



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-081

AN ORDER to repeal Trans 401.02, 401.04 (1) (note) 5., (11) and (32), 401.06 (intro.), 401.07 (2) (f) and (3) (b) 1. and (c), 401.08 (intro.), (1) (b) and (2) (b) 8. and 401.10 (intro.) and (2) (intro.), (a) and (b); to renumber Trans 401.07 (2) (j) 5.; to renumber and amend Trans 401.03 (2), 401.04 (26), 401.06 (8), 401.07 (intro.) and (1), 401.09 (intro.) and (1) and 401.10 (2) (a) 1. to 3., (3) and (4) (c); to amend Trans 401.01 (1) and (2), 401.03 (1) (intro.), (a) and (b), 401.04 (1), (note) (intro.), 1., 3. and 4., (3), (5), (8), (9), (15) to (19), (21), (23) to (25), (27), (31), (35) and (36), 401.05 (1), (2) (intro.) and (5), 401.06 (1) to (4), (6) and (7), 401.07 (2) (intro.), (c), (i) (intro.) and 5. to 8. and (j) (intro.), 1. to 3. and 9. and (3) (title), (a), (b) (intro.), 2. and 3., 401.08 (1) (a), (c) to (h), (2) (a) 1. to 4., (b) (intro.) and 1. to 7., 11. (intro.), e. and g., 12. (intro.) and a. to c. and 14. and (3) (intro.), (a) and (b), 401.09 (title) and (2) (a) and (b), 401.10 (1), (4) (intro.), (b) and (d), (5) and (6) and 401.11; to repeal and recreate Trans 401.04 (7), (14) and (29), 401.06 (5), 401.07 (2) (g), 401.08 (2) (b) 9. and 401.10 (2) (title); and to create Trans 401.03 (1) (c), 401.04 (7m), (13m), (15m), (26), (35d), (35g) and (35m), 401.06 (8) (b), 401.07 (1m) and (3) (b) 4., 401.08 (1) (am) and (ar) and (3) (c), 401.10 (4) (ag), (am) and (c) 1., 3. and 4., (4m) and (4r), 401.105 (1m), 401.106, 401.107 and 401.12, relating to construction site erosion control and storm water management procedures for department actions.

Submitted by **DEPARTMENT OF TRANSPORTATION**

06-03-2002 RECEIVED BY LEGISLATIVE COUNCIL.

07-01-2002 REPORT SENT TO AGENCY.

RS:MCP

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☐

NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-081

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. The statutory cross-reference in s. Trans 401.03 (1) (c) should include "Stats.," after the citation.
- b. In s. Trans 401.04 (31), the defined term should be "Selected site." Also, the meaning of the added sentence to this subsection is unclear. Is the intent of the sentence to state: "'Selected site' does not include a site from which incidental sales of excavated material are made directly to consumers."?
- c. In s. Trans 401.04 (35m), the quotation marks around the word "minor" should be deleted.
- d. In s. Trans 401.07 (1j) (f), the reference "s. Trans 401.07 (1) (d) 2." should be replaced by a reference to "sub. (1) (d) 2."
- e. In SECTION 401, the text should begin with the notation "Trans 401.07 (2) (g)."
- f. In s. Trans 401.107 (1), the subunits should be shown as "(a)" and "(b)."
- g. The initial applicability provision should be reviewed carefully. It does not appear that the intent of the department is that the rule should apply only to the three types of actions specified. As drafted, the rule seems to suggest that. Typical initial applicability provisions state that a statute or rule first applies to actions that have been commenced at the time the rule takes effect, except for actions that have reached a certain point in the regulatory approval process. If this is the department's intent, the three items in the initial applicability would be restated in the

negative, to constitute an exception to the general rule of applicability. For example, the rule would not apply to an action for which a final environmental impact statement has been approved on the effective date of the chapter.

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

Sections Trans 401.105 (1) and 401.10 (4) appear to refer to newly created department forms. If so, the requirements of s. 227.14 (3), Stats., should be met.

