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Madison, Wisconsin 53707  
(608) 266-1018  
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**Jim Doyle, Governor**  
**Mary P. Burke, Secretary**

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 West Wilson Street  
Madison, Wisconsin 53703-3233

Dear Mr. Poulson:

**TRANSMITTAL OF WRITTEN NOTICE OF HEARING  
AND LEGISLATIVE COUNCIL REVIEW**

RULE NO.: Chapters Comm 2, Comm 20-21, Comm 60-61

RELATING TO: Erosion Control, Sediment Control and Storm Water Management for the  
Construction of Buildings

AGENCY UNIT RESPONSIBLE: Safety and Buildings Division

PUBLIC HEARING REQUIRED:  YES  NO

CONTACT PERSON: Lynita Docken TITLE: Program Manager

TELEPHONE: (608)785-9349 EMAIL: [ldocken@commerce.state.wi.us](mailto:ldocken@commerce.state.wi.us)

Pursuant to sections 227.14 (4m) and 227.17, Stats., agencies are required to transmit a written notice of submittal of proposed rules to the Legislative Council and a written notice of hearing to the Revisor of Statutes, for publication in the Administrative Register.

On the date on this letter the department is submitting proposed rules to the Legislative Council and is submitting the following material to you:

1. Notice of Public Hearing or 30-Day Notice of Proposed Rulemaking.
2. Fiscal Estimate.
3. Initial Regulatory Flexibility Analysis.
4. Draft of Proposed Rules.

Respectfully submitted,

Mary P. Burke  
Secretary

STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE

**NOTICE OF  
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that pursuant to ss.101.02 (15) (h) to (j), 101.1205, 101.63 (1) and 101.653 Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 2, 20, 21, 60 and 61 relating to erosion control, sediment control and storm water management for the construction of buildings.

The public hearing will be held as follows:

**Date and Time:**

Tuesday, January 18, 2006  
1:00 p.m.

**Location:**

Room 3B, Thompson Commerce Center  
201 West Washington Avenue  
Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until January 31, 2006 to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at [jquast@commerce.state.wi.us](mailto:jquast@commerce.state.wi.us).

This hearing is held in accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at [cdunn@commerce.state.wi.us](mailto:cdunn@commerce.state.wi.us).



State of Wisconsin \ Department of Commerce

# HEARING DRAFT of PROPOSED RULES

**Rule No.:** Chs. Comm 2, Comm 20- 21,  
Comm 60 and 61

**Relating to:** Erosion Control, Sediment  
Control and Storm Water  
Management for the  
Construction of Buildings

# INITIAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

RULE NO.: Chapters Comm 2, Comm 20-21, Comm 60-61

RELATING TO: Erosion Control, Sediment Control and Storm Water Management for the Construction of Buildings

1. Types of small businesses that will be affected by the rules.

Any small business that constructs a new building or alters an existing building where land disturbing activity is to occur during the construction will be affected by these rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

If the land disturbing construction activity involves one or more acres, the owner or the owner's agent is required to file a Notice of Intent with the department or an agent municipality certified by the department. In most cases erosion and soil control plans need to be prepared to indicate the type and location of the control practices to be utilized on the construction site. Also, if the land disturbing construction activity involves one or more acres, a post construction storm water management needs to be developed and implemented. When one or more acres are disturbed, a log needs to be maintained documenting the periodic monitoring and maintenance of the erosion and sediment control practices on the site.

Although these procedures are the legal responsibility of the owner, these are typically delegated to the general contractor undertaking the actual construction. These procedures are mandated under current rules as well as obligations mandated by the federal Environmental Protection Agency. These procedures are standard practice for many building projects.

3. Types of professional skills necessary for compliance with the rules.

Businesses involved with the construction of buildings will have to become familiar with erosion and sediment control and storm water management or will have to contract with someone who has the expertise.

4. Rules have a significant economic impact on small businesses.

No Rules not submitted to Small Business Regulatory Review Board

Yes Rules submitted to Small Business Regulatory Review Board

# NOTICE of ENVIRONMENTAL ASSESSMENT

## Department of Commerce

Rule No.: Chapters Comm 2, Comm 20-21, Comm 60-61

Relating to: Erosion Control, Sediment Control and Storm Water Management for the  
Construction of Buildings

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

James Quast  
Division of  
Department of Commerce  
P.O. Box  
Madison, Wisconsin 53701  
Telephone (608) 266-9292  
or TTY (608) 264-8777

Written comments will be accepted until January 31, 2006.

