

Comm 65-(98-122) CONSTRUCTION SITE  
EROSION CONTROL

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201 West Washington Avenue  
P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018

Tommy G. Thompson, Governor  
Philip Edw. Albert, Acting Secretary

October 29, 1998

Senate Chief Clerk  
Room 402  
1 East Main Street  
Madison, Wisconsin 53703

Assembly Chief Clerk  
Room 402  
1 East Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE  
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 98-126

RULE NO.: Chapter Comm 65

RELATING TO: Construction Site Erosion Control

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Philip Edw. Albert'.

Philip Edw. Albert  
Acting Secretary



201 West Washington Avenue  
P.O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018

Tommy G. Thompson, Governor  
Philip Edw. Albert, Acting Secretary

October 29, 1998

Senator Brian Rude  
President of the Senate  
119 Martin L. King Blvd, Rm 102  
Madison, Wisconsin 53702

Representative Scott Jensen  
Speaker of the Assembly  
211 West, State Capitol  
Madison, Wisconsin 53702

Dear Senator Rude and Representative Jensen:

### NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 98-126

RULE NO.: Chapter Comm 65

RELATING TO: Construction Site Erosion Control

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
  - a) Rule Report.
  - b) Public Hearing Attendance Record.
  - c) Public Hearing Comment and Agency Response Form.
  - d) Legislative Council Rules Clearinghouse Report.
  - e) Response to Legislative Council Rules Clearinghouse Report.
  - f) Fiscal Estimate.
  - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Philip Edw. Albert'.

Philip Edw. Albert  
Acting Secretary

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 98-126

RULE NO.: Chapter Comm 65

RELATING TO: Construction Site Erosion Control

1. **Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.**

Section 101.1205 (1), Stats., requires the department to establish statewide standards for erosion control at building sites. Exempting one segment of the population based on size of the business would negate the value of the statewide standard.

2. **Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.**

The issues raised by small businesses were informational in nature and were incorporated into the rule draft where appropriate. The one suggestion not incorporated into the rules would have allowed essentially anyone to design erosion control measures for all sites. This was rejected because the department must be reasonably assured that only qualified persons are designing the erosion control measures for the larger sites. For sites that disturb less than 5 acres of soil, which includes the vast majority of building sites in Wisconsin, no credential is required by these rules to plan and implement the erosion control measures.

**3. Nature and estimated cost of preparation of any reports by small businesses.**

The rules require all owners of commercial buildings that are planned for construction to fill out and submit a site classification form. This form is less than one page in length and requires only very basic information.

**4. Nature and estimated cost of other measures and investments required of small businesses.**

The rules require all owners of commercial buildings that are planned for construction to develop a soil erosion control plan and to implement the control measures in that plan. These plans are typically developed by an outside party with the required expertise, just as the building plans are developed. However, these rules allow the building owner to develop erosion control plans for all sites under 5 acres if the owner so chooses.

**5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.**

Not applicable.

**6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.**

Not applicable.

**FISCAL ESTIMATE**  
DOA-2048 (R02/97)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
**Chapter Comm 65**  
Amendment No. if Applicable

**Subject**

Soil Erosion Control at Commercial Building Sites

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation  
 Decrease Existing Appropriation  
 Create New Appropriation  
 Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs - May be Possible to Absorb Within Agency's Budget  Yes  No  
 Decrease Costs

**Local:**  No local government costs

1.  Increase Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:

Towns  Villages  Cities

2.  Decrease Costs  
 Permissive  Mandatory

4.  Decrease Revenues  
 Permissive  Mandatory

Counties  Others \_\_\_\_\_

School Districts  WTCS Districts

**Fund Sources Affected**

GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

It is anticipated that 8,000 construction sites will be annually registered under the proposed provisions of chapter Comm 65. The \$40 registration-filing fee will bring in \$320,000 per year. It is estimated that 50 individuals will request an erosion control planner credential @ \$80 for a 2-year certification. This will bring in \$4,000 every 2 years or \$2,000 per year. The anticipated increase in revenue from filing and credential fees is \$322,000 per year.

Of the 8,000 annual registered construction sites, it is estimated that 100 will be 5 acres or larger. Of these 100 sites, it is predicted that 50 will undergo a voluntary in-office plan review through the Department of Commerce; at \$300 per review plan, this will generate \$15,000 per year. Of the remaining 7,900 sites of less than 5 acres, we estimate 300 will undergo voluntary in-office plan review through the Department of Commerce; at \$200 per plan, this will generate \$60,000 per year. The anticipated increase in revenue from plan review fees is \$75,000 per year.