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

a. In s. Trans 401.04 (7m) (a) and (b), does the phrase "unless the bid specifies that this chapter does not apply" mean that the parties simply can contract out of ch. Trans 401 and any regulation at all or does it mean that, in accordance with the note following par. (3), if the activity is not regulated by ch. Trans 401, it will be regulated by the Department of Natural Resources? This should be clarified.

b. In s. Trans 401.08 (1) (a), it appears the word "and" should be inserted before the phrase "to the department of transportation."

c. Section Trans 401.08 (1) (ar) presumably means that the department may hold a pre-construction conference if the events described in either subd. 1. or 2. occur. However, the phrasing of the paragraph could be read to mean that if either of the events in subd. 1. or 2. occur then a pre-construction conference could be held prior to 14 days after the prime contractor delivered or mailed the ECIP to the Department of Natural Resources.

d. In s. Trans 401.105, reference is made to both a prime contractor and a utility person in subs. (1) and (3). However, a utility person is not referred to in subs. (2), (4), and (5). Perhaps the utility person is not referred to in subs. (2) and (4) because of the creation of s. Trans 401.105 (1m) and the differences in these provisions regarding when corrective action should be taken. See also s. Trans 401.11 referring to the failure of a utility person to implement within the prescribed time period a corrective action ordered under s. Trans 401.105. The use of the term "utility person" in these provisions should be reviewed for consistent use.

e. Section Trans 401.106 (1g) is, at best, unclear. First, the subsection appears to be an applicability provision; thus, its title "delayed effective date" is inappropriate. Next, the provision seems to be saying, colloquially:

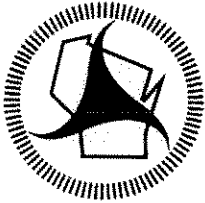
A number of activities are not regulated by this chapter but will be regulated in the future by the Department of Natural Resources (DNR), but until DNR actually regulates these activities, we will regulate the activities, but only if we want to.

The reader should be made aware, possibly through an appropriate cross-reference, of those transportation facility construction activities that are not otherwise subject to regulation under ch. Trans 401. Also, a note to this provision should be included that provides some explanation of why these activities are not now subject to rules administered by DNR and when

such regulation is anticipated. Finally, the rule should propose some standards under which ch. Trans 401 will be applied to activities that are otherwise not subject to ch. Trans 401.

f. In s. Trans 401.106 (3) (a), the use of the word "new" may be unclear. It is preferred drafting style to specifically describe the regulated activity by using a phrase such as: "For transportation facilities constructed or modified on or after the effective date of this section [revisor inserts date]." [See also, sub. (9) (c).]

g. Section Trans 401.106 (5) (d) 9. could be clarified. Presumably, an area which meets two of the characteristics described in subpars. a. to c., but does not meet the third characteristic, will be prohibited from meeting the requirements of sub. (5). However, the introduction to sub. (5) (d) 9. could be read to mean that the area must fail to meet all of the characteristics specified in subpars. a. to c. before the area is prohibited from meeting the requirements of sub. (5). The provision should be reviewed. Also, in subpar. c. presents a situation in which the soil medium within the infiltration system does not provide an equivalent level of protection. To what is the level of protection equivalent?



FEB 05 2001

Wisconsin Department of Transportation

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February 2, 2001

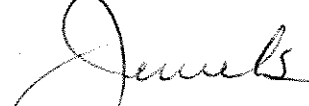
Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 401**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 401. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director
Senator Judy Robson, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Alice Morehouse
Mike Goetzman
Dan Scudder

STATEMENT OF SCOPE

DESCRIPTION OF THE OBJECTIVE OF THE RULE:

This rule making will amend ch. Trans 401 to: (1) to revise erosion and storm water management standards for transportation projects administered by WisDOT in order to avoid potential inconsistencies between Trans 401 and proposed NR 151; (2) clarify responsibility for erosion and storm water controls; (3) specify a process for implementing changes to erosion control plans required by weather or site conditions, and the permissible scope of those changes; and (4) modify performance standards for erosion control and storm water management practices to enhance state water quality.

DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:

Currently Trans 401, which was promulgated in 1994, establishes construction site erosion control and storm water management standards for WisDOT administered projects. Those standards are implemented through WisDOT's Facilities Development Manual and are incorporated into project specifications. DNR has proposed new rules that contain different and more extensive erosion control and storm water management standards for transportation facilities.

Amending Trans 401 will update the rule to reflect experience gained in implementing the rule, particularly in the area of storm water management. Additionally, with the cooperation of DNR, WisDOT wants to develop a workable, cost-effective transportation sector approach to erosion control and stormwater management standards. The goal is to harmonize Trans 401, the WisDOT/DNR Memorandum of Agreement, proposed NR 151 and existing NR 216. One benefit will be that contractors and others working on transportation construction projects will not be confused by inconsistent requirements in the rules of various agencies.

