3. Soil series and mapping units, if available, for the immediate area, as listed in the USDA soil survey.

4. Data, if any, from previous soil saturation determinations in similar soil conditions and landscape position.

5. Any written reports, comments or recommendations by the governmental unit or department staff.

(3) SOIL SATURATION DETERMINATION. (a) Actual elevations of soil saturation may be determined at specific sites in accordance with the soil saturation determination procedures in pars. (b) to (c).

(b) Intent to determine soil saturation. 1. The property owner, or his or her agent, shall notify the governmental unit and the department of the intent to conduct a soil saturation determination at least 15 business days prior to installing any groundwater elevation observation pipe.

2. The notification to conduct a soil saturation determination shall include:

a. Soil profile descriptions pursuant to s. Comm 85.30 in the area under investigation and the proposed number, depth, and location of the observation pipes; and

b. Written permission signed by the property owner for governmental unit and department personnel to enter upon the property under investigation during reasonable hours of the day to verify observation pipe installation or soil saturation determination results.

(c) Precipitation. 1. Precipitation data reported for soil saturation determination purposes shall include monthly totals for September through May, and daily totals for February through May.

2. Precipitation data totals under subd. 1. shall be from either the closest local station to the site where the observation pipe is installed, or the average from the 3 closest local stations to the site. If averaging is used, the totals under subd. 1. shall be submitted for all 3 stations.

(d) Regional water tables. 1. Where sites are subject to a broad, relatively uniform, regional water table, the fluctuation observed over a several year cycle shall be considered.

2. At such sites, and where free water levels are more than 5 feet below grade, determinations shall be made using the hydrograph procedures contained in sub. (4).

3. Areas affected by a regional water table shall be delineated by the department in consultation with the affected counties and the Wisconsin Geological and Natural History Survey.

(e) Fine textured soil. 1. The department may prohibit soil saturation determinations in fine textured soil with high matric potentials where determination results may be inconclusive.

2. In such cases, the department may approve alternative methods to address the direct determination of saturated or near saturated soil conditions not enumerated in this section.

(f) Groundwater elevation observation pipe installation and construction. 1. 'Number of observation pipes'. a. At least 3 groundwater elevation observation pipes shall be installed to delineate the area under investigation.

b. The governmental unit or department may require more than 3 observation pipes to adequately evaluate potential soil saturation conditions.

2. 'Observation pipe depth'. a. At the request of the department or governmental unit, at least one observation pipe shall be constructed to a depth of 15 feet below the ground surface to determine if high groundwater elevation conditions are due to a perched water table and the possible extent of the saturated zone.

b. Other observation pipes shall terminate at specific depths below grade that will serve to evaluate where shallow perched zones of soil saturation occurring within the soil profile.

c. The governmental unit or department may designate specific observation pipe depths and locations based on soil and site conditions, or experience in a particular geographic area or topographic position.

d. An observation pipe may not be less than 24 inches deep.

3. 'Observation pipe construction'. The direct observation of soil saturation conditions shall be accomplished by means of observation pipes conforming to this subdivision and Figure 85.60-1.

a. The observation pipe shall be of a material meeting the standards in s. Comm 84.30 Table 84.30-1, except that lead pipe may not be used.

b. The inside diameter of an observation pipe may not be less than 2 inches or more than 4 inches nominal size.

c. The borehole diameter shall be 2 to 4 inches larger than the outside diameter of the observation pipe.

d. The top of the observation pipe shall terminate at least 18 inches above grade and be provided with a vented cap.

e. The bottom of the observation pipe shall terminate with a slotted, or screened pipe. The slots or screen shall extend 6 to 18 inches above the bottom of the pipe and be at least 4 inches below the filter pack seal. The slots or screen shall not be hand cut and shall be designed to retain soil particles with a diameter of greater than 0.02 inch.

f. Except for the vented end cap, joints between lengths of pipe and fittings shall conform to s. Comm 84.40.

g. Finished grade around the observation pipe shall be sloped away from the observation pipe using soil material.

h. At a minimum, the upper 12 inches of annular space surrounding the observation pipe shall be sealed by puddled clay, bentonite, or an equal-parts mixture of soil, bentonite and cement. A surface seal may not be necessary if the entire soil profile is sand.

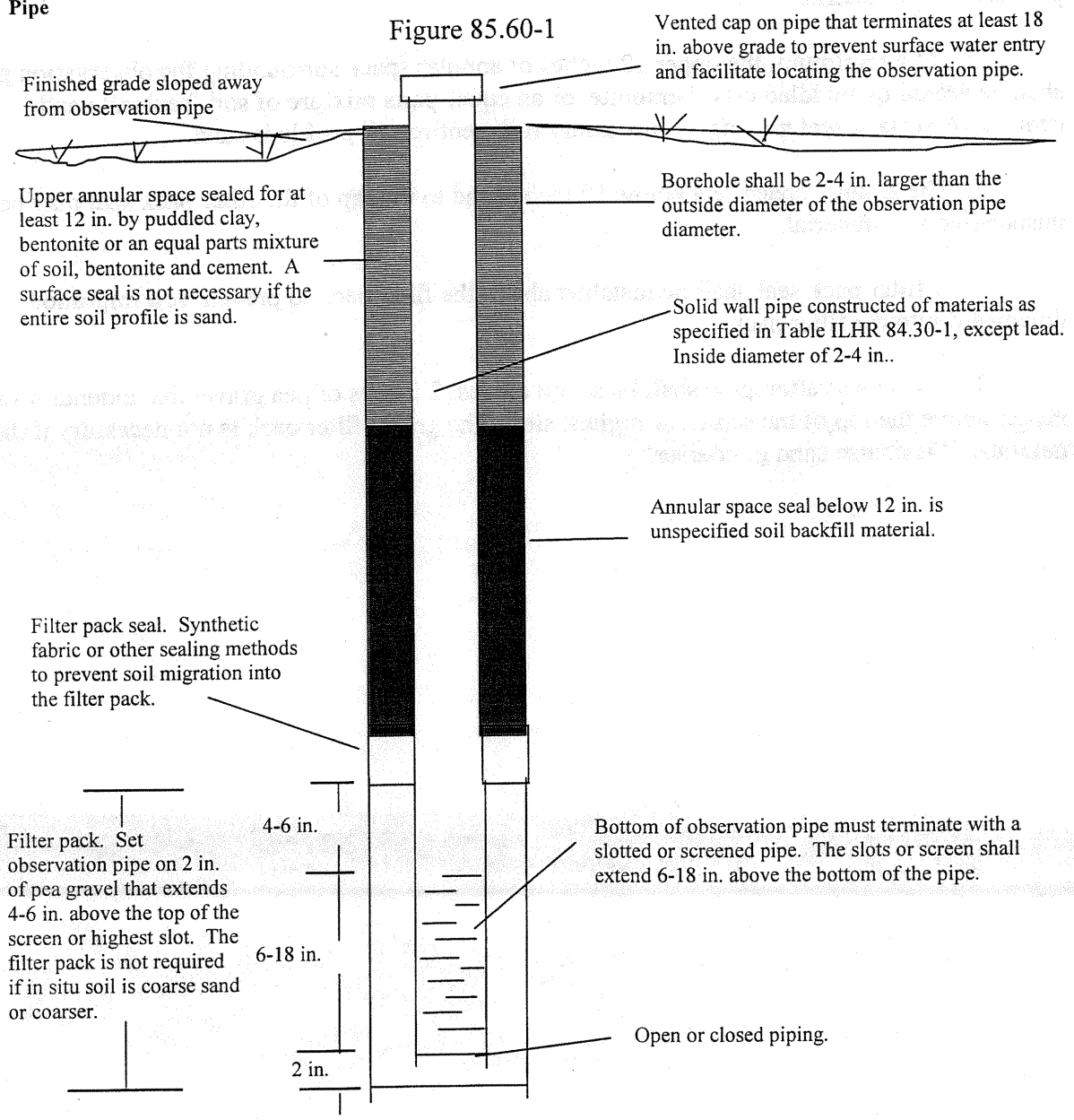
i. The annular space seal below 12 inches and to the top of the filter pack seal may be of unspecified soil material.

j. A filter pack seal shall be installed above the filter pack to prevent soil migration downward into the filter pack.

k. The observation pipe shall be set on at least 2 inches of pea gravel that extends 4 to 6 inches above the top of the screen or highest slot. The gravel filter pack is not necessary if the natural soil is coarse sand or coarser.

Groundwater Elevation Observation Pipe

Figure 85.60-1



(g) Observations. 1. 'Observation period.' The observation period for soil saturation determinations shall begin on or before the appropriate date specified in Figure 85.60-2, and end June 1st.

2. 'Alternate observation period.' The department may approve an alternate observation period if the data presented conclusively demonstrates equivalency to conditions encountered during a normal spring observation period.

3. 'Minimum frequency.' Observations shall be made on the first day of the observation period and at least every 7 days thereafter until the observation period is complete.

(h) Conclusions. 1. The highest level of soil saturation shall be considered to occur at the highest elevation of free water present in an observation pipe during a 7-day observation period.

2. The results of soil saturation determinations under this section shall be considered inconclusive if the precipitation totals under par. (b) do not equal or exceed:

a. 8.5 inches from September 1st through the last day of February; and

b. 7.6 inches from March 1st through May 31st.