The total anticipated increase in annual revenue is therefore \$397,000.

The additional staff needed to handle the workload relative to the in-office plan review, consultation, education and filing activities is anticipated to include one FTE Program Assistant I with salary and fringes of \$45,600 per year and one FTE Engineering Consultant with salary and fringes of \$80,700 per year. The additional staff required to provide the onsite review of erosion control measures and enforcement inspections throughout the construction of the building will be 3 FTE Commercial Building Inspectors with salary and fringes totaling \$215,400 per year. The total anticipated increase in costs is \$341,700.

**Long-Range Fiscal Implications**

None known or anticipated.

Agency/Prepared by: (Name & Phone No.)  
Commerce/Safety & Buildings  
(Duane Hubeler 266-1390)

Authorized Signature/Telephone No.

*[Handwritten Signature]* 6-8974

Date

8/25/98

**FISCAL ESTIMATE WORKSHEET**  
 Detailed Estimate of Annual Fiscal Effect  
 DOA-2047(R02/97)

ORIGINAL  
 CORRECTED  
 UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.  
 Chapter Comm 65

Subject  
 Soil Erosion Control at Commercial Building Sites

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
 \$35,000 (\$7,000 per FTE position)

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs By Category</b>		
State Operations - Salaries and Fringes	\$341,700	\$ -
(FTE Position Changes)	5 FTE	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs By Category</b>	<b>\$341,700</b>	<b>\$ -</b>
<b>B. State Costs By Source of Funds</b>		
GPR	\$	Increased Costs Decreased Costs
FED		-
PRO/PRS	\$341,700	-
SEG/SEG-S		-
<b>III. State Revenues-</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	Increased Rev. Decreased Rev.
GPR Earned		-
FED		-
PRO/PRS	\$397,000	-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$397,000</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 341,700	\$ 0
NET CHANGE IN REVENUES	\$ 397,000	\$ 0

Agency/Prepared by: (Name & Phone No.)  
 Commerce/Safety & Buildings  
 (Duane Hubeler 266-1390)

Authorized Signature/Telephone No.

*[Handwritten Signature]* 6-8476

Date

8-25-98

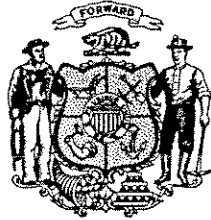
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

*RULES CLEARINGHOUSE*

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CLEARINGHOUSE REPORT TO AGENCY

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-126**

AN ORDER to repeal Comm 5.63 (1) (a) 5. and (b) 5. and (4) (b) and 50.115; to renumber Comm 5.02 Table 5.02 lines 11 to 63, 5.06 Table 5.06 lines 11 to 63, 5.63 (4) (a), 50.18 (1) and 50.21 (6) (intro.) (a) to (f); to amend Comm 5.02 Table 5.02 line 36, 5.06 Table 5.06 line 36, 5.61 (1) and 5.63 (5) (intro.) and (6) (a) 1. and ILHR 66.60; and to create Comm 2.32, 5.02 Table 5.02 line 11, 5.06 Table 5.06 line 11, 5.315, 5.675, 50.11 Note 3, 50.18 (1) (b) and 50.21 (6) (b) and ILHR 70.04 (2) Note and chapter Comm 65, relating to construction site erosion control.

Submitted by **DEPARTMENT OF COMMERCE**

08-31-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-25-98 REPORT SENT TO AGENCY.

RNS:MCP:kjf;jt



**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

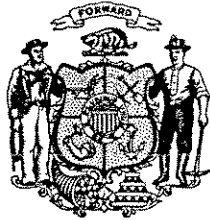
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-126

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In s. Comm 5.675 (1) (b) 2., "to" should replace the hyphen.
- b. In the treatment clause of SECTION 18, "Comm 50.18" should be inserted after "renumbered." A similar change is needed in SECTION 20.
- c. The passive voice is used inappropriately throughout the rule. For example, see s. Comm 50.21 (6) (b) 3.
- d. The subchapter title should be placed beneath the subchapter number in subch. III. Also, the format is different for the various subchapter titles. The format should be consistent. [See s. 1.05 (2) (a), Manual.]
- e. In s. Comm 65.21 (7) (b) (intro.), the period should be replaced by a colon.
- f. Section Comm 65.23 (1) (c) (intro.) should be s. Comm 65.23 (1) (c) 1. and the subsequent subdivisions should be renumbered. This change should also be made in par. (d). [See s. 1.03 (8), Manual.]

