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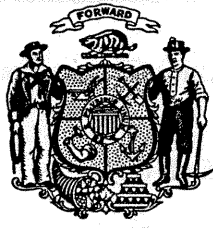
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WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

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 98-083

AN ORDER to repeal Comm 2.63, 16.28 (2) and (3), 82.10 (7) and (15) and Note, 82.11 and 84.60 and ILHR 20.09 (5) (b) 2. Note, 52.62 and 66.11 Note 2; to renumber Comm 5.02 Table 5.02 lines 17 to 64, 5.06 Table 5.06 lines 17 to 64, 16.28 (4) and 84.20 (5) (j) to (q) and ILHR 51.01 (71p) and 66.11; to renumber and amend Comm 2.67 (1) and 82.36 (3) (b) 3. a. and b.; to amend Comm Table 2.66 line 5, 2.66 (1) (d) 2., 2.67 (2), 82.01 Note, 82.10 (2), (8) and (13), 82.30 (11) (g) 2., 82.32 (4) (b) 1. b., 82.34 (5) (a) 2. (title) and (intro.) and 3. and (b) 2. (intro.), 82.40 (3) (e) and (8) (b) 1. to 3., 84.10 Table 84.10 line 5, 84.11, 84.30 Table 84.30-5 and 84.50 (3) (g) 1. and 7.; to repeal and recreate Comm 2.51 (5), 2.61 (3), 2.65 and Table 2.65, 2.66 (2) (a), 82.10 (3), chapter Comm 83, 84.10 (3) and 84.30 (2) (d) and chapter Comm 85 and ILHR 51.01 (103g), 52.61 and 52.63 (1); and to create Comm 2.67 (1) (b), 5.02 Table 5.02 line 17, 5.06 Table 5.06 line 17, 5.36, chapter Comm 81, 82.37, 82.40 (8) (j), 84.20 (5) (j) and (q) 1. Note, 84.25, 84.30 (6) (g) to (j) and Table 12, A-84.10 (3) (b) and chapter Comm 91 and ILHR 20.07 (19m), (40t) and (59t), 20.09 (5) (b) 3., 25.02, Appendix 20.09, 50.06 (3), 51.01 (19m) and (71p) and Appendix 50.06 (3), 66.11 (2) and Appendix 66.11 (2), relating to private onsite wastewater treatment systems.

Submitted by **DEPARTMENT OF COMMERCE**

06-05-98 RECEIVED BY LEGISLATIVE COUNCIL.

07-02-98 REPORT SENT TO AGENCY.

RS:MCP:jt;ksm

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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(608) 266-2982



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One E. Main St., Ste. 401
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Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-083

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 October 1994.]

I. Statutory Authority

a. Section Comm 83.01 provides that ch. Comm 83 establishes "minimum" standards and criteria for the regulation of private on-site wastewater treatment systems (POWTS). The statutory authority for ch. Comm 83, in ss. 145.02 (2) and 145.13, Stats., does not include the word "minimum" in relation to the Plumbing Code. These statutes have for many years been interpreted by the department and its predecessors to require a uniform statewide plumbing code. This interpretation of the statute is made clear and unambiguous by the legislative history, in which the word "minimum" was stricken from both of these statutes by Ch. 194, Laws of 1971. This provision of the rule and ss. Comm 83.32 (2) (b) and 83.40 (intro.), are contrary to the statutory mandate.

b. The department has included a determination in s. Comm 83.03 (4) (b) that it is not technically or economically feasible for a POWTS to comply with the preventive action limits for chloride. This determination may be relevant for several different purposes under ch. 160, Stats. The department should clearly state the regulatory consequence of this determination within the statutory framework of the groundwater law.

c. In s. Comm 83.22 (5), the department is attempting to limit any responsibility it may have based on its decisions in the process of approving plans. Under existing statutory and case law, the department, as a state agency, enjoys a number of limitations on liability, including for actions of its employees or agents done within the scope of their responsibility. If this provision is a restatement of current law, it is unnecessary. If this provision is an attempt to extend the department's immunity for its actions, the department should determine clearly whether it has statutory authority to do so.

d. The rule establishes a "range of responses" for purposes of the groundwater law in Table 83.29. Has the department considered, in preparation of this range of responses, the mandatory requirements of s. 160.21 (3) and (4), Stats.? The responses listed in Table 83.29 are expressed in general terms and do not reflect any of the details called for in the statute.

The range of responses in Table 83.29 is a single list, which presumably applies to concentrations of substances in excess of either a preventive action limit or an enforcement standard. Although the groundwater law does not require separate lists of responses, the department may wish to consider whether the mandate of the groundwater law can better be met with a separate range of responses for concentrations of substances in excess of a preventive action limit and an enforcement standard. The statute suggests the appropriateness of this by requiring regulatory responses for attaining or exceeding a preventive action limit or an enforcement standard in separate paragraphs in s. 160.21 (1), Stats. Also, the regulatory responses required by ss. 160.23 and 160.25, Stats., are not the same.

When an enforcement standard is attained or exceeded, s. 160.25 (1) (a), Stats., requires, as the primary regulatory response, prohibition of the activity or practice. This requirement is not explicitly included in Table 83.29.

The reason for promulgation of regulatory responses under s. 160.21, Stats., is to determine, in advance, the responses that the regulatory agency may take under ss. 160.23 and 160.25, Stats., if a preventive action limit or an enforcement standard is attained or exceeded. Only two of the responses in the table (related to issuing orders) can be said to constitute a regulatory response for a specific facility, although those provisions are expressed in such general terms that they do not provide information about the potential actions that must be taken by a property owner if a POWTS causes the concentration of a substance in groundwater to attain or exceed a preventive action limit or an enforcement standard.

Chapter 160, Stats., does not explicitly require groundwater monitoring for individual facilities, although regulatory agencies often require monitoring. Section Comm 83.54 (2) (b) and (e) authorize the department to require monitoring, but these provisions do not indicate the conditions under which monitoring may be required and are not clear as to whether the monitoring is to be required for contaminants in groundwater. If monitoring is not required, how will the department determine if a POWTS complies with the groundwater law? Has the department consulted with the Department of Natural Resources concerning management practice monitoring under s. 160.27, Stats., with respect to a POWTS?

The point of standards application under s. Comm 83.29 (2) corresponds with the point of standards application in s. 160.21 (2) (b), Stats., in which monitoring is not required for the facility. However, s. Comm 83.54 (2) provides that the department may require monitoring. If monitoring is required for a facility, the point of standards application provisions of s. 160.21 (2) (a), Stats., should apply.

2. Form, Style and Placement in Administrative Code

a. Table 2.65 sets fees for the plan review of private on-site wastewater treatment systems. There should be no gaps between the categories. For example, the table sets a fee for

a proposed system that treats 1,000 gallons per day or less and sets a separate fee for a system that treats 1,001 to 2,000 gallons per day. The second category should be labeled as a system that treats more than 1,000 gallons per day and not more than 2,000 gallons per day in order to avoid any controversies regarding the rounding of figures between 1,000 and 1,001 when imposing a fee.

b. The definition in s. Comm 81.01 (89) refers to "the code." Should this be a reference to the defined term, the "state plumbing code"?

c. In s. Comm 83.02 (2) (c), the cross-reference should read "chs. NR 108, 110, 206 and 218." Also, in sub. (2) (f) 1. c., the notation "ss." should be replaced by the notation "s."

d. In s. Comm 83.21 (3) (c) 2., the first sentence should be renumbered as sub. (a) and the remaining subparagraphs should be renumbered accordingly.

e. The Note after s. Comm 83.23 (3) (b) appears to establish a substantive statement that should be included in the rule.

f. The defined term "failing private on-site wastewater treatment system" should be used in s. Comm 83.24 (2) (b).

g. Section Comm 83.44 (3) (b) 2. provides information, rather than establishes a regulatory requirement, and should be redrafted as a note.

h. In s. Comm 83.45 (5), the notation "s." should be inserted before the reference to "Comm 83.22."

i. In s. Comm 84.10 (3) (c) (intro.), the cross-reference should read "chs. Comm 81, 82 and 83, this chapter and ch. 145, Stats." [See also sub. (3) (e) 1. and (f).]

j. In s. Comm 85.20 (1) (b) Note, the underscoring should be removed. Also, in sub. (2) (b) 1. b., c. and d., the notation "s." should be inserted before the cross-references to "Comm 85.30 (1) (c)."

k. In s. Comm 85.60 (3), the first sentence should be renumbered as par. (a) and the remaining paragraphs renumbered accordingly. Also, in the first sentence, the word "through" should be replaced by the word "to."

l. Section Comm 85.60 (3) contains two paragraphs numbered par. (g).

m. Section Comm 85.60 (4) (d) 4. and (d) 3. refer to an appendix. Where is the appendix? Also, sub. (5) (intro.) should conclude with a colon rather than a period.

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

a. Cross-references to chs. 144 and 147, Stats., such as in s. Comm 81.01 (13) and other places in the rule, should be changed to reflect current statutory numbering.

b. Does the term “interim” in s. Comm 81.20 (3) have a precise meaning? Are there amendments other than “interim” amendments that will take effect before the Plumbing Code is revised?

c. Section Comm 85.60 refers to various forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. Typographical errors noted:

(1) Comm 2.66 Table 2.66, line 5: “wastewater” is misspelled.

(2) Comm 5.36 (3) (b): “as a” is duplicated.

(3) Comm 81.01 (117): “that” should be replaced by “which.”