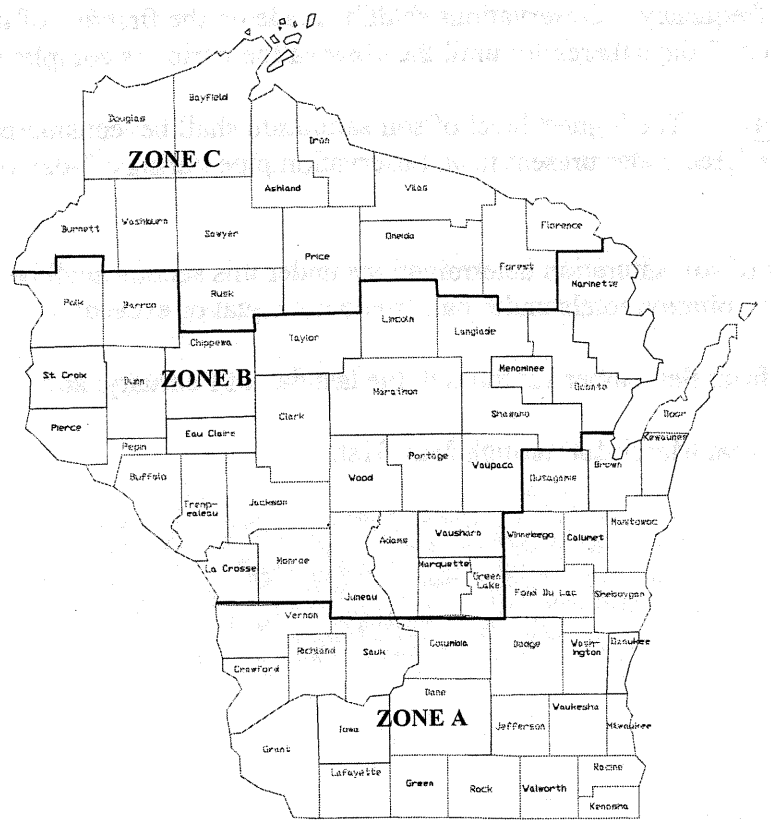


Figure 85.60-2
Latest Date to Begin Spring Soil Saturation Monitoring

Zone A	February 15
Zone B	March 1
Zone C	March 15

(i) Reporting data. 1. Within 60 days of the completion of the observations, 3 copies of the following data shall be submitted to the department for review:

a. A soil and site evaluation report pursuant to s. Comm 85.40.

b. Observation pipe installation, depth, location and elevation information.

c. Precipitation data and name of any local station used.

d. Observation dates.

e. Current and any prior observation results.

f. Any governmental unit observations or reports pertaining to the soil saturation determination observations, observation pipe construction or soil/site conditions.

2. Within 60 days of the completion of the observations, one copy of the data specified in subd. 1. shall be filed with the governmental unit having jurisdiction.

(j) Report forms. Soil saturation determination results shall be reported on forms specified by the department.

Note: Soil saturation determination report forms in an acceptable format are available from the Safety and Buildings Division, P.O. Box 7162, Madison, WI 53707-7162.

(k) Failure to report. Failure to file soil saturation determination results with the governmental unit and department within 60 days may disqualify the site from future soil saturation or interpretive determinations.

(4) HYDROGRAPH PROCEDURE. (a) 1. Where regional water table fluctuations are considered in deep sandy soil, the predicted high groundwater elevation shall be established using hydrograph documentation.

2. The highest groundwater elevation shall be determined by direct observation during the soil profile evaluation or by one of the hydrograph methods outlined in pars. (b) to (d), whichever is highest.

(b) 1. If there is less than 5 feet to free water below original grade, the procedures detailed in sub. (2) or (3) shall be used to determine the highest predicted groundwater elevation at the site.

2. If there is 5 feet or more to free water below original grade, the hydrograph procedure may be used to determine the highest predicted groundwater elevation at the site.

(c) Where the water table at the site is 5 to 10 feet below grade, the procedures of subds. 1. to 5. shall be followed:

1. A completed soil and site evaluation report pursuant to s. Comm 85.40 that confirms the elevation of free water, if observed, shall be prepared.

2. a. A slotted or screened groundwater elevation observation pipe shall be installed at the proposed system location to a depth of at least 12 inches below the free water elevation.

b. The observation pipe shall be installed and tested pursuant to sub. (3) (e) 5.

3. a. The water level in the observation pipe shall be recorded after completion of the observation pipe installation and 7 days later.

b. The highest of the 2 water levels shall be used to complete the hydrograph procedure.

4. The permanent USGS groundwater elevation well or wells as assigned by the governmental unit or department shall be read within 24 hours of establishing the actual free water elevation at the site.

Note: Soil evaluation report forms in an acceptable format are available from the Safety and Buildings Division, P.O. Box 7162, Madison, WI 53707-7162.

5. The hydrograph procedure shall be completed and the results shall be reported to the department in a format specified by the department.

(d) Where the water table at the site is 10 feet or greater below grade, the procedures of subds. 1. to 3. shall be followed.

1. A completed soil and site evaluation report pursuant to s. Comm 85.40 that confirms the elevation of free water, if observed, shall be prepared.

2. The permanent USGS groundwater elevation well or wells assigned to the project by the governmental unit or department shall be read within 24 hours of the actual free water determination at the site.

3. The standard hydrograph procedure shall be completed and the results shall be reported to the department in a format specified by the department.

Note: Hydrograph soil saturation report forms in an acceptable format are available from the Safety and Buildings Division, P.O. Box 7162, Madison, WI 53707-7162.

(5) SOIL SATURATION OBSERVATION PIPE REMOVAL. The following requirements shall apply to all groundwater elevation observation pipes installed pursuant to this section:

(a) Removal timeline. Unless specifically approved by the governmental unit or department, all groundwater elevation observation pipes shall be removed within 60 days after the completion of soil saturation determination.

(b) Contamination conduit. Any groundwater elevation observation pipe found by the department or governmental unit to be acting as a conduit for groundwater contamination shall be ordered removed immediately.

(6) VERIFICATION. (a) Verification. 1. The governmental unit or department may request verification of soil saturation determinations pursuant to s. Comm 85.50 (2), and proper observation pipe installation pursuant to this section.

2. The governmental unit or the department may require any groundwater elevation observation pipe deemed by the governmental unit or the department to be in poor contact with the surrounding soil to be reinstalled pursuant to this section.

(b) On-site visits. 1. The governmental unit or department may visit sites during soil saturation determination periods or at other reasonable times to determine the accuracy of data.

2. A written record of on-site visits in subd. 1. shall be maintained by the agency conducting the visits.

SECTION 71. Chapter Comm 91 is created to read:

Chapter Comm 91

SANITATION

Comm 91.01 PURPOSE. The purpose of this chapter is to establish minimum standards and criteria for the design, installation and maintenance of sanitation systems and devices which are alternatives to water-carried waste plumbing fixtures and drain systems so that these sanitation systems and devices are safe and will safeguard public health and the waters of the state.

Note: Local governmental units may restrict or place more stringent limitations or requirements relative to the design, installation, maintenance or use of the sanitation systems within the scope of this chapter.

Comm 91.02 SCOPE. (1) This chapter applies to all composting toilet systems, incinerating toilets, pit privies and vault privies installed or constructed on or after the effective date of this chapter.

(2) The provisions of this chapter are not retroactively applied to existing installations unless specifically stated in the administrative rule.

Comm 91.03 DEFINITIONS. In this chapter:

(1) "Composting toilet system" means a method that collects, stores and converts by bacterial digestion nonliquid-carried human wastes or organic kitchen wastes, or both, into humus.

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

(3) "Incinerating toilet" means a self-contained device for the treatment of nonliquid carried wastes that deposits the wastes directly into a combustion chamber, reduces the solid portion to ash and evaporates the liquid portion.

(4) "Pit privy" means an enclosed nonportable toilet into which nonwater-carried human wastes are deposited to a subsurface storage chamber that is not watertight.

(5) "Portable restroom" means a self-contained portable unit that includes fixtures, incorporating holding tank facilities, designed to receive human excrement.

(6) "Vault privy" means an enclosed nonportable toilet into which nonwater-carried human wastes are deposited to a subsurface storage chamber that is watertight.

Comm 91.10 COMPOSTING TOILET SYSTEMS. (1) The materials, design, construction and performance of a composting toilet system shall conform to NSF Standard 41.

(2) All composting toilet systems shall be listed by a testing agency acceptable to the department.

Note: Listing agencies acceptable to the department include the American Gas Association; Canadian Standards Association; NSF International; Underwriter's Laboratories; and Warnock Hersey.

(3) (a) Components for the storage or treatment of wastes shall be continuously ventilated.

(b) Ventilation ducts or vents for the composting toilet system shall conform to s. Comm 82.31 (16).

Note: See appendix for a reprint of portions of s. Comm 82.31 (16).

(4) (a) The disposal of the compost shall be in accordance with EPA part 503.

(b) The disposal of any liquid from a composting toilet system shall be either to a public sanitary sewer system or a POWTS conforming to ch. Comm 83.

Comm 91.11 INCINERATING TOILETS. (1) The design, construction and installation of a gas-fired incinerating toilet shall conform to ANSI Z21.61.

(2) The materials, design, construction and performance of an electric-fired incinerating toilet shall conform to NSF Standard 41.

(3) All electric and gas-fired incinerating toilets shall be listed by a testing agency acceptable to the department.

Note: Listing agencies acceptable to the department include the American Gas Association, Canadian Standards Association, NSF International, Underwriter's Laboratories, and Warnock. Hersey

(4) (a) The disposal of the end product shall be of in accordance with 40 CFR Part 503, Standards for the Use or Disposal of Sewage Sludge.

Note: EPA materials relating to EPA 503, including, "Domestic Septage Regulatory Guidance: A Guide to the EPA 503 Rule", are available from the Office of Water Resource, US EPA, 401 M Street SW, Washington D.C. 20460.

(b) The disposal of any liquid from an incinerating toilet shall be either to a public sanitary sewer system or a POWTS conforming to ch. Comm 83.