#### 4. Adequacy of References to Related Statutes, Rules and Forms

The cross-references in s. Comm 5.61 (1) refer to "Comm 66," while the cross-references in s. Comm 65.02 refer to "ILHR 66." Are both of these references correct or should one be used rather than the other?

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the first paragraph of the analysis, “feet” should be inserted after “square.”
- b. The definition of “design storm” in s. Comm 65.03 (6) does not appear to be necessary. The rainfall amounts used for designing erosion control measures are specified in Table 65.20. No additional explanation appears to be necessary.
- c. The phrase “in relation to” should be replaced by “under” in s. 65.03 (15).
- d. “Responsible party” is defined in s. Comm 65.03 (15) as an agent designated by the owner to act on the owner’s behalf. The rule could include a single provision stating that a responsible party is authorized to take any actions specified in the rule as responsibilities of the owner. This would avoid the need to refer to the “owner or responsible party” throughout the rule.
- e. Section Comm 65.04 relates to preexisting municipal ordinances. The corresponding statute provides in s. 101.1205 (5m), Stats., that an ordinance may continue in effect if the *standards in the ordinance* are more stringent than the standards promulgated by the department by rule. However, s. 65.04 (1) (a) provides that the ordinance must be more stringent than the *requirements of this chapter*. It is suggested that the language of the rule be redrafted to conform to the statute.
- f. The phrase “under the scope of this chapter” in s. Comm 65.08 (1) (intro.) appears to be unnecessary. The term “construction site” is used in that provision, and the definition of “construction site” in s. Comm 65.03 (4) appears to define the scope of the chapter.
- g. Section Comm 65.22 (2) (b) could be clarified by substituting “after” for the second “of.”
- h. The word “other” in s. Comm 65.22 (2) (c) is unnecessary.

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 98-126

RULE NO.: Chapter Comm 65

RELATING TO: Construction Site Erosion Control

Agency contact person for substantive questions.

Name: Jim Quast

Title: Program Manager

Telephone No. 266-9292

Legislative Council report recommendations accepted in whole.

Yes

No

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))

a.  Accepted

b.  Accepted in part

c.  Rejected

d.  Comments attached

*(Continued on reverse side)*

5 . Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))

- a.  Accepted
- b.  Accepted in part
- c.  Rejected
- d.  Comments attached

### Reasons for Rejecting Legislative Council Clearinghouse Comments

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))

c. Regarding Use of Passive Voice: Most, if not all codes from the Safety & Buildings Division use the passive voice to state requirements. Ultimate responsibility for code compliance lies with the property owner; however, it is irrelevant whether the owner or one of the owner's many agents actually perform what is required.

All other comments under 2. are accepted.

5 . Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))

b. Regarding the "design storm" definition: There are other code sections where we specify design requirements related to a specific design storm. The definition is required for those additional code sections.

f. Regarding a redundant definition: It is in the scope of the chapter where we state that only construction sites over 2,000 square feet are included under the chapter. If this were added to the definition, it would amount to adding a substantive code requirement to the definition of a term.

h. Regarding the word "other": This word is needed to clarify that there are two different compliance times. One compliance time applies to sediment displaced due to a storm event. The other compliance time applies to all "other" reasons for the sediment displacement.

All other comments under 5. are accepted.

# RULE REPORT

## Department of Commerce

Rule No.: Chapter Comm 65

Relating to: Soil Erosion Control at Commercial Building Sites

*Agency contact person for substantive questions:*

Name James Quast

Title Program Manager

Telephone Number 266-9292

*Agency contact person for internal processing:*

Name Duane Hubeler

Title Code Consultant

Telephone Number 266-1390

1. **Agency statutory authority under which the agency intends to promulgate the rule(s).**

ss. 101.02 (1), 101.19 (1), and 101.1205, Stats.