# **Environmental Assessment of Proposed Rules Chapters Comm 2, 20, 21, 60 and 61 Relating to Erosion and Sediment Control and Storm Water Management at Building Sites**

## **1. Introduction**

This is an Environmental Assessment (EA) under ch. Comm 1, Wis. Adm. Code. It is intended to be a concise, non-technical disclosure to the public of a proposed action's potential to significantly affect the human environment. It includes a discussion of reasonable alternatives and mitigation measures, if appropriate.

The purpose of this assessment is to inform the public of possible environmental impacts of a proposed action, and to help the Department assess the significance of those impacts in order to determine whether a proposed action will require the in-depth analysis of an Environmental Impact Statement (EIS).

## **2. Purpose and Need for Proposed Action**

Sections 101.1205 and 101.653 Stats., requires the Department of Commerce, in consultation with the Department of Natural Resources, to establish statewide standards for erosion and sediment control at building sites for public buildings, buildings that are places of employment (henceforth referred to collectively as commercial buildings) and one- and 2-family dwellings. The proposed action is intended to provide compliance with these statutory requirements.

## **3. Description of the Proposed Action**

The Department's proposed action revises the current erosion and sediment control rules under s. Comm 21.125 for construction sites of one- and 2-family dwellings and promulgates a new administrative code chapter, ch. Comm 60, *Erosion Control, Sediment Control and Storm Water Management* for commercial building sites. The rules establish standards for erosion and sediment control at all building construction sites and storm water management at building construction sites where one or more acres of land is disturbed. The proposed rules reflect the current standards under chapters NR 151 and 216, Wis. Adm. Code.

Municipalities may implement more stringent erosion and sediment control standards in order to comply with federal Environmental Protection Agency regulations or Department of Natural Resources targeted standards. Additionally, for commercial construction sites a municipality may continue to administer and enforce a local ordinance related to erosion as long as the ordinance is more stringent than ch. Comm 60 and the ordinance was in effect prior to January 1, 1994.

The performance standards for erosion and sediment control and storm water management are based upon the amount of land disturbing construction activity that is to occur. The performance standards for construction sites where one or more acres of land disturbing construction activity is to occur are higher than those sites disturbing less than one acre. Erosion and sediment control practices are to be employed and maintained until the disturbed areas are stabilized.

The owner of any commercial site where one or more acres will be disturbed must file a

Notice of Intent with the Department or Agent Municipality recognized by the Department prior to any kind of land disturbing construction activity. Erosion and sediment control plans and post construction storm management plans are also to be prepared for these sites.

#### **4. Primary Effects of the Proposed Action**

The proposed action is intended to minimize soil erosion and offsite deposition of eroded sediments from land disturbing activities associated with the construction of buildings. Minimizing these and pollutants carried by storm water runoff will have beneficial impacts on the environment, society, and economy by preventing adverse impacts on aquatic habitats, surface water quality, storm sewers, and public and private property. Minimizing erosion, sedimentation and pollution is more cost effective than allowing them to occur and then attempting remedial clean-up efforts.

The proposed rules would increase the protection of the environment from erosion and sedimentation from commercial construction sites by expanding the range of sites covered by the rules to include sites where less than one acre of area is disturbed. The current rules apply only to sites where at least one acre is disturbed.

The proposed rules will not have adverse impacts on the waters of the state, land resources, plants and animals, wilderness, scenic vistas, historical properties, auditory tranquillity, air quality, or energy use. The minor impacts on auditory tranquillity and visual aesthetics associated with installation of erosion and sediment control mechanisms and implementation of storm water management practices are not significant, especially in

comparison with the impacts of other construction activities.

#### **5. Secondary Effects of the Proposed Action**

##### ***5.1. Foreclosure of Future Options***

The promulgation of the proposed rules will not foreclose any future options.

##### ***5.2. Establishment of Precedents***

The proposed action does not establish any precedents.

##### ***5.3. Cumulative Impacts when Actions of the Type are Repeated***

The proposed action is a rulemaking action. The cumulative impacts of rulemaking should result in the improvement of Department's ability to effectively accomplish its statutory duties of protecting public health, safety, and the waters of the state.