Comm 91.12 PRIVIES. (1) (a) The storage chamber of a vault privy shall conform with the requirements of s. Comm 84.25 relating to holding tanks, and shall have a minimum storage capacity of 200 gallons or one cubic yard.

(b) 1. The storage chamber of a pit privy shall be sited and located in soil recognized to provide treatment and dispersal in accordance with s. Comm 83.44 (4) (b).

Note: Chapter Comm 85 establishes procedures for conducting soil evaluations and preparing soil evaluation reports. Section Comm 5.33 delineates the qualifications and certification procedures for individuals who conduct soil evaluations.

2. Governmental units may set standards for the structure above the vault or pit for one- and two-family dwellings.

3. Privies for public use shall meet the requirements of this section and s. Comm 52.63.

Note: Chapters NR 811 and 812 establish minimum separation distances between a pit or vault privy and a potable well. Chapters NR 811 and 812 are administered by the department of natural resources.

(c) The storage chamber of a vault privy shall be anchored to prevent flotation caused by saturated soil conditions.

(2) (a) The storage chamber of a pit or vault privy shall be provided with a vent for the purpose of relieving explosive gases.

(b) The vent serving the storage chamber of a privy shall be:

1. At least 3 inches in diameter;

2. Installed in accordance with s. Comm 82.31 (16) (a) to (f); and

3. Fabricated or provided with screening to prevent insects from entering the storage chamber.

(3) The servicing of a vault privy relative to the pumping, transporting and disposal of the contents shall be in accordance with ch. NR 113.

(4) The abandonment of a vault privy shall be accomplished by:

(a) Having the contents of the storage chamber pumped and disposed of in accordance with ch. NR 113;

(b) Removing the entire top of the chamber; and

(c) Filling the remaining portion of the emptied storage chamber with soil or other inert material to an elevation equal to or above the surrounding grade.

(5) The abandonment of a pit privy shall be accomplished by filling the storage chamber with soil or other inert material to an elevation equal to the surrounding grade.

Note: The requirements of the commercial building code, chs. Comm 50-64, apply to the structures built over those privies serving public buildings and places of employment.

(6) (a) A privy may not be installed in a floodway.

(b) A privy may be installed in the floodfringe provided that the area is filled to remove it from the floodfringe designation or the vault is flood-proofed.

Note: The department of natural resources determines if filling or flood-proofing is in accordance with current rules in effect for development in a floodfringe area.

Comm 91.13 PORTABLE RESTROOMS. (1) The storage chamber of a portable restroom into which human waste is to be deposited shall be watertight.

(2) The entire floor and the side walls to a height of not less than 4 inches of a portable restroom shall be of a material impervious to water.

Comm 91.20 INCORPORATION OF STANDARDS BY REFERENCE. (1) CONSENT. Pursuant to s. 227.21, Stats., the attorney general and the revisor of statutes have consented to the incorporation by reference of the standards listed in sub. (4).

(2) COPIES. Copies of the adopted standards are on file in the offices of the department, the secretary of state and the revisor of statutes. Copies of the standards may be purchased through the respective organizations listed in sub. (3).

(3) ADOPTION OF STANDARDS. The standards referenced in pars. (a) and (b) are hereby incorporated by reference into this chapter.

(a) American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, GAS-FIRED TOILETS, Z21.61-1983.

(b) NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan 48113-0140, WASTEWATER RECYCLE/REUSE AND WATER CONSERVATION DEVICES, NSF 41-1983.

Chapter Comm 91
Appendix

The material and information contained in this appendix is for clarification purposes only. Appendix material and information are numbered to correspond to the rule number as it appears in the text of the code. Material and information included in this appendix is subject to change without notice, including names, addresses, phone numbers and forms, and reflects information known at the time of publication.

A-91.10 (3) (b) Section Comm 82.31 (16) (a) to (f) reads as follows:

82.31 (16) VENT TERMINALS. All vents and vent systems shall terminate in the open air in accordance with this subsection.

(a) Extension above roofs. Extensions of vents through a roof shall terminate at least 8 inches above the roof. Where the roof is to be used for any purpose other than weather protection, the vents shall extend at least 7 feet above the roof.

(b) Waterproof flashings. The penetration of a roof system by a vent shall be made watertight with an approved flashing.

(c) Prohibited uses. Vent terminals shall not be used as flag poles, support for antennas or other similar purposes.

(d) Location of vent terminals. 1. A vent shall not terminate under the overhang of a building.

2. All vent terminals shall be located:

a. At least 10 feet from an air intake;

b. At least 5 feet from a power exhaust vent;

c. At least 10 feet horizontally from or 2 feet above roof scuttles, doors and openable windows; and

d. At least 5 feet from or 2 inches above parapet walls.

3. Where a structure has an earth covered roof extending from surrounding grade, the vent extension shall run at least 7 feet above grade and terminate with an approved vent cap. The portion of vent pipe outside the structure shall be without joints, except one fitting may be installed where the pipe leaves the top or side of the structure.

(e) Extension through wall. Where approved by the department, a vent may terminate through an exterior wall. Such a vent shall terminate at least 10 feet horizontally from any lot line and shall terminate downward. The vent shall be screened and shall comply with par. (d).

(f) Extensions outside buildings. Drain or vent pipe extensions shall not be located or placed on the outside of an exterior wall of any new building, but shall be located inside the building.

(END)

* *

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (b), Stats., these rules shall take effect on the first day of the third month following publication in the Wisconsin Administrative Register.

* *

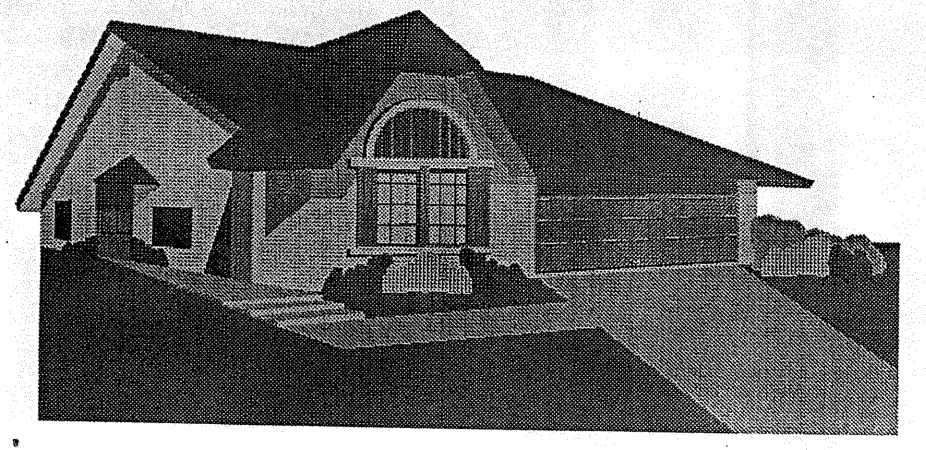
COMM 83 BRIEFING
DEPARTMENT OF COMMERCE
February 25, 1999

PROGRAM AGENDA

Topic	Speaker	Organization
Introduction	Terry Grosenheider	Commerce
Land Use	Mike Corry	Commerce
Wastewater Treatment and Treatment Systems	Jim Converse, Ph.D.	UW-Madison
Comm 83 Code	Roman Kaminski	Commerce
Regional and National Issues.	Dick Otis, Ph.D.	Ayres Associates Madison

Dept. Commerce Consultants
Jim Quast, Architect
Pat Hill, Ph.D.
Robert Langstroth, Ph.D.

TO BUILD A HOUSE



Zoning Permit
Building Permit
Water Access
Power Access
Road Access
Sewage Treatment

Private Onsite Wastewater Treatment Systems = POWTS

Comm 83 is Part of Uniform Plumbing Code

Purpose: Protect Health, Safety and Waters of State

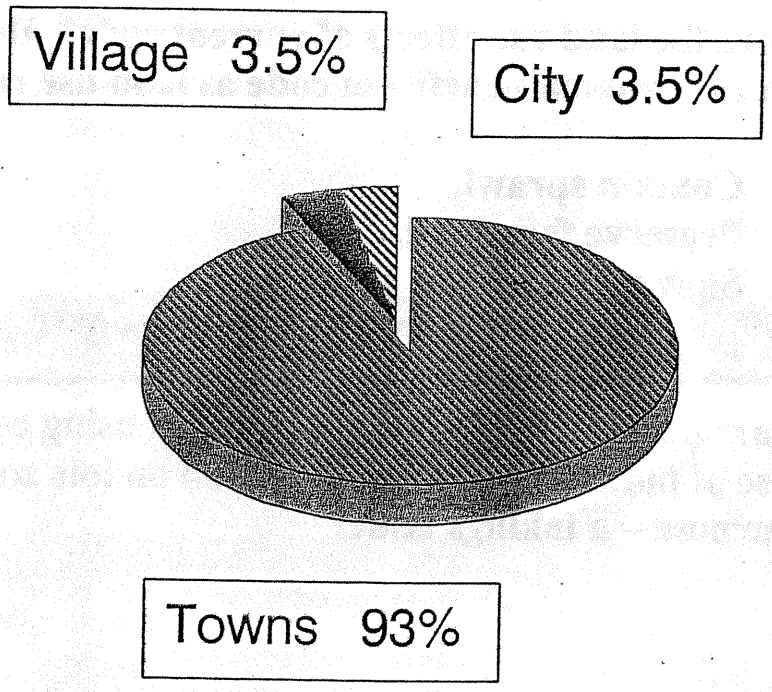
Strategic Issues:

Should Comm 83 be designed to block construction of homes on lots zoned residential by local government?

Can/do POWTS treatment systems comply with the groundwater law?