2. **Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).**

Federal Water Pollution Control Act (commonly known as the Clean Water Act)

3. **Citation of court decisions which are applicable to the proposed rule(s).**

None known

**4. Description of the proposed rule(s).**

The proposed rules establish statewide soil erosion control standards during the construction of commercial buildings where more than 2,000 square feet of land surface is disturbed. Under the proposed rules an erosion control plan must be developed and implemented at each construction site to minimize the transport, due to a storm event, of disturbed soil off the site or into public sewer inlets or the waters of the state. Erosion control measures for overland flow are to be based upon a 2-year, 24-hour storm event and erosion control measures for channelized flow are to be based upon a 10-year, 24-hour storm event.

The code will require all sites to be registered with the department and will differentiate sites by their relative erosion potential. Sites that disturb 5 or more acres are classified as class I sites. Sites that disturb less than 5 acres are classified as class II sites. Class I sites are required to have the soil erosion control plan developed by either a professional designer, such as an architect or engineer, or by a department-certified erosion control planner. Erosion control plans for Class II sites may be prepared by anyone. Erosion control plans will be subject to review by inspectors during the normal course of their visits to the job sites, however, plans may be voluntarily sent to the department for review and approval.

**5. Reason for the proposed rule(s).**

Section 101.1205 (1), Stats., requires the department to establish statewide rules for erosion control at building sites for the construction of public buildings and buildings that are places of employment. The proposed standards are intended to maintain or improve water quality by minimizing soil erosion as a result of land disturbing activities at commercial building construction sites.





**PUBLIC HEARING COMMENT  
AND AGENCY RESPONSE  
DEPARTMENT OF COMMERCE**

**DIVISION OF SAFETY AND BUILDINGS**

Rule Number: Chapter Comm 65  
 Relating To: Soil Erosion Control at Commercial Building Sites

Hearing Location: Madison  
 Hearing Date: Mailed Comments

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In	For Info.				
Sup.	X	1	Wilbert King WI Dept. of Administration Madison, WI	<p>1. Opposes creation of erosion control planner and inspector classifications as being unnecessary, expensive and cumbersome.</p> <p>2. Wants chapter 65 to establish minimum regulations and use generic, performance oriented language, as in IBC section 3307, rather than prescriptive requirements.</p>	<p>1. Disagree. This aspect is intended to establish accountability for planners and inspectors who are not otherwise qualified and credentialed and will aid in code compliance.</p> <p>2. The proposed rules include many performance requirements. The rules also delineate when and where the performance is required, as well as quality standards for products and practices.</p>
	X	2	Bill Napier WI Dept. of Administration Madison, WI	<p>1. The notion of an erosion control planner and other "certified" positions conflicts with other licensing professionals.</p> <p>2. Since Commerce doesn't intend to review plans, too many problems could arise in a complaint driven compliance scheme. Plan review should be done in parts, e. g. do plan review on the design and submit the construction documents in a manner similar to truss plan review.</p> <p>3. Chapter 65 does not recognize the differences in the design professionals' and construction professionals' duties under contract to the owner. The rule forces the design professional to take responsibility for the construction professionals' means &amp; methods.</p> <p>4. The "stop work" concept in the statutes and the rule will cause many problems. It must be clear who will issue the order, to whom the order will be given, and under what circumstances. The economic and environmental consequences and the litigation risk must be considered.</p>	<p>1. Disagree. Although licensed professionals are sometimes involved with planning the soil erosion control practices that are temporary in nature, there is nothing in the statutes that specifically links this type of work to a particular profession.</p> <p>2. The rules have been amended to allow for department review of plans, as well as job site review by the inspector. The rules do not preclude the voluntary submission of the soil erosion plans separately from the submission of the construction documents for the building.</p> <p>3. The proposed rules do not assign specific responsibilities to the agents of the owner. The rules do not prohibit construction professionals from preparing erosion control plans. The owner is still ultimately responsible for compliance.</p> <p>4. Many of these concerns are already addressed in municipal citation policies.</p>

**PUBLIC HEARING COMMENT  
AND AGENCY RESPONSE  
DEPARTMENT OF COMMERCE  
DIVISION OF SAFETY AND BUILDINGS**

Rule Number: Chapter Comm 65  
 Relating To: Soil Erosion Control at  
Commercial Building Sites

