

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: N/A
 Hearing Date: Mailed in Comments

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In Sup.	Opp. For Info.				
			Walter Kuhlmann continued	<ul style="list-style-type: none"> Opposes ending the requirement of mandatory hookup to public sewers when they are available. This would make the financing of public systems much more difficult and has nothing to do with allowing new technologies. There is not sufficient oversight of new systems or funding for local oversight of new systems. The increased cost of upkeep of the new systems means they will not be maintained properly without that oversight. There should be a phasing-in of new technologies to determine if some types of systems are prone to failure. When mounds were introduced, there was a trial period. 	<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. 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. Many of the "new" technologies that would be utilized with the implementation of the code in reality are technologies that have been available for many years in other parts of the country or are merely variations of the current technologies. System failures, including of those technologies currently recognize, occur for a variety of reasons or under a wide variety of circumstances. 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.

25.50

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Sup.	Opp.	Walter Kuhlmann continued	<ul style="list-style-type: none"> There should be a delay to allow statewide land use legislation, or local land use threshold requirements, or at least a 36 month moratorium to allow land use controls to be put in place. Supports WCCA's concerns on the potential discharge of viruses. Comm 83 should maintain the concept that holding tanks are systems of last resort only. Waste from holding tanks that is "unaccounted for" is much greater than that from conventional systems. Nitrate groundwater standards must be set on a uniform statewide basis to avoid a patchwork situation. The rule must give substantive guidance on the use of variances. Maintain the 36-inch vertical separation at least until new systems have undergone performance trials. 	<ul style="list-style-type: none"> The proposed revisions to 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. Currently there is no groundwater standard for viruses and 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. Under proposed s. Comm 83.32(2), municipalities may limit or prohibit the use of holding tanks. The provisions of ch. 160, Stats., apply to state agencies and do not preclude municipalities from enacting more stringent requirements under ss. 59.69, 60.61, 61.35 and 62.23, Stats. The petition for variance process and procedures are delineated in ch. Comm 3. Many of the "new" technologies that would be utilized with the implementation of the code in reality are technologies that have been available for many years in other parts of the country or are merely variations of the current technologies. Research and data from the Small Scale Waste Management Project - U.W.-Madison has documented the effectiveness of some of the "new" technologies.

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		X	56	Rod Eslinger St. Croix County Zoning Hudson, WI	<ul style="list-style-type: none"> Many of these policy decisions are too broad to be made by administrative rule and should be left to specific legislation. Supports the comments submitted by WCCA dated 7/13/98. The following sections must be clarified by Commerce: <ul style="list-style-type: none"> 83.03 (1) (b) Modifications 83.03 (2) Retroactivity 83.25 (2) (e) 2. c. Note. "A municipality which issues building permits may delegate to the governmental unit responsible for issuing sanitary permits... " May should be replaced by <u>shall</u>. St. Croix county will draft an ordinance delaying adoption of new code for 18 months, and may restrict the use of composting and incinerating toilets for residential use through the ordinance process. 	<ul style="list-style-type: none"> The rules establish standards to ensure plumbing systems are designed, installed and maintained to protect public health and the waters of the state. See responses to Exhibit No. 5. The comment does not identify a specific issue or concern to which clarification is sought. The comment does not identify a specific issue or concern to which clarification is sought. The proposed rule reflects current requirements. 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 proposed s. Comm 83.04 a county may delay implementation of certain specified technologies for 18 months; otherwise the proposed actions relative to composting and incinerating toilets are recognized under the proposed rules, and therefore, would not be in conflict with the code.
X			57	Michael Theo Wisconsin Realtors Ass. Madison, WI	<p>Supports proposed rules because they properly de-couple land use from septic system regulations and because they are performance based. The performance basis will lead to better environmental protection as well as consumer choice. Good local planning is the only device that is capable of curtailing sprawl and directing growth.</p>	<p>No response necessary.</p>

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X			58	Patrick Essie Wisconsin Precast Concrete Association Madison, WI	<ul style="list-style-type: none"> Supports the allowance of new technologies. Requests the incorporation of ASTM 1227, Standard Specifications for Precast Concrete Septic Tanks, and the Septic Tank Manufacturing Best Practices Manual from the National Precast Concrete Association. 	<ul style="list-style-type: none"> No response necessary. 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			59	R. E. Franklin Christiansen Building Components, Inc. Oconomowoc, WI	Supports proposed Comm 83. It has been studied for 10 years and is long overdue.	No response necessary.
X			60	Mike Lotto Lotto Homes Greenleaf, WI	Supports proposed Comm 83. It will provide for building sites on land that is marginal for use with conventional systems.	No response necessary.
	X		61	Ms. July Emmett River Falls, WI	The new regulations will open almost 25% of the state to development pressure. Delay rules until all land use planning and zoning regulations are in place for affected communities.	The number of acres mentioned 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. The pressures of residential development involve many factors of which the current siting parameters for the POWTS is only one. The variability of site and soil conditions at each site does not assure any consistency in development. Local municipalities may determine under their zoning powers where and when development may occur.

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X	X	62	Kenneth N. Kailing Eco Systems Design Hokah, MN	<p>Comm 83 needs to consider all of the environmental and social consequences of the increased development that will be possible and correctly weigh the public benefits against the public costs.</p> <p>The department must accept responsibility for its role in land conservation. The current rules do limit land use and should not be removed until equal or better broad-based planning solutions can be implemented to compensate.</p>	<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 statutory authority and powers of the Department under chapter 145 relate to the protection of public health and the waters of the state. The Department has not been granted or directed to address land-use issues.
		63	Walter J. Olson Olson Realty Deerfield, WI	<ul style="list-style-type: none"> Supports use of technology allowed by the rules to allow: <ul style="list-style-type: none"> More efficient and less intrusive land usage. Improvement of the environment's quality using better design choices. Preservation of productive farmland acres. Better protection of environmentally sensitive zones. Make homes more affordable. Expansion of the tax base into localities that are economically depressed. If county sanitarians do not want to deal with a performance code, enforcement could be done by the licensed private sector. Those who support the current code as a land control mechanism do not recognize the harm monoculture farming does to the environment. 	<ul style="list-style-type: none"> This is an option, but at this time, the Department believes working under the current regulatory framework is the most efficient and effective. No response necessary.

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	X	64	Josie Pradella Madison, WI	<p>The new rules should be put on hold until:</p> <ul style="list-style-type: none"> • Every impacted town has a land use plan. • Amendments allow local governments to decide which systems to allow. 	<ul style="list-style-type: none"> • The decision to develop and /or exercise zoning or land use powers currently is 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. • 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). 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 proposed s. Comm 83.32(2), municipalities may limit or prohibit the use of holding tanks. • 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.
X		65	Steven R. Crosby Wisconsin Onsite Waste Disposal Association, Inc. Hartford, WI	<p>Association is in support of the proposal. It allows installation of proven technologies that are being used elsewhere.</p>	No response necessary.

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	X	66	John M. Lefebvre Marinette County Solid Waste/Zoning Office Marinette, WI	<p>Supports comments made by WCCA. (See Exhibit #5.)</p> <ul style="list-style-type: none"> Has the following specific suggestions and concerns: <ul style="list-style-type: none"> Section Comm 81.01 (212) The definition of sewage in the proposed code will require a sample of the wastewater to be collected in order to determine if it is sewage. It should be stated in the definition that sewage is grey water or black water. Section Comm 83.21 (4) and (6) It should be noted that in the code the fees referenced in 145.19(3)-(6) do not pertain to Transfers or Renewals. Section Comm 83.03 (2)(b) 2.a.& b. Who has the burden of proof when it comes to documenting the POWTS was installed prior to 12/1/1969? Section Comm 83.43 (3)(b) Who's responsibility is it to ensure that the systems do not become undersized if occupancy is increased after installation? Table 83.43-1 If the dispersal component can be 10 feet from the building, it is possible it will be 8 feet or less from the stone and drain tile around the building. Section Comm 83.55 Who is responsible for enforcing this section of the code? Who is going to compile the data collected? What will the data be used for? Questions whether reporting will result in better systems. Appendix A – Page 97 Please change the Marinette County Courthouse address to the following: 1926 Hall Avenue, Marinette, WI 54143-1717. 	<ul style="list-style-type: none"> See response under Exhibit No. 5. The definition establishes a standard by which a decision may be made. In some situations to rebut a presumption of innocence, a sample and testing may be necessary. An enforcing governmental unit at its discretion may establish a fee for the transfer or renewal of permits under s. 145.19, Stats. In some situations to rebut a presumption of innocence the establishment of probable cause and proof is the obligation of the enforcing agency. The owner is responsible for using the POWTS so as not to render the POWTS inoperative or beyond its capabilities, see s. Comm 83.31. This could occur, however, it is not expected to affect the performance capabilities of the POWTS. The proposed rules require that the maintenance data be submitted to the Department. The enforcement of the code, including this rule, is shared by the Department and the enforcing governmental unit. The final draft of rules will reflect the correction.

