

Comm 65-(98-124) CONSTRUCTION SITE
EROSION CONTROL

pt.
02



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 65

Relating to: Construction Site Erosion Control

Clearinghouse Rule No.: 98-126

The Wisconsin Department of Commerce proposes an order to repeal ss. Comm 5.63 (1) (b) 5., Comm 5.63 (4) (b), and Comm 50.115;

to renumber ss. Comm 5.02 Table 5.02 lines 11 to 63, Comm 5.06 Table 5.06 lines 11 to 63, Comm 5.63 (4) (a), Comm 50.18 (1), and Comm 50.21 (6) (intro.) (a) to (f);

to amend ss. Comm 5.02 Table 5.02 line 36, Comm 5.06 Table 5.06 line 36, Comm 5.61 (1), Comm 5.63 (5) (intro.), Comm 5.63 (6) (a) 1., and ILHR 66.60;

to repeal and recreate s. Comm 5.63 (1) (a);

and to create ss. Comm 2.32, Comm 5.02 Table 5.02 line 11, Comm 5.06 Table 5.06 line 11, Comm 5.315, Comm 5.675, Comm 50.11 Note 3, Comm 50.18 (1) (b), Comm 50.21 (6) (b), ILHR 70.04 (2) Note, and ch. Comm 65;

relating to construction site erosion control.

ANALYSIS OF PROPOSED RULES

Statutory Authority: ss. 101.02 (1), 101.19 (1), 101.1205, Stats.

Statutes Interpreted: s. 101.1205, Stats.

In accordance with s. 101.1205, Stats., the department, in consultation with the department of natural resources, has the responsibility 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 rules establish statewide soil erosion standards where more than 2,000 square feet of land surface is disturbed at commercial building sites.

Under the proposed rules an erosion control plan would be have 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 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 recognizes that the utilization of erosion control practices that follow the guidelines of the department of natural resources or the department of transportation as fulfilling the performance standards.

The code will require all sites to be registered with the department and will differentiate sites by their relative erosion potential. At a site where 5 or more acres are disturbed is classified as a class I site. A site where less than 5 acres are disturbed is classified as class II sites. A class I site is required to have the soil erosion control plan developed by either a professional designer such as

an architect or engineer or a department-certified erosion control planner. The erosion control plan for a type Class II site 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's office for review and approval.

Municipalities may also require formal plan review, permitting or inspection. A municipality may also continue to administer and enforce a local ordinance on soil erosion control if the ordinance is more stringent than the proposed rules and the ordinance was in effect on January 1, 1994.

SECTION 1. Comm 2.32 is created to read:

Comm 2.32 SOIL EROSION CONTROL. (1) A fee of \$40.00 shall be remitted to the department to accompany the site information form required under s. Comm 65.06.

(2) (a) A fee of \$200.00 shall accompany a soil erosion control plan submitted to the department when the total area of land disturbance, including all phases, is less than 5 acres.

(b) A fee of \$300.00 shall accompany a soil erosion control plan submitted to the department when the total area of land disturbance, including all phases, is 5 acres or more.

SECTION 2. Comm 5.02 Table 5.02 lines 11 to 63 are renumbered lines 12 to 64.

SECTION 3. Comm 5.02 Table 5.02 line 11 is created to read:

**Table 5.02
FEES
(partial table)**

	Credential Category	Type	Application Fee	Examination Fee	Credential Fee
11.	Erosion Control Planner	Certification	\$10	\$40	\$80

SECTION 4. Comm 5.02 Table 5.02 line 36, as renumbered, is amended to read:

**Table 5.02
FEES
(partial table)**

	Credential Category	Type	Application Fee	Examination Fee	Credential Fee
36.	Soil Erosion Inspector	Certification	\$10	NA \$20	\$15

SECTION 5. Comm 5.06 Table 5.06 lines 11 to 63 are renumbered lines 12 to 64.

SECTION 6. Comm 5.06 Table 5.06 line 11 is created to read:

Table 5.06
CREDENTIAL EXPIRATIONS
(partial table)

	Credential Category	Term	Expiration Date	Continuing Education Cycle
11.	Erosion Control Planner	2 years	Date of Issuance	3 Months Prior to Date of Issuance

SECTION 7. Comm 5.06 Table 5.06 line 36, as renumbered, is amended to read:

Table 5.06
CREDENTIAL EXPIRATIONS
(partial table)

	Credential Category	Term	Expiration Date	Continuing Education Cycle
36.	Soil Erosion Inspector	2 years	June 30	NA March 30

SECTION 8. Comm 5.315 is created to read:

Comm 5.315 EROSION CONTROL PLANNING. (1) GENERAL. (a) No person may prepare soil erosion control plans for the purpose of complying with s. Comm 65.07 unless the person holds one of the following:

1. A credential issued by the department as a certified erosion control planner.
2. A registration issued by the department of regulation and licensing in one of the following categories:
 - a. Architect.
 - b. Professional engineer.
 - c. Landscape architect.
3. A certification issued by the department of agriculture, trade and consumer protection as an agricultural engineering practitioner.

(b) A person may apply for a credential as an erosion control planner by applying for and successfully passing the examination in accordance with subs. (2) and (3).

(2) APPLICATION FOR EXAMINATION. A person applying to take an erosion control planner certification examination shall submit all of the following:

- (a) An application in accordance with s. Comm 5.01.

(b) An application fee and examination fee in accordance with s. Comm 5.02, Table 5.02.

(3) EXAMINATION. The examination for an erosion control planner shall be conducted in accordance with s. Comm 5.09.

(4) APPLICATION FOR CREDENTIAL. Upon notification of successfully passing the examination for an erosion control planner certification, a person may obtain the certification by submitting an application and the credential fee in accordance with ss. Comm 5.01 and 5.09 (7) (c).

(5) RESPONSIBILITIES. A person who prepares soil erosion control plans as a certified erosion control planner shall develop erosion control plans in accordance with ch. Comm 65 or s. Comm 21.125, as appropriate.

(6) RENEWAL. (a) 1. A person may renew his or her certification as an erosion control planner.

2. An erosion control planner certification shall be renewed in accordance with s. Comm 5.07.

(b) 1. The renewal of a certification as an erosion control planner shall be contingent upon the planner obtaining at least 6 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

2. A person who holds a credential as an erosion control planner may apply to the department for waiver of the continuing education requirements under subd. 1. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department.

SECTION 9. Comm 5.61 (1) is amended to read:

Comm 5.61 (1) GENERAL. A person who holds a credential issued by the department as a certified commercial building inspector may conduct inspections of public buildings and places of employment for the purpose of administering and enforcing chs. Comm 50 to 64, Comm 65, Comm 66, Comm 69 or Comm 70.

SECTION 10. Comm 5.63 (1) (a) is repealed and recreated to read:

Comm 5.63 (1) (a) Pursuant to s. 101.66 (2), Stats., no person may conduct the inspection of one- and 2-family dwellings for the purpose of administering and enforcing chapters Comm 20 to 25 unless the person holds one or more of the following certifications issued by the department:

1. Certified UDC-construction inspector.

2. Certified UDC-electrical inspector.
3. Certified UDC-HVAC inspector.
4. Certified UDC-plumbing inspector.

SECTION 11. Comm 5.63 (1) (b) 5. is repealed.

SECTION 12. Comm 5.63 (4) (a) is renumbered 5.63 (4).

SECTION 13. Comm 5.63 (4) (b) is repealed.

SECTION 14. Comm 5.63 (5) (intro.) is amended to read:

Comm 5.63 (5) RESPONSIBILITIES. A person who inspects one- and 2-family dwellings as a certified UDC-construction inspector, certified UDC-electrical inspector, certified UDC-HVAC inspector, or certified UDC-plumbing inspector, ~~or certified soil erosion inspector~~ shall:

SECTION 15. Comm 5.63 (6) (a) 1. is amended to read:

Comm (6) RENEWAL. (a) 1. A person may renew his or her certification as an UDC-construction inspector, UDC-electrical inspector, UDC-HVAC inspector, or UDC-plumbing inspector ~~or soil erosion inspector~~.

SECTION 16. Comm 5.675 is created to read:

Comm 5.675 SOIL EROSION INSPECTORS. (1) GENERAL. (a) No person may conduct the inspection of one- and 2-family dwelling sites for the purpose of administering and enforcing s. Comm 21.125 unless that person holds a credential issued by the department as a certified erosion control inspector or as a certified UDC construction inspector.

(b) 1. No person may conduct the inspection of a commercial building site for the purpose of administering and enforcing ch. Comm 65 unless the person holds a credential issued by the department as a certified soil erosion inspector or as a certified commercial building inspector.

2. Under this section, a commercial building is a building or structure covered under any of the following codes: chs. Comm 50 to 64, ch. Comm 66, or ch. Comm 70.

(c) A person holding a credential as a soil erosion inspector under s. Comm 5.63 as of [the effective date of this section REVISOR INSERTS DATE] is considered certified under this section.

Note: Sub. (6) requires continuing education for credential renewal.

(2) APPLICATION FOR EXAMINATION. A person applying to take a soil erosion inspector certification examination shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and examination fee in accordance with s. Comm 5.02, Table 5.02.

(3) EXAMINATION. Except as provided under sub. (4) (b), a person seeking to obtain a soil erosion inspector certification shall take and pass an examination in accordance with s. Comm 5.09.

(4) APPLICATION FOR CREDENTIAL. (a) Upon notification of successfully passing the examination for a soil erosion inspector certification, a person may obtain the certification by submitting an application and the credential fee in accordance with ss. Comm 5.01 and 5.09 (7) (c).

(b) A person may apply for a credential as a certified soil erosion inspector by submitting all of the following:

1. An application, an application fee and credential fee in accordance with ss. Comm 5.01 and 5.02.

2. Evidence that the person holds a certification as a soil erosion planner issued under s. Comm 5.315.

(5) RESPONSIBILITIES. A person who inspects one- and 2-family dwelling sites or commercial building sites as a certified soil erosion inspector shall do all of the following:

(a) Maintain a record of inspections made that includes the date and the findings of the inspections.

(b) Provide a copy of the inspection report to the property owner or his or her agent.

(c) Make available to the department upon request his or her inspection records.