Hearing Location: Madison  
 Hearing Date: Mailed Comments

Commenting In	For Info.	Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
	X	2	Bill Napier (cont.)	<p>5. The proposal is a jumble of Best Management Practices and specific, designed practices. Additional confusion is created by mixing short-term erosion control and long-term storm water management.</p> <p>6. There is confusion in referencing WI DNR Best Management Practices Handbook, which is not a true standard, with others that are true standards.</p> <p>7. The Memorandum of Understanding between Commerce and DNR that will clarify the lines of responsibility needs to be completed.</p>	<p>5. The proposed rules establish performance standards relating to erosion control. The department does not have jurisdiction over post-construction storm water management issues. The rules do not prohibit stormwater management to be addressed on soil erosion control plans.</p> <p>6. The reference to the DNR Handbook is simply an acknowledgement that the Handbook is an acceptable means for achieving compliance with the performance standards in the rules. Other methods may also be used. The material standards which require compliance are specifically enumerated.</p> <p>7. Agree. This need is recognized.</p>
X		3	David Kaul WI Dept. of Administration Madison, WI	<p>1. Provides several editing suggestions. These will be considered separately and not summarized here.</p> <p>2. Is the 2,000 square foot threshold so small that it will be impossible to enforce all sites?</p> <p>3. The rules need to be consistent throughout for soil that threatens adjacent property and soil that threatens sewers or waters of the state. These are two separate issues.</p> <p>4. There should be more criteria, such as steepness, adjacent land use, soil type, and season to differentiate a Class I site from a Class II site.</p> <p>5. Are review fees appropriate to the level of service provided?</p>	<p>1. No response needed.</p> <p>2. The rule establishes a threshold for compliance regardless of whether or not an inspection occurs for a particular project.</p> <p>3. The rule addresses both situations.</p> <p>4. Soil erosion plans must reflect all of the characteristics of the site. The class determination only relates to whether a credentialed person is required to prepare the plan.</p> <p>5. The proposed fees represent the department's cost of providing the service.</p>

**PUBLIC HEARING COMMENT  
AND AGENCY RESPONSE  
DEPARTMENT OF COMMERCE  
DIVISION OF SAFETY AND BUILDINGS**

Rule Number: Chapter Comm 65  
 Relating To: Soil Erosion Control at  
Commercial Building Sites

Hearing Location: Madison  
 Hearing Date: Mailed Comments

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	For Info.				
	X	3	David Kaul (cont.)	<p>6. What are the legal repercussions if there is life loss, damage to property, adverse health effects, etc. as a result of negligence by the erosion control planner and erosion control inspector?</p> <p>7. Does the statute give authority to create the erosion control planner and erosion control inspector classifications?</p> <p>8. Questions the qualifications of a land surveyor to do the planning. The same person should submit the erosion control plan as submits the building plan.</p> <p>9. What continuing education course are offered and by whom that will be appropriate for these new credentials?</p> <p>10. For the sake of code enforcers and the public who must comply with these rules, they need to be consistent with DNR requirements.</p> <p>11. The definition of public building should also include condos with 3 or more owners in a single building.</p> <p>12. The property legal description and street address should be included with the submittal.</p> <p>13. Should drop the word "narrative" and simply require a sketched site plan in s. 65.08.</p> <p>14. Replace the word "roadway" with "paving" and require existing and proposed contours, vegetation, drainage structures and utilities to be shown.</p> <p>15. Conditions that threaten adjacent properties should also be considered emergency situations.</p>	<p>6. Such legal liabilities are typically determined through the legal system.</p> <p>7. The statutes provide the department with broad powers to fulfill its statutory mandates including the soil erosion program.</p> <p>8. The rules will be revised regarding land surveyors. Not all engineers or architects do the erosion control work now. The rules have been amended to allow department review of the erosion control plan. This would allow the same person to submit both plans.</p> <p>9. Any person or organization may develop and implement continuing education courses per the requirements of chapter Comm 5. Currently, soil erosion courses are offered around the state by the UW Extension.</p> <p>10. The administrative and enforcement requirements in the rules reflect the department's resources and priorities.</p> <p>11. The definition already includes this situation.</p> <p>12. This information is to be provided on the registration form.</p> <p>13. Construction documents and details typically include narrative specifications to provide instructions or convey information.</p> <p>14. Soil erosion can cause problems on unpaved roadways as well as paved. Agree that the other features should be shown on the plan.</p> <p>15. Agree. The rules will be clarified.</p>

**PUBLIC HEARING COMMENT  
AND AGENCY RESPONSE  
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DIVISION OF SAFETY AND BUILDINGS**

