

The Wisconsin Department of Commerce proposes an order to repeal Comm 20.07 (28v), Comm 20.07 (63m) and Comm 61.115; to renumber Comm 20.09 (4) (c); to renumber and amend Comm 20.09 (4) (b); to amend Comm 5.61 (1), Comm 5.63 (1) (b) 5., Comm 20.02 (2) (b) and Comm 61.04 (6); to repeal and recreate Comm 20.07 (65r), Comm 20.09 (4) (a) 1., Comm 20.10 (1) (c) 2., and Comm 21.125; and to create Comm 2.36, Comm 20.01 Note, Comm 20.02 (2) (e) and (f), Comm 20.07 (19r), Comm 20.07 (46m), Comm 20.07 (67m), Comm 20.085, Comm 20.09 (4) (b), Comm 21.126, ch. Comm 60 and Comm 61.03 (4) (b) 6., relating to erosion control, sediment control and storm water management for one- and 2-family dwellings and commercial buildings, and affecting small businesses.

ANALYSIS OF PROPOSED RULES

1. Statutes Interpreted.

Sections 101.02 (15) (h) to (j), 101.1205, 101.63 (1), and 101.653, Stats.

2. Statutory Authority.

Sections 101.02 (15) (h) to (j), 101.1205 and 101.653, Stats.

3. Related Statute or Rule.

Sections 59.693, 60.627, 61.354, 62.234, 281.16, 281.33, 283.33, Stats.
Chapters NR 151 and NR 216, Wis. Adm. Code

4. Explanation of Agency Authority.

Section 101.02 (15) (h) to (j), Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for public buildings and places of employment. Section 101.63 (1), Stats., grants the Department of Commerce general authority to establish construction standards for the construction of one- and 2-family dwellings.

Section 101.1205 (1), Stats., directs the department to establish statewide standards for erosion control for constructing public buildings and places of employment.

Section 101.653 (1), Stats., directs the department to establish standards for erosion control for constructing one- and 2-family dwellings. Section 101.653 (2), Stats., directs the department to promulgate rules regarding the administration of erosion control by municipalities.

5. Summary of Proposed Rules.

The Uniform Dwelling Code, chapters Comm 20-25, currently contains standards for the design and construction of one- and 2-family dwellings. The code includes provisions addressing erosion control during construction. The Commercial Building Code, chapters Comm 61-65, contains standards for the design and construction of commercial buildings that serve as public buildings or places of employment. Currently, this code has minimal provisions regarding erosion control and storm water management. The provisions reference Department of Natural Resources rules under chapter NR 216. Chapter Comm 2 contains the fees for various services and processes administered by the Department of Commerce.

The proposed rules consist of updating the Uniform Dwelling Code and the Commercial Building Code in order to reflect current standards under chapters NR 151 and 216. The following is a summary of the major changes being proposed. [The numbers in the brackets indicate where the change can be found in the proposed rules.]

1. Establishing a fee for processing notices of intent regarding the land disturbing construction activities involving one acre or more for commercial building sites. [Comm 2.36]
2. Clarifying that provisions relating to post-construction storm water management are minimum and the codes do not affect municipal authority to enact more stringent ordinances on the subject. [Comm 20.02 (2) (b) and Comm 60.01]
3. Acknowledging that municipalities may enforce more stringent erosion and sediment control provisions in order to comply with obligations under federal Environmental Protection Agency regulations or targeted standards of the Department of Natural Resources, or for commercial building sites when the provisions were preexisting prior to January 1, 1994. [Comm 20.02 (2) (e) and Comm 60.10]
4. Establishing a mandate to employ practices that address specific potential sources of soil or sediment deposition. [Comm 21.125 (2) and Comm 60.20 (2)]
5. Establishing performance standards for practices to address erosion and sediment control on sites where less than one acre of land disturbing construction activity is to occur and sites where one or more acres of land disturbing construction activity is to occur. [Comm 21.125 (3) and Comm 60.20 (3)]
6. Establishing monitoring and maintenance provisions for erosion and sediment control. [Comm 20.125 (5) and (6) and Comm 60.21 and 60.22]
7. Establishing storm water management provisions by referencing section NR 151.12. [Comm 21.126 and Comm 60.30]

6. Summary of, and Comparison with Existing or Proposed Federal Regulations.

Under the Federal Clean Water Act, the Environmental Protection Agency has established erosion and sediment control regulations, 40 CFR Parts 9, 122, 123 and 124, for land disturbing activities involving one or more acres at construction sites. The regulations establish a permitting process under the National Pollutant Discharge Elimination System, NPDES, that may be implemented by state jurisdictions. The regulations require the design, implementation and maintenance of best management practices to improve water quality by reducing pollutants in storm water runoff.