(6) RENEWAL. (a) 1. A person may renew his or her certification as a soil erosion inspector.

2. An inspector certification under this section shall be renewed in accordance with s. Comm 5.07.

(b) 1. The renewal of a certification as a soil erosion inspector which has an expiration date after June 30, 2000, shall be contingent upon the inspector obtaining at least 6 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

2. A person who holds a credential as a certified soil erosion inspector may apply to the department for waiver of the continuing education requirements under subd. 1. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department.

SECTION 17. Comm 50.11 Note 3 is created to read:

Note 3: See ch. Comm 65 for erosion control measures that are required at construction sites of public buildings and places of employment.

SECTION 18. Comm 50.115 is repealed.

SECTION 19. Comm 50.18 (1) is renumbered Comm 50.18 (1) (a).

SECTION 20. Comm 50.18 (1) (b) is created to read:

ILHR 50.18 (1) (b) Inspections of soil erosion control measures under the provisions of ch. Comm 65 shall be conducted by a person qualified in one of the following ways:

1. The person is an authorized representative of the department.
2. The person holding a credential in accordance with ch. Comm 5 as a commercial building inspector or a soil erosion inspector, and is authorized by a certified municipality under s. Comm 50.21.

**[NOTE TO REVISOR: NOTE # 1 UNDER s. 50.18 (1) SHOULD FOLLOW (1) (a).
NOTE #2 UNDER 50.18 (1) SHOULD FOLLOW (1) (b).]**

SECTION 21. Comm 50.21 (6) (intro) (a) to (f) are renumbered Comm 50.21 (6) (a) 1 to 6.

SECTION 22. Comm 50.21 (6) (b) is created to read:

Comm 50.21 (6) (b) Inspections shall be conducted by an agent municipality or county to ascertain if the erosion control measures conform to the requirements of ch. Comm 65 as follows:

1. All inspections, for the purpose of administering and enforcing ch. Comm 65, shall be performed by a person credentialed in accordance with ch. Comm 5 as a commercial building inspector or as a soil erosion inspector.
2. A written report of each inspection shall be prepared. The report shall include the name of the certified inspector.
3. A copy of each inspection report shall be furnished to the owner and erosion control planner, if any.
4. The inspection report shall indicate all items of noncompliance with ch. Comm 65.
5. Orders to correct noncomplying items shall use the time frames specified in s. Comm 65.12.

SECTION 23. Chapter Comm 65 is created to read:

CHAPTER COMM 65
CONSTRUCTION SITE EROSION CONTROL

SUBCHAPTER I
INTRODUCTION

Comm 65.01 PURPOSE. This chapter establishes minimum statewide practices and inspection procedures for soil erosion control at the construction sites of public buildings and places of employment.

Comm 65.02 SCOPE. This chapter applies to all land disturbing construction activities that disturb more than 2,000 square feet of surface and that are associated with the construction or alteration of public buildings and buildings that are places of employment falling within the scope of chs. Comm 50 to 64, Comm 66 or Comm 70.

Note: For storm water management requirements after construction is completed, see ch. NR 216 administered by the Wisconsin department of natural resources.

Comm 65.03 DEFINITIONS. In this chapter:

- (1) "Building construction activity" means any activity covered under chs. Comm 50 to 64, Comm 66 and Comm 70 associated with the physical construction or alteration of a building.
- (2) "Channelized flow" means a concentrated flow condition where runoff is restricted to a defined pathway, such as a drainage ditch.
- (3) "Check dam" means a low structure, dam or weir placed across a channel to control water velocity.
- (4) "Construction site" means an area where land disturbing construction activity takes place, including areas for parking lots, access drives, walkways and utility work, due to the construction or alteration of a public building or a place of employment.
- (5) "Department" means the department of commerce.
- (6) "Design storm" means a selected rainfall pattern of 24-hour duration with a specified amount and frequency that is used as the basis for design of erosion control measures.
- (7) "Enforcing agent" means any one of the following:
 - (a) A municipality enforcing this chapter.
 - (b) A person certified under ch. Comm 5 for the purpose of enforcing this chapter.
 - (c) A person authorized by the department for the purpose of enforcing this chapter.
- (8) "Engineered practice" means any erosion control practice that has been designed or sized based on a 10-year, 24-hour design storm, including diversionary measures or sediment traps or basins.
- (9) "Land disturbing construction activity" means any activity associated with the physical construction of a building which is covered under chs. Comm 50 to 64, Comm 66 and Comm 70 that entails a change to the land surface that could lead to increased soil erosion and transport of sediment into public sewer inlets or the waters of the state.
- (10) "Mechanical erosion control measure" means any type of erosion control not using living vegetation.
- (11) "Municipality" means any city, town, village, or county in the state.
- (12) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency, or federal agency.

(13) "Place of employment" has the meaning given in s. 101.01 (11), Stats.

Note: Section 101.01 (11), Stats., reads: "Place of employment" includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which does not involve the use of mechanical power or in farming. "Farming" includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or employes for the use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production. When used with relation to building codes "place of employment" does not include an adult family home, as defined in s. 50.01 (1), or, except for the purposes of s. 101.11, a previously constructed building used as a community-based residential facility, as defined in s. 50.01 (1g), which serves 20 or fewer unrelated residents.

(14) "Public building" has the meaning specified under s. 101.01 (12), Stats.

Note: Section 101.01 (12), Stats., reads: "Public building" means any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, "public building" does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1g) which serves 20 or fewer unrelated residents or an adult family home, as defined in s. 50.01 (1)

(15) "Responsible party" means an agent designated by the owner to act on the owner's behalf and to fulfill the responsibilities of the owner under this chapter.

(16) "Sheet flow" means a non-concentrated flow condition where runoff flows in a planar sheet as opposed to being concentrated in a channel.

(17) "Soil erosion" means the detachment and movement of soil or sediment by water, wind, ice or gravity.

(18) "Stabilization" means the process of minimizing the soil erosion potential of a construction site.

(a) "Temporary stabilization" means a practice designed to minimize soil erosion for a time period of one year or less, that is generally removed in order to perform further construction activities or to permanently stabilize the construction site.

(b) "Permanent stabilization" means a practice designed to minimize erosion for a long, indefinite period after land disturbing construction activities have ceased on the construction site.

(19) "Tackifier" means a chemical substance used to bind mulch in order to prevent displacement.

(20) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or manmade, public or private within the state or under its jurisdiction, except those waters which are entirely confined and completely retained on the property of a person.

Comm 65.035 ADOPTED STANDARDS. (1) CONSENT. Pursuant to s. 227.21, Stats., the attorney general and the revisor of statutes have consented to the incorporation by reference of the standards listed in sub. (3).

(2) COPIES. Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased through the respective organizations listed in Table 65.035.

(3) ADOPTION. The standards referenced in Table 65.035 are hereby incorporated by reference into this chapter.

TABLE 65.035

ADOPTED STANDARDS

ASTM	American Society for Testing and Materials 100 Barr Harbor Drive West Conshohocken, PA 19428
Standard Reference Number	Title
1. D 4355-92	Test Method for Deterioration of Geotextiles from Exposure to Ultraviolet Light and Water (Xenon-Arc Type Apparatus)
2. D 4491-96	Test Methods for Water Permeability of Geotextiles by Permittivity
3. D 4632-91	Test Method for Grab Breaking Load and Elongation of Geotextiles
4. D 4751-95	Test Method for Determining the Apparent Opening Size of a Geotextile

SUBCHAPTER II
ADMINISTRATION AND ENFORCEMENT

Comm 65.04 MUNICIPAL ORDINANCES. (1) Pursuant to s. 101.1205 (5m), a municipality may continue to administer and enforce a local ordinance related to soil erosion

control at construction sites of public buildings and places of employment if the ordinance meets both of the following conditions:

(a) The standards in the ordinance are more stringent than the standards of this chapter.

(b) The ordinance was in effect on January 1, 1994.

(2) Nothing in this chapter shall prevent a municipality from any of the following:

(a) Employing a credentialed commercial building inspector or credentialed soil erosion inspector to administer and enforce this chapter, whether or not the municipality is certified under ss. Comm 50.21 or Comm 66.24.

(b) Instituting additional administrative or enforcement requirements such as plan review, permitting, or inspecting and charging fees to cover the costs of those requirements.

Comm 65.045 CERTIFICATION OF INSPECTORS. Inspections performed for the purpose of administering and enforcing this chapter shall be performed by a person credentialed in accordance with ch. Comm 5 as a soil erosion inspector or commercial building inspector.

Comm 65.05 OWNERS RESPONSIBILITY. The building owner or responsible party is responsible for meeting all requirements of this chapter including:

(1) Completing and submitting the site information form required under s. Comm 65.06.

(2) Preparing a soil erosion control plan for each site prior to submitting the site information form required under s. Comm 65.06 (3).

Note: Section Comm 65.07 requires a certified erosion control planner or other registered professional to develop the soil erosion control plan for a class I site.

(3) Maintaining a copy of the soil erosion control plan at the construction site.

(4) Implementing erosion control measures according to the plan.

(5) Notifying the inspection agency when a site under a stop work order has been brought into compliance.

(6) Performing the erosion control monitoring required under s. Comm 65.10.

(7) Permanently stabilizing the site within 7 days after the final grade is established as required under s. Comm 65.23.

(8) Submitting a copy of the soil erosion control plan to the enforcing agent on request.

Comm 65.06 SITE CLASSIFICATION. (1) CLASS I. Construction sites shall be classified as class I when the total area of all land disturbance, including all phases of construction, is 5 or more acres.

(2) CLASS II. Construction sites shall be classified as class II when the total area of all land disturbance, including all phases of construction, is less than 5 acres.

(3) SITE INFORMATION FORM. The owner or responsible party shall submit the completed site information form along with the filing fee specified in s. Comm 2.32 to the department prior to any land disturbing construction activity.

Note: See appendix for an example of the information needed to complete the site information form, form SBD 10376.

Note: The filing fee as of **[the effective date of this chapter REVISOR INSERTS DATE]** specified in s. Comm 2.32 is forty dollars.