Location of POWTS

1990 Census



Land Use – Comm 83

Questions:

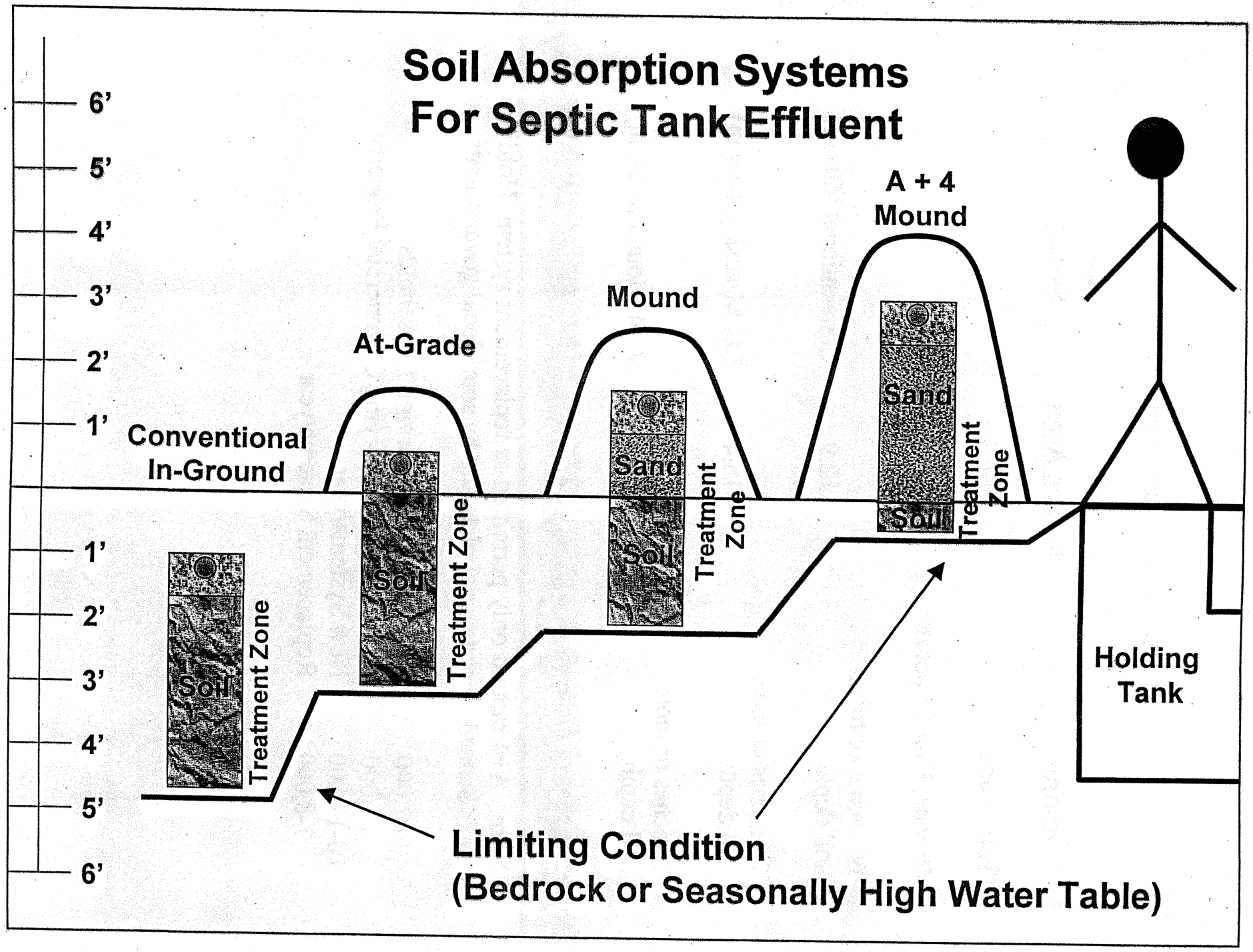
1. **What is the link between land use and Comm 83?**

2. **Should Comm 83 be designed for the purpose of preventing home construction?**

3. **What are the land use effects of current code? Does it help or hurt the claimed benefits of code as land use regulation?**

   Contain sprawl,
   Preserve farmland,
   Slow urban flight

4. **What are potential legal consequences of using code for purpose of blocking home construction on lots zoned for that purpose – a takings issue?**


Soil Absorption Systems
For Septic Tank Effluent
6'
5'
4'
3'
2'
1'
Conventional
In-Ground
At-Grade
Mound
A + 4
Mound
Sand
Soil
Treatment Zone
Holding
Tank
Limiting Condition
(Bedrock or Seasonally High Water Table)

Comm 83 – Land Use Link

Land Area	Million Acres	Likely System
Total Land	35	
Private, Unincorporated	27.6	
60 inches or more soil depth	12.9	Conventional (60+in)
24 inches or more soil depth	15.4	Std Mound (24-60 in)
6 inches or more soil depth	22.4	A+4 Mound (6-24 in)
0 inches or more	27.6	Holding Tank (0-6 in)

Note: A+4 mound only permitted as replacement system. Holding tanks banned on state level plats and by some local governments.

702,000	POWTS Systems Serving Households
21,000	POWTS Systems Serving Commercial Property
10-12,000	New Systems/year
7-8,000	Replacement Systems/year

Comm 83 – Land use Link

1969

First modern POWTS code adopted. Required use of Conventional System design –56-60 inches of soil needed.

Result = 53% of land unbuildable with POWTS treatment system.

1971

Legislature creates SSWMP - UW program to develop alternate systems.

1972-79

Wisconsin Mound developed.

Resulted in lawsuits and lobbying against proposed code that permitted use of the Wisconsin Mound.

Objections about Wis. Mound code:

Increase urban sprawl.

Increase farmland conversion.

Promote urban flight.

Mound - Unproven in Wis.

Endanger Public Health

Farmland Conservation

Proposition:

The current code harms farmland conservation.

Argument:

Currently approved "new" construction POWTS need 24 or more inches of slowly permeable, unsaturated soil.

This soil description also defines good farmland.

Current code bans POWTS on soils with less than 24 inches slowly permeable unsaturated soil. This soil tends to be marginal farm soil.

Proposed code will allow treatment systems on marginal land with 6-24 inches soil.

Therefore:

Current code concentrates housing on prime farmland. New code will allow building on marginal or useless farmland, reducing the pressure on good farmland.

Sprawl

Sprawl is variously defined as an expansion of an urban fringe or scattered rural housing. The term is now pejorative, but in fact most current homes were sprawl homes when constructed.

Proposition:

The current code promotes both forms of sprawl.

Argument:

56% of land statewide is suitable for a new septic system under current code. 44% is not.

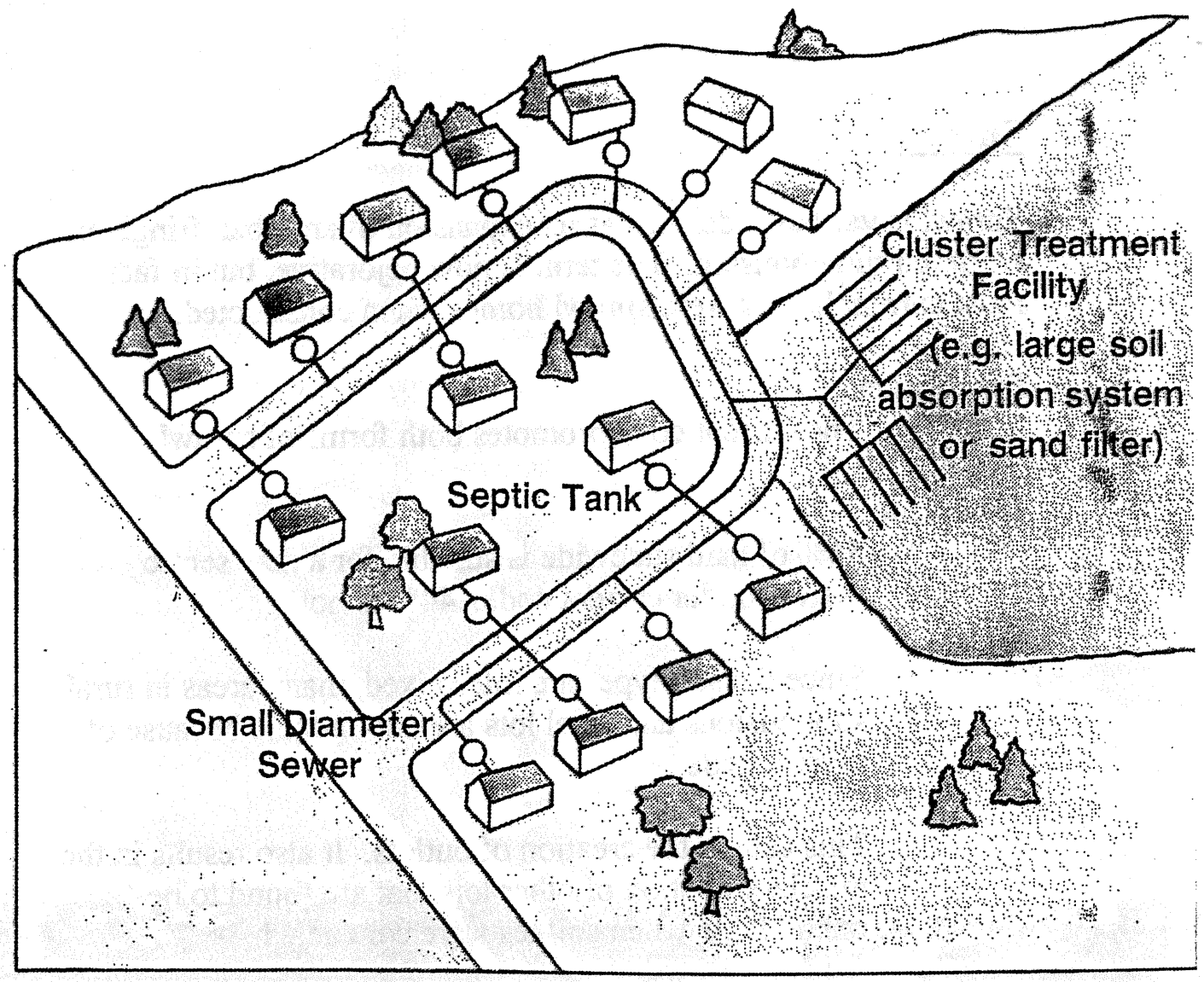
Since the soil types are intermixed, many areas in rural subdivisions and rural lots are unbuildable because of current code.