The Department of Natural Resources under chapter NR 216 implements the EPA permitting process mandate in Wisconsin. Under section NR 216.42 (4), the Department of Natural Resources recognizes commercial building construction falling under Department of Commerce rules as complying with the Wisconsin Pollutant Discharge Elimination System permitting. That recognition in turns helps to achieve the state's implementation of the EPA permitting process for construction site erosion control.

7. Comparison with Rules in Adjacent States.

The rules of all of the neighboring states, Illinois, Iowa, Michigan and Minnesota basically emulate the regulations of the federal Environmental Protection Agency with respect to permits and the implementation of best management practices for erosion and sediment control for land disturbing construction activities and post construction storm water management. In addition, Minnesota requires that the one-acre disturbed sites utilize some method to treat at least a ½ inch volume of the post-construction storm water runoff. Iowa has established a performance standard of 80 percent of sediment reduction in post construction storm water runoff.

In these states local municipalities have the ability to enact more stringent erosion and sediment control or storm water management provisions.

8. Summary of Factual Data and Analytical Methodologies.

In developing the proposed rules the Department reviewed the federal regulations under the Clean Water Act relating to the erosion and sediment control and storm water management, as well as the administrative rules of the Department of Natural Resources under chapters NR 151 and 216. The rules have been developed in consultation with the Department of Natural Resources.

The Department also utilizes advisory councils in analyzing and developing proposed revisions to the Uniform Dwelling Code and the Commercial Building Code. The councils involved in the review of the proposed rules were the Dwelling Code Council, the Multifamily Dwelling Code Council and the Commercial Building Code Council. These councils involve a variety of organizations whose memberships include many types of small businesses. The Department utilizes these councils to gather information on potential impacts in complying with the both the technical and administrative requirements of the codes. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in the Safety and Building Division.)

An economic impact report has not been required pursuant to s. 227.137, Stats.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The requirements relating to erosion and sediment control and storm water management under the Uniform Dwelling Code and the Commercial Building Code impact businesses of all sizes. The rules impact a variety of businesses, including small businesses, particularly those businesses that build one- and 2- family dwellings and commercial buildings or own commercial buildings when land disturbing construction activity occurs. The rules are intended to fulfill the statutory mandates under ss. 101.1205 and 101.653, Stats.

The potential compliance effects of the rules occur on two basic levels, administrative and technical. The rules dictate certain administrative procedural requirements that are to be followed in order to acquire various approvals. For the most part, the rules establish technical standards that are to be adhered to when building a dwelling or a commercial building in order to protect the waters of the state.

The Department believes that the proposed rules would have a minimal additional impact on small business in light of the following:

- The administrative requirements pertaining to the construction of dwellings are to be incorporated into existing application and approval procedures with no additional fees.
- Under current federal expectations and obligations, all businesses are to implement best management practices when undertaking land disturbing construction activities involving one acre or more.
- For commercial building sites where an acre or more of land disturbing construction activity is to occur, the Department will charge only \$25 for filing the necessary Notice of Intent.
- For sites where less than one acre of land disturbing construction activity is to occur in the construction of dwellings, the proposed rules reflect practices already required under the current code.
- For commercial building sites where less than one acre of land disturbing construction activity is to occur, the proposed rules are no more stringent than the current and proposed rules for the construction of dwellings.
- The rules include performance standards based on an average annual loss which will allow more options and flexibility for compliance over current prescriptive type rules that at times may result in work and practices exceeding the objectives of the rules.
- The Department will provide free access to analytical software that will minimize workload and economic impacts on the construction industry and building owners. The software will allow users to easily evaluate potential erosion soil loss and the efficacy of proposed erosion control practices. The software will be available via the internet and on computer disk.
- Compliance solutions describing the use and implementation of various control practices will be available through the Safety and Buildings Division's web site and in the code's appendix which is printed and distributed with the code.