Comm 65.07 PLAN DEVELOPMENT REQUIREMENTS FOR CLASS I SITES. The soil erosion control plan for a class I construction site shall be developed in accordance with this chapter by a person holding one of the following:

(1) A credential issued by the department as a certified erosion control planner.

Note: See s. Comm 5.315 for requirements.

(2) A registration issued by the department of regulation and licensing in one of the following categories:

(a) Architect.

(b) Professional engineer.

(c) Landscape architect.

(3) A certification issued by the department of agriculture, trade and consumer protection as an agricultural engineering practitioner.

Note: See s. ATP 50.95 for requirements relating to agricultural engineering practitioners.

Comm 65.075 PLAN REVIEW PROCESS. (1) The erosion control plan shall be available at the construction site for review.

(2) Plans may be submitted to the department for an in-office review. Fees in accordance with s. Comm 2.32 shall be submitted.

Note: Section 65.04 (2) allows municipalities to institute plan review, inspection or permitting activities and charge fees to cover the costs of those activities.

Comm 65.08 GENERAL PLAN REQUIREMENTS. (1) ALL SITES. The soil erosion control plan for all construction sites under the scope of this chapter shall show all of the following:

- (a) A narrative description of the site and the nature of the construction activity.
- (b) The location of all existing and proposed roadways, buildings, surface waters and the limits of clearing and grading on the site with respect to property lines.
- (c) Drainage patterns before and after land disturbing construction activities.
- (d) Erosion control measures, including placement, installation details and materials used.
- (e) The total area of the construction site and the total area which is expected to be disturbed by construction activities.
- (f) A description of the intended sequence of major activities which disturb soils for major portions of the construction site, such as grubbing, excavation, or grading.
- (g) A proposed schedule of intended soil disturbing activities.
- (h) A description of proposed stabilization methods.

(2) ADDITIONAL REQUIREMENTS FOR CLASS I SITES. In addition to the requirements listed in sub. (1), plans for Class I construction sites shall show all of the following:

- (a) Data describing the surface soil and subsoils planned to be exposed. For the purposes of this section, subsoils shall be the B horizons in soils with distinct profiles or, in soils with weak profiles, the soil below which roots do not normally grow.
- (b) 1. The existing and proposed topography and drainage patterns, roads and surface waters, drawn to a scale of at least 1 inch = 50 feet, with contours shown at 2-foot intervals for areas with slopes less than 20 percent and contours shown at 5-foot intervals in areas where slopes are 20 percent or greater.
- 2. The topographical information shall extend 200 feet beyond the disturbed area or to the property line, whichever is less.
- (c) Cross sections of channels designed to convey concentrated flows.
- (d) A description of the method used for sizing any engineered erosion control practices.

(e) The name and identification number of the certified erosion control planner or the name and registration number of the architect, professional engineer, land surveyor, or landscape architect that created the plan.

Comm 65.09 PLAN CHANGES FOR CLASS I SITES. The owner or responsible party shall obtain the approval and signature of a person certified or registered in accordance with s. Comm 65.07 prior to making any of the following changes to the soil erosion control plan of a class I construction site:

- (1) A phasing change that affects the land disturbance.
- (2) A substitution for an engineered erosion control practice.
- (3) An alteration to the seeding plan which eliminates temporary seeding.
- (4) Eliminating or decreasing the size of sediment traps, basins, berms, stone outlets, or size and type of stones or piping.
- (5) Grading changes that extend grading beyond previously designated limits.

Comm 65.10 MONITORING BY THE BUILDING OWNER OR RESPONSIBLE PARTY. The building owner or responsible party shall monitor the soil erosion control measures for structural failure at least weekly and anytime there is rainfall that exceeds 0.5 inches in a 24-hour period.

Comm 65.11 EMERGENCY SITUATIONS. When the failure of erosion control measures results in an immediate threat of displaced soil entering adjacent properties, public sewers or the waters of the state, procedures shall be implemented immediately to repair or replace the measures to a code-compliant state.

Comm 65.12 VIOLATIONS AND PENALTIES. (1) NOTICE OF NONCOMPLIANCE. (a) Notification. Upon finding of noncompliance, the enforcing agent shall notify the owner and the responsible party, in writing, of the violations to be corrected.

(b) Timing of orders. The enforcing agent shall order all cited violations of erosion control requirements under this chapter corrected within 72 hours after notification.

Note: The sediment cleanup requirements of s. Comm 65.22 (2) have different time limits and are unaffected by the 72-hour notice provision.

(c) Stop work order. 1. Pursuant to s. 101.1205 (6), Stats., failure to comply with an order issued in accordance with par. (b) may result in the issuance of a special order directing an immediate cessation of all construction work.

2. Construction work may resume when the conditions of the stop work order have been met.

(2) PENALTIES. Penalties for violations of this chapter shall be assessed in accordance with s. 101.02, Stats.

Note: Section 101.02, Stats., provides for fines of up to \$100 for each violation of rules promulgated under this section. Each day of continued violation may constitute a separate offense.

Comm 65.13 PETITION FOR VARIANCE. Petitions for variance to the requirements of this chapter may be submitted to the department in accordance with ch. Comm 3.

SUBCHAPTER III DESIGN REQUIREMENTS

Comm 65.20 DESIGN REQUIREMENTS. (1) Erosion control measures shall be planned and installed to minimize the erosion of disturbed soil and minimize the transport of soil offsite or into public sewer inlets or the waters of the state.

(2) Erosion control measures shall be planned, installed and maintained to remain in place and to function as designed for at least the duration of land disturbing construction activity up to the time of final site stabilization.

(3) Erosion control measures shall be planned, installed and maintained to remain in place and to function as designed when subjected to the forces of storm water and displaced soil associated with the appropriate design storm:

(a) Measures to minimize erosion resulting from overland flow shall be planned and installed to withstand the 2-year, 24-hour design storm for the county in which the construction site is located.

(b) Measures to minimize erosion resulting from channelized flow shall be planned and installed to withstand the 10-year, 24-hour design storm for the county in which the construction site is located.

(4) Rainfall amounts specified in Table 65.20 shall be used for designing these measures.

TABLE 65.20

RAINFALL IN INCHES FOR A 24-HOUR PERIOD

County	2 Year	10 Year	County	2 Year	10 Year
Adams	2.8	4.1	Marathon	2.7	4.0
Ashland	2.6	3.9	Marinette	2.4	3.6
Barron	2.7	4.1	Marquette	2.7	4.1
Bayfield	2.6	3.9	Menominee	2.5	3.7
Brown	2.5	3.7	Milwaukee	2.7	3.9
Buffalo	2.9	4.3	Monroe	2.9	4.2
Burnett	2.7	4.0	Oconto	2.4	3.7
Calumet	2.5	3.8	Oneida	2.5	3.8
Chippewa	2.7	4.1	Outagamie	2.5	3.8
Clark	2.8	4.1	Ozaukee	2.6	3.9
Columbia	2.8	4.1	Pepin	2.8	4.3
Crawford	3.0	4.3	Pierce	2.8	4.2
Dane	2.9	4.2	Polk	2.7	4.1
Dodge	2.8	4.0	Portage	2.7	4.0
Door	2.4	3.6	Price	2.6	4.0
Douglas	2.6	3.9	Racine	2.7	4.0
Dunn	2.8	4.2	Richland	2.9	4.3
Eau Claire	2.8	4.2	Rock	2.9	4.1
Florence	2.4	3.6	Rusk	2.7	4.1
Fond du Lac	2.6	3.9	St. Croix	2.8	4.2
Forest	2.4	3.7	Sauk	2.9	4.2
Grant	3.0	4.3	Sawyer	2.6	4.0
Green	3.0	4.2	Shawano	2.5	3.8
Green Lake	2.7	4.0	Sheboygan	2.5	3.8
Iowa	3.0	4.3	Taylor	2.7	4.1
Iron	2.5	3.8	Trempealeau	2.9	4.3
Jackson	2.8	4.2	Vernon	3.0	4.3
Jefferson	2.8	4.0	Vilas	2.5	3.8
Juneau	2.8	4.1	Walworth	2.8	4.1
Kenosha	2.8	4.0	Washburn	2.7	4.0
Kewaunee	2.4	3.7	Washington	2.7	3.9
La Crosse	2.9	4.3	Waukesha	2.7	4.0
Lafayette	3.0	4.3	Waupaca	2.6	3.9
Langlade	2.5	3.8	Waushara	2.7	4.0
Lincoln	2.6	3.9	Winnebago	2.6	3.9
Manitowoc	2.4	3.8	Wood	2.7	4.1

(5) If a site crosses the boundary between two or more counties, the county with the highest rainfall amounts shall be used for design purposes.

(6) Except as limited under this chapter, the department will accept practices installed and maintained in accordance with either of the following references as providing erosion control in accordance with this chapter:

(a) Chapter 3 of Wisconsin Construction Site Best Management Practice Handbook published by Wisconsin Department of Natural Resources.

(b) Chapter 10 of Facilities Development Manual published by Wisconsin Department of Transportation.

Note: Copies of Chapter 10 of Facilities Development Manual are available from Manual Development Engineer, Bureau of Highway Development, Room 651, P.O. Box 7916, Madison, WI, 53707. The cost as of the effective date of this chapter is \$5, which must accompany the order. Copies of the Best Management Practice Handbook are available from the Department of Administration, Document Sales, P.O. Box 7840, Madison, WI, 53707. Phone (608) 266-3358 for information or 1-800-362-7253 for credit card orders.

Comm 65.21 GENERAL INSTALLATION REQUIREMENTS. (1) GENERAL. (a) All erosion control measures shall be constructed, maintained, and, if necessary, altered in accordance with this chapter.

(b) The erosion control measures shall be installed, used and maintained until the construction site is permanently stabilized.

(2) COMPLIANCE TIMES. Except for tracking pads, all planned erosion control measures shall be properly installed prior to the start of the current phase of land disturbing construction activities.

Note: See sub. (7) for tracking pad requirements.

(3) PERIMETER EROSION CONTROL MEASURES. (a) Erosion control measures shall be placed between the area of soil disturbance and the downslope property lines as needed to contain soil that would otherwise be transported offsite.

(b) Downslope perimeter erosion control measures shall be installed prior to beginning upslope land disturbing activities.