Alternatives are the following:

1. Do nothing. DNR is promulgating NR 151, which purports to apply erosion control and storm water management standards to transportation facilities. Proposed NR 151 contradicts provisions in Trans 401, which may cause uncertainty and confusion among contractors and state agency personnel as to the precedence and applicability of the conflicting rules.
2. Wait for a request to amend Trans 401. That request could come from DNR, contractors or local units of government after DNR promulgates NR 151. This alternative could eventually result in consistency between Trans 401 and NR 151. This approach would likely result in legal disputes between contractors, WisDOT and DNR as to the applicability of inconsistent rules. This approach

also delays a resolution of questions concerning best management practices required on transportation projects and costs involved.

3. Begin revising Trans 401 before NR 151 is promulgated in conflict with Trans 401. This alternative offers the opportunity to coordinate Trans 401 with NR 151 and to specify how Trans 401 and NR 151 will be implemented in the field. Amending Trans 401 concurrent with the promulgation of NR 151 will eliminate confusion regarding what erosion controls and storm water management activities are required of transportation facilities and construction projects.


STATUTORY AUTHORITY FOR THE RULE:

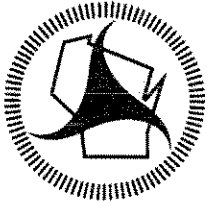
ss. 30.12(4), 85.075, 85.16(1), 85.19(1), 86.07(2), 114.31(7), and 227.11(2), Stats.

ESTIMATES OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

Approximately 1000 man hours, which represents Department staff time.

Signed at Madison, Wisconsin, this 1 day
of February, 2001.


TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

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The Honorable Judy Robson
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

June 3, 2002

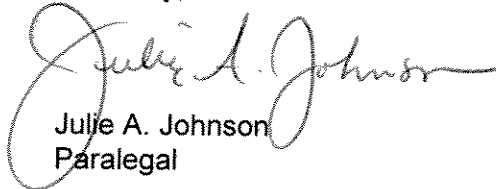
The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **construction site erosion control and storm water management procedures for department actions**, Trans 401

Dear Senator Robson and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

cc: Alice Morehouse
Mike Goetzman
Dan Scudder

The Wisconsin Department of Transportation proposes an order to repeal TRANS 401.02, 401.04(1)(note)5., (11) and (32), 401.06(intro.), 401.07(2)(f), (3)(b)1. and (c), 401.08(intro.), (1)(b), (2)(b)8., 401.10(intro.), (2)(intro.), (a) and (b); renumber TRANS 401.07(2)(j)5.; renumber and amend TRANS 401.03(2), 401.04(26), 401.06(8), 401.07(intro.) and (1), 401.09(intro.) and (1), 401.10(2)(a)1. to 3., (3) and (4)(c); amend TRANS 401.01(1) and (2), 401.03(1)(intro.), (a) and (b), 401.04(1), (1)(note)(intro.), 1., 3. and 4., (3), (5), (8), (9), (15) to (19), (21), (23) to (25), (27), (31), (35) and (36), 401.05(1), (2)(intro.) and (5), 401.06(1) to (4), (6) and (7), 401.07(2)(intro.), (c), (i)(intro.), (i)5. to 8., (j)(intro.), (j)1. to 3. and 9., (3)(title), (a), (b)(intro.), (b)2. and 3., 401.08(1)(a), (c) to (h), (2)(a)1. to 4., (b)(intro.), (b)1. to 7., 11.(intro.), 11.e. and g., 12.(intro.), 12.a. to c. and 14., (3)(intro.), (a) and (b), 401.09(title), (2)(a) and (b), 401.10(1), (4)(intro.), (4)(b) and (d), (5) and (6), 401.11; repeal and recreate TRANS 401.04(7), (14) and (29), 401.06(5), 401.07(2)(g), 401.08(2)(b)9., and 401.10(2)(title); and create TRANS 401.03(1)(c), 401.04(7m), (13m), (15m), (26), (35d), (35g) and (35m), 401.06(8)(b), 401.07(1m) and (3)(b)4., 401.08(1)(am), (ar) and (3)(c), 401.10(4)(ag) and (am), (c)1., 3. and 4., (4m) and (4r), 401.105(1m), 401.106, 401.107 and 401.12, relating to construction site erosion control and storm water management procedures for department actions

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats., and interpreting ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **12th** day of **July, 2002**, at **10:00 AM**, to consider the amendment of

chapter Trans 401, Wisconsin Administrative Code, relating to construction site erosion control and storm water management procedures for department actions.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business July 19, 2002, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Dan Scudder, Department of Transportation, Bureau of Environment, Room 451, P. O. Box 7965, Madison, WI 53707-7965.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats.