Council Members and Representation

The proposed rules were developed with the assistance of the following Advisory Councils:

Commercial Building Code Council

Janet Harter, Fire Chiefs Association
Curt Hastings, Building Contractors
Joe Jameson, Municipalities/Building Inspectors
Joseph Jurkiewicz, Architects
David Keller, Building Owners
Steve Klessig, Associated Builders and Contractors
Terry Kennedy, Engineers
Dennis Krutz, Insurance Organizations
David Lind, Fire Inspectors Association
William Napier, State Facilities
Ed Ruckriegel, Madison Fire Department
Gary Ruhl, Tradesworkers and Craftworkers
Chris Rute, City of Milwaukee
Michael Shoys, Building Owners
Russ Spahn, Fire Chiefs Association
Fred Stier, Builders and Contractors

Multifamily Dwelling Code Council

Kraig Biefeld, Fire Service/Fire Department
Jeffery Brohmer, Fire Service
Emory Budzinski, Manufacturer/Supplier Wood Products
Beth Gonnering, Building Contractors/Developers
Edward Gray, Labor
Greta Hansen, Public
James Klett, Architects/Engineers/Developers
Michael Morey, Contractors/Developers
Dave Nitz, Building Inspectors
Richard Paur, Building Inspectors
Nicholas Rivecca, Manufacturer/Supplier Concrete
William Roehr, Labor
Korrine Schneider, Public
Kevin Wippurfurth, Drywall Distributors

Uniform Dwelling Code Council

- Allan Bachmann, Remodeling Contractor
- Jeffrey Bechard, Labor
- Ken Dentice, Building Inspector
- David Dolan-Wallace, Architect
- Dan Gorski, Contractor
- Robert Jakel, Public
- Steve Levine, Public
- Daniel Nowak, Building Inspector
- Frank Opatik, Housing Manufacturer
- Tom Palecek, Housing Manufacturer
- William Roehr, Labor
- Gary Ruhl, Labor
- Mary Schroeder, Contractor
- Kathleen Stadtherr, Building Inspector
- William Turner, Supplier
- John Vande Castle, Supplier
- Mike Wallace, Inspector
- Paul Welnak, Labor

SECTION 1. Comm 2.36 is created to read:

Comm 2.36 Erosion and sediment control. The filing fee for a notice of intent required under s. Comm 60.12 (1) shall be \$25.00.

SECTION 2. Comm 5.61 (1) is amended to read:

Comm 5.61 (1) GENERAL. A person who holds a certification issued by the department as a certified commercial building inspector may conduct inspections of public buildings and places of employment for the purpose of administering and enforcing chs. Comm ~~64~~ 60 to 65, 70 and 75 to 79.

Note: Pursuant to s. 101.14 (2), Stats., deputies of the department may perform fire prevention inspections of public buildings and places of employment without holding the certification as a certified commercial building inspector.

SECTION 3. Comm 5.63 (1) (b) 5. is amended to read:

Comm 5.63 (1) (b) 5. Certified soil erosion inspector may inspect one- and 2-family dwellings for the purpose of administering and enforcing s. Comm 21.125, and public buildings and places of employment for the purpose of administering and enforcing chapter Comm 60.

SECTION 4. Comm 20.01 Note is created to read:

Comm 20.01 Note: Other agencies may have regulations that affect the design, construction or placement of the dwelling and accessory structures or systems serving the dwelling. The regulations may necessitate additional administrative procedures or inspections for compliance.

SECTION 5. Comm 20.02 (2) (b) is amended to read:

Comm 20.02 (2) (b) This code shall not be construed to affect local requirements relating to land use, zoning, post-construction storm water management, fire districts, side, front and rear setback requirements, property line requirements or other similar requirements. This code shall not affect the right of municipalities to establish safety regulations for the protection of the public from hazards at the job site.

SECTION 6. Comm 20.02 (2) (e) and (f) are created to read:

Comm 20.02 (2) (e) Nothing in this chapter shall prevent a municipality from any of the following:

1. Implementing erosion and sediment control requirements that are more stringent than the standards of this chapter when directed by an order of the United States Environmental Protection Agency or by an administrative rule of the department of natural resources under s. NR 151.004.

2. Regulating erosion and sediment control for sites that are not under the scope of this chapter.

(f) This code shall not be construed to affect the authority of the Department of Natural Resources to enforce chapters 281 and 283, Stats., and administrative rules promulgated there under.

SECTION 7. Comm 20.07 (19r) is created to read:

Comm 20.07 (19r) “Control practice” means a method or device implemented to prevent or reduce erosion or the resulting deposition of soil or sediment.

SECTION 8. Comm 20.07 (28v) is repealed.

SECTION 9. Comm 20.07 (46m) is created to read:

Comm 20.07 (46m) “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit or trench dewatering, filling and grading activities.

SECTION 10. Comm 20.07 (63m) is repealed.

SECTION 11. Comm 20.07 (65r) is repealed and created to read:

Comm 20.07 (65r) “Stabilized” means the condition where vegetation is established or other practices are in place on exposed soil surfaces so as to reduce erosion.

SECTION 12. Comm 20.07 (67m) is created to read:

Comm 20.07 (67m) “Storm water management plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water, after the site has undergone stabilization, following completion of the construction activity.