(4) Comm 82.10 (8): a space should be inserted before “treatment.”

(5) Comm 83.02 (2) (d) 2.: “engineered” is misspelled.

b. Should “registration” be inserted after “provider” in s. Comm 5.36 (3) (intro.)?

c. In s. Comm 5.36 (3) (a) (intro.), “are relative” should be replaced with “relate.”

d. “Humus” is used in s. ILHR 20.07 (19m) and several provisions in the rule. This term is defined in the rule as the product of bacterial digestion of human wastes and organic kitchen wastes, although this term, in geographical science as well as common usage, means a component of soil.

e. The definition in s. Comm 81.01 (3) refers to the treatment of “wastewater” and the definition in s. Comm 81.01 (8) refers to the treatment of “waste and wastewater.” Is there any reason for the difference?

f. “Application rate” does not appear to be a technical term and is not a term that should ordinarily require a definition. The definition in s. Comm 81.01 (10) is confusing, because the definition refers to the movement of liquid *into* a soil surface, which suggests a term such as “absorption,” rather than “application.”

g. The definition of “appurtenance” in s. Comm 81.01 (11) is not particularly clear, because “adjunct” is no more precise than “appurtenance.”

h. The term “backflow” includes the reverse flow of liquids, solids or gases. However, as this term is used in the rule, it appears to apply only to the reverse flow of liquids. Are there in fact provisions in the rule that refer to the reverse flow of solids or gases?

i. The definition of "dispersal" in s. Comm 81.01 has the same problem as the definition of "application rate." The defined term does not match the definition. [See also, s. Comm 81.01 (180).]

j. In Note 3 after s. Comm 83.02 (1), in the statutory quotation, "department" should be followed by "[of natural resources]."

k. The phrase "require that the modification" in s. Comm 83.03 (1) (b) is superfluous. Also, in the Note after that paragraph, "impact" should be replaced by "affect" and the department should consider whether some guidance should be included on how to determine what is the "appropriate edition" of the "code."

l. Section Comm 83.03 (2) (a) should commence: "This chapter does not apply . . ."

m. "Entities" is used in s. Comm 83.20 (1) (b). It is not clear what this word means.

n. It appears that "format" should be replaced by "form" in s. Comm 83.21 (6) (a) 1. and the Note after that subdivision. Also, should the Note refer to "a copy of" the application rather than "further information relative to" the application?

o. Section Comm 83.32 (1) (a) 2. and 3. repeat provisions that are included earlier in the rule.

p. "Frequency" should be deleted in s. Comm 83.54 (3) (b).

q. In s. Comm 83.55 (1) (a), the word "their" should be replaced by the phrase "the owner's." [See also sub. (1) (b) and s. Comm 85.60 (1) (a) 1.]



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

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

July 6, 1999

JUL 07 REC'D

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

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

Dear Chief Clerks:

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

CLEARINGHOUSE RULE NO.: 98-083

RULE NO.: Chapters Comm 83, 85 and 91

RELATING TO: Private Onsite Wastewater Treatment Systems

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

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

Respectfully submitted,

Brenda J. Blanchard
Secretary



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

Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

July 6, 1999

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

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

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 98-083

RULE NO.: Chapters Comm 83, 85 and 91

RELATING TO: Private Onsite Wastewater Treatment Systems

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

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

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brenda J. Blanchard', written over a horizontal line.

Brenda J. Blanchard
Secretary

RULE REPORT

Department of Commerce

Rule No.: Chapters Comm 83, 85 and 91

Relating to: Private Onsite Wastewater Treatment Systems

Agency contact person for substantive questions:

Name James Quast

Title Program Manager

Telephone Number 266-9292

Agency contact person for internal processing:

Name James Quast

Title Program Manager

Telephone Number 266-9292

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
Statutory Authority: Sections 101.02 (1), 101.63 (1), 101.73 (1) and 145.02 (3) and (4), Stats.
Statutes Interpreted: Sections 145.02 (4), 145.045, 145.13, 145.135, 145.19, 145.20 and 145.245, Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
The federal Environmental Protection Agency regulations for class I, IV and V injection wells are relevant to the proposed rules.
3. Citation of court decisions which are applicable to the proposed rule(s).
None known.

4. Description of the proposed rule(s).

Currently, chapter Comm 83 of the plumbing code establishes specific and prescriptive minimum standards for the design, installation, inspection and maintenance of private sewage systems. In order for the plumbing code to be effective and reasonable, code standards must be updated periodically to address new safety and health concerns, issues and priorities as well as to reflect changing technologies, practices and materials. The current chapter Comm 83 has not been completely revised since 1980. The proposed revisions represent a complete re-evaluation of the private sewage program as well as the code. (For a detailed analysis of the proposed rules see the hearing draft of proposed rules.)

5. Reason for the proposed rule(s).

The proposed revisions for the rewriting of chapter Comm 83 are intended to do all of the following:

- Address groundwater parameters outlined under chapter 160, Stats.
- Replace a highly specification-type code with a performance-oriented code which:
 - Provides for specified criteria for treatment and dispersal to serve as a target for technological and design improvements; and
 - Is flexible to recognize new technology and new design solutions.
- Create a maintenance reporting scheme to improve the confidence that systems are being operated within acceptable parameters, especially relating to the pumping and disposal of septic and holding tanks contents.
- Eliminate the duplication of department regulations and processes associated with reviewing subdivisions that are not served by public sewers.
- Recognize other alternatives for dealing with domestic wastes, including composting and incinerating toilets.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 98-083

RULE NO.: Chapters Comm 83, 85 and 91

RELATING TO: Private Onsite Wastewater Treatment Systems

Final regulatory flexibility analysis not required. (Statement of determination required.)

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

Under ss. 145.02 and 145.13, Stats., the department is empowered to establish statewide uniform plumbing standards for the purpose of protecting public health and the waters of the state. Exempting one segment of the population based upon the size of a business would be in conflict with these statutory objectives.

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

Comments and issues raised by small businesses relating to the proposed rules were provided in the context and effort to revise the rules for all applications. No public hearing comments were provided in the specific context of either exempting or reducing requirements or enacting different requirements for small businesses. It is surmised that the nature of the rules, public health, displaces focus from a single segment of the population.

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

The rules require plans for all private onsite wastewater treatment systems, POWTS, be prepared, submitted to and approved by the department or an agent of the department, typically at the county level. Plans for POWTS are also required to be prepared by master plumbers, architects, engineers or designers. All POWTS must also be installed under the responsibility of a master plumber. The rules, reflecting statutory provisions, require the necessity of obtaining a sanitary permit in order to install a POWTS. Owners of POWTS must maintain their systems in order to ensure proper performance and continued protection of public health. The rules require the reporting of specific critical maintenance events to the department or its agents. The costs associated with all these requirements vary with many factors, including the size and type of technology involved with the POWTS, and the fees charged by the respective approving governmental agencies that are statutorily empowered to independently establish fees.

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

The cost of a POWTS and its periodic maintenance for a specific business varies with factors, including the type and quantity of the wastewater generated by the business, the type of POWTS technology needed and chosen to treat the wastewater, and the site characteristics where the treated wastewater is to be dispersed.

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

Not applicable.

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

Not applicable.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 98-083

RULE NO.: Chapters Comm 83, 85 and 91

RELATING TO: Private Onsite Wastewater Treatment Systems

Agency contact person for substantive questions.

Name: James Quast

Title: Program Manager

Telephone No. 266-9292

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority (s.227.15(2)(a))

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

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

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

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))

- a. Accepted No response is necessary.
- b. Accepted in part
- c. Rejected
- d. Comments attached

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

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

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

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

6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))

- a. Accepted No response is necessary.
- b. Accepted in part
- c. Rejected
- d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))

- a. Accepted No response is necessary.
- b. Accepted in part
- c. Rejected
- d. Comments attached

**COMMENTS TO
LEGISLATIVE COUNCIL CLEARINGHOUSE
REPORT No. 98-83**

Department of Commerce

1. Statutory Authority

a. The plumbing code that includes the proposed rules of ch. Comm 83 establishes standards that are uniform in application with respect to local governmental units not being empowered to enact more restrictive plumbing requirements. However, from the perspective of a designer or installer, the plumbing code does not preclude a designer or installer voluntarily exceeding the code's specified design, installation or maintenance standards.

b. The rule, s. Comm 83.03 (4) (b), and the following note have been revised to address the concerns raised.

c. The rule represents a consolidation and a simpler expression of the existing statutes and case law reflecting the limitations on liability for the department. The rule is not an attempt to extend the department's immunity.

d. The range of responses under s. Comm 83.29 reflects the department's administrative and enforcement powers and strategies. The specific responses enumerated under s. 160.21 (3) and (4), Stats., appear to be suggestions and are introduced with the term "may." For any situation where an exceedence is documented, the department would normally investigate the matter and issue an order to correct the performance relative to the specific cause, which may include the prohibition of a specific activity in how the POWTS is used or what is introduced into the POWTS. Table 83.29 has been revised to acknowledge the department's ability to prohibit an activity consistent with s. 160.25, Stats.

Pursuant to s. 160.001 (4), Stats., the department with the promulgation of chapter Comm 83 and other related rules is establishing and defining design, installation and management standards, practices and activities for private onsite wastewater treatment to address the objectives of ch. 160, Stats. The various rules relating to monitoring reflect the most likely scenario of monitoring wastewater and wastewater treatment to evaluate the design, installation or management criteria at a specific site. The provisions of s. 160.21 (2) (a), Stats., apply when monitoring is required under existing rules for a facility, the current rules of ch. Comm 83 do not mandate monitoring under any circumstances.