This causes the creation of outlots. It also results in the misclassification of other lots that are found to be unbuildable when soil tests are conducted.

An additional 25 percent of the land will be buildable under new code, allowing greater in-fill of current lots and more concentrated housing.

Therefore:

The proposed code will reduce sprawl relative to the current code. Land use critics should support the Comm 83 revisions.



In a cluster system, alternative sewers collect wastewater and transport it a short distance to a neighborhood treatment facility.

Urban Flight

Proposition:

Stopping Comm 83 will not slow or prevent urban flight.

Argument:

There are 15.4 million acres suitable for POWTS under current code. This is sufficient land to absorb the urban population of Wisconsin many times over.

Therefore:

Stopping the code will not sufficiently affect the supply of available land relative to demand to have a beneficial effect.

Taking Land without Compensation

Proposition:

Current code, where access to an A+4 mound is denied for new construction, may create a serious claim against the state for an improper taking of land without due process or compensation.

Argument:

The current code bars access to an A+4 mound for new construction. The code bans the use of holding tanks on state level plats and also allows local government to ban holding tanks. This results in many residential lots becoming classified as unbuildable under the code. If these lots had access to the A+4 mound, they would be buildable.

The A+4 mount performs as well attached to a new or old home.

The purpose of maintaining the ban against the A+4 mound for new construction is to deny the owner the ability to build a home on a lot zoned for residential purposes.

Since these lots are small and often are included in areas zoned exclusively residential, the owner may be denied sufficient use of the lot to make a valid takings claim.

Therefore:

Comm 83 should be approved to allow construction on these lots to avoid the potential claim. Alternately, the current code should be modified to permit these lots access to the A+4 system.

Legislative Authority – Plumbing code as land use regulatory tool.

Proposition:

Commerce should not design Comm 83 for the purpose of blocking home construction on lots where local government otherwise permits residential construction.

The proposed plumbing code should not be delayed or stopped to maintain a discriminate ban on some home construction caused by the current code.

Land use should be regulated by local government through their zoning powers.

Argument:

The purpose statement of the plumbing code is found at s. 145.02(1) Wis. Stats. It does not contain a land use control regulatory purpose.

Land use regulation powers are contained in the various statute chapters that regulate cities, villages and towns.

To deny a POWTS system for a lot for the purpose of stopping construction of a building thwarts the lawful power of the municipality to regulate the use of that land.

Each municipal and town government has either made the decision to zone the land or has made the decision not to zone. Both constitute a decision by the authority with the power. They have been on notice since 1979

that the then 10-year-old unintended rationing of access to septic systems was not permanent. They were given further notice in 1995 that the new code was pending.

The current proposed code has an optional 18 month delay for counties to block access to the A+4 mound after the effective date of the code. In addition, the code has a six-month built in delay of effective date after promulgation. Assuming promulgation on July 1, 1999, counties have until July 2001 to make any necessary adjustments, six years after the first Comm 83 hearing draft was published in 1995.

Some counties and most towns want access to the A+4 mound and single pass sand filter now. Some use the holding tank/replacement mound strategy to avoid the restriction (see Washington Co letter), at considerable extra expense to the owner.

Therefore:

The code should not be further delayed for land use concerns.

State of Wisconsin \ Department of Commerce

CURRENT DRAFT

February 24, 1999

Rule No.: Chapters Comm 83, 85 and 91

Relating to: Private Onsite Wastewater Treatment Systems

Clearinghouse Rule No.: 98-083

The Wisconsin Department of Commerce proposes an order to repeal Comm 2.63, Comm 20.09 (5) (b) 2. Note, Comm 66.11 Note 2, Comm 82.10 (7), 82.10 (15) and Note, 82.11, Comm 84.60;

to renumber Comm 5.02 Table 5.02 lines 18 to 65, 5.06 Table 5.06 lines 18 to 65, Comm 51.01 (71p), Comm 66.11, Comm 84.20 (5) (j) to (q);

to renumber and amend Comm 2.67 (1), Comm 82.36 (3) (b) 3. a., 82.36 (3) (b) 3. b.;

to amend Comm Table 2.66 line 5, 2.66 (1) (d) 2., 2.67 (2), Comm 52.60 (1) (a) (intro.), 52.62 (1) (b), Comm 82.01 Note, 82.10 (2), 82.10 (8), 82.10 (13), 82.30 (11) (g) 2., 82.32 (4) (b) 1. b., 82.34 (5) (a) 2. (title) and (intro.) and 3. and (b) 2. (intro.), 82.40 (3) (e), 82.40 (8) (b) 1. to 3., Comm 84.10 Table 84.10 line 5, 84.11, 84.30 Table 84.30-5, 84.50 (3) (g) 1. and 7.;

to repeal and recreate Comm 2.52 (5), 2.61 (3), 2.65 and Table 2.65, 2.66 (2) (a), Comm 51.01 (103g), 52.61, 52.62 (1) (a) and Note, 52.63, Comm 82.10 (3), ch. Comm 83, Comm 84.10 (3), 84.30 (2) (d), ch. Comm 85;

and to create Comm 2.67 (1) (b), Comm 5.02 Table 5.02 line 18, 5.06 Table 5.06 line 18, 5.36, Comm 20.07 (19m), (40t) and (59t), 20.09 (5) (b) 3., 25.02, Appendix 20.09, Comm 50.06 (3), 51.01 (19m), 51.01 (71p), 51.01 (103d), 52.60 (1) (c), Comm 52.60 (1) (c), Appendix 50.06 (3), Comm 66.11 (2), Appendix 66.11 (2), ch. Comm 81, Comm 82.37, 82.40 (8) (j), Comm 84.20 (5) (j), 84.20 (5) (q) 1. Note, 84.25, 84.30 (6) (g) to (j) and Table 12, A-84.10 (3) (b), ch. Comm 91, relating to private onsite wastewater treatment systems and sanitation systems and devices.

* *

ANALYSIS OF RULES

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (1), 101.82 (1) and 145.02 (3) and (4), Stats.
Statutes interpreted: ss. 145.02 (4), 145.045, 145.13, 145.135, 145.19, and 145.20, Stats.

Under s. 145.02, Stats., the Department of Commerce has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of the state plumbing code, chapters Comm 81-87.

Currently, chapter Comm 83 of the plumbing code establishes specific and prescriptive minimum standards for the design, installation, inspection, and maintenance of private sewage systems. In some sense, the current rules dictate or prioritize specific solutions or the selection of certain types of private sewage systems. The current chapter Comm 83 has not been fully revised since 1980. In order for the plumbing code to be effective and reasonable, code standards must be updated periodically to address new health and safety concerns, issues and priorities as well as to reflect changing technologies, practices and materials. The proposed revisions represent a complete reevaluation of the private sewage program as well as the code.

The goals guiding the reengineered program and code are to:

- Minimize risk to public health and the water resources of the state, including groundwater;
- Provide measurable performance criteria for private onsite wastewater treatment systems, formerly known as private sewage systems, that ensure flexibility and predictability and facilitate improvements in system design and product development;
- Promote the recycling of constituents to minimize disposal volumes;
- Promote a wide range of treatment options that match users' needs and desires and the varied soil and site conditions in the state;
- Provide clear boundaries, based on system performance standards for the scope of the code;
- Promote competition in the design, installation and maintenance of systems, thereby, providing users with efficient and cost effective services;
- Provide procedures and establish priorities for the responsibilities of the design, installation and maintenance of systems to ensure that the respective responsibilities are clear and consistent and that compliance is occurring;
- Provide and promote active research and development of innovative technologies and solutions in the desired directions;
- Promote public education about treatment options and proper disposal of wastewater;
- Provide timely and efficient administration and enforcement of the regulatory system; and
- Acknowledge the powers and the abilities of municipalities to determine and control development.

The following summarizes by chapter the significant highlights of the rewrite:

Chapter Comm 2, Fee Schedule; The revisions involve the fees to be charged by the department for reviewing plans, petitions and products relative to private onsite wastewater treatment systems. The fees for plan review are now to be based upon the design wastewater flow of the system and whether the proposed treatment components of the system have been previously recognized under the product approval process. Overall, the revised fee structure does not increase the cost of these services or increase the department's revenues.

Chapter 5, Credentials; Changes to the chapter established a credentialing program for individuals who are to provide required monitoring and maintenance services for mechanical POWTS components. To qualify for the credential individuals will either have to obtain training or have experience installing mechanical POWTS components.

Chapters Comm 20-25, One- and 2- Dwelling Code, Chapters Comm 50-64, Commercial Building Code, Chapter Comm 66, Multifamily Dwelling Code; Revisions to the appendices of these codes are to provide greater clarity as to the issuance of building permits for projects served by private onsite wastewater treatment systems. The other revisions provide a cross reference to newly created ch. Comm 91 for privies, composting toilets and incinerating toilets.

Chapter Comm 81, Definitions and Standards; The newly created chapter consolidates into one location the plumbing code definitions and referenced national standards.