(c) If vegetative barriers are used as perimeter erosion control measures, their use shall meet all of the following requirements:

1. The disturbed area upslope from a vegetative barrier shall have no slopes greater than 6%.

2. The area used for the barrier shall have no slope greater than 5%.

3. The barriers shall be at least 10 feet wide for every 50 feet of open ground draining to them.
4. An individual barrier may not be less than 25 feet wide in the direction of maximum slope.

5. If the barriers are driven on, become silt covered, or are otherwise rendered ineffective, other perimeter erosion control measures shall be used.

(5) FLOW IN CHANNELS. Velocity dissipation devices shall be placed at discharge locations and along the length of any receiving channels as necessary to prevent erosive flow from the site.

(6) SEWER INLET PROTECTION. Onsite sewer inlets that are downslope of the disturbed area and that discharge to a public storm sewer system or to waters of the state shall be protected with erosion control measures.

(7) SOIL TRACKING. (a) General. Measures shall be provided to minimize the tracking of soil off the construction site.

(b) Tracking Pad. Where a tracking pad is used to minimize tracking, all of the following requirements shall be met:

1. The length of the pad shall be at least 50 feet measured from the property line where the street or sidewalk is accessed or the distance from the road to the disturbed area, whichever is less.

2. a. The width of the pad shall be at least 10 feet.

- b. If it is necessary to have vehicles pass one another on the tracking pad, the pad shall be at least 20 feet wide.

3. a. The topmost layer of the tracking pad shall consist of at least 6 inches of 2- to 3-inch aggregate or equivalent.

- b. If soils are at least 50% clay or silt, an appropriate geotextile liner shall be used to separate the aggregate from the soil below.

4. All vehicles entering or leaving the site shall use the tracking pad.

5. The tracking pad shall be installed within 24 hours after beginning land disturbing construction activity.

(8) SOIL STOCKPILES. (a) Unstabilized soil stockpiles are considered to be disturbed soil.

(b) Soil stockpiles that are planned to be left undisturbed for 45 consecutive days or more shall be immediately protected with temporary stabilization measures or perimeter erosion control measures.

(c) Soil stockpiles may not be located in areas of concentrated flow.

(9) DEWATERING. If a site requires dewatering, measures shall be taken to minimize the transport of soil offsite.

Note: A pit dewatering permit may be required from the department of natural resources in accordance with ch. 283, Stats.

(10) APPROVED MATERIALS. When the following products are used for erosion control, the products shall meet the following requirements:

(a) Silt fence fabric. Fabric used in silt fencing shall meet all of the following requirements:

1. 'Grab strength'. A minimum grab strength of 450 newtons measured parallel and perpendicular to the manufacturing direction when tested in accordance with ASTM standard D 4632.

Note: 450 newtons is approximately equal to 100 pounds of force.

2. 'Ultraviolet stability'. A minimum retained tensile strength of 70% after 500 hours of exposure to ultraviolet light and water when tested in accordance with ASTM standard D 4355.

3. 'Apparent opening size'. A maximum apparent opening size of 0.6 mm, as determined by ASTM standard D 4751.

4. 'Water transmission rate'. A minimum permittivity of 0.05 sec^{-1} when tested in accordance with ASTM standard D 4491.

(b) Matting, tackifiers and chemical soil stabilizers. Materials used as matting, tackifiers or chemical stabilization shall be listed in the Wisconsin department of transportation erosion control product acceptability lists.

Note: See appendix for further information on the WISDOT erosion control product acceptability lists.

Comm 65.22 CONSTRUCTION SITE MAINTENANCE. (1) GENERAL. All erosion control measures shall be monitored by the owner or responsible party and maintained in operating condition until the disturbed area is stabilized.

(2) SEDIMENT CLEANUP. (a) Mechanical erosion control measures shall be cleared of sediment by the time the accumulation reaches 50% of the height of the control measure.

(b) Offsite sediment deposition occurring as a result of a storm event shall be cleaned up within 24 hours after the end of the storm event.

(c) All other offsite sediment deposition occurring as a result of construction activities shall be cleaned up by the end of the same work day.

Comm 65.23 CONSTRUCTION SITE STABILIZATION. (1) GENERAL. Stabilization of construction sites shall be provided in accordance with this section. Stabilization methods include the following:

(a) Establishing perennial vegetation with a minimum coverage rate of 70% of the soil surface.

(b) Covering the soil with a hard surface such as concrete, bituminous material or riprap.

(c) 1. Using anchored mulch spread at a minimum depth of one inch.

2. The means of anchoring mulch include punching the mulch or using a tackifier.

3. When seed and mulch are planned to be used as final stabilization and final grade is established outside of the seeding or dormant seasons as shown in Table 65.23, anchored mulch without seeding shall be used.

(d) 1. Seeding and mulching.

2. Seeding and mulching shall be used only during the growing season or during the dormant season as shown in Table 65.23.

3. Temporary seeding during the growing season shall use an annual herbaceous plant, such as grass, that germinates within 10 days.

4. Temporary seeding during the dormant season shall use winter wheat or winter rye.

(e) Using a chemical soil stabilizer that is applied in accordance with the manufacturer's recommendations.

(2) TIMING. (a) 1. Except as provided in subd. 2., the construction site shall be stabilized within 7 days after the final grade is established.

2. If more than 7 days will elapse between final grading and stabilization, perimeter erosion control measures and sewer inlet protection shall be maintained in place or shall be reinstalled.

(b) Disturbed soil that is planned to be left inactive for one year or more shall be treated as final grade and be permanently stabilized.

(3) STABILIZATION OF CHANNELS. (a) If sod is used to stabilize a channel, it shall be staked to prevent movement.

(b) Vegetation may not be used as the sole means of final stabilization of channels if the 10-year 24-hour storm event will produce flow velocities greater than or equal to the following:

1. 3.0 feet per second for sand, silt, sandy loam and silty loam soils.
2. 4.0 feet per second for sandy clay loam and silty clay loam soils.
3. 5.0 feet per second for clay soils.

(c) Vegetation shall be established prior to using the channel as a control measure unless checkdams or other planned erosion control measures are installed to reduce water velocities and prevent channel erosion.

(d) Measures shall be taken to minimize the transport of suspended soil in channels prior to discharging the water from the site.

(4) STABILIZATION OF AREAS SUBJECT TO SHEETFLOW. (a) Seeding and mulching. 1. Seeding shall be scheduled in accordance with Figure 65.23 and Table 65.23.

SEEDING SCHEDULE

Region	Growing Season	Dormant Season
North	5/1 to 9/6	11/1 to 3/20
Central	4/15 to 9/15	11/1 to 3/15
South	4/1 to 9/20	11/15 to 3/1

TABLE 65.23

2. Seeding shall be protected with mulch that is anchored in place by a tackifier or mechanical means.

3. If seeding is done during the dormant season, the site shall be reseeded during the following growing season as necessary to achieve a minimum soil coverage rate of 70%.

4. If final grade is established outside of the growing or dormant seasons, the soil shall be covered with anchored mulch prior to seeding.

(b) Sod. 1. Sod may be used any time of the year that conditions allow for establishment.

2. Except for use in channels, sod shall be staked to remain in place anytime the slope is greater than 4 to 1.

Note: Paragraph (3) (a) requires sod to be staked anytime it is used to stabilize a channel.

(5) STABILIZATION OF STEEP SLOPES USING VEGETATION. Fill slopes longer than 10 feet with a slope of 3 to 1 or more and cut slopes longer than 10 feet with a slope of 2 to 1 or more that use vegetation for stabilization shall incorporate one or more of the following practices:

(a) Erosion control matting is used in accordance with the manufacturer's recommendations.

(b) Sod is staked to prevent movement.

SECTION 24. Comm 66.60 is amended to read:

Comm 66.60 CONSTRUCTION STANDARDS AND DEFINITIONS. The design and construction of multifamily dwellings shall comply with the applicable requirements of chs. Comm 51 to 53, subch. II of ch. Comm 57, and chs. Comm 63,64,65, and 69, which are hereby incorporated by reference into this chapter.

SECTION 25. Comm 70.04 (2) Note is created to read:

Comm 70.04 (2) Note: See ch. Comm 65 for soil erosion requirements that apply during construction or alteration of buildings covered under this chapter.

(END)

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, except for ss. Comm 5.315 (1) (a) and Comm 65.07.

Pursuant to s. 227.22 (2) (b), Stats., ss. Comm 5.315 (1) (a) and Comm 65.07 shall take effect on the first day of the 2nd month following publication in the Wisconsin Administrative Register.

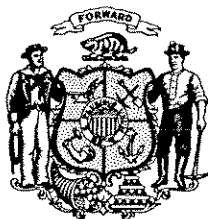
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[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)]

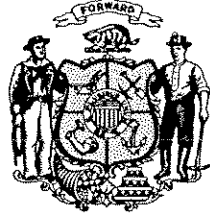
Comment Attached YES NO

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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.

The Wisconsin Department of Commerce proposes an order to repeal ss. Comm 5.63 (1) (a) 5. and (b) 5., Comm 5.63 (4) (b), and Comm 50.115;

to renumber ss. Comm 5.02 Table 5.02 lines 11 to 63, Comm 5.06 Table 5.06 lines 11 to 63, Comm 5.63 (4) (a), Comm 50.18 (1), and Comm 50.21 (6) (intro.) (a) to (f);

to amend ss. Comm 5.02 Table 5.02 line 36, Comm 5.06 Table 5.06 line 36, Comm 5.61 (1), Comm 5.63 (5) (intro.), Comm 5.63 (6) (a) 1., and ILHR 66.60;

and to create ss. Comm 2.32, Comm 5.02 Table 5.02 line 11, Comm 5.06 Table 5.06 line 11, Comm 5.315, Comm 5.675, Comm 50.11 Note 3, Comm 50.18 (1) (b), Comm 50.21 (6) (b), ILHR 70.04 (2) Note, and ch. Comm 65;

relating to construction site erosion control.

ANALYSIS OF PROPOSED RULES

Statutory Authority: ss. 101.02 (1), 101.19 (1), 101.1205, Stats.

Statutes Interpreted: s. 101.1205, Stats.