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			John M. Lefebvre continued	<ul style="list-style-type: none"> • Comm 85 – Soil & Site Evaluations: <ul style="list-style-type: none"> • It appears that it is no longer necessary to show a replacement area location for a new system. • Is it suitable with the use of three soil profile evaluation excavations to show a large enough area for an initial system and future replacement system? • Percolation soil tests have been found to be very inaccurate and should be phased out. • Comm 91 – Sanitation <ul style="list-style-type: none"> • It is unclear whether a Sanitary Permit is required for a privy. • If so, is the County obligated to send the State the fees required by 145.19 (3) & (6)? 	<ul style="list-style-type: none"> • Correct, however a contingency plan is required under s. Comm 83.22(2)(b)1.f., in the event of system failure • No, under 85.20(2)(b)1.a. a minimum of 3 profile excavations are required to delineate each system site. • Each POWTS design must be accompanied by sufficient data and information to substantiate the claimed performance, percolation tests which were filed with the County prior to July 02, 1994, may provide part of the information which may be accepted or challenged by the reviewing agency. • A privy is not a POWTS, and therefore, a sanitary permit is not required; however, a municipality may require some other type of local permit, such as a building permit, before constructing a privy. • Since a sanitary permit is not necessary, no fees are required to be forward to the Department.

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				John M. Lefebvre continued	<ul style="list-style-type: none"> The new rules would require the county to hire additional staff. In resolution 98-99-03, Marinette County expressed its opposition to the proposal unless the state provides funds to administer the program. 	<ul style="list-style-type: none"> 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.
	X		67	Don Marguardt B&D Plumbing and Heating Wausau, WI	<p>Opposes Sec. 10 of Comm (2) 67 which will allow a restricted journeyman plumber to be licensed and install septic systems. The current code should remain as is with respect to septic installations.</p> <ul style="list-style-type: none"> Reflects on 900-year old communities when people were allowed to live in cities and villages and the "rural land" was preserved; Comm 83 is doing it wrong. 	<ul style="list-style-type: none"> The rules do not propose any change as to who may install septic systems.
	X		68	Lowell L. Klessig Self 934 River Road N. Amherst Junction, WI 54407	<ul style="list-style-type: none"> "Land use regulation should be left to zoning." This is a sad excuse, government should use its tool in concert, not contradictory messages. It's irresponsible (of Commerce) to encourage behavior that other units of government are trying to discourage. The Department of Commerce's response that land use planning is not their responsibility is an insult to all citizens and elected officials . . . state agencies ought to support local governments, not sabotage them. The issue is where the homes will be built. 	<ul style="list-style-type: none"> The decision to develop and/or exercise zoning or land use powers currently is 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. See previous response. Local municipalities may determine under their zoning powers where and when development may occur.

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	X	69	George J. Kraft Self 8640 STH JJ Amherst, WI 54406	<ul style="list-style-type: none"> Put a hold on Comm 83 until new and scientifically justifiable EIS can be written; land use impacts can be evaluated; and groundwater impacts are quantified more realistically than the DEIS does at present. Comm 83 has the potential for huge land use impacts; local governments are ill prepared to face land use challenge. Rule should not be implemented until every town impacted has a comprehensive land use plan in place. Amend rules to allow local governments to allow only those systems best for their communities. Holding tanks should still be the system of last resort. The Department must comply with WEPA; it is unfair that the Department can claim they (impacts) can't be estimated. 	<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 decision to develop and /or exercise zoning or land use powers currently is 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. See previous response. 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). 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 proposed s. Comm 83.32(2), municipalities may limit or prohibit the use of holding tanks. 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.

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	X	70	Jerome M. Visie Door County Environmental Council, Inc. Fish Creek, WI	<ul style="list-style-type: none"> Land use planning and utilization will suffer serious setback through the loss of control; the proposed change will result in tremendous parcels of marginal lands being utilized for development. The lessening of the cost (of POWTS) will cause exploitation of more difficult building sites. Alternate methods of wastewater treatment will lessen the control and supervision of installation and maintenance. New additional personnel (local level) would be mandated; monitoring would be ineffective. 	<ul style="list-style-type: none"> The proposed rules do not preclude municipalities from determining under their zoning powers where and when development may occur. The cost of a POWTS is just one variable affecting the development of a site; a "difficult" site may increase the cost of other development, such as the designing a building's foundation or constructing access driveways to the building. 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. 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. No response necessary.
X		71	George A. Morris and Dick Mace Waukesha County Dept. of Parks & Land Use Waukesha, WI	<ul style="list-style-type: none"> Rules governing wastewater control and proper disposal should be strengthened; obvious not intent of liberalization of (these) rules. Short-term profit factors appear to be the driving force . . . of these liberal rules. The continued evaluation of POWTS performance and attempts to improve groundwater are indeed important goals, but major concerns persist in Comm 83 as follows: 	

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Sup.	Opp.	George A. Morris continued	<ul style="list-style-type: none"> Section Comm 81.01(89) An engineered system must be held to same minimum discharge standards for other POWTS; example for fecal coliform given. Section Comm 81.01(111) Do not delete county designation in definition of governmental unit [s. 145.01(05), Stats.] as counties will continue to be involved with POWTS even when the county population exceeds 500,000. Section Comm 83.03(1)(b) & (c) A modification to a POWTS may be major or minor; specific guidelines need to be established for uniformity by county. Section Comm 83.03(2)(b) 2. a. & b. Use definition for high groundwater [s. Comm 81.08(118)] rather than groundwater definition [s. Comm 81.01(114)]. Section Comm 83.04 Establishment of 18 months for counties to "opt in" does not ensure adequate staff and training. Allow local policymakers to make the commitment. 	<ul style="list-style-type: none"> 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 in the current rules of chs. Comm 82 and 84. The definition reflects the statutory definition under s. 145.01(5), Stats. Chapter Comm 83 under s. 145.13, Stats. establishes a statewide uniform code; the proposed rules in question in conjunction with s. Comm 83.03(2) provide compliance direction. The final draft of rules for s. Comm 83.03(2)(b)2. will be clarified to reflect the highest estimated groundwater elevation. The proposed revisions to 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.

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				George A. Morris continued	<ul style="list-style-type: none"> Section Comm 83.21(1)(a) Reference to Stats. does not include s. 66.036, Stats. This needs to be such that it is clear a sanitary permit IS required prior to issuance of building permit. Section Comm 83.21(1)(b) Section does not address sanitary permit for modification/repair or system remediation. Section Comm 83.21(4) Modify to allow transfer to sanitary permit between plumbers. Section Comm 83.21(7) Authority to suspend a sanitary permit should be given. Section Comm 83.22(1) Plan review does not address modifications for additions or replacement component, nor repair or system remediation. Section Comm 83.25(2)(c) Proposed language is a step backwards, leading to confusion and non-uniformity. 	<ul style="list-style-type: none"> The final draft of rules will include an information note referencing s. Comm 83.25. The rules clearly delineate when a sanitary permit is required; the establishment for 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). 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 county under ch. 59, Stats., possesses several enforcement options, including "red tag authority" to address the concern. The rules clearly delineate when plan review is required; the establishment for some type of enforcement oversight, including plan review, for those activities not addressed under the rules is at the discretion of the enforcing governmental unit, see s. Comm 83.20(2). Pursuant to s. 66.036, Stats., s. Comm 83.25 addresses the potential impacts of construction projects on existing POWTS's. 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.

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		George A. Morris continued	<ul style="list-style-type: none"> Section Comm 83.25(2)(d) Section only includes one of three criteria; include in this section the requirement for failure as defined in Stats. and s. Comm 83.03(2). Note following s. Comm 83.25(2)(e)2.c. The agency responsible for issuance of the sanitary permit should be recognized authority for determining impacts after construction, not local (who issue building permit), thus leading to "noncompliance" of a compliant POWTS. Section Comm 83.26(5) Clarify when testing must occur. Section Comm 83.31 A performance-based code should reference performance-based standards. Section Comm 83.32(1)(f) Be consistent with 2 ft. above groundwater or bedrock as in s. Comm 83.03(2)(a)2.b. Section 832(g), include in Ch. Comm 81 a definition for "camping unit transfer containers". Section Comm 83.43(9)(e)3. Providing shutdown in (seasonal saturated) situation creates conditions with potential for health hazard. Section Comm 83.44(3) Section is inconsistent on 2 ft. above groundwater bedrock as in s. Comm 83.43(9)(e)3. 	<ul style="list-style-type: none"> See previous response. The proposed rule reflects current requirements. 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 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 by the installer. The proposed rules cite a variety of performance standards, including influent quality to soils under s. Comm 83.44(2)(a), and the responsibility to design for known contaminant loads under s. Comm 83.42(2). The two referenced rules address separate and distinct situations. The final draft of rules will include a definition for the term. This provision has been deleted out of the final draft of rules. See previous response.