2. Form, Style and Placement in Administrative Code

a. The fees under Table 2.65 are presented in a format consistent with the rest of ch. Comm 2. The department will take the comment under advisement when reviewing that chapter for possible revision.

e. The Note after s. Comm 83.23(3)(b) has been revised to clarify the statement.

g. The rule has been revised to clarify the issue.

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

b. The rule relating to "interim" amendments has been eliminated.

c. Notes have been added to the rules indicating where the various forms may be obtained.

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

d. The term "humus" was selected and defined to describe the object addressed by the rules.

e. The two definitions for aerobic treatment component and anaerobic treatment component have been revised to be consistent with each other in using the term "wastewater."

f. The definition for "application rate" has been eliminated.

g. The definition for "appurtenance" reflects the current definition specified in chapter Comm 82 and is referenced only in that chapter. When chapter Comm 82 is reviewed for possible revisions the term will be evaluated.

h. The definition for "backflow" reflects the current definition specified in chapter Comm 82 and is referenced only in that chapter. When chapter Comm 82 is reviewed for possible revisions the term will be evaluated.

i. The definition for "dispersal" has been eliminated; the definition for "POWTS dispersal component" has been retained to distinguish these types of objects from other types of POWTS components such holding tanks or treatment components.

k. It is agreed that the phrase is somewhat redundant, however, the phrase is necessary to clarify the application of the code that in the past has been misinterpreted by some to retroactively apply to existing systems.

n. The term "format" allows greater flexibility by allowing others to develop and use "electronic" forms that are not specifically those of the department.

o. The provisions are repeated under s. Comm 83.32 (1) (a) 2. and 3. as a convenience so that the reader will know which standards apply or do not apply.

1. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
2. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
3. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
4. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
5. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
6. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
7. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
8. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
9. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
10. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
11. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
12. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
13. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
14. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
15. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
16. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
17. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
18. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						
19. The provisions of section 83.32 (1) (a) 2. and 3. apply to the following provisions of the Act:						
20. The provisions of section 83.32 (1) (a) 2. and 3. do not apply to the following provisions of the Act:						

BRITISH COLUMBIA VULNERABLE SECONDARY EDUCATION DELIVERMENT OF COMPETENCE

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapters Comm 83, 85 and 91

DATE: July 13, 1998

RELATING TO: Private Onsite Wastewater Treatment Systems

TIME: 9:00 a.m. to noon

LOCATION: 201 W. Washington Ave. Room 3B

CITY: Madison

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
David Holman	Rock co Health Dept.	JANESVILLE WIS			X
George A. Morris	Waukesha City - P&U.	Waukesha WI			X
Dennis Wiering	"	"			X
WALTER J. OLSON	Olson Realty Co	DEERFIELD, WIS	X		
GRANT FUHLMAN	TOWN OF YORKVILLE, Racine Co.	VILION GROVE, WI		X	
BILL LANE	DANE Co. RPC	Madison, WI			X
JEFF HAMMES	SELF	MADISON, WI			X
JAMES GARTON	TOWN OF DELAFIELD	DELAFIELD, W.	X		
CLARE DUNDON	" "	TOWN OF DELAFIELD	X		
PAT LUNDMAN	Petersen Supply	FREEDRIA, WI	X		
TOM MOORE	WI Percent Grant Assn.	MADISON, WI	X		
Thomas Ahern	City of Sparta	MADISON		X	
DAVE GIESSEY	1000 BROSNOS OF WI	Madison		X	
Jeffrey D. Segren	Walworth Co.	MADISON		X	
Ed Huck	WI Attorneys of Cities	MADISON			
Jim Memke	Madison Met. Sewerage District	Madison, WI.			X
JAMES P. SURLIC	WIS. COUNTY CODE ADMINISTRATORS	WRAUNAKERS WI		X	
Steven Crosby	WIS. COUNTY CODE ADMINISTRATORS WIS. Dorsine White	CUNNINGHAM			X
Larry Gleason	Self	Madison	X		
Cheryl Gain	WI Dept. Commerce - Bus. Ombudsman	Madison			X

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapters Comm 83, 85 and 91

DATE: July 13, 1998

RELATING TO: Private Onsite Wastewater Treatment Systems

TIME: 9:00 a.m. to noon

LOCATION: 201 W. Washington Ave. Room 3B

CITY: Madison

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
<u>Richard Biech</u>	<u>Sank Co</u>	<u>Baraboo wis</u>			<u>X</u>
<u>Michael Brozek</u>	<u>WA PITCC</u>	<u>MSN</u>			<u>X</u>
<u>Eric Fawcett</u>	<u>E. CENTRAL CO. RPC</u>	<u>MENASHA, WI</u>			<u>X</u>
<u>Bull Neumann</u>	<u>Twin Blm's - Dane Cty Bd</u>	<u>Mt Horeb</u>	<u>X</u>		
<u>Pat Hawkohl</u>	<u>Waukesha Co. Supervisor</u>	<u>Brookfield, WI</u>			<u>X</u>
<u>Tom Gilbert</u>	<u>WONR</u>				<u>X</u>

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapters Comm 83, 85 and 91

DATE: July 15, 1998

RELATING TO: Private Onsite Wastewater Treatment Systems

TIME: 9:00 a.m. to noon

LOCATION: 1900 College Drive Room 241

CITY: Rice Lake

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
Doreen Gronquist	Parkland South Dist	Douglas City WI			X
BILL LIEBERT	LIEBERT DESIGN 361 HIGHVIEW PKWY WASHBURN CITY WI 53090	RHINECLONDER, WI	XX		X
Michael Millta	WASHBURN CITY WI 53090 CITY BOARD CHAIRMAN CPB BOX 337	Shell Lake WI			X
Hugh Smith	SELF	Shell Lake WI			X
DAVE Thomas	SELF	Chetek WI			X
Billy Beth Wiberg	SELF	Springbrook WI			X
Steve Olson	Huffcouth Concrete Inc	732 Hobbers St Chippewa Falls WI			X
CAROLE AVERY	Self	939 LAKE SHORE Rice Lake, WI			X
Jeff Iverson	Inflector Systems Inc.	312 10th St NW Byron MN	X		X
BILL FLAHERTY	DOUGLAS CO. ZONING	SUPERIOR, WI			X
Ken Jan	E.C. County	Fau Claire			X
Doreen Farmer	Fau Claire City - Co. Health	720 2nd Ave. Eau Claire		✓	
Don March	March P & H	Ferri WI			X
John Daniels	Daniels port	Siceon WI			X
GRAIG Conroy	WASHBURN C Zoning	Shell Lk WI			
Steve Truchel		Spooner			X
Jim Smith	W213 Belvidere Road	Sandow			X
Shirley Shoup	W213 Belvidere Rd	Sarona			X
Donald Handman	W 2217 "	"			X

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapters Comm 83, 85 and 91

DATE: July 17, 1998

RELATING TO: Private Onsite Wastewater Treatment Systems

TIME: 9:00 a.m. to noon

LOCATION: 1951 Bond Street Comfort Suites

CITY: Green Bay

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
WAYNE MIIX	WCPA COUNTY concrete	Stevens Point wis	YES		
Steve Osterman	WCCA	Rhine/ander		✓	
Keith Thimer	Self	Kaukauna	✓		
Blanca Thimer	Self	Kaukauna	✓		
DON VERBRICK	SAN. DIST 2	TOWN OF NEENAH	✓		
JIM MERTEN JR	Town of OSHKOSH	TOWN OF OSHKOSH			✓
Susan Johnson	Marinette Wilbert Vaultwks	Marinette	✓		
Geo. GARY MURPHY	MURPHY SEPTIC SERVICE	DEPERE			✓
RICK STAPELMAJER	Wis Towns Assoc.	SHAWANO	✓		
Lesley Roll	OUTAGAMIE Co.	OUTAGAMIE/Appleton			✓
Lee V. Small	Water Watch	Neenah WI	✓		
JEFF LADD	BROWN COUNTY HOME BUILDERS ASSN	GREEN BAY WI	✓		
Ross J. Fuyill	Wis Dept. of Commerce - STB	Shawano WI			
Bill Boudhuin	Boudhuin Inc.	Sturgeon Bay	✓		
Steve Morrison	Town of Workington	Workington WI	✓		✓
Brad Johnson	Dept. of Commerce	Green Bay			
Mark Sorwille	HOVMSD	Kaukauna Wis			
Bill Bosniack	BROWN CO. Zoning	Green Bay	✓		
Joe Maitland	Brown Co. Zoning	Green Bay	✓		
Dave George	George Holt Soil Consulting	Green Bay WI	✓		

**DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD**

RULE NO.: Chapters Comm 83, 85 and 91 DATE: July 17, 1998
 RELATING TO: Private Onsite Wastewater Treatment Systems TIME: 9:00 a.m. to noon
 LOCATION: 1951 Bond Street Comfort Suites CITY: Green Bay

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
<u>Avon Heidt</u>	<u>George's Holdt Soil Consulting</u>	<u>Green Bay WI</u>	✓		
<u>John Robinson</u>	<u>WI Water Work Assoc</u>	<u>Waterloo WI</u>			X
<u>Thomas Schaitel</u>	<u>SELF</u>	<u>Union Grove WI</u>	✓		
<u>Donna Briesemeister</u>	<u>SELF</u>	<u>Wash. Co., WI</u>			X
<u>Sonny Bonchen</u>	<u>TOWN OF CLAYTON</u>	<u>GARCON WIS</u>	✓		
<u>THEODORE ROTHLOFF</u>	<u>CALUMET COUNTY</u>	<u>CHICAGO, WI</u>		X	
<u>ALLISON BLACKMER</u>	<u>TOWN OF HARRISON-CHAIR</u>	<u>MENASHA, WI</u>	✓		
<u>Hulk M. Ferguson</u>	<u>Dept Comm</u>	<u>DOUG WI</u>	✓		✓

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

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
Chs. Comm 83, 85 & 91

Subject
Private Onsite Wastewater Treatment Systems

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 8,500	\$ -
(FTE Position Changes)	(0.25 FTE)	(- 0 FTE)
State Operations - Other Costs	6,500	-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$ 15,000	\$ -0
B. State Costs By Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS	15,000	-0
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	30,000	-
SEG/SEG-S		-
TOTAL State Revenues	\$ 30,000	\$ -0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 15,000	\$ 0
NET CHANGE IN REVENUES	\$ 30,000	\$ 0

Agency/Prepared by: (Name & Phone No.)
Commerce/James Quast 266-9292

Authorized Signature/Telephone No.