##### ***5.4. Stimulation of Effects that are Later in Time or at a Distance***

The proposed action is not anticipated to stimulate any effects that are later in time or at a distance, except beneficial ones.

##### ***5.5. Conflicts with Official Plans of Public Agencies or with Policies of Governments at Any Level***

The proposed action is not in conflict with any official plans of public agencies or with policies of governments at any level.

##### ***5.6. Significant Controversy that may be or is Generated by the Proposed Action***

There are no known significant controversies generated by the proposed action.

## **6. Alternatives**

### **6.1. The No-Action Alternative**

Presently, s. Comm 61.115, Wis. Adm. Code, requires the landowner of a construction project for a commercial building to file a notice of intent for coverage under a Wisconsin Pollutant Discharge Elimination System General Permit if the area of disturbed land is one acre or more. Prior to filing a notice of intent, a site-specific erosion and sediment control plan and storm water management plan must be prepared in accordance with ss. NR 216.46 and 216.47, Wis. Adm. Code. Under those rules soil erosion control measures must be installed and maintained at the construction site until the site is stabilized and a notice of termination is filed with the Department of Commerce or the agent municipality.

Under the current rules, the Department has no requirements for commercial building sites where less than one acre of land is disturbed for construction. The majority of construction sites disturb less than one acre of land and are not subject to regulation under the current rules.

Maintaining the current rules would result in most commercial construction sites (i.e., those with less than one acres of disturbed soil) not being covered by state soil erosion control rules. This would allow significant adverse impacts on the environment to occur in many situations.

### **6.2. Plan Submittal to an Office of the Department of Commerce**

This alternative would require that all soil erosion control plans be submitted to an office

of the Department for approval. This alternative would provide a means for checking the adequacy of plans prior to land disturbing activities, but would impose significant costs on both the builders and the Department of Commerce due to the increased time and staffing requirements that would be required for submission and review of plans in this manner.

## **7. Evaluation of Alternative Actions when there are Unresolved Conflicts regarding the Use of Available Resources**

No unresolved conflicts regarding the use of available resources have been identified relative to the proposed action.

## **8. Preliminary Recommendation**

The primary impact of the proposed action on the human environment is to minimize soil erosion and offsite sedimentation associated with the construction of commercial buildings, resulting in the protection of the waters of the state. No potential adverse impacts on the human environment have been identified. The Department's preliminary finding is that an EIS is not required.

**FISCAL ESTIMATE**  
DOA-2048 (R06/99)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Chs. Comm 2, 20, 21, 60, 61  
Amendment No. if Applicable

**Subject** Erosion Control, Sediment Control and Storm Water Management for the Construction of Buildings

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

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

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

Decrease Costs

**Local:**  No local government costs

1.  Increase Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:

Towns  Villages  Cities

2.  Decrease Costs  
 Permissive  Mandatory

4.  Decrease Revenues  
 Permissive  Mandatory

Counties  Others \_\_\_\_\_

School Districts  WTCS Districts

**Fund Sources Affected**

GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

Based upon past data, it is anticipated that 600 Notices of Intent will be annually filed with the Department for the construction of commercial building where one or more acres of land disturbing activity will occur. This will result in a revenue increase of \$15,000 per year. This revenue will offset the development and maintenance of a web-based Notice form and filing process.

The proposed rules will not change the Department's administration and enforcement activities with respect to erosion and sediment control and storm water management. The administration and enforcement of the proposed rules are within the current capabilities of the Department with respect to staffing levels and resources.

Local municipalities may enforce the provisions of the Uniform Dwelling Code, chapters Comm 20-25, and the Commercial Building Code, chapters Comm 60-65, and have the ability and authority to offset enforcement costs by charging the appropriate fees.

The proposed rules will not have a significant fiscal effect on the private sector.

Long-Range Fiscal Implications  
None known or anticipated.

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

Authorized Signature/Telephone No.

Date

**FISCAL ESTIMATE WORKSHEET**  
 Detailed Estimate of Annual Fiscal Effect  
 DOA-2047(R06/99)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
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Subject

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

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

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ 15,000 _____	\$ _____

Agency/Prepared by: (Name & Phone No.)

Commerce/James Quast 266-9292

Authorized Signature/Telephone No.

Date