SECTION 13. Comm 20.085 is created to read:

Comm 20.085 Notices of intent and termination. (1) NOTICE OF INTENT. (a) A notice of intent shall be filed by the owner or owner’s agent when land disturbing construction activity involves one or more acres.

(b) For the purposes of par. (a), the application for the UDC permit and the submission of plans under s. Comm 20.09 shall constitute the notice of intent process.

(c) The submittal of a notice of intent to the department for a construction site with one or more acres of land disturbing construction activity constitutes an application for coverage under a storm water construction site general permit issued by the Department of Natural Resources pursuant to s. 283.33, Stats., and ch. NR 216, which contains erosion control standards established by the Department of Commerce pursuant to s. 101.653, Stats.

Note: Although construction site notices of intent are submitted to the Department of Commerce, coverage under the Department Natural Resources' storm water construction site general permit is required by the United States Environmental Protection Agency in accordance with its delegation of Clean Water Act permit authority to the Department of Natural Resources.

Note: Department of Natural Resources rules under s. NR 216.42 (9) state: "Storm water discharges from construction sites of one- and two-family dwellings regulated by the department of commerce pursuant to s. 101.653, Stats., in a manner which is equivalent to the requirements of this subchapter as determined by the department in writing, shall be deemed to hold a WPDES permit issued pursuant to this subchapter." Sites deemed to hold a WPDES permit are subject to DNR enforcement for violations of permit conditions.

(2) NOTICE OF TERMINATION. (a) The owner or owner's agent shall submit a notice of termination in a format prescribed by the department for a site where a notice of intent is required under this section.

(b) The notice of termination shall be submitted when all of the following have occurred:

1. All land disturbing construction activities have ceased.
2. All disturbed areas have been stabilized. A disturbed area shall be considered stabilized by vegetation when a perennial cover has been established with a density of at least 70 percent.
3. All temporary erosion and sediment control practices have been removed.

SECTION 14. Comm 20.09 (4) (a) 1. is repealed and recreated to read:

Comm 20.09 (4) (a) 1. 'Site plan'. A site plan shall show all of the following:

- a. The location of the dwelling and any other buildings, wells, surface waters and dispersal systems on the site with respect to property lines and surface waters adjacent to the site.
- b. The areas of land disturbing construction activity and the location of all erosion and sediment control practices to be employed to comply with s. Comm 21.125.
- c. The pre-construction ground surface slope and direction of runoff flow within the proposed areas of land disturbance.

SECTION 15. Comm 20.09 (4) (b) and (c) are renumbered Comm 20.09 (4) (c) and (d) and Comm 20.09 (4) (c), as renumbered, is amended to read:

Comm 20.09 (4) (c) Data required. 1. All required plans submitted for approval be accompanied by sufficient data, calculations and information to determine if the dwelling will meet the requirements of this code.

2. The data and information for determining compliance with the energy conservation standards shall be submitted on forms provided by the department or other approved forms.

3. Except as required under s. Comm 21.33, a municipality exercising jurisdiction may not require plans or calculations to be stamped by an architect or engineer.

4. The name of the initial downstream receiving water of the state from the dwelling site shall be identified, regarding erosion and sediment control and storm water management.

SECTION 16. Comm 20.09 (4) (b) is created to read:

Comm 20.09 (4) (b) Storm water management plan. 1. A storm water management plan shall be prepared for a site where one or more acres of land disturbing construction activity is to occur.

2. The storm water management plan shall delineate and describe the post-construction storm water management practices to be employed to comply with s. Comm 21.126.

SECTION 17. Comm 20.10 (1) (c) 2. is repealed and recreated to read:

Comm 20.10 (1) (c) 2. 'Erosion and sediment control.' a. The time period allowed for compliance with the erosion and sediment control provisions under s. Comm 21.125 shall be determined based on the severity of the noncompliance in relation to soil loss or potential damage to the waters of the state.

b. Pursuant to s. 101.653 (7) (b), Stats., the department, a municipality or the designated registered UDC inspection agency may issue a special order directing an immediate cessation of construction work on other facets of the dwelling until compliance with the erosion and sediment control provisions under s. Comm 21.125 is attained. Construction work may resume once the erosion and sediment control compliance corrections are completed.

Note: Section 101.653 (7) (b) reads: "The department or a city, village, town or county may issue a special order directing the immediate cessation of work on a one- or 2-family dwelling until the necessary plan approval is obtained or until the site complies with the rules promulgated under sub. (2)."