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				George A. Morris continued	<ul style="list-style-type: none"> Section Comm 83.44 Section does not provide guidance on when or in what situations or who is responsible for influent testing. Section Comm 83.44(3)(c) The infiltrative surface should be at least one inch below the original grade, not the finish grade. Section Comm 83.44(6)(b) A POWTS installed below or above the ground surface must be installed so the infiltrative surface is level. Subchapter V Failure to provide an effective maintenance and monitoring procedure may result in premature POWTS failure and increase risk of public health hazard. Chapter Comm 85 The present Comm 85 should continue being used in addition to plating functions performed by Commerce. The move from prescriptive-based code to performance-based code is massive and should proceed with caution. 	<ul style="list-style-type: none"> The rule establishes a design standard. The rule in itself does not mandate monitoring. Such a requirement would prohibit the use of a mound or at-grade system. The final draft of rules will be revised to address this concern. No response necessary. The current review of proposed subdivisions is limited to certain types. The review has been determined to be premature in light of the variety of technological solutions available and that each lot is reviewed when development occurs. No response necessary.
	X		72	Dale Dimond Marathon County Zoning Dept. Wausau, WI	<ul style="list-style-type: none"> (NOTE: Comments on component manuals not included here.) Section Comm 83.40(c) Do not clearly delineate performance standards. There are no standards for cost-effectiveness, life of system, etc. 	<ul style="list-style-type: none"> The rules reflect the objectives of protecting public health and waters of the state.

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Rule Number: Chs. Comm 83, 85, 91

Relating To: POWTS

Hearing Location: N/A

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		Dale Dimond continued	<ul style="list-style-type: none"> Sections Comm 81.01(89) and 83.24(1) Code language indicates systems will be approved that do not meet performance standards. The use of the terms "intent" or "significance of exceedence" will result in decisions based upon individual interpretations or opinions rather than specific rule requirements. The proposed rules are passive regarding failing systems; code no longer states that a failing system must be replaced. Section Comm 81.01(212) New definitions for sewage will mandate costly and time-consuming sampling analysis. Gaps in proposed rules will make counties adopt extensive sanitary ordinances. Many requirements (permit issuance, plan review and revision, repair, evaluation) are left to the counties. Draft leaves the prohibition/restriction of holding tanks to local ordinances, thus side-stepping controversy over the biggest failure of the current regulations; thus code will be less uniform due to variety of county ordinances. 	<ul style="list-style-type: none"> None of the provisions referenced provide a waiver to compliance. 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 in the current rules of chs. Comm 82 and 84. 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 concerns regarding how a POWTS is operated or how a POWTS is maintained are addressed under ss. Comm 83.32(1) and 83.51. The definition establishes a standard by which a decision may be made. In some situations to rebut a presumption of innocence, a sample and testing may be necessary. The rules clearly delineate when a sanitary permit or plan review is required; the establishment of oversight strategies including permits 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). Under proposed s. Comm 83.32(2), municipalities may limit or prohibit the use of holding tanks.

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			Dale Diamond continued	<ul style="list-style-type: none"> Section Comm 81.01(89) All systems should meet the enumerated standards. Clarify that an engineered system must comply. Section Comm 81.01 "In situ" should be defined. Section Comm 81.01(212) New definition of sewage will require sampling; enforcement will be more difficult, expensive and time consuming. Section Comm 81.01(248) The exception at the end of "surface water" definition should be deleted. Section Comm 82.10(8) "Recycling" seems an inappropriate term to describe disposal of sewage; replace with "treatment and disposal." Section Comm 82.37 A section should be added requiring or authorizing counties to issue sanitary permits for composting systems. Some type of sanitary permit will be necessary to comply with s. Comm 83.25 & s. 66.036, Stats. Section Comm 83.01 A Principles section, retaining language from current 83.01(2) should be included here. Section Comm 83.03(1)(b) The note should be replaced with language that requires all system components to be evaluated for code compliance prior to a modification of an existing system. 	<ul style="list-style-type: none"> 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 in the current rules of chs. Comm 82 and 84. The final draft of rules will define the term "In situ soil". The definition establishes a standard by which a decision may be made. In some situations to rebut a presumption of innocence, a sample and testing may be necessary. The comment does not address a specific concern, in light of how the term is used in the context of ch. Comm 83; the concern maybe addressed under the term "waters of the state" under Comm 81.01(279). The final draft of rules will clarify the intent. The concern is addressed under s. Comm 82.37(1)(e)2.; otherwise, a composting system under ch. Comm 91 is not a POWTS, a municipality may require some other type of local permit, such as a building permit, before constructing a composting system. The issues under this reference are addressed in various places of the proposed rules, including s. Comm 83.51. 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.

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	<p>For Info.</p> <p>Exh. No.</p>	Dale Dimond continued	<ul style="list-style-type: none"> Section Comm 83.03(2) Retroactivity section does not address sizing, setbacks, etc. for these pre-1969 systems. Retroactivity section fails to address the problem these proposed rules will create. Section Comm 83.03(4) The "Groundwater Standards" should clearly state that a POWTS must comply with the standards of s. 160, Stats., and ch. NR 140 and then list the exceptions. Section Comm 83.03(5) Code implies that a zoning code should be used as a private sewage tool. Section Comm 83.21(1)(b) This section should clearly address whether a permit is required for such components (force mains, effluent lines, etc.) Section 83.21(4) The rules should also address plumber transfers (for sanitary permits.) Section Comm 83.22(1) Need to be more specific about "repairs"; need to address POWTS components which are not holding, treatment or dispersal. Section Comm 83.22(4) More detail is needed here; items such as change of pump, TDH, pipe size, hole spacing, tank size, etc. do not appear to be addressed. 	<ul style="list-style-type: none"> The retroactivity of these issues is addressed under s. Comm 83.03(2)(b)1. The concern is addressed under s. Comm 83.32(1) The rule merely acknowledges the powers and authorities granted under the statutes. The rules clearly delineate when a sanitary permit is required; the establishment for 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). 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. The rules clearly delineate when plan review is required; the establishment of some type of enforcement oversight, including plan review, for those activities not addressed under the rules is at the discretion of the enforcing governmental unit, see s. Comm 83.20(2). See previous answer.

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			Dale Dimond continued	<ul style="list-style-type: none"> Section Comm 83.22(7) Specify that "evidence of approval" includes the plan action letter. Section Comm 83.24(1) "Intent" is not stated or defined in the code and will be subject to individual interpretations. Section Comm 83.24(2)(b) Should be rewritten to clarify that a variance will not be granted if a system is failing; department should also require that systems subject to variance requests be evaluated to determine whether they are failing. Section Comm 83.25(2)(b)2 Specify that evaluation and documentation is required to verify compliance; it should go to the county rather than the building permit authority. Section Comm 83.25(2)(c)1. b. Specify that documentation is provided to the county. 	<ul style="list-style-type: none"> It is not clear what the suggestion of retaining the plan action letter at the job site is meant to accomplish in light of the provision under s. Comm 83.21(2)(c)2. and also that enforcing governmental units do not always issue an "approval" letter. The proposed rules contain many purpose statements to provide insight on rule intents. The concern is addressed under s. Comm 83.24(2)(a), furthermore, the rule as written does not predict a decision by the Department in evaluating a petition request. 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 reflects current requirements. 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. See previous comments.

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		Dale Dimond continued	<ul style="list-style-type: none"> Section Comm 83.25(2)(c)2.b. Should retain current requirements; existing language is the most practical method. Elimination of the 25% rule will assure that few additions will ever have a room called a bedroom. Section Comm 83.25(2)(d) No specifics or standards for acceptance of these existing systems; the entire section needs more detail in this regard; also require a complete evaluation of the current condition of the existing system. Section Comm 83.26(5) Clarification is needed concerning testing. Table 83.29, #1 "Significance of the exceedance" is subjective. Table 83.29, #7 Revision of the rules should not be listed as a response to non-compliance. Section Comm 83.32(1) Specifically state that, when identified as such, a failing POWTS must be replaced; this should also be referenced in new s. Comm 83.03. Section Comm 83.32(2) The state code should keep holding tanks as a system of last resort, or otherwise limit their use. 	<ul style="list-style-type: none"> The 25% trigger has been deemed to be arbitrary and often it does not reflect wastewater impacts. Pursuant to s. 66.036, Stats., s. Comm 83.25 addresses the potential impacts of construction projects on existing POWTS's. 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. See previous response. 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 by the installer. This is a Department option to investigate and gather information before deciding whether further action is warranted. Revising the rules could potentially make the standards more restrictive, including the prohibition of a practice or a technology. The concern is addressed under s. Comm 83.51. The proposed rules recognize that municipalities have the ability to enact such ordinances.