Rule Number: Chapter Comm 65  
 Relating To: Soil Erosion Control at  
Commercial Building Sites

Hearing Location: Madison  
 Hearing Date: Mailed Comments

Sup.	Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
	In	For Info.				
	X		3	David Kaul (cont.)	<p>16. Why are there two different design storms? Is erosion from overland flow less critical than channelized flow?</p> <p>17. What are the consequences if sediment leaves the site due to a more severe storm event? Who will determine this?</p> <p>18. The source for Table 65.20 should be referenced.</p> <p>19. Is there silt fencing sold that does not meet the requirements in s. 65.21 (10)?</p> <p>20. Should define when a vegetative cover is "established".</p> <p>21. Erosion blankets or mats should be recognized for general stabilization.</p> <p>22. Temporary seeding during the dormant season should only be permitted in conjunction with an erosion blanket.</p> <p>23. Erosion blankets or mats should be allowed to stabilize channels in s. 65.23 (3).</p> <p>24. Erosion blankets or mats should be allowed for stabilization of sheetflow in s. 65.23 (4).</p>	<p>16. Standard practice involves designing overland flow to different criteria than channelized flow.</p> <p>17. The proposed rules require any offsite sediment deposition to be cleaned up no matter what storm event occurs.</p> <p>18. The importance of citation is not clear. The table will be updated based on new data.</p> <p>19. Yes, silt fence that is totally inadequate for its intended use is sold. The specification establishes a minimum quality standard.</p> <p>20. Agree. Rule will be clarified.</p> <p>21. The rules do not prevent their use.</p> <p>22. The rules will be amended to require a covering. The blanket should not be required in all cases.</p> <p>23. The rules do not prevent their use.</p> <p>24. The rules do not prevent their use.</p>
	X		4	Gordon Petschow Self Eleva, WI	"Landscape Designers" should be recognized as being qualified to do erosion control plans. It is discriminatory to only allow landscape architects recognized by the Department of Regulation & Licensing.	Disagree. The department knows of no definition or certification for a landscape designer, therefore no way to determine if their training and experience qualifies them for a credential.

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X		5	Thomas DeLacy Independent Inspections, Ltd. Waukesha, WI	Questions the change to s. 50.18 (1) (b) that requires the inspector for Comm 65 to be either a representative of the department or a credentialed inspector for a certified municipality. What about a credentialed inspector in a non-certified municipality?	The intent is to allow this to occur. The wording in s. Comm 50.18 applies to building inspection in certified cities. Section Comm 65.04 allows any municipality to contract with a credentialed soil erosion inspector to enforce chapter Comm 65.
X		6	Kevin Connors Dane County Land Conservation Dept. Madison, WI	<ol style="list-style-type: none"> <li>Erosion control planning often must consider hydrologic conditions of the site. Architects, landscape architects and surveyors probably do not have this background.</li> <li>The rules should require plans to be submitted to the municipality or the enforcing agent. Some municipalities have engineers on staff to review the plans. The enforcing agent should then have the opportunity to request the plan at any time.</li> <li>All monitored activities should be kept in a detailed logbook.</li> <li>The enforcing agent must be given at least 48 hours notice prior to land disturbing activities.</li> </ol>	<ol style="list-style-type: none"> <li>All professionals must exercise judgement as to whether they are capable of performing the duties required for a particular project or type of work. Any professional has the option of becoming credentialed through the department.</li> <li>The proposed rules acknowledge this as a local option in s. Comm 65.04 (2) (b).</li> <li>It is unclear how this requirement will improve compliance with the rules.</li> <li>Municipalities may enact this as an option.</li> </ol>
X		7	Terry Donovan WI DNR Madison, WI	<ol style="list-style-type: none"> <li>Offers general support for the concepts in the proposed rules and makes editing suggestions that will not be summarized here.</li> <li>The code should specify the time and circumstances when inspections must take place. Inspections must occur at the appropriate time, which probably has no connection with the building inspections.</li> <li>There should be more criteria, such as steepness, adjacent land use, soil type, and proximity to waters and wetlands to differentiate a Class I site from a Class II site.</li> </ol>	<ol style="list-style-type: none"> <li>No response needed.</li> <li>Municipalities may enact this as an option.</li> <li>Soil erosion plans must reflect all of the characteristics of the site, no matter what classification has been determined. The determination only relates to who is allowed to prepare the plan.</li> </ol>