SECTION 18. Comm 21.125 is repealed and recreated to read:

Comm 21.125 Erosion control and sediment control. (1) GENERAL. (a) Where land disturbing construction activity is to occur erosion and sediment control practices shall be employed, as necessary, and maintained to prevent or reduce the potential deposition of soil or sediment to all of the following:

1. The waters of the state.

2. Adjacent properties.

(b) Land disturbing construction activities, except those activities necessary to implement erosion or sediment control practices, may not begin until the sediment control practices are in place for each area to be disturbed in accordance with the approved plan.

(c) Erosion and sediment control practices shall be maintained until the disturbed areas are stabilized. A disturbed area shall be considered stabilized by vegetation when a perennial cover has been established with a density of at least 70 percent.

(d) Erosion and sediment control practices shall either be approved by the department or listed by the department of natural resources in accordance with the process under s. NR 151.32 (2).

Note: Listed practices can be found through the Safety and Buildings Division website at www.commerce.state.wi.us/SB or by contacting the Safety and Buildings Division at (608) 266-3151.

(2) MANDATED PRACTICES. Specific practices at each site where land disturbing construction activity is to occur shall be utilized to prevent or reduce all of the following:

- (a) The deposition of soil from being tracked onto streets by vehicles.
- (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
- (c) The discharge of sediment from disturbed areas into abutting waters of the state.
- (d) The discharge of sediment from drainage ways that flow off the site.
- (e) The discharge of sediment by dewatering activities.
- (f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

(3) CONTROL STANDARDS. Including the practices under sub. (2), additional erosion and sediment control practices shall be employed, as necessary, to accomplish one of the following:

- (a) A potential annual cumulative soil loss rate of not more than one of the following:
 - 1. Five tons per acre per year where sand, loamy sand, sandy loam, loam, sandy clay loam, clay loam, sandy clay, silty clay or clay textures are exposed.
 - 2. Seven and a half tons per acre per where silt, silty clay loam or silt loam textures are exposed.
- (b) A reduction of at least 80 percent of the potential sediment load in storm water runoff from the site on an average annual basis as compared with no sediment or erosion controls for the site when the land disturbing construction activity involves one or more acres.
- (c) A reduction of at least 40 percent of the potential sediment load in storm water runoff from the site on an average annual basis as compared with no sediment or erosion controls for the site where less than one acre of land disturbing construction activity is to occur.

Note: See appendix for further explanatory material regarding compliance solutions for 80 and 40 percent reductions.

(4) SOIL LOSS ANALYSIS. Potential soil loss shall be determined using an engineer analytical modeling acceptable to the department.

Note: The Revised Universal Soil Loss Equation II is an example of an acceptable model to determine soil loss.

(5) MONITORING. (a) The owner or owner's agent shall check the erosion and sediment control practices for maintenance needs at all the following intervals until the site is stabilized:

1. At least weekly.

2. Within 24 hours after a rainfall event of 0.5 inches or greater. A rainfall event shall be considered to be the total amount of rainfall recorded in any continuous 24 hour period.

3. At all intervals cited on the erosion and sediment control plan.

(b) The owner or owner's agent shall maintain a monitoring record when the land disturbing construction activity involves one or more acres.

(c) The monitoring record shall contain at least the following information:

1. The condition of the erosion and sediment control practices at the intervals specified under par. (a).

2. A description of the maintenance conducted to repair or replace erosion and sediment control practices.

(6) MAINTENANCE. (a) 1. Except as provided in subd. 3., off-site sediment deposition resulting from the failure of an erosion or sediment control practice shall be cleaned up by the end of the next day.

NOTE: Contact the Department of Natural Resources before attempting to clean up any sediment deposited or discharged into the waters of the state.

2. Except as provided in subd. 3., off-site soil deposition, resulting from construction activity, that creates a nuisance shall be cleaned up by the end of the work day.

3. A municipality may enact more stringent requirements regarding cleanup of soil or sediment deposition onto public ways.

(b) 1. Except as required in subd. 2., the owner or owner's agent shall complete repair or replacement of erosion and sediment control practices as necessary within 48 hours of an interval specified under sub. (5).

2. When the failure of erosion or sediment control practices results in an immediate threat of sediment entering public sewers or the waters of the state, procedures shall be implemented immediately to repair or replace the practices.

SECTION 19. Comm 21.126 is created to read:

Comm 21.126 Storm water management. Storm water management practices shall be employed in accordance with s. NR 151.12 and maintained when the land disturbing construction activity involves one or more acres.

Note: See appendix for further explanatory material.