In accordance with s. 101.1205, Stats., the department, in consultation with the department of natural resources, has the responsibility 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 rules establish statewide soil erosion standards where more than 2,000 square of land surface is disturbed at commercial building sites.

Under the proposed rules an erosion control plan would be have 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 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 recognizes that the utilization of erosion control practices that follow the guidelines of the department of natural resources or the department of transportation as fulfilling the performance standards.

The code will require all sites to be registered with the department and will differentiate sites by their relative erosion potential. At a site where 5 or more acres are disturbed is classified as a class I site. A site where less than 5 acres are disturbed is classified as class II sites. A class I site is required to have the soil erosion control plan developed by either a professional designer such as an architect or engineer or a department certified erosion control planner. The erosion control plan for a type Class II site 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's office for review and approval.

Municipalities may also require formal plan review, permitting or inspection. A municipality may also continue to administer and enforce a local ordinance on soil erosion control if the ordinance is more stringent than the proposed rules and the ordinance with in effect on January 1, 1994.

SECTION 1. Comm 2.32 is created to read:

Comm 2.32 SOIL EROSION CONTROL. (1) A fee of \$40.00 shall be remitted to the department to accompany the site information form required under s. Comm 65.06.

(2) (a) A fee of \$200.00 shall accompany a soil erosion control plan submitted to the department when the total area of land disturbance, including all phases, is less than 5 acres.

(b) A fee of \$300.00 shall accompany a soil erosion control plan submitted to the department when the total area of land disturbance, including all phases, is 5 acres or more.

SECTION 2. Comm 5.02 Table 5.02 lines 11 to 63 are renumbered lines 12 to 64.

SECTION 3. Comm 5.02 Table 5.02 line 11 is created to read:

Table 5.02
FEES
(partial table)

	Credential Category	Type	Application Fee	Examination Fee	Credential Fee
11.	Erosion Control Planner	Certification	\$10	\$40	\$80

SECTION 4. Comm 5.02 Table 5.02 line 36, as renumbered, is amended to read:

Table 5.02
FEES
(partial table)

	Credential Category	Type	Application Fee	Examination Fee	Credential Fee
36.	Soil Erosion Inspector	Certification	\$10	NA \$20	\$15

SECTION 5. Comm 5.06 Table 5.06 lines 11 to 63 are renumbered lines 12 to 64.

SECTION 6. Comm 5.06 Table 5.06 line 11 is created to read:

Table 5.06
CREDENTIAL EXPIRATIONS
(partial table)

	Credential Category	Term	Expiration Date	Continuing Education Cycle
11.	Erosion Control Planner	2 years	Date of Issuance	3 Months Prior to Date of Issuance

SECTION 7. Comm 5.06 Table 5.06 line 36, as renumbered, is amended to read:

Table 5.06
CREDENTIAL EXPIRATIONS
(partial table)

	Credential Category	Term	Expiration Date	Continuing Education Cycle
36.	Soil Erosion Inspector	2 years	June 30	NA March 30

SECTION 8. Comm 5.315 is created to read:

Comm 5.315 EROSION CONTROL PLANNING. (1) GENERAL. (a) No person may prepare soil erosion control plans for the purpose of complying with s. Comm 65.07 unless the person holds one of the following:

1. A credential issued by the department as a certified erosion control planner.
2. A registration issued by the department of regulation and licensing in one of the following categories:
 - a. Architect.
 - b. Professional engineer.
 - c. Land surveyor.
 - d. Landscape architect.

(b) A person may apply for a credential as an erosion control planner by applying for and successfully passing the examination in accordance with subs. (2) and (3).

(2) APPLICATION FOR EXAMINATION. A person applying to take an erosion control planner certification examination shall submit all of the following:

- (a) An application in accordance with s. Comm 5.01.
- (b) An application fee and examination fee in accordance with s. Comm 5.02, Table 5.02.

(3) EXAMINATION. The examination for an erosion control planner shall be conducted in accordance with s. Comm 5.09.

(4) APPLICATION FOR CREDENTIAL. Upon notification of successfully passing the examination for an erosion control planner certification, a person may obtain the certification by submitting an application and the credential fee in accordance with ss. Comm 5.01 and 5.09 (7) (c).

(5) RESPONSIBILITIES. A person who prepares soil erosion control plans as a certified erosion control planner shall develop erosion control plans in accordance with ch. Comm 65 or s. ILHR 21.125, as appropriate.

(6) RENEWAL. (a) 1. A person may renew his or her certification as an erosion control planner.

2. An erosion control planner certification shall be renewed in accordance with s. Comm 5.07.

(b) 1. The renewal of a certification as an erosion control planner shall be contingent upon the planner obtaining at least 6 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

2. A person who holds a credential as an erosion control planner may apply to the department for waiver of the continuing education requirements under subd. 1. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department.

SECTION 9. Comm 5.61 (1) is amended to read:

Comm 5.61 (1) GENERAL. A person who holds a credential issued by the department as a certified commercial building inspector may conduct inspections of public buildings and places of employment for the purpose of administering and enforcing chs. ILHR 50 to 64, Comm 65, Comm 66, ILHR 69 or ILHR 70.

SECTION 10. Comm 5.63 (1) (a) 5. and (b) 5. are repealed.

SECTION 11. Comm 5.63 (4) (a) is renumbered 5.63 (4).

SECTION 12. Comm 5.63 (4) (b) is repealed.

SECTION 13. Comm 5.63 (5) (intro.) is amended to read:

Comm 5.63 (5) RESPONSIBILITIES. A person who inspects one- and 2-family dwellings as a certified UDC-construction inspector, certified UDC-electrical inspector, certified UDC-HVAC inspector, or certified UDC-plumbing inspector, ~~or certified soil erosion inspector~~ shall:

SECTION 14. Comm 5.63 (6) (a) 1. is amended to read:

Comm (6) RENEWAL. (a) 1. A person may renew his or her certification as an UDC-construction inspector, UDC-electrical inspector, UDC-HVAC inspector, or UDC-plumbing inspector ~~or soil erosion inspector~~.

SECTION 15. Comm 5.675 is created to read:

Comm 5.675 SOIL EROSION INSPECTORS. (1) GENERAL. (a) No person may conduct the inspection of one- and 2-family dwelling sites for the purpose of administering and enforcing s. ILHR 21.125 unless that person holds a credential issued by the department as a certified erosion control inspector or as a certified UDC construction inspector.

(b) 1. No person may conduct the inspection of a commercial building site for the purpose of administering and enforcing ch. Comm 65 unless the person holds a credential issued by the department as a certified soil erosion inspector or as a certified commercial building inspector.

2. Under this section, a commercial building is a building or structure covered under any of the following codes: chs. ILHR 50-64, ch. ILHR 66, or ch. ILHR 70.

(c) A person holding a credential as a soil erosion inspector under s. Comm 5.63 as of [the effective date of this section **REVISOR INSERTS DATE**] is considered certified under this section.

Note: Sub. (6) requires continuing education for credential renewal.

(2) APPLICATION FOR EXAMINATION. A person applying to take a soil erosion inspector certification examination shall submit all of the following:

(a) An application in accordance with s. Comm 5.01.

(b) An application fee and examination fee in accordance with s. Comm 5.02, Table 5.02.

(3) EXAMINATION. Except as provided under sub. (5) (b), a person seeking to obtain a soil erosion inspector certification shall take and pass an examination in accordance with s. Comm 5.09.

(4) APPLICATION FOR CREDENTIAL. (a) Upon notification of successfully passing the examination for a soil erosion inspector certification, a person may obtain the certification by submitting an application and the credential fee in accordance with ss. Comm 5.01 and 5.09 (7) (c).

(b) A person may apply for a credential as a certified soil erosion inspector by submitting all of the following:

1. An application, an application fee and credential fee in accordance with ss. Comm 5.01 and 5.02.

2. Evidence that the person holds a certification as a soil erosion planner issued under s. Comm 5.315.

(5) RESPONSIBILITIES. A person who inspects one- and 2-family dwelling sites or commercial building sites as a certified soil erosion inspector shall do all of the following:

(a) Maintain a record of inspections made that includes the date and the findings of the inspections.

(b) Provide a copy of the inspection report to the property owner or his or her agent.

(c) Make available to the department upon request his or her inspection records.

(6) RENEWAL. (a) 1. A person may renew his or her certification as a soil erosion inspector.

2. An inspector certification under this section shall be renewed in accordance with s. Comm 5.07.

(b) 1. The renewal of a certification as a soil erosion inspector which has an expiration date after June 30, 2000 shall be contingent upon the inspector obtaining at least 6 hours of acceptable continuing education within the time period specified in s. Comm 5.08 and Table 5.06, except as provided in subd. 2.

2. A person who holds a credential as a certified soil erosion inspector may apply to the department for waiver of the continuing education requirements under subd. 1. on the grounds of prolonged illness or disability or similar circumstances. Each application for waiver shall be considered individually on its merits by the department.

SECTION 16. Comm 50.11 Note 3 is created to read:

Note 3: See ch. Comm 65 for erosion control measures that are required at construction sites of public buildings and places of employment.

SECTION 17. Comm 50.115 is repealed.

SECTION 18. Comm 50.18 (1) is renumbered (1) (a).

SECTION 19. Comm 50.18 (1) (b) is created to read:

ILHR 50.18 (1) (b) Inspections of soil erosion control measures under the provisions of ch. Comm 65 shall be conducted by a person qualified in one of the following ways:

1. The person is an authorized representative of the department.
2. The person holding a credential in accordance with ch. Comm 5 as a commercial building inspector or a soil erosion inspector, and is authorized by a certified municipality under s. ILHR 50.21.

**[NOTE TO REVISOR: NOTE # 1 UNDER s. 50.18 (1) SHOULD FOLLOW (1) (a).
NOTE #2 UNDER 50.18 (1) SHOULD FOLLOW (1) (b).]**

SECTION 20. Comm 50.21 (6) (intro) (a) to (f) are renumbered (6) (a) 1 to 6.