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				Dale Diamond continued	<ul style="list-style-type: none"> Section Comm 83.40 The first sentence from current 83.01 should be included here. This new purpose statement, especially (2) is very vague and unclear. The code language often refers to using the "intent" of the rule rather than the standards. Section Comm 83.41 Section does not include principles which apply to the installation. Section Comm 83.43(3)(b) This allows designs to be based upon the number of residents, rather than bedrooms; (b) should be deleted. Section Comm 83.43(8) Section should mention compliance with Ch. NR 140 & s. 160, Stats. 	<ul style="list-style-type: none"> It is unclear what would be accomplished by repeating the same language twice. The final draft of rules will be clarified to address "installation" principles. The final draft of rules will be revised to address this concern.
					<ul style="list-style-type: none"> Section Comm 83.43(9)(e)3. POWTS treatment components consisting in part of in situ soil should not be installed in seasonal saturation; auto shutdown will be bypassed. Table 83.43-1 Need to list setbacks for effluent lines, force mains, etc. Section Comm 83.44(2) Section is unclear concerning when influent quality is verified. Section Comm 83.44(2)(a) Should replace the word "all" with "any". Section Comm 83.44(3)(c) Typo: "finished grade" should be "original grade". 	<ul style="list-style-type: none"> Pursuant to s. 160.001(4), Stats., the proposed provisions of ch. Comm 83 establish design and management practices conceived to attain compliance with the groundwater standards. The final effluent quality provisions identified in Comm 83.43(8) will be deleted from the final draft of rules. This provision has been deleted out of the final draft of rules. The final draft of rules will incorporate setbacks for these items. The rule establishes a design standard. The rule in itself does not mandate monitoring. The use of the term "any" would let a designer to choose just one and exceed the other parameters. Such a requirement would prohibit the use of a mound or at-grade system.

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		Dale Dimond continued	<ul style="list-style-type: none"> Section Comm 83.44(5) Frequency of dosing should not be specified in this "performance" code; address in the component manuals or product approvals. Table 83.44-3 Add note addressing sites having soils which include both NC and 36" or 60". Section Comm 83.54(3)(c) "One foot below the inlet ." conflicts with the proposed Holding Tank Component. Section Comm 83.55(1) Reporting at the completion of each inspection or pumping is not practical; reporting with paper documents will continue for the foreseeable future in many areas; should specify a minimum frequency for reporting (such as 6-month intervals). Section Comm 83.55(3)(d) Specify that reports which are submitted on paper include signature of the individual. Section Comm 83.55(5) It will be beneficial to have long-term O & M records to aid in evaluating any performance problems which may occur. Appendix Table A-83.21-1 is incomplete and not up to date; it will be impossible to keep this current. Section Comm 84.25(2) More detail is needed here: each individual tank be tested? representative sample? after installation? after backfilling? Who will actually perform tests? Section 84.25(7) An access (manhole) diameter of at least 24" should be retained. 	<ul style="list-style-type: none"> The final draft of rules will be revised to address this concern. Table 83.44-3 will be revised to address this concern. The component manual reflects one method for setting the high water alarm. It is not in conflict with the code provision. The proposed rules reflect a department tracking program for POWTS maintenance. The maintenance reporting provisions are established upon the critical indicators relative to the performance of the technologies to ensure that the system is and will continue to perform as intended. It is unclear as to what purpose this would serve. No response necessary. The appendix is not an administrative rule, therefore, it may be updated anytime the plumbing code is being reprinted. The final draft of 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 and holding tanks available.

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			Dale Diamond continued	<ul style="list-style-type: none"> Section Comm 84.30(6)(i) This section should clarify what constitutes clean aggregate. Section Comm 85.20(2) There is no benefit in eliminating the soil testing requirement for replacement system. Section Comm 85.60(1)(b) Define "adjacent to a navigable water". Section Comm 85.60(4) Hydrograph procedure will encourage attempts to approve an unsuitable site by timing when test is performed. Section Comm 91.01 Add requiring or authorizing counties to issue sanitary permits for these non-plumbing systems. Section Comm 91.04-91.09 The code jumps from 91.03 to 91.10? Section Comm 91.12(1)(a) Is there a need for minimum vault size of 200 gallons? Vaults are as small as 55 gallons. 	<ul style="list-style-type: none"> The concern is addressed by the fact that the aggregate must be washed and meet all the parameters of the ASTM C33 standard. A contingency plan is required under s. Comm 83.22(2)(b)1.f.; in the event of system failure. A "replacement" area for a soil absorption type POWTS may be identified in the contingency plan. The final draft of rules will be clarified to address the concern. The concern is addressed under s. Comm 85.60(4)(b)1. Such devices are not considered a POWTS, and therefore, a sanitary permit is not required; however, a municipality may require some other type of local permit, such as a building permit, before constructing or installing such a device. The numbering gap is intended to facilitate future revisions. The minimum capacity provision has been eliminated from the final draft of rules; therefore, municipalities may establish a minimum capacity at their discretion.
X		73	Kathleen Falk Dane County Executive Madison, WI	<ul style="list-style-type: none"> (NOTE: Comments on DEIS not included here.) New set of proposed rules make little substantive change from earlier drafts. 	<ul style="list-style-type: none"> No response necessary.

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			Kathleen Falk continued	<ul style="list-style-type: none"> The proposed rules degrade the protection of public health while adding to administrative overhead to counties. The failure to require pilot tests for new systems increases the probability that some new systems will fail and pollute groundwater. 	<ul style="list-style-type: none"> The proposed rules establish standards to protect public health and the waters of the state. The proposed rules do not mandate any new or additional regulatory or enforcement activities to be undertaken by enforcing governmental units. 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. The Department believes that many of the "new" technologies that would be utilized with the implementation of the code in reality are technologies that have been available for many years in other parts of the country or are merely variations of the current technologies.

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			Kathleen Falk continued	<ul style="list-style-type: none"> The failure to expand local implementation deferral option increases the likelihood that county health offices will be inadequately prepared to deal with new, complex, and sometimes failing private sewer technologies. 	<ul style="list-style-type: none"> Municipalities have the ability to either delay the implementation of or limit the use of certain technologies under ss. Comm 83.04. 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. No response is necessary in light of no specific issues or concerns being identified. Treatment technologies submitted in the future to the Department under s. Comm 84.10(3) will also be reviewed with input from a technical advisory committee. The proposed rules do not mandate any new or additional regulatory or enforcement activities to be undertaken by enforcing governmental units. Under current statutory provisions, governmental units have the ability and discretion in how to fund and to what level to fund their oversight activities and services.

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		Kathleen Falk continued	<ul style="list-style-type: none"> Attached a previous letter regarding the 1997 public hearing draft listing the following concerns: <ul style="list-style-type: none"> The code ironically creates incredible land use changes for local governments. Discharges as allowed completely depart from Wisconsin's historic policy and have serious potential impacts in areas of steep slope and short distances between soil surface and groundwater or bedrock – potentially creating serious human health risks. The rapid introduction of innovative technologies minimizes many of the current siting restrictions which are designed to protect the environment and public health. The code permits new systems to exceed the groundwater law's PALs for chloride, TDS, and nitrates. The code presumes that every installed system is compliant; this is a major departure from past practice and places a heavy burden on county enforcement staff to prove non-compliance. 	<ul style="list-style-type: none"> The code establishes design, installation and maintenance standards for plumbing. Local municipalities may determine under their zoning powers where and when development may occur. The proposed rules do not permit the final dispersal of treated wastewater to surface water or the ground surface. Municipalities have the ability to either delay the implementation of or limit the use of certain technologies under ss. Comm 83.04. The proposed revisions to 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. The proposed draft of rules reflects the allowance under s. 160.19, Stats. This provision was not incorporated into the 1998 proposed draft.

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			Kathleen Falk continued	<ul style="list-style-type: none"> The code requires sampling and analyzing discharge (for proving non-compliance); this is costly and time consuming; yet no funding to the local governments and no assurances that the state will provide adequate personnel or training (to local governments). The code allows cluster systems; there are few in the state and performance problems have been experienced. The code does not require that these systems be installed consistent with any adopted land use plans or water quality plans. The code conflicts with role of the DNR in approval of cluster systems. The code eliminates plat review. The impact could be significant for local governments who have relied upon this review in the past. The code allows installation of new technologies without review and public participation. The code creates an internal review process. The code would allow 318 sq. mi. in Dane County for development. 	<ul style="list-style-type: none"> The proposed rules do not specifically mandate governmental units to sample and analyze discharges to initiate enforcement actions. However, in some situations to rebut a presumption of innocence, a sample and analysis may be necessary. The proposed rules under s. Comm 83.32(2)(c) specifically acknowledge a municipality's option to address ownership concerns for cluster systems by local ordinance. The proposed 1998 draft of rules recognizes the overlapping jurisdictions of the two state agencies. The current review of proposed subdivisions is limited to certain types. The review has been determined to be premature in light of the variety of technological solutions available and that each lot is reviewed when development occurs. Treatment technologies submitted in the future to the Department under s. Comm 84.10(3) will also be reviewed with input from a technical advisory committee. The proposed rules do not impair a municipality's ability to control development through their zoning powers.