SECTION 20. Chapter Comm 60 is created to read:

**CHAPTER Comm 60
EROSION CONTROL, SEDIMENT CONTROL
AND STORM WATER MANAGEMENT**

SUBCHAPTER I - INTRODUCTION

Comm 60.01 Purpose. The purpose of this chapter is to establish uniform standards and criteria for the design, installation and maintenance of erosion and sediment control practices at building construction sites and minimum performance standards for post construction storm water management on building sites under the authority of ch. 101, Stats., so as to protect the waters of the state.

Note: Other agencies may have regulations that may affect the site design and construction activities for a building. The regulations may necessitate additional administrative procedures or inspections for compliance with such regulations.

Comm 60.02 Scope. This chapter applies to all sites where land disturbing construction activities occur during the construction of buildings and structures serving as public buildings and places of employment.

Comm 60.03 Owners responsibility. The owner or owner's agent is responsible for complying with this chapter.

Comm 60.04 Definitions. In this chapter:

(1) "Control practice" means a method or device implemented to prevent or reduce erosion or the resulting deposition of soil or sediment.

(2) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(3) "Municipality" means any city, village, town or county in this state.

(4) "Owner" means any person or legal entity holding fee title, an easement or other interest in property that allows the person to undertake land disturbing construction activity.

(5) "Stabilized" means the condition where vegetation is established or other practices are in place on exposed soil surfaces so as to reduce erosion.

(6) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water, after the site has undergone stabilization, following completion of the construction activity.

(7) "Waters of the state" has the meaning given in s. 283.01 (20), Stats.

NOTE: Under s.283.01 (20), Stats., “waters of the state” means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

SUBCHAPTER II - ADMINISTRATION AND ENFORCEMENT

Comm 60.10 Governmental oversight. (1) MUNICIPAL ORDINANCES. Pursuant to s. 101.1205 (5m), Stats., a municipality may continue to administer and enforce a local ordinance related to erosion and sediment control at building sites where land disturbing construction activities are to occur if the ordinance meets all of the following conditions:

- (a) The ordinance standards are more stringent than the standards of this chapter.
- (b) The ordinance was in effect on January 1, 1994.

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

(a) Instituting administrative erosion and sediment control requirements such as plan review, permitting or inspecting and the associated fees to cover the costs of those requirements.

(b) Implementing erosion and sediment control requirements that are more stringent than the standards of this chapter when directed by an order of the United States Environmental Protection Agency or by an administrative rule of the department of natural resources under s. NR 151.004.

- (c) Regulating erosion and sediment control for sites that are not under the scope of this code.

NOTE: This code does not apply to buildings that are not public buildings, places of employment or buildings and projects exempted under s.101.05, Stats. For example: farm buildings, buildings on Indian reservations or buildings owned by the federal government are not buildings under the scope of this chapter. Erosion control and storm water management standards enacted by municipalities, the Department of Natural Resources or the U.S. Environmental Protection Agency may apply in these cases.

(3) DNR AUTHORITY. This code shall not be construed to affect the authority of the Department of Natural Resources to enforce chapters 281 and 283, Stats., and administrative rules promulgated there under.

Comm 60.11 Certified municipalities. Certified municipalities in conformance with s. Comm 61.60 may serve as the department’s agent for all notices referenced under s. Comm 60.12 and all inspections referenced under ss. Comm 60.14 and 60.15.

Comm 60.12 Required submittals. (1) NOTICE OF INTENT. (a) A notice of intent along with an erosion and sediment control plan summary in a format prescribed by the department shall be filed by the owner or owner’s agent when land disturbing construction activity involves one or more acres.

NOTE: Copies of the notice of intent form SBD-10376 are available from the Safety and Buildings Division at P.O. Box 7162, Madison, WI 53707-7162, or by telephone 608/266-3151 and 608/264-8777 (TTY), or at the Safety and Buildings’ web site at www.commerce.wi.gov/SB.

(b) The notice of intent shall be submitted at least 7 days prior to commencement of land disturbing construction activity unless a shorter time period is permitted by the department.

(c) A site specific erosion and sediment control plan and a storm water management plan shall be prepared and completed prior to submitting the notice of intent.

Note: Section Comm 2.36 states the amount of the fee remitted to the department when a notice of intent is filed.

(d) The submittal of a notice of intent to the department for a construction site with one or more acres of land disturbing construction activity constitutes an application for coverage under a storm water construction site general permit issued by the Department of Natural Resources pursuant to s. 283.33, Stats., and ch. NR 216, which contains erosion control standards established by the Department of Commerce pursuant to s. 101.1205, Stats.

Note: Although construction site notices of intent are submitted to the Department of Commerce, coverage under the Department Natural Resources' storm water construction site general permit is required by the United States Environmental Protection Agency in accordance with its delegation of Clean Water Act permit authority to the Department of Natural Resources.