SECTION 21. Comm 50.21 (6) (b) is created to read:

ILHR 50.21 (6) (b) Inspections shall be conducted by an agent municipality or county to ascertain if the erosion control measures conform to the requirements of ch. Comm 65 as follows:

1. All inspections, for the purpose of administering and enforcing ch. Comm 65, shall be performed by a person credentialed in accordance with ch. Comm 5 as a commercial building inspector or as a soil erosion inspector.
2. A written report of each inspection shall be prepared. The report shall include the name of the certified inspector.
3. A copy of each inspection report shall be furnished to the owner and erosion control planner, if any.
4. The inspection report shall indicate all items of noncompliance with ch. Comm 65.
5. Orders to correct noncomplying items shall use the time frames specified in s. Comm 65.13.

SECTION 22. Chapter Comm 65 is created to read:

Chapter Comm 65
Construction Site Erosion Control

Subchapter I
Introduction

Comm 65.01 PURPOSE. This chapter establishes minimum statewide practices and inspection procedures for soil erosion control at the construction sites of public buildings and places of employment.

Comm 65.02 SCOPE. This chapter applies to all land disturbing construction activities that disturb more than 2,000 square feet of surface and that are associated with the construction or alteration of public buildings and buildings that are places of employment falling within the scope of chs. ILHR 50 to 64, ILHR 66 or ILHR 70.

Note: For storm water management requirements after construction is completed, see ch. NR 216 administered by the Wisconsin department of natural resources.

Comm 65.03 DEFINITIONS. In this chapter:

(1) "Building construction activity" means any activity covered under chs. ILHR 50 to 64, ILHR 66 and ILHR 70 associated with the physical construction or alteration of a building.

(2) "Channelized flow" means a concentrated flow condition where runoff is restricted to a defined pathway, such as a drainage ditch.

(3) "Check dam" means a low structure, dam or weir placed across a channel to control water velocity.

(4) "Construction site" means an area where soil is disturbed, including parking lots, access drives, walkways and utility work, due to the construction or alteration of a public building or a place of employment.

(5) "Department" means the department of commerce.

(6) "Design storm" means a selected rainfall pattern of 24-hour duration with a specified amount and frequency that is used as the basis for design of erosion control measures.

(7) "Enforcing agent" means any one of the following:

(a) A municipality enforcing this chapter.

(b) A person certified under ch. Comm 5 for the purpose of enforcing this chapter.

(c) A person authorized by the department for the purpose of enforcing this chapter.

(8) "Engineered practice" means any erosion control practice that has been designed or sized based on a 10-year, 24-hour design storm, including diversionary measures or sediment traps or basins.

(9) "Land disturbing construction activity" means any activity associated with the physical construction of a building which is covered under chs. ILHR 50 to 64, ILHR 66 and ILHR 70 that entails a change to the land surface that could lead to increased soil erosion and transport of sediment into public sewer inlets or the waters of the state.

(10) "Mechanical erosion control measure" means any type of erosion control not using living vegetation.

(11) "Municipality" means any city, town, village, or county in the state.

(12) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency, or federal agency.

(13) "Place of employment" has the meaning given in s. 101.01 (11), Stats.

Note: Section 101.01 (11), Stats., reads: "Place of employment" includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which does not involve the use of mechanical power or in farming. "Farming" includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or employes for the use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production. When used with relation to building codes "place of employment" does not include an adult family home, as defined in s. 50.01 (1), or, except for the purposes of s. 101.11, a previously constructed building used as a community-based residential facility, as defined in s. 50.01 (1g), which serves 20 or fewer unrelated residents.

(14) "Public building" has the meaning specified under s. 101.01 (12), Stats.

Note: Section 101.01 (12), Stats., reads: "Public building" means any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, "public building" does not include a previously constructed building used as a

community-based residential facility as defined in s. 50.01 (1g) which serves 20 or fewer unrelated residents or an adult family home, as defined in s. 50.01 (1)

(15) "Responsible party" means an agent designated by the owner to act on the owner's behalf and to fulfill the responsibilities of the owner in relation to this chapter.

(16) "Sheet flow" means a non-concentrated flow condition where runoff flows in a planar sheet as opposed to being concentrated in a channel.

(17) "Soil erosion" means the detachment and movement of soil or sediment by water, wind, ice or gravity.

(18) "Stabilization" means the process of minimizing the soil erosion potential of a construction site.

(a) "Temporary stabilization" means a practice designed to minimize soil erosion for a time period of one year or less, that is generally removed in order to perform further construction activities or to permanently stabilize the construction site.

(b) "Permanent stabilization" means a practice designed to minimize erosion for a long, indefinite period after land disturbing construction activities have ceased on the construction site.

(19) "Tackifier" means a chemical substance used to bind mulch in order to prevent displacement.

(20) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or manmade, public or private within the state or under its jurisdiction, except those waters which are entirely confined and completely retained on the property of a person.

Comm 65.035 ADOPTED STANDARDS. (1) CONSENT. Pursuant to s. 227.21, Stats., the attorney general and the revisor of statutes have consented to the incorporation by reference of the standards listed in sub. (3).

(2) COPIES. Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased through the respective organizations listed in Table 65.035.

(3) ADOPTION. The standards referenced in Table 65.035 are hereby incorporated by reference into this chapter.

TABLE 65.035

ADOPTED STANDARDS

ASTM	American Society for Testing and Materials 100 Barr Harbor Drive West Conshohocken, PA 19428
Standard Reference Number	Title
1. D 4355-92	Test Method for Deterioration of Geotextiles from Exposure to Ultraviolet Light and Water (Xenon-Arc Type Apparatus)
2. D 4491-96	Test Methods for Water Permeability of Geotextiles by Permittivity
3. D 4632-91	Test Method for Grab Breaking Load and Elongation of Geotextiles
4. D 4751-95	Test Method for Determining the Apparent Opening Size of a Geotextile

Subchapter II
Administration and Enforcement

Comm 65.04 MUNICIPAL ORDINANCES. (1) Pursuant to s. 101.1205 (5m), a municipality may continue to administer and enforce a local ordinance related to soil erosion control at construction sites of public buildings and places of employment if the ordinance meets both of the following conditions:

(a) The ordinance is more stringent than the requirements of this chapter.

(b) The ordinance was in effect on January 1, 1994.

(2) Nothing in this chapter shall prevent a municipality from any of the following:

(a) Employing a credentialed commercial building inspector or credentialed soil erosion inspector to administer and enforce this chapter, whether or not the municipality is certified under ss. Comm 50.21 or ILHR 66.24.

(b) Instituting additional administrative or enforcement requirements such as plan review, permitting, or inspecting and charging fees to cover the costs of those requirements.

Comm 65.045 CERTIFICATION OF INSPECTORS. Inspections performed for the purpose of administering and enforcing this chapter shall be performed by a person credentialed in accordance with ch. Comm 5 as a soil erosion inspector or commercial building inspector.

Comm 65.05 OWNERS RESPONSIBILITY. The building owner or responsible party is responsible for meeting all requirements of this chapter including:

- (1) Completing and submitting the site information form required under s. Comm 65.06.
- (2) Preparing a soil erosion control plan for each site prior to submitting the site information form required under s. Comm 65.06 (3).

Note: Section 65.07 requires a certified erosion control planner or other registered professional to develop the soil erosion control plan for a class I site.

- (3) Maintaining a copy of the soil erosion control plan at the construction site.
- (4) Implementing erosion control measures according to the plan.
- (5) Notifying the inspection agency when a site under a stop work order has been brought into compliance.
- (6) Performing the erosion control monitoring required under s. Comm 65.11.
- (7) Permanently stabilizing the site within 7 days after the final grade is established as required under s. Comm 65.23.

Comm 65.06 SITE CLASSIFICATION. (1) CLASS I. Construction sites shall be classified as class I when the total area of all land disturbance, including all phases of construction, is 5 or more acres.

(2) CLASS II. Construction sites shall be classified as class II when the total area of all land disturbance, including all phases of construction, is less than 5 acres.

(3) SITE INFORMATION FORM. The owner or responsible party shall submit the completed site information form along with the filing fee specified in s. Comm 2.32 to the department prior to any land disturbing construction activity.

Note: See appendix for an example of the information needed to complete the site information form, form SBD 10376.

Note: The filing fee as of [the effective date of this chapter REVISOR INSERTS DATE] specified in s. Comm 2.32 is forty dollars.

Comm 65.07 PLAN DEVELOPMENT REQUIREMENTS FOR CLASS I SITES. The soil erosion control plan for a class I construction site shall be developed in accordance with this chapter by a person certified as an erosion control planner under s. Comm 5.315 or by a person registered through the department of regulation and licensing in one of the following categories:

- a. Architect.
- b. Professional engineer.
- c. Land surveyor.
- d. Landscape architect.

Comm 65.075 PLAN REVIEW PROCESS. (1) The erosion control plan shall be available at the construction site for review.

(2) Plans may be submitted to the department for an in-office review. Fees in accordance with s. Comm 2.32 shall be submitted.

Note: Section 65.04 (2) allows municipalities to institute plan review, inspection or permitting activities and charge fees to cover the costs of those activities.

Comm 65.08 GENERAL PLAN REQUIREMENTS. (1) ALL SITES. The soil erosion control plan for all construction sites under the scope of this chapter shall show all of the following:

- (a) A narrative description of the site and the nature of the construction activity.
- (b) The location of all existing and proposed roadways, buildings, surface waters and the limits of clearing and grading on the site with respect to property lines.
- (c) Drainage patterns before and after land disturbing construction activities.
- (d) Erosion control measures, including placement, installation details and materials used.
- (e) The total area of the construction site and the total area which is expected to be disturbed by construction activities.
- (f) A description of the intended sequence of major activities which disturb soils for major portions of the construction site, such as grubbing, excavation, or grading.
- (g) A proposed schedule of intended soil disturbing activities.
- (h) A description of proposed stabilization methods.

(2) ADDITIONAL REQUIREMENTS FOR CLASS I SITES. In addition to the requirements listed in sub. (1), plans for Class I construction sites shall show all of the following:

(a) Data describing the surface soil and subsoils planned to be exposed. For the purposes of this section, subsoils shall be the B horizons in soils with distinct profiles or, in soils with weak profiles, the soil below which roots do not normally grow.