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	X	7	Terry Donovan (cont.)	<p>4. There must be a correlation with long-term storm water management. The WPDES Permit and NR 216 require a storm water management plan that describes practices installed during construction that will control peak flow and runoff after construction is complete.</p> <p>5. The existing language in s NR 216.42 (3) states that commercial building sites regulated by and in compliance with chapters LLHR 50-64 are deemed to hold a WPDES permit and be in compliance with chapter NR 216. There is no mention of chapter Comm 65. Additional language is needed to address this.</p>	<p>4. The rules reflect the statutory mandates and the objectives assigned to the Department of Commerce relating to soil erosion control.</p> <p>5. The revision to chapter NR 216 to reference chapter Comm 65 must be initiated by DNR.</p>
				<p>6. Plans for Class I sites should also show the immediate named receiving water from the U.S.G.S. 7.5 minute maps and should show wetlands, the aerial extent of wetlands on the site, and the locations where runoff enters surface waters or wetlands.</p> <p>7. The monitoring log is required in NR 216 and the WPDES permit program and needs to be required under Comm 65.</p>	<p>6. It is unclear how this requirement will improve compliance with the rules.</p> <p>7. It is unclear how this requirement will improve compliance with the rules.</p>
	X	8	Stephen Decker Construction Fabrics & Materials (CFM) Cottage Grove, WI	<p>1. Includes best management practices information from USEPA on silt fence installation and maintenance.</p> <p>2. There should be uniformity between Commerce and DOT on silt fence specifications.</p>	<p>1. No response needed.</p> <p>2. Agree. The rules will be amended to allow all viable silt fence materials.</p>
	X	9	Petry Lindquist Washington County Land Conservation Dept. West Bend, WI	<p>1. Chapter Comm 65 should be a minimum code that allows local amendments regardless of when the local ordinance goes into effect. The statutes give the department flexibility in how post-1994 local ordinances are administered. Local initiative should not be squashed by top-down rule making that results in a less effective and more bureaucratic process.</p>	<p>1. The statutes do not appear to give us the requested flexibility.</p>

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Sup.	X	9	Perry Lindquist (cont.)	<p>2. Washington County has a model ordinance that combines stormwater management and erosion control into a single permit process. This reduces bureaucracy and has the support of developers and builders and should be allowed to continue. NR 216 addresses half the picture but it does not restrict local ordinances. Comm 65 addresses half the picture but it does restrict local ordinances.</p> <p>3. Certification should not be allowed to anyone for erosion control planning without a thorough documentation of directly applicable experience and training. Section ATCP 50.95 has certification of conservation professionals that makes more sense than the scheme in Comm 65.</p> <p>4. It is disturbing to see another agency specify another set of standards for erosion control, especially in the form of an administrative rule. This creates confusion among the regulated community. There is an interagency process in place to maintain a single set of erosion control standards in the state.</p> <p>5. Reference to the documents in section 65.20 (6) should include dates.</p> <p>6. Prescriptive language regarding vegetative barriers, tracking pads, silt fence fabric, seeding and mulching, and stabilization of channels should be deleted because these are standard practices that should be uniform statewide. Several of these requirements are inconsistent with standard practice or misunderstand the practice. Future revision to these standard practices is made difficult when they are part of an administrative rule.</p> <p>7. Includes copies of model ordinances, checklists, flowcharts, issue papers and information on the standards coordinating committee.</p>	<p>2. The rules do not limit local permitting practices for administration and enforcement. The statutes do not appear to give us the requested flexibility.</p> <p>3. The rule will be amended to accept the environmental engineering practitioner certification outlined in s. ATCP 50.95</p> <p>4. The rules fulfill the mandates in s. 101.1205, Stats. The interagency group has no statute-based authority.</p> <p>5. Disagree. These documents are not standards and compliance with them is not mandated. The rules recognize that compliance with the best practices in these documents will achieve compliance with the performance standards which are required in the rules.</p> <p>6. Besides establishing performance and quality standards, the rules establish the point of standards application. The rules do not preclude the use of other valid methods, products or solutions.</p> <p>7. No response needed.</p>

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		X	10 Tom Kasper WI Dept of Commerce Madison, WI	There is no reason to assume that a land surveyor has the requisite knowledge to be automatically recognized as an erosion control planner.	Agree. The reference to land surveyors will be dropped.