[Signature] C-9576

Date

6-1-98

FISCAL ESTIMATE
DOA-2048 (R02/97)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chs. Comm 83, 85 & 91
Amendment No. if Applicable

Subject

Private Onsite Wastewater Treatment Systems

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation

or affects a sum sufficient appropriation

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

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

Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive Mandatory

2. Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

None

Assumptions Used in Arriving at Fiscal Estimate

The proposed revisions concerning the rewrite of the private sewage code would affect the department's workloads and processes in 3 programs.

The revisions would eliminate the department's involvement in reviewing the proposed creation of subdivisions that would not be served by public sewers. The lost revenues and staff resources, 1/2 FTE, associated with elimination of the program would be offset and redirected to other programs such as plumbing product review or plan review.

The revisions to chapter Comm 2, Fee Schedule, are intended to restructure the fees charged for reviewing plans, petitions and products related to private sewage systems; however, the restructured fees are not intended to increase the cost of services to the department's customers or to increase the department's revenues.

The proposal under ch. Comm 5 to required a credential for individuals who provide monitoring and maintenance services for mechanical POWTS components would generate additional revenue for department which would be used to offset the cost of administering the credential program. It is anticipated that the additional workload associated with the new credential would be absorbed within current staffing levels and workloads. The cost for producing and processing a credential is estimated at \$15 per unit. It is estimated that approximately 2,000 individuals may be interested in acquiring the credential. The fee for the credential is proposed to be \$30 for 2 years. Under this assumption the department would then realize additional annual revenues of \$30,000 and annual costs of \$15,000.

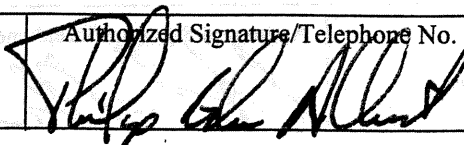
The proposed revisions for the rewrite of the private sewage code do not mandate local governmental units to implemented new or additional administration or enforcement strategies.

Long-Range Fiscal Implications

No long-range fiscal implications are anticipated at this time.

Agency/Prepared by: (Name & Phone No.)
Commerce/James Quast 266-9292

Authorized Signature/Telephone No.



Date

6/1/98

PUBLIC HEARING COMMENT AND AGENCY RESPONSE

DEPARTMENT OF COMMERCE

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
 Relating To: POWTS

Hearing Location: Madison, WI
 Hearing Date: July 13, 1998

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	Opp. For Info.				
X			Walter J. Olson Deerfield, WI (Small Business)	Supports proposed rules and new technologies. Prudent implementation of the knowledge gained over the past 20 years in soils and environmental science should be embraced as tools in the common goal to create a more synergistic relationship with our physical environment.	No response necessary.
			James Garton Town of Delafield Pewaukee, WI	In favor of outcome-based language in new rules; this will better protect the environment.	No response necessary.
	X	4	Grant Fuhrman Town of Yorkville Union Grove, WI	<ul style="list-style-type: none"> These rules have no significant changes from the first hearing. Comments from the first hearing should be accepted and entered as part of these comments at this hearing. Add a statement in Table 83.04 allowing local governments to determine an appropriate effective date. This allows local control of taxes. 18 months is not a fair amount of time, especially where long-range planning is done. Zoning changes are not an automatic cure-all for the approaching problems 	<ul style="list-style-type: none"> The Department statutory responsibilities under ch. 145, Stats, include the establishment of a plumbing code in order to protect public health and the waters of the state not a zoning code to regulate land use. The proposed revisions for Comm 83 were first initiated in the spring of 1995 with the 18-month moratorium appearing in the 1997 revised hearing draft. Under the rule-making process the earliest the current proposed rules could be implemented and in effect would be the spring of 1999. The final draft of rules will be clarified to allow an optional local 18 month delay for new design manuals and treatment components approved by the Department under s. Comm 84.10(3). The delay may begin from the date of the Department's approval of the technology.

PUBLIC HEARING COMMENT AND AGENCY RESPONSE DEPARTMENT OF COMMERCE

Hearing Location: Madison, WI
Hearing Date: July 13, 1998

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
Relating To: POWTS

Commenting		Presenter, Group Represented, City, State	Exh. No.	Comments/Recommendations	Agency Response
Sup.	In Opp. For Info.				
X		James P. Clark WI County Code Administrators Waunakee, WI	5	<p>• Not opposed to the new technology; opposed to method the department has chosen to implement the changes. Changes will create nonuniformity in Wisconsin and will increase confusion and multiplicity of regulations for industry and consumers. There should be local control over which technologies should be accepted. New systems will create significant workload that local governments will not be able to handle.</p> <p>• Comm 81.01(89) Engineered system. This describes a system which meets the intent of the code but not the enumerated specifications. Since the enumerated specifications are limited to performance standards and the intent is to remove components of wastewater that are harmful to human health or groundwater quality, this appears to allow the department to consider systems that won't meet the performance standards which automatically violates the intent. This should either be eliminated or amended to clarify that such systems must meet the performance standards in the code.</p> <p>• Comm 81.01(248) Surface Water. This exempts waters which are entirely confined and completely retained upon the property of a facility from the definition of a surface water. This is contradictory to the agreement with the DNR regarding jurisdiction over POWTS which discharge to the surface. This definition should be amended to eliminate the exemption.</p>	<ul style="list-style-type: none"> • Under ss. 145.13 and 59.70(5), Stats., local ordinances governing the design, installation and maintenance of POWTS's are to be in conformance with the state plumbing code. Ordinances concerning administrative and enforcement matters such as the need for additional permits, or zoning standards may be enacted under the appropriate statutory powers. Under current statutory provisions, the local governmental units have the ability and discretion in how to fund and to what level to fund their oversight activities and services. • The definition of a term does not reflect a standard or predict a certain action by the Department. The term "engineered system" is not used in the text of ch. Comm 83, but appears the current rules of chs. Comm 82 and 84. • The definition under s. Comm 81.01(248) defines the term "surface water"; the definition under 82.01(279) defines the term "waters of the state" and reflects the agreement with DNR regarding jurisdiction.

PUBLIC HEARING COMMENT AND AGENCY RESPONSE

DEPARTMENT OF COMMERCE

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
 Relating To: POWTS

Hearing Location: Madison, WI
 Hearing Date: July 13, 1998

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	Opp. For Info.				
			James Clark continued	<ul style="list-style-type: none"> Comm 82.10(7) This section should be retained. This has been a part of the plumbing code since its inception and is a valuable tool for local units of government to correct problem situations cooperatively with sanitary districts when the need arises. This section establishes the authority for counties and is important since we don't have home rule and can't perform functions that are not authorized in statute or administrative rule. Comm 82.10(8) The amendment uses the word "recycling" but the term is not defined. The word "recycling" must be defined or the phrase should be changed to clarify what the intent is here, i.e., remove the harmful components of the sewage and return the treated effluent to the environment. Comm 83.03(1)(b) This can and will have the effect of prolonging the life of non-complying or perhaps even failing private sewage systems. This is poor policy. The code should require the evaluation of all components of the system for compliance when any portion of the system is modified, repaired or replaced. The current Comm 83.03(2) should be retained in this code for the reasons identified above for Comm 82.10(7). Comm 83.03(2) It is good public policy to require an upgrade to current criteria when an alteration or addition to part(s) of the private sewage system are being made. The current criteria reflects the improvements in knowledge about these systems and represents a reasonable expectation for all systems whether they are new or altered or repaired. 	<ul style="list-style-type: none"> The proposed rules do not prohibit municipalities from addressing such issues as when sewers are available and connection thereto is to occur under local ordinances. Such ordinances may be enacted under the statutory authority of s. 281.45, Stats. The final draft of rules will clarify the intent. The rule does not waive any standard or compliance with any standard; rather the rule clarifies how the standards apply relative to time. The trigger and mandate to require the evaluation of an existing POWTS to determine whether it is failing is at the discretion of the county under s. 145.20(2)(e) to (g), Stats. The concern is addressed by a number of proposed rules, including s. Comm 83.51(2). The proposed rules will remain unchanged. The suggestion if implemented would at times result in the unnecessary modification of systems even when the performance of the systems is within standards just so components such as pipes or sand are brought up to current product standards.