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X		74	Kathleen Falk continued Gerard J. Deschane WI Builders Assoc. Madison, WI	<ul style="list-style-type: none"> The 18-month delay local governments can impose on implementation is welcome, but the state response to broad land use impacts are inadequate. Suggest extending period 24-36 months, with counties having option to chose time most sensible to their situation. The implementation and choice in technologies will lead to acceptance of different technologies in different counties, completely undermining "uniformity" directed by state law. Strongly believe that code will improve public health and environmental quality in Wisconsin, as it replaces a code that has not been substantially updated in 20 years. Innovations allow for more orderly, efficient and compact use of land in rural areas. Other states are miles ahead. (Wisconsin's) POWTS regulations need to be brought into the 20th century as we enter the 21st century. Disagrees with opponents of the code who claim the code will lead to urban sprawl; we believe it will have the opposite impact. "Orphan lots" in subdivision now can be developed. Modern POWTS have proven to exceed environmental quality achieved by conventional systems, while not relying on the same limiting soil conditions. 	<ul style="list-style-type: none"> The proposed revisions to 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. The proposed rules do not dictate that any one POWTS option be utilized. Whatever POWTS option is selected it must be designed, installed and maintain in accordance with the uniform code. No response necessary. No response necessary. No response necessary. No response necessary. No response necessary. No response necessary.

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X		75	George Meyer, Secretary Dept. of Natural Resources Madison, WI	<ul style="list-style-type: none"> The Department of Commerce has made serious and significant improvements in the code. The code clearly states that the Department of Commerce will regulate smaller systems that discharge to subsurface soil absorption. The code omits design and management standards for systems that discharge directly to the ground surface. The distinction between large and small systems makes sense. (WDNR agrees to future statutory provisions to clarify and confirm jurisdictional agreement.) By definition, WDNR believes any system designed to discharge to (ground) surface or to surface waters is not a POWTS, s. Comm 83.02(2)(c). Consider deleting this section. Pleased that the 6 design manuals are specifically referenced by the code and should result in protection of the groundwater for standard installations. Pleased with the establishment by rule of a technical advisory committee to provide input on voluntary product or experimental approvals. Restricting POWTS to small-scale systems will serve to reduce risks associated with experimental and variance designs. 	<ul style="list-style-type: none"> No response necessary. No response necessary. The proposed rules do not permit the final dispersal of treated wastewater to surface water or the ground surface. No response necessary. The statutory definition under s. 145.01(12), Stats., does not specifically preclude surface discharge. No response necessary. No response necessary. No response necessary.

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		George Meyer continued	<ul style="list-style-type: none"> Concerns about substantial discretion of approving new designs have been further magnified with the changing of fecal coliform performance standard from zero to 200 CFU/100 mL. Concern that there is only a single performance criteria regarding fecal coliform. There is no requirement that performance monitoring related to water quality will be conducted as part of the management plan. Proper maintenance does not necessarily provide information on whether the treatment performance will be at the level claimed by the designer (in experimental & variance design). Suggest that appropriately designed assumptions be established to provide a reasonable assurance of groundwater and public health protection. 	<ul style="list-style-type: none"> The fecal coliform standard, based upon current information, represents one indicator of a design performance regulation conceived by the Department in the proposed draft of rules to attain compliance with the groundwater standards. The proposed rule cites a variety of performance standards, including influent quality to soils under s. Comm 83.44(2)(a), and the responsibility to design for known contaminant loads under s. Comm 83.42(2). The requirement to monitor water quality under a management plan will be decided on a case by case basis dependent upon various factors including the type of technology to be utilized, the type of wastewater being treated and the type of treatment and/or dispersal components and their relationship to site features. In evaluating any solution the designer needs to substantiate the performance capabilities and for experiments the Department can require verification of those capabilities. 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.

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DEPARTMENT OF COMMERCE
DIVISION OF SAFETY AND BUILDINGS**

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

Hearing Location: N/A
Hearing Date: Mailed in Comments

Commenting		Exh. No.	Presenter, City, State	Comments/Recommendations	Agency Response
In Sup.	Opp. For Info.				
			George Meyer continued	<ul style="list-style-type: none"> It is unclear how the code would ensure compliance with all groundwater standards for complex exper./variance systems. All substances in wastewater . . . need to be considered under specific circumstances to determine how adequate groundwater protection will be provided. Additional information warranted for total coliform and virus removal re: meeting standards at 5 ft. from infiltrative area. Consider chlorine residual activity. Suggestions for consideration: <ul style="list-style-type: none"> If separation requirements remain unchanged, reconsider a final effluent standard of zero for either total fecal coliform or total coliforms. Consider code requirements for minimum separation which take into account possible experimental/variance designs; maintain minimum separation to bedrock than to high groundwater may be appropriate; maintain certain soil requirements to ensure some minimum percentage of fines; provide some buffer for possible trace organic compounds; greater minimum distance to property boundaries; allow for more dispersion and dilution. 	<ul style="list-style-type: none"> See previous response regarding variances. The review of experiments includes the input from a technical advisory committee under s. Comm 84.10(3) which includes representation for DNR. Furthermore, under the plan review process the Department has the ability to establish specific conditions to address such concerns. The provision in ch. NR 140 do not establish standards regarding viruses and at this time there is insufficient data regarding viruses and POWT's to establish specific performance standards. 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. The Department does not consider total coliform to be a reasonable or appropriate indicator, in light the fact that total coliform exists in soil. The rules establish uniform and consistent practices and standards applicable to all proposed designs for protecting public health and the waters of the state.

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			George Meyer continued	<ul style="list-style-type: none"> Require effluent water quality monitoring for any system using disinfection technology for systems which rely on attenuation of pollutants (but which have soil or bedrock conditions with questionable capabilities for treatment or dilution within the separation distance to a point of standards application). If design relies on a method of disinfection other than soil treatment, that disinfection system becomes an important public health issue; recommend the consideration of codified design or maintenance provisions to ensure adequate disinfection system reliability. Encourage future consideration of code measures to reduce nitrogen impacts. DNR supports s. Comm 83.32 to prohibit POWTS in the floodway. Concern that floodplain installations may be allowed based on variance language contained in s. Comm 83.24; suggest: "No variance to POWTS design requirements may be granted in a floodplain without the concurrence of the Department of Natural Resources and the appropriate municipal government." Section Comm 81.01 Suggest that the term "point of standards application" be defined in the rule to have the same meaning as in s. 160.01(5), Wis. Statutes. 	<ul style="list-style-type: none"> The requirement to monitor water quality under a management plan will be decided on a case by case basis by the Department dependent upon various factors including the type of technology to be utilized, the type of wastewater being treated and the type of treatment and/or dispersal components and their relationship to site features. The rules establish uniform and consistent practices and standards applicable to all proposed designs for protecting public health and the waters of the state.. When data becomes available substantiating the concern the Department will evaluate the rules for possible revision. No response necessary. The proposed rules reflect previous DNR concerns. The final draft of rules will include a definition of the term.

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In	Opp.				
			George Meyer continued	<ul style="list-style-type: none"> Sections Comm 81.01(92) and (212) Use the statutory definition for a failing onsite sewage system. Ch. 145, Stats., uses the term "sewage"; Section Comm. 83.01(212) is not consistent with Stats. Section Comm 81.01(154) Revise the definition of "Municipality" to conform with the definition in s. 281.01(6), Stats. Section Comm 81.01(187) Recommend that the phrase "or 140.20" be deleted. Section Comm 81.01(248) Since ch. 145, Stats. is the enabling legislation for the proposed rules, the definition in s. 281.01(18), Stats., should be used as the source of the definition for surface waters. Note: the exception applies to totally confined waters such as lagoons or lined pits. <ul style="list-style-type: none"> Section Comm 83.02(2)(a) More accurate to use the term "responsibilities" than "jurisdiction". Suggest: <u>JURISDICTION RESPONSIBILITIES. (a) Purpose.</u> This subsection delineates the jurisdiction responsibilities of the department and the department of natural resources for the purpose of acknowledging the expertise and resources of the two agencies to protect public health and the waters of the state and for the purpose of providing clarity regarding agency oversight of private onsite sewage systems for the regulated community. 	<ul style="list-style-type: none"> The proposed definition of "failing private onsite wastewater treatment system" currently reflects the statutory definition specified in s. 145.245(4), Stats.,. The statutory definition for "sewage" pertains to only to section 145.245, Stats. The definition under the proposed rule identifies the political units with which the Department has interaction or a relationship; many of the "governmental" units included by the suggestion do not have such a relationship. The final draft of rules will reflect the suggestion, in light of DNR's indication that s. 140.20 applies to only those activities or facilities regulated by DNR. 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 statutory definition under 281.01(18), Stats. The final draft of rules will use the term "responsibilities".

