject to a forfeiture to the county of not less than that amount specified in Chapter 30.02(4)(a) under "Private Sewage System Regulations" or not less than \$50.00 nor more than \$1,000.00 together with court costs in such action.

(3) Unlawful discharge of private sewage from a holding tank shall result in a forfeiture of either that amount specified in Chapter 30.02(4)(a) under "Private Sewage System Regulations" or not less than \$50.00 nor more than \$1,000.00 together with court costs.

(4) Every day a violation exists may constitute a separate offense.

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**11.20 SEVERABILITY AND NON-LIABILITY.** (1) If a court of competent jurisdiction adjudges any section, provision or portion of this chapter unconstitutional or invalid, the remainder of this chapter shall not be affected thereby.

(2) The county does not guarantee, warrant, represent or hold itself liable for any defects in plans or specifications, false information provided, plan omissions, examination or inspection oversight, construction or any damage that may result in or after installation and reserves the right to order changes or additions should conditions arise making this necessary.

(3) The county asserts that there is no liability on the part of the County, its agencies or Zoning Administrator's office for sanitation problems or structural damages that may occur as a result of reliance upon, and conformance with, this chapter.

**11.21 EXISTING POWTS INSPECTIONS.** (1) An existing system inspection is required for all property transfers and land divisions in which the property contains a structure served by a POWTS. A system regulated by the mandatory maintenance program specified in 11.073(5) at the time of division or transfer may be precluded from this section at the discretion of the Zoning Administrator. An existing system inspection is not required if a letter from the host municipality is submitted to the Zoning Office stating a date by which the structure is required to be connected to a sanitary sewer.

(2) To adequately determine whether an existing POWTS is failing under conditions defined in s.145.245(4), Stats., an existing system inspection must include:

(a) An observation boring described by a certified soil tester extending 3' below the bottom of the absorption area which is large enough to clearly depict the presence of groundwater, bedrock, or seasonally saturated soils which adversely affect the operation of the system. The Zoning Office may allow use of a previously filed soil test conducted in an area near the failing system to verify soil conditions if deemed reliable by the Zoning Administrator.

(b) A written evaluation of the general condition of the POWTS, by a Master Plumber, Master Plumber-Restricted Service, POWTS Inspector, or Certified Soil Tester, which explains the presence and condition of all of the following components:

1. Inlet and outlet baffles.
2. Vents, observation ports.
3. High water alarms.
4. Treatment tanks including risers and covers.
5. Absorption area including ponding, surface discharge.
6. Presence of any outfall pipe or connection to a drain tile.
7. All applicable setbacks require an accurate site diagram if none exists on file at the Zoning Office.
8. Presence of any surface discharge of sewage.
9. Evident ponding in a vent or observation port.

(3) A county inspection to verify the results of the existing system inspection may be required. Any costs associated with the inspection including, but not limited to backhoe pits or pumping fees are the responsibility of the owner at the time of inspection.

(4) Existing system inspection reports must be submitted to the Zoning Office on forms obtained from the Zoning Office within thirty days of completion of the inspection.

(5) Once an existing system inspection report is received, the Zoning Office may issue orders to correct violations and the system shall be placed on the Maintenance Program specified under Ch. 11.073(5)(a).

**11.22 PENDING FILES.** It is the responsibility of any person licensed to install a POWTS to promptly complete any pending files that need completed inspections, plan revisions, or systems that need alterations, additions, or completion. The county has the authority to refuse issuance of a sanitary permit to any installer who has delinquent files. A sanitary permit will not be issued for any plumber to install if that plumber has more than three pending files. A pending file is defined as or includes:

(1) Any POWTS installed or partially installed which requires a state plan revision and has not yet been assigned a verifiable plan review date and number for the revision. Receipt of the revision by the issuing agent may suffice as a verified revision date and number.

(2) Any POWTS installed or partially installed which does not have a completed inspection report unless a scheduled date has been set to meet with the county on the site to complete the inspection. This section does not apply to POWTS not completed due to weather constraints or other reasons deemed necessary by the county such as final seeding and mulching inspections.

(3) A new construction holding tank installation being used without a water meter and remote reading device properly installed or service drive installed.