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

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
Relating To: POWTS

Hearing Location: Madison, WI
Hearing Date: July 13, 1998

Commenting		Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	For Opp. Info. No.			
		James Clark continued	<ul style="list-style-type: none"> Comm 83.03(2)(b)2a. This section uses the term groundwater as the criteria for determining the status of an existing private sewage system. "Groundwater" has a very different meaning than "high groundwater" in this code. The section should be amended to replace "groundwater" with "high groundwater". Comm 83.03(2)(b)2a. This section also establishes that the criteria apply to systems installed prior to December 1, 1969. This creates a gap for systems that were installed between 1969 and 1976; 1976 being the year when meaningful application of soil evaluation practices began. Comm 83.03(2)(b)2b. The code should require that the testing intended to prove code compliance of any POWTS with the infiltrative surface less than 2 feet above a limiting factor must be initiated within 30 days of issuance of a corrective order and must terminate no more than 60 days after the issuance date of the order (or some similar defined time frame). If this is not well-defined, there will be significant confusion and widely different applications around the state. 	<ul style="list-style-type: none"> The final draft of rules for s. Comm 83.03(2)(b)2. will be clarified to reflect the highest estimated high groundwater elevation. The comment does not delineate a specific concern. Until December 1, 1972 the plumbing code promulgated under ch. 145, Stats., established minimum plumbing standards where municipalities could voluntarily enact more stringent standards. Since that time the plumbing code applies uniformly across the state. The date of December 1, 1969 represents the first time the "3-foot separation" to bedrock and groundwater appeared in the plumbing code. If an order has been issued it would seem that the specific problem of noncompliance has already been identified. The enforcing agency in issuing an order may establish the terms of compliance including the timeframe it determines to be appropriate.

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

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
Relating To: POWTS

Hearing Location: Madison, WI
Hearing Date: July 13, 1998

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	Opp. For Info.				
			James Clark continued	<ul style="list-style-type: none"> Comm 83.04 Counties should be allowed to determine whether they have the resources to allow the use of certain technologies. The risks to the environment and groundwater will be greater for systems relying on mechanical or chemical processes for the treatment and dispersal of the wastewater. The risks will be even greater if the local government does not have the capability to properly monitor the operation and maintenance of these systems. At the very least, this section should be amended to allow an 18-month delay from the date of product approval, not just from the effective date of this rule. The preferred alternative would be to allow counties the authority (obligation) to not allow certain technologies unless they have the necessary resources. Comm 83.21(1)(a) Section 66.036, Stats., should be included in the enumerated codes to be considered before a POWTS can commence or continue. Comm 83.21(1)(a) There are components which will be part of the system which are not included in the code identified items. This means that counties will likely have their own permit for components not itemized in Comm 83. This will foster confusion and non-uniform application around the state. It would be better policy to include all components of the private sewage system under the one permit. Comm 83.21(1)(b) This section requires a sanitary permit for modification of a private sewage system, but not for installation, construction, replacement or addition to the POWTS. This is inconsistent and potentially conflicting with other sections of the code dealing with plan review, etc. This should include all types of installations or modifications. Page 60 The way the "Note" is set up, it creates the perception that the code numbering is out of sequence. The portions pertaining to the note should either be inset, italicized, or otherwise distinguished from the provisions of Comm 83. 	<ul style="list-style-type: none"> The final draft of rules will be clarified to allow an optional local 18 month delay for new design manuals and treatment components approved by the Department under s. Comm 84.10(3). The delay may begin from the date of the Department's approval of the technology. Although there is an inference to sanitary permits, s. 66.036, Stats., relates to the issuance of building permits. The rules clearly delineate when a sanitary permit is required; the establishment of some type of permit other than a sanitary permit, for those activities not addressed under the rules is at the discretion of the enforcing governmental unit, see s. Comm 83.20(2). The concern is addressed under this paragraph where specific language indicates that a sanitary permit is required "if the modification involves the addition or replacement of any of the following components – holding, treatment or dispersal." See also previous response. Notes appearing in the administrative codes published by the revisor of statutes are printed in smaller font size than rule text.

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

Hearing Location: Madison, WI
Hearing Date: July 13, 1998

Rule Number: Chs. Comm 83, 85, 91
Relating To: POWTS

DIVISION OF SAFETY AND BUILDINGS

Commenting		Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	For Opp. Info. No.			
		James Clark continued	<ul style="list-style-type: none"> Comm 83.21(3)(a) The allowance for processing the sanitary permit should be changed to 30 working days. Comm 83.21(4) This section only refers to transfers between owners. If a different plumber is selected after the sanitary permit is obtained, a transfer of plumber permit is also needed. This section should include transfer between plumbers, too. Comm 83.21(5) This section should include a clarification that the 2-year term of the permit is not to be construed as a grace period for compliance with orders. This should also clarify that the permit ceases to exist when the system has been inspected and approved by the local unit of government, regardless of when that occurs within the 2-year time period. Comm 83.21(7) This section should include authority for suspension of a permit for cases when revocation will be too harsh to fit the circumstances. Revocation will require obtaining a whole new permit, including new fees. Suspension allows the permit to be held in abeyance until the problems are corrected without additional costs to the owner. If this is not included, there will be a lack of uniformity around the state, leading to confusion in the licensed community and by consumers. Comm 83.22(1) This section should include modifications similar to those referred to for Comm 83.21(1). Comm 83.22(4)(a)4b,c,d. The criteria in these sections needs clarification in order to provide direction to local units of government with specific examples of when the criteria apply. Comm 83.22(7) This section should include language which prohibits the use of a POWTS until the installation has been inspected and approved by the local unit of government, and until any necessary revisions have been submitted to the local unit of government. 	<ul style="list-style-type: none"> The final draft of rules will reflect "business" days. Pursuant to s. 145.19, Stats., sanitary permits are issued to the owner and transferable to a subsequent owner. The application form may be amended by the owner to list the new plumber. A sanitary permit is just the recognition that the installation of a POWTS may commence and does not in itself grant a waiver of compliance. An order establishes the conditions and timeframes for compliance. The enforcing agency issuing an order establishes at its discretion the conditions. A county under ch. 59, Stats., possesses several enforcement options, including "red tag authority" to address the concern. The county has a number of avenues to address the problems without having to revoke or reissue a sanitary permit. The two proposed rules reflect the same issues and parameters. The Department has and will continue to provide training on the proposed code and its implementation. The concern is addressed under s. Comm 83.26 (2)(a); in addition, an enforcing agency may establish other local oversight such as a use or occupancy permit.

PUBLIC HEARING COMMENT AND AGENCY RESPONSE
DEPARTMENT OF COMMERCE

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
 Relating To: POWTS

Hearing Location: Madison, WI
 Hearing Date: July 13, 1998

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			James Clark continued	<ul style="list-style-type: none"> Comm 83.24(1) The need for a variance procedure in this code is questioned since there are no particular design standards that need to be met, only performance standards. There should be no authority to grant a variance to the performance standards. Comm 83.24(2)(b) This section indicates a variance cannot be granted for a POWTS if it is failing as defined in section 145.245(4). This should also include systems that are deemed failing as per Comm 83.03(2)(b)2a. Comm 83.25(2)(c) This section still ties the review of a private sewage system to the issuance of a building permit without providing a realistic mechanism for triggering the review. The provisions of the current Comm 83.055 are superior to the proposed chapter and should be restored. The proposed language will lead to major confusion among regulators, installers, builders and consumers. It will also greatly increase the likelihood of non-uniform application around the state. Comm 83.25(2)(d) This section requires documentation to include only one of the itemized criteria, when all three are necessary to make an adequate determination of the system's suitability. This section also does not require submittal of evidence that the existing system is not failing as defined in Wis. Stats. and per Comm 83.03(2). This section needs to include that requirement. Comm 83.25(2)(d)3. This does not provide any guidance on how the local government should proceed if the report is negative but does not identify any particular circumstance in violation of the code. This will lead to confusion and non-uniform application around the state. 	<ul style="list-style-type: none"> The petition for variance process allows an individual to request and the department to evaluate an alternative method, practice or product in fulfilling the intent of a rule. The intent of the proposed rule is not to add a new classification for "failed private sewage system" which is already defined. The proposed rule reflects the same type of documentation and decision making as under the current rules. The procedures and roles of a municipality issuing building permits and a county overseeing the private sewage code is a relationship based on mutual agreement or on the higher unit of government's mandates. The proposed rule reflects the same type of documentation and decision making as under the current rules. The trigger and mandate to require the evaluation of an existing POWTS to determine whether it is failing is at the discretion of the county under s. 145.20(2)(e) to (g), Stats. The proposed rule lists three possible methods for documenting existing POWTS capabilities. The decision to make a determination whether a POWTS is failing is at the discretion of the county under s. 145.20(2)(e) to (g), Stats.