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			George Meyer continued	<ul style="list-style-type: none"> Section Comm 83.02(2)(e)1. Suggest: Greater than 12,000 gpd. 1. A POWTS shall additionally conform to applicable provisions of chs. NR 108, 110, 206 and 214, 214 and other requirements deemed necessary by the department of natural resources for a WPDES permit. Section Comm 83.02(2)(e)2. Suggest: Two or more POWTS shall additionally conform to applicable provisions of chs. NR 108, 110, 206 and 214 and other requirements deemed necessary by the department of natural resources for WPDES permits, where the combined wastewater flow... Section Comm 83.02(2)(e) Suggest: Note: If a proposed POWTS has a design flow greater than 12,000 gpd, a WPDES permit is required by the department of natural resources. The department of natural resources should be contacted for WPDES permit application information. Section Comm 83.02(4)(a) Add the following to the end of the sentence: "or if required pursuant to a department of natural resources WPDES permit for systems in sub (2)(e)." Section Comm 83.03(4)(b) Suggest: Delete "respectively" from this sentence. Section Comm 83.29 - Table 83.29 It is not clear whether Commerce has considered the detailed requirements of s. 160.21(3) and (4), Stats., in determining the range of responses; there is only one list of responses; consider whether it is appropriate to have a table of possible responses for exceedence of a PAL and a separate table for enforcement standard exceedences. 	<ul style="list-style-type: none"> The final draft of rules will be revised to clarify of jurisdiction and the applicability of the Department of Natural Resources' code. See previous response. The final draft of rules will incorporate one informational note alerting readers about WPDES permits mandated under DNR requirements. See previous response. The final draft of rules will reflect the suggestion. The comment reiterates a Legislative Council Clearinghouse comment. The responses under Table 83.29 reflect the administrative and enforcement powers of the Department which are the same if there is an exceedence of a PAL or an enforcement standard.

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			George Meyer continued	<ul style="list-style-type: none"> Section Comm 83.29(1)(b). Add the following at the end of the sentence "or except if required due to a department of natural resources WPDES permit requirement." Section Comm 83.32(1)(a)2. Add the following at the end of the sentence "or except if required due to a department of natural resources WPDES permit requirement." Section Comm 83.32(1)(d) and (e) Request that the prohibition language be further revised to state that any discharge from a POWTS to surface water or the ground surface is prohibited. Both "domestic wastewater" and "effluent" would appear to accomplish the same end. Ch. Comm 81 has separate definitions for "effluent", "domestic wastewater", "final effluent", "industrial wastewater", "sewage", "wastewater", and "wastewater treated". None of these should be discharged from a POWTS to the ground surface or to surface waters (Question the need for all these wastewater terms [definitions] and suggest Commerce consider elimination of certain terms to minimize confusion.) Section Comm 83.32(3) Add the following to the note after sub. (3): "A WPDES permit may also be required by the Department of Natural Resources. Subchapter IV In the previous 1997 code draft, the following language was included as one of purposes of subchapter IV, but was deleted from the current draft: "Maintaining compliance with the enforcement standards and preventive action limits specified in ch. NR 140 at a point of standards application under s. Comm 83.29(2)." WDNR requests that this language be retained in the rule. 	<ul style="list-style-type: none"> The rules reflect the activities, practices and objects regulated by the Department of Commerce. See previous response. The final draft of rules will be clarified to clearly indicate the objective of the rule which is not in dispute. The final draft of rules will incorporate one informational note alerting readers about WPDES permits mandated under DNR requirements. The language was determined to pertain not just to subchapter IV but was relative to the entire code.

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			George Meyer continued	<ul style="list-style-type: none"> Section Comm 83.43(9)(e)3 Implies that a system may be designed and approved with shutdown controls to terminate operation during periods of seasonal soil saturation. Under what design conditions would Commerce approve a system in which it is recognized that there will not always be sufficient unsaturated soil for treatment? What provisions will there be to ensure cessation of the influent flow, or the prevention of overflows or bypassing by other means during these high groundwater periods? Section Comm 83.52(3)(e)2. "144.95, Stats." should be changed to "299.11, Stats.?" Section Comm 83.54(2) What requirements would apply to the construction of groundwater monitoring wells installed to monitor a POWTS? Suggest construction requirements of ch. NR 141. Section Comm 83.54(2)(e) Reference is made to "monitoring of influent and effluent loads". A subsequent note then lists acceptable references for sampling procedures. We note, however, that all the listed references pertain to groundwater monitoring (NR 140.16), and not to typical influent or effluent monitoring. Suggest these references only be used if the code addresses groundwater monitoring. 	<ul style="list-style-type: none"> This provision has been deleted out of the final draft of rules. The final draft of rules will reflect the correct statutory reference. The final draft of rules will be clarified to indicate that when groundwater monitoring is required that groundwater monitoring wells in accordance with NR 141 shall be utilized. The final draft of rules will list a recognized standard for sampling effluent.

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				George Meyer continued	<ul style="list-style-type: none"> Section Comm 83.54(2)(e) Request similar language to s. NR 140.16 "All water quality samples collected to determine compliance with ch. 160, Stats., except samples collected for total coliform bacteria analysis and field analyses for pH, specific conductance, and temperature, shall be analyzed by a laboratory certified or registered under ch. NR 149. Samples for total coliform bacteria analysis shall be analyzed by the state laboratory of hygiene or at a laboratory approved or certified by the department of agriculture, trade and consumer protection." Section Comm 84.50(3)(g)7. If the experimental approval was originally reviewed with input from the Technical Advisory Committee, we believe it would be appropriate for the committee to also review the results of the experiment 5 years later and again provide advice to Commerce. WDNR suggests the addition of code language to indicate this will occur. Section Comm 85.60(3) WDNR believes that monitoring wells installed in the unsaturated zone will not provide useful information on soil saturation conditions. WDNR recommends that this subsection and subsections 85.60(3) to (5) be deleted from the proposed rule as a means of determining soil saturation. <ul style="list-style-type: none"> Figure 85.60-1 doesn't comply with current industry standards or the requirement of ch. NR 141. Suggest that, for construction and abandonment of monitoring wells, Comm 83 and 85 refer to ch. NR 141. 	<ul style="list-style-type: none"> All the samples will not necessarily be required to be collected in order specifically determine compliance with ch. 160, Stats., but in some cases will be collected and evaluated to a performance standard which serves as an indicator whether the POWTS is functioning properly. The proposed rule revision covers all plumbing experiments not just those involved with POWTS technologies. The Technical Advisory Committee would be involved if an experiment resulted in the development and request to recognize the technology or practice under s. Comm 83.10(3). The methodology has been reflected in the current code since 1980 and is a practice to determine whether redoximorphic features are true indicators of the highest elevation reached by groundwater during the normal recharge cycle. The proposed rules reflect a standard to determine groundwater elevation not groundwater quality which is the objective of ch. NR 141.

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		George Meyer continued	<ul style="list-style-type: none"> Section Comm 85.60 The proposed subpar. Comm 85.60(3)(e)4.b. is in violation of s. NR 812.05, that prohibits the injection of substances into the subsurface. Section Comm 85.60(4) The hydrograph method has little application to a specific site since site specific factors such as soil type, slope vegetative cover, topography, etc. make comparison with a USGS well in a different setting meaningless. Section Comm 91.10 Recommend more specifically what this compliance will entail, and provide more information in the rule. Chapter NR 204 also contains operational, permitting, and land application requirements, which would have to be complied with. Specific references should be made to ch. NR 204, not the federal regulations. Section Comm 91.11 Recommend more specifically what this compliance will entail, and provide more information in the rule. It should be noted that the EPA part 503 regulations contain requirements for incineration processes in ss. 40 CFR 503.40 – 503.48. If s. Comm 91.11 is intended to only refer to the disposal of an ash end-product, then chs. NR 500 to 536 would apply or if the end-product is considered a hazardous waste, then the ch. NR 600 series applies. 	<ul style="list-style-type: none"> The methodology has been reflected in the current code since 1980 and is practice to determine whether redoximorphic features are true indicators of the highest elevation reached by groundwater during the normal recharge cycle. The rules under ch. NR 812.05 would seem to apply to excavations constructed for the purpose of obtaining groundwater, otherwise, the prohibition under s. NR 812.05 would inhibit many construction practices such as foundation caissons and piers. The provisions relating to the hydrograph method have been developed with input from UW-Madison and WG&NHS Upon further discussion with DNR the proposed rules as written have been determined to be adequate to address the concerns. See previous response.