(b) 1. The existing and proposed topography and drainage patterns, roads and surface waters, drawn to a scale of at least 1 inch = 50 feet, with contours shown at 2-foot intervals for areas with slopes less than 20 percent and contours shown at 5-foot intervals in areas where slopes are 20 percent or greater.

2. The topographical information shall extend 200 feet beyond the disturbed area or to the property line, whichever is less.

(c) Cross sections of channels designed to carry concentrated flows.

(d) A description of the method used for sizing any engineered erosion control practices.

(e) The name and identification number of the certified erosion control planner or the name and registration number of the architect, professional engineer, land surveyor, or landscape architect that created the plan.

Comm 65.09 PLAN CHANGES FOR CLASS I SITES. The owner or responsible party shall obtain the approval and signature of a person certified or registered in accordance with s. Comm 65.07 prior to making any of the following changes to the soil erosion control plan of a class I construction site:

(1) A phasing change that affects the land disturbance.

(2) A substitution for an engineered erosion control practice.

(3) An alteration to the seeding plan which eliminates temporary seeding.

(4) Eliminating or decreasing the size of sediment traps, basins, berms, stone outlets, or size and type of stones or piping.

(5) Grading changes that extend grading beyond previously designated limits.

Comm 65.11 MONITORING BY THE BUILDING OWNER OR RESPONSIBLE PARTY. The building owner or responsible party shall monitor the soil erosion control measures for structural failure at least weekly and anytime there is rainfall that exceeds 0.5 inches in a 24-hour period.

Comm 65.12 EMERGENCY SITUATIONS. When the failure of erosion control measures results in an immediate threat of displaced soil entering into public sewers or waters of the state, corrective procedures shall be implemented immediately.

Comm 65.13 VIOLATIONS AND PENALTIES. (1) NOTICE OF NONCOMPLIANCE. (a) Notification. Upon finding of noncompliance, the enforcing agent shall notify the owner and the responsible party, in writing, of the violations to be corrected.

(b) Timing of orders. The enforcing agent shall order all cited violations of erosion control requirements under this chapter corrected within 72 hours after notification.

Note: The sediment cleanup requirements of s. Comm 65.22 (2) have different time limits and are unaffected by the 72-hour notice provision.

(c) Stop work order. 1. Pursuant to s. 101.1205 (6), Stats., failure to comply with an order issued in accordance with par. (b) may result in the issuance of a special order directing an immediate cessation of all construction work.

2. Construction work may resume when the conditions of the stop work order have been met.

(2) PENALTIES. Penalties for violations of this chapter shall be assessed in accordance with s. 101.02, Stats.

Note: Section 101.02, Stats., provides for fines of up to \$100 for each violation of rules promulgated under this section. Each day of continued violation may constitute a separate offense.

Comm 65.14 PETITION FOR VARIANCE. Petitions for variance to the requirements of this chapter may be submitted to the department in accordance with ch. Comm 3.

SUBCHAPTER III DESIGN REQUIREMENTS

Comm 65.20 DESIGN REQUIREMENTS. (1) Erosion control measures shall be planned and installed to minimize the erosion of disturbed soil and minimize the transport of soil offsite or into public sewer inlets or the waters of the state.

(2) Erosion control measures shall be planned, installed and maintained to remain in place and to function as designed for at least the duration of land disturbing construction activity up to the time of final site stabilization.

(3) Erosion control measures shall be planned, installed and maintained to remain in place and to function as designed when subjected to the forces of storm water and displaced soil associated with the appropriate design storm:

(a) Measures to minimize erosion resulting from overland flow shall be planned and installed to withstand the 2-year, 24-hour design storm for the county in which the construction site is located.

(b) Measures to minimize erosion resulting from channelized flow shall be planned and installed to withstand the 10-year, 24-hour design storm for the county in which the construction site is located.

(4) Rainfall amounts specified in Table 65.20 shall be used for designing these measures.

TABLE 65.20

RAINFALL IN INCHES FOR A 24-HOUR PERIOD

County	2 Year	10 Year	County	2 Year	10 Year
Adams	2.8	4.1	Marathon	2.7	4.0
Ashland	2.6	3.9	Marinette	2.4	3.6
Barron	2.7	4.1	Marquette	2.7	4.1
Bayfield	2.6	3.9	Menominee	2.5	3.7
Brown	2.5	3.7	Milwaukee	2.7	3.9
Buffalo	2.9	4.3	Monroe	2.9	4.2
Burnett	2.7	4.0	Oconto	2.4	3.7
Calumet	2.5	3.8	Oneida	2.5	3.8
Chippewa	2.7	4.1	Outagamie	2.5	3.8
Clark	2.8	4.1	Ozaukee	2.6	3.9
Columbia	2.8	4.1	Pepin	2.8	4.3
Crawford	3.0	4.3	Pierce	2.8	4.2
Dane	2.9	4.2	Polk	2.7	4.1
Dodge	2.8	4.0	Portage	2.7	4.0
Door	2.4	3.6	Price	2.6	4.0
Douglas	2.6	3.9	Racine	2.7	4.0
Dunn	2.8	4.2	Richland	2.9	4.3
Eau Claire	2.8	4.2	Rock	2.9	4.1
Florence	2.4	3.6	Rusk	2.7	4.1
Fond du Lac	2.6	3.9	St. Croix	2.8	4.2
Forest	2.4	3.7	Sauk	2.9	4.2
Grant	3.0	4.3	Sawyer	2.6	4.0
Green	3.0	4.2	Shawano	2.5	3.8
Green Lake	2.7	4.0	Sheboygan	2.5	3.8
Iowa	3.0	4.3	Taylor	2.7	4.1
Iron	2.5	3.8	Trempealeau	2.9	4.3
Jackson	2.8	4.2	Vernon	3.0	4.3
Jefferson	2.8	4.0	Vilas	2.5	3.8
Juneau	2.8	4.1	Walworth	2.8	4.1
Kenosha	2.8	4.0	Washburn	2.7	4.0
Kewaunee	2.4	3.7	Washington	2.7	3.9
La Crosse	2.9	4.3	Waukesha	2.7	4.0
Lafayette	3.0	4.3	Waupaca	2.6	3.9
Langlade	2.5	3.8	Waushara	2.7	4.0
Lincoln	2.6	3.9	Winnebago	2.6	3.9
Manitowoc	2.4	3.8	Wood	2.7	4.1

(5) If a site crosses the boundary between two or more counties, the county with the highest rainfall amounts shall be used for design purposes.

(6) Except as limited under this chapter, the department will accept practices installed in accordance with either of the following references as providing erosion control in accordance with this chapter:

(a) Chapter 3 of Wisconsin Construction Site Best Management Practice Handbook published by Wisconsin Department of Natural Resources.

(b) Chapter 10 of Facilities Development Manual published by Wisconsin Department of Transportation.

Note: Copies of Chapter 10 of Facilities Development Manual are available from Manual Development Engineer, Bureau of Highway Development, Room 651, P.O. Box 7916, Madison, WI, 53707. The cost as of the effective date of this chapter is \$5, which must accompany the order. Copies of the Best Management Practice Handbook are available from the Department of Administration, Document Sales, P.O. Box 7840, Madison, WI, 53707. Phone (608) 266-3358 for information or 1-800-362-7253 for credit card orders.

Comm 65.21 GENERAL INSTALLATION REQUIREMENTS. (1) GENERAL. (a) All erosion control measures shall be constructed, maintained, and, if necessary, altered in accordance with this chapter.

(b) The erosion control measures shall be installed, used and maintained until the construction site is permanently stabilized.

(2) COMPLIANCE TIMES. Except for tracking pads, all planned erosion control measures shall be properly installed prior to the start of the current phase of land disturbing construction activities.

Note: See sub. (7) for tracking pad requirements.

(3) PERIMETER EROSION CONTROL MEASURES. (a) Erosion control measures shall be placed between the area of soil disturbance and the downslope property lines as needed to contain soil that would otherwise be transported offsite.

(b) Downslope perimeter erosion control measures shall be installed prior to beginning upslope land disturbing activities.

(c) If vegetative barriers are used as perimeter erosion control measures, their use shall meet all of the following requirements:

1. The disturbed area upslope from a vegetative barrier shall have no slopes greater than 6%.
2. The area used for the barrier shall have no slope greater than 5%.

3. The barriers shall be at least 10 feet wide for every 50 feet of open ground draining to them.

4. An individual barrier may not be less than 25 feet wide in the direction of maximum slope.

5. If the barriers are driven on, become silt covered, or are otherwise rendered ineffective, other perimeter erosion control measures shall be used.

(5) FLOW IN CHANNELS. Velocity dissipation devices shall be placed at discharge locations and along the length of any receiving channels as necessary to prevent erosive flow from the site.

(6) SEWER INLET PROTECTION. Onsite sewer inlets that are downslope of the disturbed area and that discharge to a public storm sewer system or to waters of the state shall be protected with erosion control measures.

(7) SOIL TRACKING. (a) General. Measures shall be provided to minimize the tracking of soil off the construction site.

(b) Tracking Pad. Where a tracking pad is used to minimize tracking, all of the following requirements shall be met.

1. The length of the pad shall be at least 50 feet measured from the property line where the street or sidewalk is accessed or the distance from the road to the disturbed area, whichever is less.

2. a. The width of the pad shall be at least 10 feet.

b. If it is necessary to have vehicles pass one another on the tracking pad, the pad shall be at least 20 feet wide.

3. a. The topmost layer of the tracking pad shall consist of at least 6 inches of 2- to 3-inch aggregate or equivalent.

b. If soils are at least 50% clay or silt, an appropriate geotextile liner shall be used to separate the aggregate from the soil below.

4. All vehicles entering or leaving the site shall use the tracking pad.

5. The tracking pad shall be installed within 24 hours after beginning land disturbing construction activity.

(8) SOIL STOCKPILES. (a) Unstabilized soil stockpiles are considered to be disturbed soil.

(b) Soil stockpiles that are planned to be left undisturbed for 45 consecutive days or more shall be immediately protected with temporary stabilization measures or perimeter erosion control measures.

(c) Soil stockpiles may not be located in areas of concentrated flow.

(9) DEWATERING. If a site requires dewatering, measures shall be taken to minimize the transport of soil offsite.