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Relating To: POWTS

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		James Clark continued	<ul style="list-style-type: none"> Comm 83.25(2) The note after (2)(e)2c appears to indicate that the municipality issuing the building permit(s) is the entity which decides whether the proposed construction will affect or interfere with an existing POWTS relating to capability or location of the POWTS, and that authority may be delegated to the governmental unit responsible for issuing sanitary permits. This is very disturbing if it is the intent. There are no requirements for the municipality to have trained or knowledgeable staff to be able to make informed determinations. This should automatically require the determination to be made by the unit responsible for issuing sanitary permits. Comm 83.26(1)(c) This section authorizes a governmental unit to issue orders to abate a human health hazard but still does not clarify the authority to enforce that order. Without the clarification, enforcement will shift to the local health officer, who in many cases will not have the knowledge, time or perhaps the capability to follow up on these complaints. This will create an additional barrier due to the work involved in transferring evidence, etc. Comm 83.26(5) This section needs to clarify when the testing must occur (after manufacturing? after delivery to the site? after installation?) and who must do the testing (the manufacturer? the installer? the inspector?) This will lead to significant confusion and non-uniform application if the necessary clarification is not included in the code. 	<ul style="list-style-type: none"> The proposed rule reflects the same type of documentation and decision making as under the current rules. The procedures and roles of a municipality issuing building permits and a county overseeing the private sewage code is a relationship based on mutual agreement or on the higher unit of government's mandates. Under s. 145.20(1)(a), Stats., the governmental unit may assign the responsibility of administering the POWTS program to any office or employee. Under 145.20(2)(f), Stats., the governmental unit shall investigate violations of the POWTS ordinances and s. 254.59(2), Stats., and issue orders to abate the violations. If and when a specific POWTS product is to be tested is largely dependent upon the product's manufacturer and the specifications for the product. The responsibility for testing components under s. Comm 83.26(5) rests with the installer. The enforcing governmental unit always has the prerogative of requesting that this information be provided via the installer.

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			James Clark continued	<ul style="list-style-type: none"> Comm Table 83.29 The first and last ranges of response in this table are objectionable due to their implications. The first response calls for determining the significance of the exceedance; given the tone set in the DEIS that "local" exceedances aren't of concern, this is cause for concern. The last response is to simply change the code in order to evade making any changes related to the problem. This has very serious implications and should be deleted. Comm 83.31 This section should state that the POWTS shall be "maintained and operated in a manner so as not to cause the POWTS to fail to operate according to the design and/or performance standards, and thereby, create a human health hazard". The "use" issue is totally different than the maintenance and operation. No section specifies the authority of the local unit of government vs. the local health officer to pursue violations under chapter 254 pertaining to human health hazards. The WCCA has concerns about the confusion in jurisdiction and the obstacles to enforcement that will be created if only the health officer can enforce the health hazard statute. Comm 83.32(1)(f) This section needs to either state or reference the requirement of 24 inches or more of suitable in situ soil beneath the infiltrative surface in order to not be considered as failing per section 145.245. Comm 83.32(1)(g) The term "camping unit transfer container" must be defined. 	<ul style="list-style-type: none"> Section 160.21(1), Stats., requires an agency to establish responses if a PAL or enforcement standard is attained or exceeded. Furthermore, the statutes under s. 160.21(3), Stats., state that the "responses" may include revisions of rules or remedial actions which include investigations. Revising the rules could potentially make the standards more restrictive, including the prohibition of a practice or a technology. The final draft of rules will be clarified to address the concern. Under s. 145.20(1)(a), Stats., the governmental unit may assign the responsibility of administering the POWTS program to any office or employe. Under 145.20(2)(f), Stats., the governmental unit shall investigate violations of the POWTS ordinances and s. 254.59(2), Stats., and issue orders to abate the violations. The rule establishes a prohibition for certain existing systems. The purpose of the proposed rule is not to classify "failed private sewage system" which is already defined. The final draft of rules will define the term "camping unit transfer container".

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		James Clark continued	<ul style="list-style-type: none"> • Comm 83.32(2) Discussions between the WCCA and the department have resulted in an understanding that this section should reflect the need for adequate resources at the local level in order to be able to properly oversee the use of technologies in addition to those iterated in this section. This section should set standards for (or allow local authority to restrict the use of in lieu of) adequate resources for each of the proposed technologies. • Note on Page 76, after Comm 83.32(4) This note reflects the department's position on including the authority for units of government responsible for issuing sanitary permits to require connection to public sewer. This has been included in all past versions of the code and has been a valuable aspect of the code to many counties. The refusal to include it in the revised code will ensure non-uniform application on a statewide basis by taking away authority previously included in the code. • Comm 83.40(8) The final effluent quality does not address viruses. The Wisconsin Division of Health has had reports of wells in Wisconsin that were contaminated with viruses, but tested bacteriologically "safe". The final effluent standards need to include a standard of treatment or disinfection that will also remove viruses. • Comm 83.43(9)(b) This section refers to pipe sizing which will permit the operation of the POWTS. This should require sizing that will meet the minimum design standards of the POWTS. • Comm 83.43(9)(c) This section should require the design and installation of POWTS components so as to be protected from frost, not protection by design only. 	<ul style="list-style-type: none"> • The final draft of rules will be revised to address the concern about the expertise and knowledge of installers and inspectors to utilize certain technologies. • The proposed rules do not prohibit municipalities from addressing such issues as when sewers are available and connection thereto is to occur under local ordinances. Such ordinances may be enacted under the statutory authority of s. 281.45, Stats. • There is currently no groundwater standard for viruses. In addition, there is no evidence supporting the concern as it relates to POWTS's at this time. When data becomes available substantiating the concern the Department will evaluate the rules for possible revisions. • The rules establish design/performance standards. The necessary minimum velocity will be established by the functions of the design solution. An enforcing entity may request the POWTS designer or installer to verify compliance through calculations or other information. • The final draft of rules will be clarified to address the concern.

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			James Clark continued	<ul style="list-style-type: none"> Comm 83.44(2) This section will allow influent as long as it does not exceed all of the listed factors. It appears that the POWTS could be adversely affected by an exceedence of any of these deleterious materials. Comm 83.44(3) This section appears to be in conflict with Comm 83.43(9)(e)3. The provisions of this section should prevail. Comm 83.44(3)(c) This section should require that the infiltrative surface must be at least one inch below the <u>original</u> grade, not just the finish grade. Comm 83.44(4)(a)1b. This section establishes the criteria for concentrations of effluent quality parameters without any explanation of how these will be measured or otherwise determined. This will lead to confusion and disagreement if the method of determination for these parameters is not clearly stated. Comm 83.44(6)(b) This section requires a below grade infiltrative surface to be level, but nowhere does the code require an infiltrative surface located above the original grade to be level. This needs to be corrected since a level infiltrative surface is necessary wherever it is located. Comm 84.25(7) The access requirements do not include a minimum size for the diameter of the access opening. A minimum size of 24 inches in diameter has been shown to be effective and reasonable. The 24-inch requirement should be included in the code. Subchapter V. The code must not be implemented until the process or program to ensure adequate maintenance and operation is designed and tested in Wisconsin. 	<ul style="list-style-type: none"> The influent quality parameters cannot be exceeded for any of the three listed factors. This provision has been deleted out of the final draft of rules. Such a requirement would prohibit the use of a mound or at-grade system. The rule establishes a design standard. An enforcing entity may request the POWTS designer or installer to verify compliance through calculations or other information. The final draft rules will be clarified to address the concern. The proposed code provision recognizes that one size will not be appropriate for the wide variety of treatment components and holding tanks that will be available. The Department is in the process of completing the development of a maintenance tracking system. The proposed rules require that POWTS's be properly maintained.

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			James Clark continued	<ul style="list-style-type: none"> Comm 84 Chart on p. 196. The ASTM standard for aggregate allows up to 5% silt and clay on the aggregate. This standard is a poor choice for aggregate being used in POWTS and should be deleted. 	<ul style="list-style-type: none"> The incorporation of the standard is intended to provide a measure and method for determining aggregate quality. At this time the Department is unaware of other alternatives to accomplish this purpose, but if new information, such as a different standard, is provided the Department will consider revising the rules.
X		1	David Cieslewicz 1000 Friends of Wisconsin Madison, WI	<ul style="list-style-type: none"> The rule will have a negative impact on land use by allowing and encouraging the use of POWTS where natural conditions had restricted their use under the current code. Almost 9 million acres will be opened to easier development. If this rule was for ground or surface water protection, requirements like minimum soil depths and slope restrictions would be left in place. The rule is a land use policy to permit more development. 	<ul style="list-style-type: none"> The number of acres reflects the theoretical installation of POWTS's which may be sited on 6 inches of in situ soil and does not take into account whether development is allowed to occur under local zoning powers. Development is the result of many variables and factors. The proposed rules establish plumbing standards to protect public health and the waters of the state. The proposed rules for the first time include numerical performance standards for the treatment of wastewater. The rules also establish design and management practices to protect groundwater resources in accordance with chapter 160, Stats.

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			David Cieslewicz continued	<ul style="list-style-type: none"> The rule threatens ground and surface water quality. It allows the use of new, untested, alternative technologies. Enforcement will be more difficult. More POWTS will be installed. There are no standards for nitrates, chlorides and TDS. Private entities will build cluster systems serving as many as 30 homes without DNR permitting. The consideration of zoning or other land use issues is prohibited in the issuance of sanitary permits. Holding tank setback should be left at 25 feet. The policy of considering holding tanks as the system of last resort should not be eliminated, it should be enforced. The rule should not go into effect in any jurisdiction which does not have a land use plan which meets state standards for being comprehensive and which meets state land use planning goals. The rule should be delayed until local governments have the resources to adequately enforce the complex new code. 	<ul style="list-style-type: none"> POWTS technologies submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The rules also establish design and management practices to protect groundwater resources in accordance with chapter 160, Stats. The decision of when DNR permits are necessary is an issue to be determined by that agency. The proposed rules recognize that municipalities have the ability to enact ordinances relative to the use of holding tanks. The decision to develop and/or exercise zoning or land use powers currently is at the sole discretion of local municipalities. The Department still has the responsibility to enact a plumbing code in order to protect public health and the waters of the state. Under s. 145.20(2), Stats., each governmental unit responsible for regulating POWTS's has a great deal of latitude as to the breadth and degree of oversight activities to provide or exercise. Also, under current statutory provisions, the governmental units have the ability and discretion in how to fund and to what level to fund their oversight activities and services. Municipalities have the ability to either delay the implementation of or limit the use of certain technologies under ss. Comm 83.04 and 83.32(2).