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X			76	Tim Clay WI Federation of Cooperatives Madison, WI	<ul style="list-style-type: none"> Section Comm 82.40(8)(f) Object to this provision if it is meant to apply to existing water softeners connected to a POWTS system; exclude existing water softener systems from this provision, and only apply this provision to new installations or replacements. Section Comm 83.03(5) Question whether municipalities have authority to create nitrate standards. This language also appears to be in conflict with s. 160.225, Stats., which specifically grants "regulatory agencies" (not municipalities by definition) discretion to apply NR 140's ES and PAL nitrates values for POWTS. Section Comm 83.20(1)(b) In cases where the delayed implementation is due to a lack of training and not planning, Comm 83.20(1)(b) should include a provision that allows persons to submit a permit application to the state for approval (limited to a maximum of 18 months.) Section Comm 83.27(1) This section undermines much of the rule's performance-based concept. To be truly performance-based, the separation distances and loading rates should be reflective of a treatment system's capability of treating the wastewater; should only apply to "pretreatment" devices not approved under ch. Comm 84 and should not apply to the final dispersal and treatment to subsurface soil since this is addressed in s. Comm 83.44(4)(a)2. Comm 83.29 Needs to be consistent with s. Comm 83.32(1)(a)3.; it does not have to meet the NR 140 Table 2 PAL for chlorides. 	<ul style="list-style-type: none"> Pursuant to s. Comm 82.03 the provisions of ch. Comm 82 are not retroactive. As noted the provisions of ch. 160, Stats., apply to state agencies and do not preclude municipalities from enacting more stringent requirements under ss. 59.69, 60.61, 61.35 and 62.23, Stats. The proposed rule reflects the fact that the enforcing governmental unit has the primary role of overseeing the installation of the POWTS. Under this section, experimentation is considered as a mechanism to obtain information and data by which future rule revisions would be evaluated and pursued. Section 160.21(1), Stats., requires an agency to establish responses if a PAL or enforcement standard is attained or exceeded without reference to technical and economic feasibility.

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			Tim Clay continued	<ul style="list-style-type: none"> Section Comm 83.43(9)(e) Allow other alarm systems such as remote transmitting devices monitored off-site. Section Comm 83.44(2) Assume the values listed in (a) were representative of domestic household wastewater without having to conduct influent monitoring. Include this assumption in this section. Section Comm 84.44(4) Tables 83.44-1 and 83.44-2 Balance pretreatment loading rates in Table 83.44-2 to match those in Table 83.44-1. Comm 84.44(4)(a)1.c. The infiltrative surface may be located in more than one horizon, not just surface horizon. Section Comm 83.61 Is one able to use more than one approved treatment component for systems larger than 5,000 gallons design capacity? Add language reflecting the department's current position. 	<ul style="list-style-type: none"> The proposed rules would not prohibit such an arrangement, however, these alarms which would be in addition to those required for the person or facility using the POWTS. The appendix will include information concerning the typical domestic wastewater contaminant loads. The final draft of rules will be clarified to address the concern. The proposed rule references the exception under s. Comm 83.44(4)(c) where the application rates are to reflect restrictive soil horizon capabilities. The manuals reflect the capabilities of certain specific design solutions that have been recognized by the Department to achieve compliance with ch. Comm 83. This does not preclude the design and use of other design solutions if approved by the Department nor does it prohibit the use of solutions that incorporate multiple recognized treatment and dispersal components.
	X	77	V. Vizer Self Boyd, WI	<ul style="list-style-type: none"> Commented that public hearing notice did not appear in papers in Eau Claire or Stanley. Hearings have excluded many people then. Rules have confined many small town, rural and city people to old housing 	<ul style="list-style-type: none"> The announcement of public hearings included a notice in the official state newspaper, it is the discretion of the local newspapers as to what articles to include in their publications. The rules as part of the plumbing code establish minimum design, installation and maintenance standards to protect public health and the waters of the state.

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	X		78	David L. Mundigler Racine County Planning & Development Sturtevant, WI	<ul style="list-style-type: none"> • Difficult with unknowns and uncertainties how county can do budget planning for staffing, equipment and training requests to implement in 1999. Local governments not prepared for this unfunded mandate. • The code will cease and default to local governments the regulation and review of proposed subdivisions, thus placing workload on county. • The code, as a whole, will be more difficult to administer than current code. • Basing design standards on occupancy (vs. number of bedrooms) requires continual monitoring, review and modification. • The proposed rules will require more detailed reviews as it relates to the issuance of building permits. • Section Comm 83.03(2) grandfathers existing system siting, design, construction and maintenance; how will county enforce this for systems installed prior to July 1, 1980? (The county has no history or knowledge of those rules.) 	<ul style="list-style-type: none"> • 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. • The statutes under s. 236.45, Stats., currently recognize the ability of municipalities to oversee subdivision creations for a variety of issues and concerns. • No response necessary. • Design provisions under s. Comm 83.43(3)(a) recognize the design of POWTS's based upon bedrooms. • The documentation of an existing POWTS capabilities is addressed under s. Comm 83.25(2)(c). There are no specific mandates placed upon the county to document or verify the capabilities. • The Department has copies of previous editions of the plumbing code on file for reference.

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	For Info.	David L. Mundigler continued	<ul style="list-style-type: none"> Section Comm 83.03(2)(a) conflicts with 83.03(1)(b) & (c) regarding retroactivity and modifications. Requiring testing of components by county will increase staff time and effort. Ch. Comm 91 does not specify who (entity) issues permits or responsible for enforcement. (Some items inside homes; county currently conducts inspections outside home.) Several questions on county staffing needs were posed: <ul style="list-style-type: none"> How much more staff needed? What will be the monitoring and enforcement responsibilities? 	<ul style="list-style-type: none"> The rules of this chapter would apply to that part or portion of a POWTS that is to be "modified" or "altered"; those parts or portions of the POWTS which are unaffected by the modification are to be compliant with the appropriate code editions under s. Comm 83.03(2). The responsibility for testing component under s. Comm 83.26(5) rests with the installer. The rule establishes a design standard. The rule under s. Comm 83.44(2) in itself does not mandate testing. The devices under ch. Comm 91 are not POWTS's, and therefore, a sanitary permit is not required; however, a municipality may require some other type of local permit, such as a building permit, before constructing or installing such a device. 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. See previous response.

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				David Mundiqler	<ul style="list-style-type: none"> Who will develop list (of these responsibilities)? Who will conduct training? How much training? What will be the cost of training? How will counties adequately assess sanitary permit fees? What is the cost to "hook up" to the Commerce computer system? What are the details of the system? Section Comm 83.26(5) Will county need additional equipment for testing new systems? At what cost? Who reviews and ensures final effluent quality is met? Section Comm 83.43(9)(a) 2. & 3. County has no ability to measure flows inside sealed pipe. 	<ul style="list-style-type: none"> Since each enforcing governmental unit has a great deal of latitude as to the breadth and degree of oversight to exercise, the enforcing unit can establish its own priorities. Training on the various technologies is available through a variety of sources, including the Department, the Small Scale Waste Management Project, UW-Extension and product manufacturers. 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. At this time the Department does not contemplate charging enforcing agencies to "hookup" to the Department's maintenance tracking system. The Department is in the process of completing the development of a tracking system. The responsibility for testing components under s. Comm 83.26(5) rests with the installer. The concern to provide the appropriate testing equipment is addressed under s. Comm 83.26(2)(d). The rule establishes a design standard. The rule in itself does not mandate monitoring. The rules establish design standards. An enforcing entity may request the POWTS designer or installer to verify compliance through calculations or other information.

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In Sup.	For Opp. Info.			
		David Mundigler continued	<ul style="list-style-type: none"> Section Comm 85.50(1)(a) places an additional burden on counties to review within 30 days. Suggest allowing review (soil evaluations) during winter months when staff is not in the field. Additional concerns regarding impact on the consumer: <ul style="list-style-type: none"> Meeting contaminant standards Costs of upgrades of 5-10 year old systems when building alterations are contemplated Consumer becoming the "guinea pig" for experimental systems (that have failed in Racine Co.) Concerns regarding impact on industry: <ul style="list-style-type: none"> Education needed on new code Education on technical aspects of new components Upgrade standards for licensing maintenance and testing entities Need to require test of knowledge not just hours of course attendance 	<ul style="list-style-type: none"> The rule in itself does not mandate a specific decision which is addressed under s. Comm 85.50(1)(b) and includes the ability to request additional information from the certified soil tester. Current technologies have been recognized to achieve compliance with the performance standards of the proposed rules. As stated under s. Comm 83.03(2) for the most part the proposed standards are not retroactively applied. If the alterations to a building affect the existing POWTS beyond its capabilities, modifications to the POWTS may be necessary. Even under the current rules the request to use an "experimental system" is a choice made by the consumer. Educational opportunities on the new code have been provided and will continue to be provided by various sources, including the Department. See previous response. The concern is addressed under s. Comm 5.36. At this time the Department does not consider it reasonable to establish a separate and distinct credential for each potential POWTS technologies.