Chapter Comm 82, Design, Construction, Installation, Supervision and Inspection of Plumbing; The changes:

- Reflect consistent terminology relative to ch. Comm 83;
- Recognize that sanitation needs can also be fulfilled by nonplumbing means such as composting toilets;
- Eliminate from the plumbing code the mandates of connecting to public sewer and/or water in light of the powers and authority held by municipalities and sewer and water districts under chs. 66 and 281.145, Stats., to require such connections;
- Establish requirements for composting toilets and systems that use water or other liquids as a transport medium; and
- Establish requirements for sanitary dump stations that receive the wastes from the holding tanks of travel trailers and such.
- Mandate the use of water softeners that are used primarily for water hardness reduction to be of a demand initiated regeneration type when the brine solution is discharged to a private onsite wastewater treatment system.

Chapter Comm 83, Private onsite Wastewater Treatment Systems; The chapter has been completely rewritten; the outline for the new chapter is:

Ch. Comm 83
Subchapter I SCOPE AND APPLICATION
Comm 83.01 Purpose
Comm 83.02 Scope
Comm 83.03 Application
Comm 83.04 Implementation
Comm 83.05 Installation and Inspection Training
Subchapter II ADMINISTRATION AND ENFORCEMENT
Comm 83.20 Purpose
Comm 83.21 Sanitary Permits
Comm 83.22 Plan Review and Approval
Comm 83.23 Review Agent Status
Comm 83.24 Petitions for Variance
Comm 83.25 Governmental Programs
Comm 83.26 Inspections and Testing
Comm 83.27 Experimental POWTS
Comm 83.28 Penalties
Comm 83.29 Range of Responses
Subchapter III GENERAL REQUIREMENTS
Comm 83.30 Purpose
Comm 83.31 Principles
Comm 83.32 Prohibitions and Limitations
Comm 83.33 Abandonment
Subchapter IV DESIGN AND INSTALLATION
Comm 83.40 Purpose
Comm 83.41 Principles
Comm 83.42 Application
Comm 83.43 General Requirements
Comm 83.44 Parameters for POWTS Components Consisting of In Situ Soil
Comm 83.45 Installation
Subchapter V MANAGEMENT
Comm 83.50 Purpose
Comm 83.51 Principles
Comm 83.52 Responsibilities
Comm 83.53 General
Comm 83.54 Management Requirements
Comm 83.55 Reporting Requirements
Subchapter VI RECOGNIZED METHODS AND TECHNOLOGIES
Comm 83.60 Purpose
Comm 83.61 Acceptable Methods and Technologies
Comm 83.62 Parameters for Using Acceptable Methods and Technologies

Unlike the current chapter, the revised ch. Comm 83 does not dictate or prioritize specific solutions or the selection of systems; rather, the chapter delineates the critical factors, parameters, options, prohibitions and limitations for the design of private onsite wastewater treatment systems. Under the framework of chapter Comm 83 designers and owners would be allowed to choose the appropriate method for reducing the contaminant loads and dispersing the hydraulic flows by selecting and arranging prerecognized treatment components, single use designs, and other means in conjunction with site limitations for a particular project.

The revisions under chapter Comm 83, include:

- Numerical standards for system design and operation relative to fecal coliform, suspended solids, biological oxygen demand, fats, grease, oil and particle size;

- Requirements to obtain plan approval and a sanitary permit before the installation of a private onsite wastewater treatment system may begin; local governmental units would still be required to review plans employing "conventional" technology for residential projects while plans for commercial projects or projects employing technologies not previously recognized would be reviewed by the department. Plans using other types of "prerecognized" solutions would be reviewed by either the local governmental unit or the department depending upon where the submitter wanted the service to be performed and if the local government unit had opted to provide this service as an agent of the department;

- The testing of components before the system is put into service;

- A reference to the petition for variance process, chapter Comm 3, whereby an equivalent alternative that meets the intent of a rule but not the letter may be recognized - the petition for variance process is not to waive compliance and does not supersede statutory requirements or local ordinances;

- The allowance for local governmental units, by ordinance, to delay the implementation of some technologies upon the adoption of the code and to prohibit or limit the use of holding tanks, or constructed wetlands or evapotranspiration beds as POWTS treatment components;

- The prohibition of cesspools and outfall pipes discharging sewage to the surface, including existing installations;

- Design standards that:
  - Delineate the contaminant loads and hydraulic flows for residential occupancies based on bedrooms and occupants and for other occupancies based upon estimated wastewater flows;
  - Allow for the segregation of graywater and blackwater wastes and designs to deal with each;
  - Specify parameters for subsurface treatment and dispersal;
  - Recognize that treatment components may be installed inside buildings provided the components are gas-tight, and pose no health or safety risk to occupants.

- The establishment of an electronic maintenance tracking scheme that would monitor the required periodic servicing of private onsite wastewater treatment systems depending upon the type of technology employed; the maintenance service parameters would be established during either product review or plan review; the maintenance tracking system would allow regulatory agencies and the department to focus their enforcement activities; the maintenance tracking scheme would be expanded to include existing holding tanks; and

- The recognition that responsibility to operate and maintain a private onsite wastewater treatment system in accordance with its approval is assigned to the owner and the failure to report required maintenance would be considered a violation of the code and a "human health hazard" allowing possible direct intervention to correct the situation.

Chapter Comm 84 Plumbing Products; The revisions under this chapter:

- Require department approval of all prefabricated treatment components to be employed in a private onsite wastewater treatment system to recognize the performance capabilities of the components through the department's product approval process; product approvals are valid for 5 years and may be revised and renewed at the option of the submitter and may be rescinded by the department; the department's approval and recognition is determined with respect to the requirements and standards delineated in the plumbing code;

- Establish the voluntary submission and the department's recognition of system design solutions, treatment and dispersal, as private onsite wastewater treatment systems thereby facilitating the design process and the plan review process; the review of such submissions would entail the input of a technical advisory committee comprised of interested parties involved in private onsite wastewater treatment systems;

- Establish performance and specification requirements for treatment and holding components; and

- Establish performance and specification requirements for geotextile fabrics used in private onsite wastewater treatment systems to prevent backfill material from entering absorption areas.

Chapter Comm 85 Soil and Site Evaluations; This chapter currently addresses the proposed creation of subdivisions that are not to be served by public sewers and reflects the department's regulatory involvement under ch. 236, Stats. The department's role under ch. 236, Stats., is to facilitate the planning of adequate sewage disposal for new subdivisions. The department proposes to reduce its regulatory involvement in the present plat review process believing that the process is premature and duplicative. Premature in that a type of system is preselected and assigned to a site without knowing the type of building to be served and its wastewater needs or the preferences of the owner; duplicative in that plans for a private onsite wastewater treatment system will still be required to be submitted and approved for each project. Under s. 236.45, Stats., local governmental units will still be able to facilitate and regulate subdivisions relative to a wide variety of land use issues including sewerage.

The rewritten chapter will focus on providing consistent high quality soil and site data which may be used as the basis for selecting and designing a solution to address a project's wastewater management needs. Even though chapter Comm 83 does not dictate or prioritize specific solutions the data gathered from soil and site evaluations must be of such quality as to document the site's limitations or abilities to support the proposed design during the plan review process. The rules of this chapter will no longer require the soil tester to recommend a system type for a site. The selection of the design is the decision of the owner in consultation with the designer, soil tester, installer and other parties involved in the POWTS design process.

Chapter Comm 91 Sanitation; The newly created chapter is not part of the plumbing code and establishes minimum standards for the design, installation and maintenance of sanitation systems and devices which are alternatives to traditional plumbing fixtures and systems. The chapter covers composting toilets and systems, incinerating toilets, privies and portable restrooms. Local governmental units would be able to enact more stringent requirements or use limitations for these types of sanitation systems.

Pursuant to s. 160.19 (2) (b), Stats., the department has determined that the proposed rules under ch. Comm 83 and the rules under previous editions of ch. Comm 83 which govern existing private onsite wastewater treatment do not result in compliance with the preventive action limits under ch. NR 140 at a point of standards application for chlorides. The department has concluded that it is not technically or economically feasible to reduce chlorides to the preventive action limits. The principle contributor of chlorides in the wastewater stream of residential occupancies is the use of water softeners. Anion exchange is the only chemical process capable of removing chloride from water. The physical processes of removing chloride, such as evaporation and reverse osmosis, would separate feedwater into two streams, one with a reduced chloride content and the other with an increased chloride content, and results in still having to treat and dispose of chloride contaminated wastewater.

Also under s. 160.255, Stats., private sewage systems are exempted from meeting the NR 140 nitrate standards by s. 160.255, Stats., because of this legislative direction, nitrate standards were not included as part of the rules under ch. Comm 83.

SECTION 1. Comm 2.52 (5) is repealed and recreated to read:

Comm 2.52 (5) PETITIONS FOR VARIANCE ON RULES UNDER CHS. Comm 81 TO 85, UNIFORM PLUMBING CODE. The fee per petition for processing petitions for variance to rules under chs. Comm 81 to 85 shall be $225.00.

SECTION 2. Comm 2.61 (3) is repealed and recreated to read:

Comm 2.61 (3) PRIORITY PLAN REVIEW. (a) A submitter of plans for plumbing or private onsite wastewater treatment systems may request and make an appointment with the department to facilitate the review of the plans on a priority basis.

(b) The fee for plan review on a priority basis shall be twice the rate as determined under Tables 2.64-1, 2.64-2 or 2.65.

(c) The scheduling of a plan review on a priority basis shall be contingent upon the department having sufficient time and staff to accommodate the request.

SECTION 3. Comm 2.63 is repealed.

SECTION 4. Comm 2.65 and Table 2.65 are repealed and recreated to read:

Comm 2.65 PRIVATE ONSITE WASTEWATER TREATMENT SYSTEMS. (1) GENERAL. The plan examination fee as determined under this section shall accompany the plans and specifications for the proposed design of a private onsite wastewater treatment system at a specific site. If the department determines, upon review of the plans, that inadequate fees were provided, the department will not make a final determination on the plans until the appropriate fees are received.