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		David Cieslewicz continued	<ul style="list-style-type: none"> The rule should be delayed until the department meets its requirements under WEPA and its own administrative code to analyze the impact of the proposed action on the human environment. Local governments should be able to prohibit or ban the use of any type of system. All new design packages should be field tested in Wisconsin. Tests in other states under other conditions cannot be trusted. All new design packages should undergo WEPA review. At least an EA and maybe an EIS should be performed. Mandatory municipal ownership of cluster systems should be continued. Private developers and homeowners are not answerable to the state like municipal governments are. The NR 140 nitrate standard should be complied with if the goal is groundwater protection and not land use policy. 	<ul style="list-style-type: none"> The Department will have completed the environmental disclosure responsibilities under s. 1.11, Stats., before forwarding the final draft of rules to the Legislature for standing committee review. The proposed code is envisioned to recognize all valid POWTS technologies that will protect public health and the waters of the state. The final draft of rules will be clarified to allow an optional local 18 month delay for new design manuals and treatment components approved by the Department under s. Comm 84.10(3). The delay may begin from the date of the Department's approval of the technology. POWTS technologies submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The Department will follow the environmental analysis procedures delineated under its administrative rules, currently chs. ILHR 1 and Comm 107. The proposed rules under s. Comm 83.32(2)(c) recognize a municipality's ability to dictate municipal ownership of cluster systems if desired. The rules establish design and management practices to protect groundwater resources in accordance with chapter 160, Stats. Relative to nitrates, the rules reflect the direction provided under s. 160.255, Stats.

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		X	2	David A. Holman Rock County Health Department Milton, WI	<ul style="list-style-type: none"> Minimum soil depths, vertical separations, setbacks and slope restrictions should be left in place to provide additional ground and surface water protections. Public health protection by adequate sewage disposal is based on the concept that the public right to public health protection for all the citizens will be a higher priority than the private rights of an individual citizen to dispose of sewage in a method that would create a human health hazard. The proposed code eliminates the existing codified design and installation specifications necessary to install and operate an effective private sewage program for property owners, plumbers and county code administrators by experimental approval and product approval section of the code. The code does not limit the number of experimental systems and does indicate what standards will be used for approval of new system types under product approval section. 	<ul style="list-style-type: none"> The proposed rules for the first time include numerical performance standards for the treatment of wastewater. The rules establish design and management practices to protect public health and the waters of the state. The proposed rules establish numerical performance standards for the treatment of wastewater. Unlike the current code, the proposed rules do not mandate the use of a limited number of specific solutions. However, some solutions, under ch. 83 subch. VI, have been recognized as achieving compliance with the code's performance standards. The proposed rules under s. Comm 84.10(3)(a) for POWTS products indicate that reviews are based upon conformance with ch. Comm 83. Pursuant to s. 145.13, Stats., the plumbing code, including ch. Comm 83, is a statewide uniform code. Treatment technologies submitted in the future to the Department under s. Comm 84.10(3) will be reviewed with input from a technical advisory committee.

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		David Holman continued	<ul style="list-style-type: none"> The proposed code does not provide required third party testing for reliability and lifetime of POWTS. This is necessary to assure that new proposed private sewage disposal systems will protect public health, groundwater or the environment on a short or long-term basis in a cost-effective manner. The code does not provide an adequate management plan of POWTS to protect public health or the environment. The proposed code does not provide for reliability performance standards by third party testing. This will allow non-cost-effective and inadequately tested private sewage systems to be mandated on local governments and citizens who will have to manage and/or operate these systems for the lifetime of the building or until public sewer is available. The Department has not provided a cost/benefit analysis of the proposed system(s) or an environmental impact statement that indicates how public health and the environment will be protected in a more cost-effective manner than the existing code. The citizens owning private sewage systems are not organized or represented. They do not understand the potential public health, environmental or economic impacts of the proposed code on their future health, property or financial resources. An effective private sewage code will have codified performance standards, prescription design, operation and management standards. All POWTS design installation and maintenance standard(s) should be enforceable to protect public health. 	<ul style="list-style-type: none"> Under ss. Comm 83.52(3) and 5.36 certain types of POWTS's require evaluation and monitoring in accordance with their management plan to be performed by individuals who have been registered with the Department. Management provisions for POWTS's are addressed under ch. Comm 83 subch. V. The Department does not find it reasonable to specifically predict or dictate all of the possible maintenance factors associated with all of the potential POWTS technologies. POWTS technologies submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The reliability of all systems, including current technologies, is dependent upon many variables, including how the owner uses and operates the system. Under the current code there are no specific reliability standards; owners in conjunction with designers choose the type of system that meets their needs and expectations. No response necessary. The proposed rules establish numerical performance standards for the treatment of wastewater in order to protect public health and the waters of the state.

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				David Holman continued	<ul style="list-style-type: none"> Commerce does not have their own testing program and third party testing is not required for systems which are approved outside of NSF standards; even NSF standards do not have a reliability or length of life standard. This indicates inadequately tested systems may be unintentionally approved based on insufficient or unavailable data. The proposed code is opening the door to thousands of small complex treatment plants that have to be operated properly at all times to protect public health and environment. The protection will require not allowing small treatment plants or providing certified operators to manage the small treatment plants on a continuous basis, if needed. This will be required to assure artificial disinfection is occurring on a continuous basis where adequate soils are not used in disinfection. The Rock County Board of Health, by unanimous vote on July 1, 1998, recommended the following: Include the authority to allow local governments responsible for Comm 83 code administration to approve POWTS and POWTS treatment components before they are used within their jurisdiction. The proposed code has placed the responsibility of maintaining POWTS to protect public health in the local public health department. This will occur because the required maintenance not done is a human health hazard, and the local and state health department is mandated to abate human health hazards, including failing private sewage systems. 	<ul style="list-style-type: none"> POWTS technologies submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The proposed rules require all types of POWTS's to be used and operated to achieve the specified performance standards at all times. The final draft of rules will be clarified to allow an optional local 18 month delay for new design manuals and treatment components approved by the Department under s. Comm 84.10(3). The delay may begin from the date of the Department's approval of the technology. Under s. 145.20(1)(a), Stats., the governmental unit may assign the responsibility of administering the POWTS program to any office or employee. Under 145.20(2)(f), Stats., the governmental unit shall investigate violations of the POWTS ordinances and s. 254.59(2), Stats., and issue orders to abate the violations.

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			David Holman continued	<ul style="list-style-type: none"> State approval process does not assure a continuous disinfection performance standard for non-soil absorption systems under experimental and/or product approval authority under Comm 84.10 and 83.27. Comm 83.43(8) allows 200 fecal coliform bacteria /100 ml (this is a swimming water standard) to enter groundwater used for drinking water. The standard should be less than one fecal coliform/100 ml to protect drinking water from being contaminated by fecal matter. Comm 83.43 does not provide a standard for design life of the POWTS and/or POWTS components minimum lifetime standards should be 20 years plus. Comm 83.43 does not provide a performance reliability standard for the type and amount of maintenance needed to protect public health before state approval is given for new type POWTS or components. 	<ul style="list-style-type: none"> The proposed rules require all systems to conform to the performance standards at all times. The possible exception would be for experimental systems under s. Comm 83.27 in which case the department will establish conditions for operating including monitoring provisions in order to protect public health and the waters of the state. The rules establish design and management practices to protect public health and groundwater resources in accordance with chapter 160, Stats. The final effluent quality provisions identified in Comm 83.43(8) will be deleted from the final draft of rules. POWTS technologies submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The reliability of all systems, including current technologies, is dependent upon many variables, including how the owner uses and operates the system. Under the current code there are no specific reliability standards; owners in conjunction with designers choose the type of system that meets their needs and expectations. The code expects and demands the POWTS to perform to the criteria all the time the system is in service.

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			David Holman continued	<ul style="list-style-type: none"> The number of experimental systems which can be placed in the local jurisdiction has not been indicated in the proposed Comm 83.27. New type POWTS and POWTS treatment components can be mandated into operation without testing [84.10(2) and 84.10(b)] and without assuring performance will comply with Comm 83 including the disinfection standard. Comm 83.24 Petitions for Variance indicates variance will be given based on intent of rule. However, the intent of the rule is not provided in ordinance or EIS. This indicates all Variances should meet the goal to protect public health and not lower the level of public health protection already in the community. It appears there can be major changes to the recognized technology systems and present systems without public hearing by using the product approval section to avoid public comment on proposed changes. These systems can be revised outside of Comm 83. The code allows up to 12,000 gallons POWTS that will cause the proliferation of small sewage treatment plants that will require special inspection by local governments to assure public health is being protected; where in the past, DNR prohibited small treatment plants because they are difficult to operate and maintain to protect the public health or the environment without a certified operator available 24 hours/day. 	<ul style="list-style-type: none"> In order to obtain statistically valid data the Department does not believe it prudent to limit the number of experiments by rule. POWTS technologies submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The variance process is not a waiver of a rule, but rather a method to evaluate and recognize alternative methods, practices or products that achieve compliance. The technologies represent solutions that are still required to achieve compliance with the enumerated standards under ch. Comm 83. Design solutions that utilize innovative treatment technologies submitted in the future to the Department under s. Comm 84.10(3) will be reviewed with input from a technical advisory committee. No data has been submitted to substantiate the prediction of whether POWTS "cluster" systems will be preferred as an alternative to individual systems. The concern about the management of the cluster systems can be address by a municipality under s. Comm 83.3(2)(c) by requiring municipal ownership.