Note: A pit dewatering permit may be required from the department of natural resources in accordance with ch. 283, Stats.

(10) APPROVED MATERIALS. When the following products are used for erosion control, the products shall meet the following requirements:

(a) Silt fence fabric. Fabric used in silt fencing shall meet all of the following requirements:

1. 'Grab strength'. A minimum grab strength of 450 newtons measured parallel and perpendicular to the manufacturing direction when tested in accordance with ASTM standard D 4632.

Note: 450 newtons is approximately equal to 100 pounds of force.

2. 'Ultraviolet stability'. A minimum retained tensile strength of 70% after 500 hours of exposure to ultraviolet light and water when tested in accordance with ASTM standard D 4355.

3. 'Apparent opening size'. A maximum apparent opening size of 0.6 mm, as determined by ASTM standard D 4751.

4. 'Water transmission rate'. A minimum permittivity of 0.05 sec^{-1} when tested in accordance with ASTM standard D 4491.

(b) Matting, tackifiers and chemical soil stabilizers. Materials used as matting, tackifiers or chemical stabilization shall be listed in the Wisconsin department of transportation erosion control product acceptability lists.

Note: See appendix for further information on the WISDOT erosion control product acceptability lists.

Comm 65.22 CONSTRUCTION SITE MAINTENANCE. (1) GENERAL. All erosion control measures shall be monitored by the owner or responsible party and maintained in operating condition until the disturbed area is stabilized.

(2) SEDIMENT CLEANUP. (a) Mechanical erosion control measures shall be cleared of sediment by the time the accumulation reaches 50% of the height of the control measure.

(b) Offsite sediment deposition occurring as a result of a storm event shall be cleaned up within 24 hours of the end of the storm event.

(c) All other offsite sediment deposition occurring as a result of construction activities shall be cleaned up by the end of the same work day.

Comm 65.23 CONSTRUCTION SITE STABILIZATION. (1) GENERAL. Stabilization of construction sites shall be provided in accordance with this section. Stabilization methods include the following:

(a) Establishing perennial vegetation with a minimum coverage rate of 70% of the soil surface.

(b) Covering the soil with a hard surface such as concrete, bituminous material or riprap.

(c) Using anchored mulch spread at a minimum depth of one inch.

1. The means of anchoring mulch include punching the mulch or using a tackifier.

2. When seed and mulch are planned to be used as final stabilization and final grade is established outside of the seeding or dormant seasons as shown in Table 65.23, anchored mulch without seeding shall be used.

(d) Seeding and mulching.

1. Seeding and mulching shall be used only during the growing season or during the dormant season as shown in Table 65.23.

2. Temporary seeding during the growing season shall use an annual herbaceous plant, such as grass, that germinates within 10 days.

3. Temporary seeding during the dormant season shall use winter wheat or winter rye.

(e) Using a chemical soil stabilizer that is applied in accordance with the manufacturer's recommendations.

(2) TIMING. (a) 1. Except as provided in subd. 2., the construction site shall be stabilized within 7 days after the final grade is established.

2. If more than 7 days will elapse between final grading and stabilization, perimeter erosion control measures and sewer inlet protection shall be maintained in place or shall be reinstalled.

(b) Disturbed soil that is planned to be left inactive for one year or more shall be treated as final grade and be permanently stabilized.

(3) STABILIZATION OF CHANNELS. (a) If sod is used to stabilize a channel, it shall be staked to prevent movement.

(b) Vegetation may not be used as the sole means of final stabilization of channels if the 10-year 24-hour storm event will produce flow velocities greater than or equal to the following:

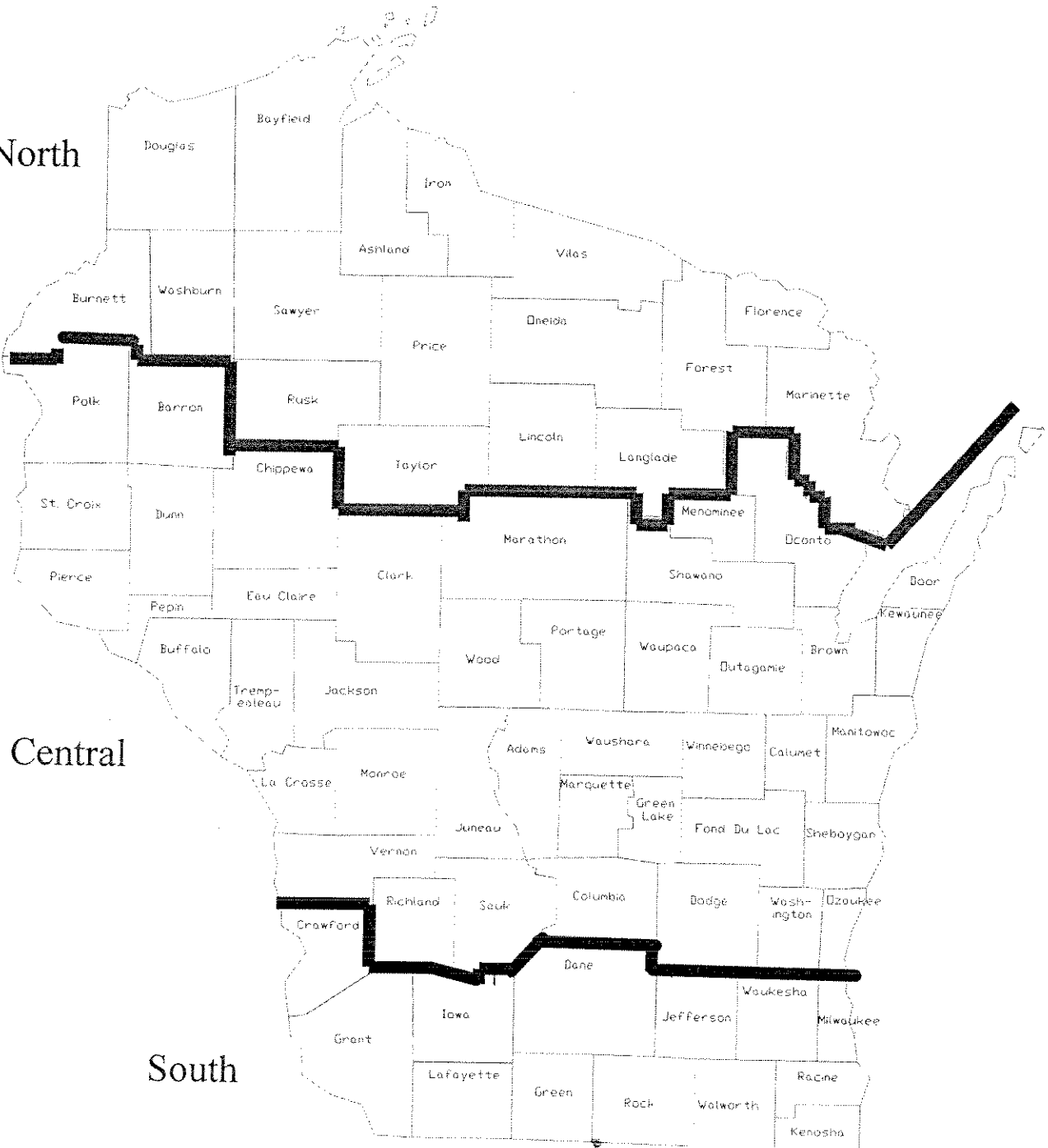
1. 3.0 feet per second for sand, silt, sandy loam and silty loam soils.
2. 4.0 feet per second for sandy clay loam and silty clay loam soils.
3. 5.0 feet per second for clay soils.

(c) Vegetation shall be established prior to using the channel as a control measure unless checkdams or other planned erosion control measures are installed to reduce water velocities and prevent channel erosion.

(d) Measures shall be taken to minimize the transport of suspended soil in channels prior to discharging the water from the site.

(4) STABILIZATION OF AREAS SUBJECT TO SHEETFLOW. (a) Seeding and mulching. 1. Seeding shall be scheduled in accordance with Figure 65.23 and Table 65.23.

North



Central

South

FIGURE 65.23

SEEDING SCHEDULE

Region	Growing Season	Dormant Season
North	5/1 to 9/6	11/1 to 3/20
Central	4/15 to 9/15	11/1 to 3/15
South	4/1 to 9/20	11/15 to 3/1

TABLE 65.23

2. Seeding shall be protected with mulch that is anchored in place by a tackifier or mechanical means.

3. If seeding is done during the dormant season, the site shall be reseeded during the following growing season as necessary to achieve a minimum soil coverage rate of 70%.

4. If final grade is established outside of the growing or dormant seasons, the soil shall be covered with anchored mulch prior to seeding.

(b) Sod. 1. Sod may be used any time of the year that conditions allow for establishment.

2. Except for use in channels, sod shall be staked to remain in place anytime the slope is greater than 4 to 1.

Note: Paragraph (3) (a) requires sod to be staked anytime it is used to stabilize a channel.

(5) STABILIZATION OF STEEP SLOPES USING VEGETATION. Fill slopes longer than 10 feet with a slope of 3 to 1 or more and cut slopes longer than 10 feet with a slope of 2 to 1 or more that use vegetation for stabilization shall incorporate one or more of the following practices:

(a) Erosion control matting is used in accordance with the manufacturer's recommendations.

(b) Sod is staked to prevent movement.

SECTION 23. ILHR 66.60 is amended to read:

ILHR 66.60 CONSTRUCTION STANDARDS AND DEFINITIONS. The design and construction of multifamily dwellings shall comply with the applicable requirements of chs. ILHR 51 to 53, subch. II of ch. ILHR 57, and chs. ILHR 63,64,65, and 69, which are hereby incorporated by reference into this chapter.

SECTION 24. ILHR 70.04 (2) Note is created to read:

ILHR 70.04 (2) Note: See ch. Comm 65 for soil erosion requirements that apply during construction or alteration of buildings covered under this chapter.

(END)

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, except for ss. Comm 5.315 (1) (a) and Comm 65.07.

Pursuant to s. 227.22 (2) (b), Stats., ss. Comm 5.315 (1) (a) and Comm 65.07 shall take effect on the first day of the 2nd month following publication in the Wisconsin Administrative Register.