(2) EXAMINATION FEES. The plan examination fee for a private onsite wastewater treatment system submitted to the department for review shall be determined in accordance with Table 2.65, rounded to the nearest dollar.

Table 2.65
Plan Review
Private Onsite Wastewater Treatment Systems

Type of Project	Fee
1. All treatment components are previously approved under s. Comm 84.10 (2) or (3):	
Design wastewater flow of the proposed system:	
1,000 gpd or less	$175.00
1,001 - 2,000 gpd	$225.00
2,001 - 5,000 gpd	$275.00
greater than 5,000 gpd	$300.00 plus $0.05/g/d
2. One or more treatment components are not previously approved under s. Comm 84.10 (2) or (3):	
Design wastewater flow of the proposed system:	
1,000 gpd or less	$300.00
1,001 - 2,000 gpd	$400.00
2,001 - 5,000 gpd	$500.00
greater than 5,000 gpd	$600.00 plus $0.05/g/d
3. Holding tanks previously approved under s. Comm 84.10 (2) or (3):	
Design wastewater flow of the proposed system:	
5,000 gpd or less	$60.00
5,001 - 10,000 gpd	$100.00
greater than 10,000 gpd	$150.00
4. Holding tanks not previously approved under s. Comm 84.10 (2) or (3):	
Design wastewater flow of the proposed system:	
5,000 gpd or less	$120.00
5,001 - 10,000 gpd	$200.00
greater than 10,000 gpd	$300.00

(3) DATA REVIEW. The fee to review soil saturation monitoring studies or reports in accordance with s. Comm 85.60 (2) or (3) shall be $100.00 per site.

SECTION 5. Comm 2.66 Table 2.66 line 5 is amended to read:

Table 2.66
(partial table)

Product		Fee	
		Type of Review	
		New Review	Revision or Renewal
5.	Prefabricated ~~exterior grease interceptor, holding or septic tank~~ holding or treatment components for private onsite wastewater treatment systems	~~$100~~ $200	~~$50~~ $100

SECTION 6. Comm 2.66 (1) (d) 2. is amended to read:

Comm 2.66 (1) (d) 2. The fee for the request of a revision or renewal of an experimental approval to be issued by the department for a plumbing material or product shall be $250.00.

SECTION 7. Comm 2.66 (2) (a) is repealed and recreated to read:

Comm 2.66 (2) (a) The fee for the request to have a private onsite wastewater treatment system or site constructed private onsite wastewater treatment system component approved by the department, in accordance with s. Comm 84.10 (3), shall be $300.00 per system or site constructed component.

SECTION 8. Comm 2.67 (1) is renumbered 2.67 (1) (a) and amended to read:

Comm 2.67 (1) FEE. (a) ~~The~~ Pursuant to s. 145.19 (5), Stats., the fee for a sanitary permit ~~determined in accordance with s. 145.19, Stats.,~~ issued by a governmental unit shall be at least ~~$91.00~~ $116.00.

Note: The sanitary permit fee includes a $25.00 groundwater fee, required by s. 145.19 (6), Stats., that is forwarded by the department of commerce to the department of natural resources.

SECTION 9. Comm 2.67 (1) (b) is created to read:

Comm 2.67 (1) (b) The fee for a sanitary permit issued by the department under s. Comm 83.21 shall be $200.00.

SECTION 10. Comm 2.67 (2) is amended to read:

Comm 2.67 (2) PORTION FORWARDED TO THE DEPARTMENT. The governmental unit responsible for the regulation of private ~~sewage~~ onsite wastewater treatment systems shall forward to the department ~~$50.00~~ $75.00 of each sanitary permit fee, determined in accord with s. 145.19, Stats.

Note: The $75.00 includes the $25.00 groundwater fee, required by s. 145.19 (6), Stats., that is forwarded to the department of natural resources.

SECTION 11. Comm 5.02 Table 5.02 lines 18 to 65 are renumbered lines 19 to 66.

SECTION 12. Comm 5.02 Table 5.02 line 18 is created to read:

Table 5.02
FEES
(partial table)

	Credential Category	Type	Application Fee	Examination Fee	Credential Fee
18.	Mechanical POWTS Maintainer	Registration	$10	NA	$30

SECTION 13. Comm 5.06 Table 5.06 lines 18 to 65 are renumbered lines 19 to 66.

SECTION 14. Comm 5.06 Table 5.06 line 18 is created to read:

Table 5.06
CREDENTIAL EXPIRATIONS
(partial table)

	Credential Category	Term	Expiration Date	Continuing Education Cycle
18.	Mechanical POWTS Maintainer	2 years	Date of Issuance	3 Months Prior to Date of Issuance

SECTION 15. Comm 5.36 is created to created:

Comm 5.36 MECHANICAL POWTS MAINTAINERS. (1) GENERAL. Pursuant to s. Comm 83.53 (3) a person who holds a credential issued by the department as a registered mechanical POWTS maintainer may evaluate and monitor mechanical POWTS components for the purpose of providing the management of a POWTS under ch. Comm 83 subch. V.

(2) APPLICATION FOR CREDENTIAL. A person applying for a mechanical POWTS maintainer registration shall submit all of the following:

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

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

(c) Information or documentation relating to the qualifications under sub. (3).

(3) QUALIFICATIONS FOR CREDENTIAL. A person applying for a mechanical POWTS maintainer registration shall have completed or obtained at least one of the following:

(a) At least 6 hours in a course or courses approved under s. Comm 5.08 that relate to the theory, operation, maintenance and inspection of mechanical POWTS treatment and dispersal components, including instruction in at least all of following:

1. Sand filters.

2. Effluent pumps and switches.

3. Alarms and floats.

4. Active filtration devices.

5. Valves and solenoids for distributing effluent.

6. Aerobic treatment units.

(b) At least 60 hours of experience as a licensed master plumber, master plumber-restricted service, journeyman plumber or journeyman plumber-restricted service installing mechanical POWTS treatment and dispersal components.

(4) RENEWAL. (a) 1. A person may renew his or her registration as mechanical POWTS maintainer.

2. A mechanical POWTS maintainer registration shall be renewed in accordance with s. Comm 5.07.

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

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

SECTION 16. Comm 20.07 (19m), (40t) and (59t) are created to read:

Comm 20.07 (19m) "Composting toilet system" means a method that collects, stores and converts by bacterial digestion nonliquid-carried human wastes or organic kitchen wastes, or both, into humus.

(40t) "Incinerating toilet" means a self-contained device for the treatment of nonliquid carried wastes that deposits the wastes directly into a combustion chamber, reduces the solid portion to ash and evaporates the liquid portion.

(59t) "Privy" means an enclosed nonportable toilet into which nonwater-carried human wastes are deposited to a subsurface storage chamber.

SECTION 17. Comm 20.09 (5) (b) 2 Note is repealed.

SECTION 18. Comm 20.09 (5) (b) 3 is created to read:

Comm 20.09 (5) (b) 3. Pursuant to s. 66.036, Stats., if the proposed construction requires connection to a private onsite wastewater treatment system, a Wisconsin uniform building permit may not be issued unless conformance with s. Comm 83.25 (2) has first been determined.

Note: See appendix for a reprint of s. Comm 83.25 (2).

SECTION 19. Comm 25.02 is created to read:

Comm 25.02 SANITATION FACILITIES AND DEVICES. The design, construction, installation and maintenance of sanitation facilities and devices such as composting toilets, incinerating toilets and privies to serve one- and 2-family dwellings shall comply with the requirements of ch. Comm 91.

SECTION 20. Appendix Comm 20.09 is created to read:

Section Comm 20.09 (5) (b) 1. refers to s. Comm 83.25 (2), which reads as follows:

Comm 83.25 (2) ISSUANCE OF BUILDING PERMITS. (a) General. Pursuant to s. 66.036, Stats., the issuance of building permits by a municipality for unsewered properties shall be in accordance with this subsection.

(b) New construction. A municipality may not issue a building permit to commence construction or installation of a structure that necessitates the use of a POWTS to serve the structure, unless:

1. The owner of the property possesses a sanitary permit for the installation of a POWTS in accordance with s. Comm 83.21; or

Note: Section Comm 83.21 outlines the procedures for the issuance of sanitary permits. Sections 145.135 and 145.19, Stats., mandate that no private sewage system may be installed unless the owner of the property holds a valid sanitary permit.

2. A POWTS of adequate capability and capacity to accommodate the wastewater flow and contaminant load already exists to serve the structure.

Note: See ss. Comm 83.02 and 83.03 concerning the application of current code requirements to existing POWTS.

(c) Construction affecting wastewater flow or contaminant load. 1. A municipality may not issue a building permit to commence construction of any addition or alteration to an existing structure when the proposed construction will modify the design wastewater flow or contaminant load, or both, to an existing POWTS, unless the owner of the property:

a. Possesses a sanitary permit to either modify the existing POWTS or construct a POWTS to accommodate the modification in wastewater flow or contaminant load, or both; or

b. Provides documentation to verify that the existing POWTS is sufficient to accommodate the modification in wastewater flow or contaminant load, or both.

2. For the purpose of this paragraph, a modification in wastewater flow or contaminant load shall be considered to occur:

a. For commercial facilities, public buildings, and places of employment, when there is a proposed change in occupancy of the structure; or the proposed modification affects either the type or number of plumbing appliances, fixtures or devices discharging to the system; and

b. For dwellings, when there is an increase or decrease in the number of bedrooms.