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		David Holman continued	<ul style="list-style-type: none"> No standards or regulation in Comm 83.29 to require revoking of product approval if systems are causing human health hazard or noncompliance with performance standards. The proposed "certified" mechanical provider is only required to monitor and evaluate the system, not operate the system. There is a need for POWTS operators for large scale systems and systems requiring artificial disinfection to assure systems are operated properly to protect public health. Table 83.44-2 indicates there will be no credit given for soil treatment for fecal coliform in very coarse sand or coarser, loamy coarse sand with 35% coarse fragments. This rule is not justified by scientific information and will affect about 5,000 private sewage systems in Rock County. There is no indication where 10 - 60 feet of this unsaturated material has caused any health problems in Rock County. Submitted 12 attachments consisting of charts and reports relating to diseases, advantages of a prescriptive code, costs, cost/benefit analysis, holding tank noncompliance, inspection reports, wastewater system operator training, performance criteria for POWTS review, local approval of POWTS, and unnecessary soil restrictions. Other states have incorporated these new technologies; they are not new technologies, only new to Wisconsin. Wisconsin is no longer the leader in this area. 	<ul style="list-style-type: none"> Pursuant to s. 160.21, Stats., the proposed table relates specifically to possible responses which may be undertaken by the Department where a groundwater PAL or enforcement standard is exceeded at a point of standards application. To implement such a provision would not be reasonable in that the code can not predict the type of technology or the specific design that would be utilized to accommodate "large" wastewater flows and what components would require manual "operation". It is unclear as to what is meant by "artificial" disinfection. The table will be revised to address the concern. No response necessary.
	X	Jeff Hammes Self Madison, WI (Small Business)		<ul style="list-style-type: none"> No response necessary.

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

Rule Number: Chs. Comm 83, 85, 91

Relating To: POWTS

Hearing Location: Madison, WI

Hearing Date: July 13, 1998

Sup.	Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
	In	For				
				Jeff Hammes continued	<ul style="list-style-type: none"> Many counties will need help adapting to new technologies; they will need training. 	<ul style="list-style-type: none"> Training on the various technologies is available now and will continue to be offered through a variety of sources, including the Department, the UW-Madison Small Scale Waste Management Project, and product manufacturers. The concern is addressed under s. Comm 85.60(2). The final draft of rules will define the term "in situ". The issue of construction safety falls within the jurisdiction of OSHA. Pursuant to s. 101.02(15)(a), Stats., the Department does not specifically have supervision of safety and health issues covered by OSHA.
X				Larry W. Gleasman Self Madison, WI	<p>Growth in Dane County will continue; rules will allow more compact rural development. Rules will open up more land for development, but rules will take pressure off prime farmland by opening up less desirable farmland. Rules will not increase demand for rural development. Land use decisions will still need to be made by local government.</p> <ul style="list-style-type: none"> The existing prescriptive code provides the consumer with few alternative choices for wastewater treatment. A performance-based code that includes pretreatment technologies offers the consumer alternative wastewater treatment choices that meet more of their social and individual needs. 	<ul style="list-style-type: none"> No response necessary.
X			3	Duane Greuel Wood County Planning & Zoning Wisconsin Rapids, WI	<ul style="list-style-type: none"> The existing prescriptive code provides the consumer with few alternative choices for wastewater treatment. A performance-based code that includes pretreatment technologies offers the consumer alternative wastewater treatment choices that meet more of their social and individual needs. 	<ul style="list-style-type: none"> No response necessary.

PUBLIC HEARING COMMENT AND AGENCY RESPONSE DEPARTMENT OF COMMERCE

Rule Number: Chs. Comm 83, 85, 91

Relating To: POWTS

Hearing Location: Madison, WI

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DIVISION OF SAFETY AND BUILDINGS

Commenting		Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	For Opp. Info.			
		Duane Greuel continued	<ul style="list-style-type: none"> New advanced wastewater treatment systems will require intensive training similar to those courses provided by the Small Scale Waste Management Project for at-grade type systems. Courses offered by product manufacturers were very helpful to the installers and provided a forum to discuss installation problems. Mandatory certification for certain technologies will drastically reduce installation and operational problems. Routine maintenance requirements are essential for proper treatment and longevity of all POWTS systems. The more pumps and switches, the greater the need for routine maintenance. The state must take the lead in maintenance tracking since many counties do not have the technical support necessary to have a successful tracking system. Requiring the permit applicant to name a service provider prior to permit issuance provides credibility to the system. New wastewater technologies can be very cost effective in reducing rural living costs. Payback on pretreatment technologies is expected to grow once the plumbing industry becomes familiar with their installation. Land-use plans and comprehensive zoning have a much greater impact on land development than onsite wastewater systems. Good sound land-use plans and countywide zoning ordinances should be the primary tools for land-use control. It is recommended that installers of pretreatment systems be required to have a one-year implied system warranty. The warranty should cover all adjustments and problems with system operation. In many aerobic systems, proper float settings and time sequences are essential to system performance. 	<ul style="list-style-type: none"> The final draft of rules will incorporate training requirements for certain technologies to be obtained by the installer and the enforcing governmental unit in order to use that technology within the specific jurisdiction. The Department is completing development of a maintenance tracking system. Documentation of maintenance information is to be provided as part of the reporting requirements. No response necessary. The code requires that systems and components conform to the performance standards at all times. The Department does not usually establish warranty provisions under any of its construction codes.

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

Rule Number: Chs. Comm 83, 85, 91
Relating To: POWTS

Hearing Location: Madison, WI
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DIVISION OF SAFETY AND BUILDINGS

Commenting		Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	For Opp. Info. No.			
		Duane Greuel continued	<ul style="list-style-type: none"> There is a tremendous amount of new wastewater technologies that are being used across this country that would do just fine in this state. The proposed Comm 83 code allows us to incorporate new technologies and research findings in the code a lot faster. Use of component manuals as proposed in the code is a real asset to rapidly implement changes that benefit the wastewater industry. One can never develop a code that meets everyone's needs. Those counties where the Zoning Administrator performs a variety of duties, including inspection of septic systems, will be affected the most in that he or she will not have the time or resources to adequately manage the new code or associated wastewater technologies. Use of private entities to provide technical support and inspections is advised and should be structured so enforcement of installation violations is a practical procedure. 	<ul style="list-style-type: none"> No response necessary. Under s. 145.20(2), Stats., each governmental unit responsible for regulating POWTS' s has a great deal of latitude as to the breadth and degree of oversight activities to provide or exercise. Also, under current statutory provisions, the governmental units have the ability and discretion in how to fund and to what level to fund their oversight activities and services.

PUBLIC HEARING COMMENT AND AGENCY RESPONSE DEPARTMENT OF COMMERCE

Hearing Location: Rice Lake, WI
Hearing Date: July 15, 1998

DIVISION OF SAFETY AND BUILDINGS

Rule Number: Chs. Comm 83, 85, 91
Relating To: POWTS

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In	For Info.				
X			Steve Olson Huffcutt Concrete, Inc. & WPCA Chippewa Falls, WI (Small Business)	Supports revisions of plumbing code to reflect changes in technology and practices. The rule should reference ASTM C1227-95 Standard for Specifications of Precast Concrete Septic Tanks in Table 81.2. The rule should also reference the National Precast Concrete Association's Septic Tank Manufacturing Best Practices Manual.	It is the Department's understanding that the referenced ASTM standard is currently being revised and once the revision is completed the Department will consider incorporating the standard as part of the rules. The Department does not consider the best practice manual as a technical standard under s. 227.21, Stats.
	X		Ken Jain Eau Claire City County Health Dept. Eau Claire, WI	<ul style="list-style-type: none"> • Comm 83.44(3) Is not clear when the 12 inches is required. • Comm 83.44(4) Is not clear what standards the department will use to exempt POWTS components from Table 83.44(3). 	<ul style="list-style-type: none"> • The proposed rule establishes a minimum separation for the introduction of influent into a POWTS component using in situ soil for either treatment and/or dispersal purposes. • POWTS designs and technologies that involve less soil for treatment purposes that are submitted for recognition must be accompanied by sufficient documentation to substantiate claims of performance in accordance with either s. Comm 84.10(3) or 83.22(2)(b). The designs of all POWTS must achieve the performance standards outlined by the code. • The rule establishes a design standard. The rule in itself does not mandate monitoring. • Pursuant to s. 160.001(4), Stats., the proposed rules of ch. Comm 83 establish design and management practices conceived to attain compliance with the groundwater standards.
				<ul style="list-style-type: none"> • Comm 83.44(2) Rule doesn't state who tests the influent, who decides if it needs to be tested, or what activates this code section. • Proposed code does not conform to NR 140.10. The total coliform standard is zero, the proposal allows up to 200. The greatest public health threat from sanitary systems is microbiological contamination of drinking water. Relaxing the groundwater standard is not the answer; upgrading treatment capabilities of inadequate POWTS components is. Systems that discharge inadequately treated sewage to the groundwater are failing and are a public health hazard. The application of a body contact standard for drinking water makes no sense and there is no justification for it. Effluent needs to meet NR 140.10 to ensure protection of public health. 	