**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: N/A
 Hearing Date: Mailed in Comments

Commenting		Exh. No.	Presenter, Group Represented, City, State	Comments/Recommendations	Agency Response
In	Opp.				
			David Mundigler continued	<ul style="list-style-type: none"> Approval process for new systems should have public hearing/input as in past. Concern on impact on environment: Code encourages innovative technology which is deemed "experimental" by current code. Department is sole approver and no assumption of responsibility for failure(s) Counties support new technology on a limited basis Suggest phase-in and monitoring of new technology (like phase-in of mounds) Performance-based code has too many loopholes and lacks required specificity 	<ul style="list-style-type: none"> Treatment technologies submitted in the future to the Department under s. Comm 84.10(3) will also be reviewed with input from a technical advisory committee. The Department believes that many of the "new" technologies that would be utilized with the implementation of the code in reality are technologies that have been available for many years in other parts of the country or are merely variations of the current technologies. The Department's statutory responsibility is to supervise plumbing in order to protect public health and the waters of the state; to these objectives the Department has developed the proposed rules and is ready to implement and enforce those rules. No response necessary. 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). 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. The proposed rules for the first time include numerical performance standards for the treatment of wastewater.

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			David Mundigler continued	<ul style="list-style-type: none"> There are no safeguards in point of standards when lots are further subdivided. Design flows can be based on meter readings, yet there are no specific timeframes noted, e.g. day, week, seasonal. Reduced setbacks for tanks do not safeguard for leaks to adjacent rivers or lakes, too close to pools present caves. Need to address transfer of sanitary permits to include plumbers. No cost/benefit analysis nor life span given for (new) systems for owners. No standard guidelines or public hearings when Department approves new systems. No reference to indicate the consideration to local climate, soils and geologic conditions. Section Comm 83.44(3) The current code dictates a safer 3 ft. separation. Section Comm 83.43(9)(e)3. No solution is offered as to how waste will be treated during periods of saturation. Section Comm 83.44(2), reword to "shall not exceed all of the following." 	<ul style="list-style-type: none"> For the theoretical scenario described, it is unclear what type of potential POWTS design would result in the depicted concerns. The final draft of rules will exclude this option, s. Comm 83.43(3)(c), for the design of a dwelling. The concerns are addressed by the proposed additional standards for the construction of tanks. Pursuant to s. 145.19, Stats., sanitary permits are issued to the owner and transferable to a subsequent owner. The application form can be amended by the owner to list the new plumber. The rules reflect the objectives of protecting public health and waters of the state. Treatment technologies submitted in the future to the Department under s. Comm 84.10(3) will also be reviewed with input from a technical advisory committee. Each POWTS design is subject to review and approval either by the local enforcing governmental unit or by the Department. The POWTS design needs to reflect site and soil conditions at the specific site. The proposed rules establish performance standards that are implied by the current 3-foot "separation" rule. This provision has been deleted out of the final draft of rules. Pursuant to administering rule drafting procedures, the term "may" is used with negative subjects.

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			David Mundigler continued	<ul style="list-style-type: none"> Section Comm 83.45(4) Should refer to 1/4" diameter. Section Comm 83.54(3) Should dictate a minimum timeframe such as 3 years. Section Comm 83.54(1)(c) Reword as to what information "shall be" included in a management plan Section Comm 85.20(4)(a) should include language that prohibits soil evaluations (color) when sky is overcast. The code should make holding tanks a system of last resort. The code should incorporate minimum septic and holding tank sizes, minimum pipe diameters, minimum frost protection standards, and more stringent requirements for large scale systems If the Department is going to use standards to review system designs, include them (the standards) in the code now. 	<ul style="list-style-type: none"> The term "wire" reflects soil science nomenclature. The provision reflects current rules and that of many states; when information becomes available substantiating the concern, the Department will evaluate the rules for possible revision. The suggestion would result in provisions that may not be relevant to all potential POWTS technologies. The proposed rule reflects a performance standard that can be accomplished in a number of ways. The proposed rules recognize that municipalities have the ability to enact such ordinances. The concerns would be addressed or reflected as the POWTS design solution to serve a specific building and site. 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. Specific design and installation manuals for several POWTS technologies and practices are referenced and recognized in ch. 83 subch. VI.

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		David Mundigler continued	<ul style="list-style-type: none"> Removing prescriptive code measures, guidelines and interpretations will require counties to adopt their own rules to fill in the gaps. This will destroy the goal of a statewide uniform code. The codes do not address risks of mechanical failure and improper operation. The codes do not address the creation of a maintenance code prior to a statewide monitoring system. Section Comm 83.03(2)(b)2.a. Groundwater fluctuates daily and therefore it would be impossible to accurately monitor. This code provision should also include a 2-foot (and preferably 3-foot) separation to zones of seasonal saturation and indicate a testing procedure to prove compliance. Section Comm 83.21(1)(b) Expand to include all types of repairs that need permits. No code language included to support allowing a reduced vertical separation when pretreatment components are used. 	<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 permit, or zoning standards may be enacted under the appropriate statutory powers. The concerns are addressed under ss. Comm 83.31, 83.51 and 83.52. The concerns would seem to be addressed under s. Comm 83.54(4). The rule has been revised to reflect the highest estimated elevation of groundwater that can be determined in accordance with ch. Comm 85. The proposed code clearly indicates when a sanitary permit needs to be obtained. Permits for other activities are at the discretion of the governmental unit exercising regulatory oversight. The proposed draft of rules will be revised based upon current data and information from researchers, including those of the Small Scale Waste Management Project.

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	In	For				
				David Mundigler	<ul style="list-style-type: none"> Section Comm 83.25(2)(c) It does not give the guidelines or proof that the county must accept as evidence that performance will not be impaired nor is there any consideration to ensure that the existing system is in proper soils! Section Comm 83.32(1)(f) Include language which requires at least 2 feet of separation above groundwater and zones of seasonal saturation. (There should also be a 3-foot separation rule for POWTS installed on and after December 1, 1969.) Section Comm 83.32(1)(g) Define "camping unit transfer" Section Comm 83.44(4)(c) Indicate a depth that affects treatment. Section Comm 83.45(6)(b) Include holding tank manhole covers to be 2 feet above flood levels. Section Comm 83.55(3)(d) Require a signature from the individual performing the maintenance. Section Comm 84.10(3)(d), Many details are missing as to how often the Advisory Committee meets, who selects members, whether members are paid, the procedure for approving, etc. This appears to be a ploy to bypass WEPA, EIS and public hearing processes to allow new technology. 	<ul style="list-style-type: none"> The documentation of an existing POWTS' capabilities is addressed under s. Comm 83.25(2)(c). There are no specific mandates places upon the county. Section 66.036, Stats., and 83.25(2) are not intended to trigger the identification of failing systems. The various editions of the code since December 1, 1969 have and do require 3 feet of separation. The final draft of rules will include a definition for the term. The depth of the most restrictive soil horizon cannot be predicted for a specific POWTS design solution; this design factor, if applicable, is reflected by the data from the soil and site report. The concern is addressed in s. Comm 83.45(6)(a) in that these covers needed to be made watertight in some manner. It is unclear as to what purpose this suggestion would serve. The committee is a voluntary group to provide input to the Department; the Department has the ultimate responsibility to make the decision on POWTS product approval requests. The product approval process is a method by which to recognize the capabilities of products in light of code specified standards. The process does not approve a POWTS for any specific site.

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				David Mundigler continued	<ul style="list-style-type: none"> New variance procedures allow bypass of regulations as long as the intent of the rule is met; the Dept. of Commerce will be given too much power to decide on designs that have an impact on the environment and public health. Public hearings should be required. Section Comm 84.25(7) Provide for a minimum 24" diameter access opening into tanks. Maximum setback from holding tank manholes to service drives for ease of pumping. 	<ul style="list-style-type: none"> The variance procedures are not new and are currently embodied under ch. Comm 3, which include an opportunity to challenge the decision of the Department. The proposed code provision recognizes that one size will not be appropriate for the wide variety of treatment and holding tanks available.
	X		79	Robert E. Strand, MP Brayak Plumbing & Heating Wausau, WI	<ul style="list-style-type: none"> Bad timing (summer) for public input; plumbers are too busy now to give quality feedback. The state doesn't enforce the current code; why make the "system" bigger? Section Comm 5.02 – Table 5.02, line 17 Eliminate duplication of recredentialling. Section Comm 5.36(3), "Both" of the following instead of "at least one" of the following. Section Comm 5.36(3)(b) Eliminate "journeyman plumber or journeyman plumber-restricted"; do not change the current regulations established in chapter 145 and impose the current penalties for violations. It's an overlap of government services and a waste of taxpayers' money. 	<ul style="list-style-type: none"> No response necessary. The plumbing code to be effective and reasonable needs to be updated periodically to address and reflect new technologies and practices as well as new concerns identified as risks to public health and the waters of the state. The establishment of the new credential addresses a concern regarding the on-going performance of technology which is different than the "installation" of plumbing under the "licensing" law. The proposed rules establish criteria determined to recognize all qualified individuals able to provide a service. See previous response.