(d) Documentation of existing capabilities. Documentation to verify whether an existing POWTS can accommodate a modification in wastewater flow or contaminant load, or both, shall include at least one of the following:

1. A copy of the plan for the existing POWTS that delineates minimum and maximum performance capabilities and which has been previously approved by the department or the governmental unit.

2. Information on the performance capabilities for the existing POWTS that has been recognized through a product approval under ch. Comm 84.

3. A written investigative report prepared by an architect, engineer, designer of plumbing systems, designer of private sewage systems, master plumber, master plumber-restricted service or certified POWTS inspector analyzing the proposed modification and the performance capabilities of the existing POWTS.

(e) Setbacks. 1. A municipality may not issue a building permit for construction of any structure or addition to a structure on a site where there exists a POWTS, unless the proposed construction conforms to the applicable setback limitations under s. Comm 83.43 (9) (i).

2. The applicant for a building permit shall provide documentation to the municipality issuing the building permit showing the location and setback distances for the proposed construction relative to all of the following:

a. Existing POWTS treatment components.

b. Existing POWTS holding components.

c. Existing POWTS dispersal components.

Note: A municipality which issues building permits may delegate to the governmental unit responsible for issuing sanitary permits the determination of whether the proposed construction will affect or interfere with an existing POWTS relating to capability or location of the existing POWTS.

SECTION 21. Comm 50.06 (3) is created to read:

Comm 50.06 (3) ISSUANCE OF BUILDING PERMITS. Pursuant to s. 66.036, Stats., if the proposed construction requires connection to a private onsite wastewater treatment system, a local building permit may not be issued unless conformance with s. Comm 83.25 (2) has first been determined.

Note: See appendix for a reprint of s. Comm 83.25 (2).

SECTION 22. Comm 51.01 (19m) is created to read:

Comm 51.01 (19m) "Composting toilet system" means a method that collects, stores and converts by bacterial digestion nonliquid-carried human wastes or organic kitchen wastes, or both, into humus.

SECTION 23. Comm 51.01 (71p) is renumbered 51.01 (71t).

SECTION 24. Comm 51.01 (71p) is created to read:

Comm 51.01 (71p) "Incinerating toilet" means a self-contained device for the treatment of nonliquid carried wastes that deposits the wastes directly into a combustion chamber, reduces the solid portion to ash and evaporates the liquid portion.

SECTION 25. Comm 51.01 (103d) is created to read:

Comm 51.01 (103d) "Portable restroom" means a self-contained portable unit that includes fixtures, incorporating holding tank facilities, designed to receive human excrement.

SECTION 26. Comm 51.01 (103g) is repealed and recreated to read:

Comm 51.01 (103g) "Privy" means an enclosed nonportable toilet into which nonwater-carried human wastes are deposited to a subsurface storage chamber.

SECTION 27. Comm 52.60 (1) (a) (intro.) is amended to read:

Comm 52.60 (1) (a) Expect as ~~permitted in par. (b)~~ provided in pars. (b) and (c), all water closets required to be provided in public buildings and places of employment shall:

SECTION 28. Comm 52.60 (1) (c) is created to read:

Comm 52.60 (1) (c) A composting toilet system complying with s. Comm 91.10 or an incinerating toilet complying with s. Comm 91.11 may be substituted for any water closet.

SECTION 29. Comm 52.61 is repealed and recreated to read:

Comm 52.61 PROTECTION FROM FREEZING. All portions of plumbing water supply systems shall be protected against freezing in accordance with s. Comm 82.40 (8) (a).

SECTION 30. Comm 52.62 (1) (a) and Note are repealed and recreated to read:

Comm 52.62 (1) (a) A private onsite wastewater treatment system, POWTS; or

Note: For detailed requirements on POWTS see ch. Comm 83.

SECTION 31. Comm 52.62 (1) (b) is amended to read:

Comm 52.62 (1) (b) Where the local conditions or situations make it impractical to install ~~such~~ a ~~system~~ POWTS, permanent or portable outdoor toilets, as described in s. Comm 52.63, or other ~~facilities~~ sanitation systems or devices, ~~such~~ as ~~septic toilets installed in accordance with the provisions of the state plumbing code, chs. Comm 82 to 87~~ described in ch. Comm 91, may be used; provided that in the case of places of employment for more than 10 persons, schools larger than 2 rooms, and apartment houses, water-flush toilets as herein described shall be provided, unless outdoor toilets or other ~~facilities~~ sanitation systems or devices are permitted in writing by the department.

SECTION 32. Comm 52.63 is repealed and recreated to read:

Comm 52.63 PERMANENT AND PORTABLE OUTDOOR TOILETS. (1) PERMANENT OUTDOOR TOILETS. (a) Permanent outdoor toilets consisting of composting toilet systems, incinerating toilets, or privies shall comply with ss. Comm 52.50 to 52.59 and ch. Comm 91.

(b) A permanent outdoor toilet shall be provided with a suitable approach, such as a concrete, gravel or cinder walk.

(c) All windows, ventilators and other openings of permanent outdoor toilets shall be screened to prevent the entrance of flies, and all doors shall be self-closing.

Note: Chapter Comm 91 contains requirements for the design, construction, installation and maintenance of the storage chambers for privies.

(2) PORTABLE RESTROOMS. (a) No portable restroom may be erected or maintained within 50 feet of any well, 10 feet of the line of any street or public thoroughfare, unless vehicular traffic has been temporarily detoured while the portable restroom is in use, 5 feet of the property line between premises or 25 feet of a door, window or other outdoor openings of any building.

(b) A portable restroom shall be stabilized to prevent the unit from tipping over.

(c) A portable restroom shall be located with an approach such that access is unobstructed, and free of brush, debris and standing water.

(d) For specialty event centers without permanent sanitary fixtures in numbers as required under s. Comm 62.992 (2), portable restrooms may be used to meet the number required for the event, using capacity or seating capacity.

Note 1. Chapter Comm 91 contains requirements for the storage chamber of portable restrooms into which human waste is to be deposited.

Note 2. The servicing and disposal of the contents of portable restrooms is addressed under chs. NR 113 and 114.

SECTION 33. Comm A-50.06 (3) in the appendix is created to read:

Comm A-50.06 (3) ISSUANCE OF BUILDING PERMITS. Section Comm 50.06 (3) refers to s. Comm 83.25 (2), which reads as follows:

Comm 83.25 (2) ISSUANCE OF BUILDING PERMITS. (a) General. Pursuant to s. 66.036, Stats., the issuance of building permits by a municipality for unsewered properties shall be in accordance with this subsection.

(b) New construction. A municipality may not issue a building permit to commence construction or installation of a structure that necessitates the use of a POWTS to serve the structure, unless:

1. The owner of the property possesses a sanitary permit for the installation of a POWTS in accordance with s. Comm 83.21; or

Note: Section Comm 83.21 outlines the procedures for the issuance of sanitary permits. Sections 145.135 and 145.19, Stats., mandate that no private sewage system may be installed unless the owner of the property holds a valid sanitary permit.

2. A POWTS of adequate capability and capacity to accommodate the wastewater flow and contaminant load already exists to serve the structure.

Note: See ss. Comm 83.02 and 83.03 concerning the application of current code requirements to existing POWTS.

(c) Construction affecting wastewater flow or contaminant load. 1. A municipality may not issue a building permit to commence construction of any addition or alteration to an existing structure when the proposed construction will modify the design wastewater flow or contaminant load, or both, to an existing POWTS, unless the owner of the property:

a. Possesses a sanitary permit to either modify the existing POWTS or construct a POWTS to accommodate the modification in wastewater flow or contaminant load, or both; or

b. Provides documentation to verify that the existing POWTS is sufficient to accommodate the modification in wastewater flow or contaminant load, or both.

2. For the purpose of this paragraph, a modification in wastewater flow or contaminant load shall be considered to occur:

a. For commercial facilities, public buildings, and places of employment, when there is a proposed change in occupancy of the structure; or the proposed modification affects either the type or number of plumbing appliances, fixtures or devices discharging to the system; and

b. For dwellings, when there is an increase or decrease in the number of bedrooms.

(d) Documentation of existing capabilities. Documentation to verify whether an existing POWTS can accommodate a modification in wastewater flow or contaminant load, or both, shall include at least one of the following:

1. A copy of the plan for the existing POWTS that delineates minimum and maximum performance capabilities and which has been previously approved by the department or the governmental unit.

2. Information on the performance capabilities for the existing POWTS that has been recognized through a product approval under ch. Comm 84.

3. A written investigative report prepared by an architect, engineer, designer of plumbing systems, designer of private sewage systems, master plumber, master plumber-restricted service or certified POWTS inspector analyzing the proposed modification and the performance capabilities of the existing POWTS.

(e) Setbacks. 1. A municipality may not issue a building permit for construction of any structure or addition to a structure on a site where there exists a POWTS, unless the proposed construction conforms to the applicable setback limitations under s. Comm 83.43 (9) (i).

2. The applicant for a building permit shall provide documentation to the municipality issuing the building permit showing the location and setback distances for the proposed construction relative to all of the following:

a. Existing POWTS treatment components.

b. Existing POWTS holding components.

c. Existing POWTS dispersal components.

Note: A municipality which issues building permits may delegate to the governmental unit responsible for issuing sanitary permits the determination of whether the proposed construction will affect or interfere with an existing POWTS relating to capability or location of the existing POWTS.

SECTION 34. Comm 66.11 Note 2 is repealed.

SECTION 35. Comm 66.11 is renumbered 66.11 (1).

SECTION 36. Comm 66.11 (2) is created to read:

Comm 66.11 (2) Pursuant to s. 66.036, Stats., if the proposed construction requires connection to a private onsite wastewater treatment system, a Wisconsin uniform multifamily building permit may not be issued unless conformance with s. Comm 83.25 (2) has first been determined.

Note: See Appendix A for a reprint of s. Comm 83.25 (2).