Note: Department of Natural Resources rules under s. NR 216.42 (4) state: "Storm water discharges from construction sites for public buildings and buildings that are places of employment regulated by the department of commerce pursuant to s. 101.1205, Stats., in a manner which is equivalent to this subchapter shall be deemed to hold a WPDES permit issued pursuant to this subchapter." Sites deemed to hold a WPDES permit are subject to DNR enforcement for violations of permit conditions.

(2) NOTICE OF TERMINATION. (a) The owner or owner's agent shall submit a notice of termination in a format prescribed by the department for a site where a notice of intent is required under this section.

(b) The notice of termination shall be submitted when all of the following have occurred:

1. All land disturbing construction activities have ceased.
2. All disturbed areas have been stabilized. A disturbed area shall be considered stabilized by vegetation when a perennial cover has been established with a density of at least 70 percent.
3. All temporary erosion and sediment control practices have been removed.

Comm 60.13 Plans. (1) EROSION AND SEDIMENT CONTROL. (a) 1. An erosion and sediment control plan shall be prepared that delineate the practices to be employed for the site where land disturbing construction activity is to occur.

2. An erosion and sediment control plan shall be of sufficient detail so as to document compliance with s. Comm 60.20.

3. An erosion and sediment control plan shall show the areas of land disturbance and location of all control practices to be employed to comply with this chapter.

4. An erosion and sediment control plan shall show the pre-construction ground surface contour lines at intervals appropriate for conditions present within the proposed disturbed areas.

5. An erosion and sediment control plan shall identify the initial downstream receiving water of the state from the building site.

(b) 1. An erosion and sediment control plan and any revisions to the plan shall be maintained at the construction site for the duration of the land disturbing construction activities.

2. An erosion and sediment control plan and any revisions shall be made available to the department, municipality or delegated inspection agency providing the required inspections.

(2) STORM WATER MANAGEMENT. (a) A written storm water management plan shall be prepared for a site where one or more acres of land disturbing construction activity is to occur.

(b) The storm water management plan shall delineate and describe the post-construction storm water management practices to be employed to comply with s. NR 151.12.

Comm 60.14 Inspections. (1) A person certified in accordance with ch. Comm 5 as a soil erosion inspector or commercial building inspector shall conduct all inspections performed for the purpose of administering and enforcing the erosion and sediment control provisions under this chapter.

(2) The inspections of the erosion and sediment control practices under this chapter shall be conducted as required under s. Comm 61.41.

Comm 60.15 Violations and penalties. (1) **NOTICE OF NONCOMPLIANCE.** (a) *Notification.* Upon finding of noncompliance, the inspector administering and enforcing the erosion and sediment control provisions under this chapter shall notify the owner or owner's agent in writing of the violations to be corrected and the time period allowed for compliance.

(b) *Timing of orders.* Except as provided in par. (c), the time period allowed for compliance shall be determined based on the severity of the noncompliance in relation to the potential soil loss or damage to the waters of the state.

(c) *Stop work order.* 1. Pursuant to s. 101.1205, Stats., the department or a certified municipality may issue a special order directing an immediate cessation of construction work on other facets of the building until compliance with the erosion and sediment control provisions under this chapter is attained.

2. Construction work may resume once the erosion and sediment control compliance corrections have been completed.

(2) PENALTIES. Penalties for violations of this chapter shall be assessed in accordance with s. 101.02 (13), Stats.

Note: Section 101.02 (13), Stats., provides for fines of up to \$100 for each violation of rules promulgated under this section. Each day of continued violation may constitute a separate offense.

Note: For a site where one or more acres of land disturbing construction activity occurs, the Department of Natural Resources has the ability to inspect and pursue enforcement action under the issuance of the Wisconsin Pollutant Discharge Elimination System, WPDES, General Permit pursuant to chapter NR 216.

SUBCHAPTER III - EROSION AND SEDIMENT CONTROL

Comm 60.20 Erosion and sediment control. (1) GENERAL. (a) Where land disturbing construction activity is to occur erosion and sediment control practices shall be employed, as necessary, and maintained to prevent or reduce the potential deposition of soil or sediment to all of the following:

1. The waters of the state.
2. Adjacent properties.

(b) Land disturbing construction activities, except those activities necessary to implement erosion or sediment control practices, may not begin until the sediment control practices are in place for each area to be disturbed in accordance with the erosion and sediment control plan.

(c) Erosion and sediment control practices shall be maintained until the disturbed areas are stabilized. A disturbed area shall be considered stabilized when a perennial cover has been established with a density of at least 70 percent.

(d) Erosion and sediment control practices shall either be approved by the department or listed by the department of natural resources in accordance with the process under s. NR 151.32 (2).

Note: Listed practices can be found through the Safety and Buildings Division website at www.commerce.state.wi.us/SB or by contacting the Safety and Buildings Division at (608) 266-3151.

(2) MANDATED PRACTICES. Specific practices at each site where land disturbing construction activity is to occur shall be utilized to prevent or reduce all of the following:

- (a) The deposition of soil from being tracked onto streets by vehicles.
- (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
- (c) The discharge of sediment from disturbed areas into abutting waters of the state.
- (d) The discharge of sediment from drainage ways that flow off the site.
- (e) The discharge of sediment by dewatering activities.
- (f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

(3) CONTROL STANDARDS. Including the practices under sub. (2), additional erosion and sediment control practices shall be employed, as necessary, to accomplish one of the following:

- (a) A potential annual cumulative soil loss rate of not more than one of the following:
 1. Five tons per acre per year where sand, loamy sand, sandy loam, loam, sandy clay loam, clay loam, sandy clay, silty clay or clay textures are exposed.
 2. Seven and a half tons per acre per where silt, silty clay loam or silt loam textures are exposed.

(b) A reduction of at least 80 percent of the potential sediment load in storm water runoff from the site on an average annual basis as compared with no sediment or erosion controls for the site when the land disturbing construction activity involves one or more acres.

(c) A reduction of at least 40 percent of the potential sediment load in storm water runoff from the site on an average annual basis as compared with no sediment or erosion controls for the site where less than one acre of land disturbing construction activity is to occur.

Note: See appendix for further explanatory material regarding compliance solutions for 80 and 40 percent reductions.

(4) SOIL LOSS ANALYSIS. Potential soil loss shall be determined using an engineer analytical modeling acceptable to the department.

Note: The Revised Universal Soil Loss Equation II is an example of an acceptable method to determine soil loss.

Comm 60.21 Monitoring. (1) The owner or owner's agent shall check the erosion and sediment control practices for maintenance needs at all the following intervals until the site is stabilized:

(a) At least weekly.

(b) Within 24 hours after a rainfall event of 0.5 inches or greater. A rainfall event shall be considered to be the total amount of rainfall recorded in any continuous 24 hour period.

(c) At all intervals that are cited on the erosion and sediment control plan.

(2) (a) The owner or owner's agent shall maintain a monitoring record when the land disturbing construction activity involves one or more acres.

(b) The monitoring record under par. (a) shall contain at least the following information:

1. The condition of the erosion and sediment control practices at the intervals specified under sub. (1).

2. A description of the maintenance conducted to repair or replace erosion and sediment control practices.

Comm 60.22 Maintenance. (1) (a) Except as provided in par. (c), off-site sediment deposition resulting from the failure of an erosion or sediment control practice shall be cleaned up by the end of the next day.

NOTE: Contact the Department of Natural Resources before attempting to clean up any sediment deposited or discharged into the waters of the state.

(b) Except as provided in par. (c), off-site soil deposition, resulting from construction activity, that creates a nuisance shall be cleaned up by the end of the work day.

(c) A municipality may enact more stringent requirements regarding cleanup of soil or sediment deposition onto public ways.

(2) (a) Except as required in par. (b), the owner or owner's agent shall complete repair or replacement of erosion and sediment control practices or devices as necessary within 48 hours of an interval specified under s. Comm 60.21.

(b) When the failure of erosion or sediment control practices results in an immediate threat of sediment entering public sewers or the waters of the state, procedures shall be implemented immediately to repair or replace the practices.

SUBCHAPTER IV - STORM WATER MANAGEMENT

Comm 60.30 Storm water management. Storm water management practices shall be employed in accordance with s. NR 151.12 and maintained when the land disturbing construction activity involves one or more acres.

Note: See appendix for further explanatory material.

SECTION 21. Comm 61.03 (4) (b) 6 is created to read:

Comm 61.03 (4) (b) 6. Pursuant to 101.1205 (1), Stats., a county, city, village or town may not enact and enforce additional or more restrictive standards for erosion control or sediment control, except as provided under s. 101.1205 (5m) and s. Comm 60.10 (2).

SECTION 22. Comm 61.04 (6) is amended to read:

Comm 61.04 (6) "This code" means chs. Comm ~~64~~ 60 to 65, which is the Wisconsin Commercial Building Code.

SECTION 23. Comm 61.115 is repealed.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(b), Stats., these rules shall take effect on April 1, 2007.