STATUTES INTERPRETED: ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats.

General Summary of Proposed Rule Currently, statutes require the department of transportation ("DOT") to establish standards for the control of soil erosion related to highway and bridge construction that is paid with state or federal funds. The statutes also exempt transportation facility projects directed and supervised by DOT (including highway, airport, harbor, and railroad projects) from numerous environmental prohibitions, and from permit or approval requirements administered by the department of natural resources ("DNR"), if DOT coordinates the exempted project with DNR through interdepartmental cooperation.

This revised chapter Trans 401 is an integral part of a series of administrative rules and interdepartmental cooperation coordinated with DNR to strengthen Wisconsin's nonpoint source water pollution abatement programs and related water regulations. The changes to Trans 401 are intended to protect the environment from nonpoint source

water pollution originating from transportation facility construction and operation at least as effectively as the nonpoint source water pollution abatement programs and related water regulations proposed by DNR (principally proposed NR 151). This coordination of rules is intended to provide equal protection to the environment by prescribing similar practices for transportation projects undertaken by the state under regulation of this Trans 401 and for transportation projects undertaken by local units of government under regulation of proposed NR 151.

This rule revises construction site erosion control and storm water management for transportation facility projects directed and supervised by DOT. The rule also creates new 'post-construction' performance standards for storm water management. More specifically, the rule (which applies only to projects directed and supervised by DOT) does all of the following:

1. Standardizes the use of devices and practices to control erosion and stormwater runoff ("best management practices" or "BMPs"). The rule accepts BMPs as tested and proven effective when applied to specified site conditions. The standards are the same as those required under proposed NR151, and may be amended only jointly with DNR. Exceptions to the standards require site-specific justification.
2. Maintains the existing scheme of erosion control plans and erosion control implementation plans. DOT prepares an erosion control plan for the project site as part of a project's design. The prime contractor supplements that plan with an erosion control implementation plan ("ECIP"), which reflects borrow sites, material disposal sites and construction methods chosen by the prime contractor. DOT reviews and approves the prime contractor's ECIP in consultation with DNR. The prime contractor implements the ECIP during construction, and DOT routinely inspects the project sites to verify the BMPs' effectiveness at protecting the environment. The prime contractor must take corrective action ordered by DOT and must amend an ECIP if the BMPs are ineffective.
3. Standardizes site inspections, site inspection reporting, and corrective action orders. The rule makes the site inspection process integral to preventing environmental harm by predicated liability for discharges of pollution upon the site inspections and corrective action orders. The rule formalizes communications between DOT and the prime contractor, and resolves minor inconsistencies between DOT's standard contract specifications and Trans 401. The rule details the process of ordering corrective action found during site inspections to be necessary, and the process of responding to such orders.
4. Clarifies liability for environmental harm caused by discharges of pollution from transportation facility projects. The rule specifies that the prime contractor is liable only if the prime contractor has failed to perform as required in the contract documents and if the failure was a substantial contributing factor in causing, failing to prevent, or worsening the discharge. Whenever the prime contractor has fully performed as required, or where any failure to perform was not a

substantial contributing factor, DOT will pay as a project expense all costs associated with the discharge.

5. Creates post-construction standards for stormwater management similar to those in proposed NR 151. These post-construction provisions include requirements to do all of the following: avoid building transportation facilities near surface waters and to provide vegetated buffer areas where such building is unavoidable; reduce peak stormwater discharge rates from transportation facilities, and the total suspended solids carried in such runoff; encourage infiltration of runoff from transportation facilities into groundwater; reduce the amount of petroleum carried within runoff from fueling and vehicle maintenance areas; and encourage the use of vegetated swales (a low tract of land adjacent to a transportation facility) for the conveyance runoff and the removal of pollutants from runoff.
6. Establishes deadlines and standards for reducing the total suspended solids in runoff from transportation facilities located in developed urban areas. The rule requires DOT to educate DOT staff and other maintenance officials regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.
7. Addresses utility facility projects undertaken within transportation rights-of-way. The rule harmonizes Trans 401 with DOT's utility accommodation policy and with the DOT-DNR interdepartmental liaison agreement.

Fiscal Effect. The Department estimates that there will be an annual fiscal impact on state liabilities of between \$4.4 and \$6.5 million. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. See the attached Fiscal Estimate and Fiscal Estimate Worksheet for a more detailed summary.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule. Copies of the rule may be obtained upon request, without cost, by writing to Dan Scudder, Department of Transportation, Bureau of Environment, Room 451, P. O. Box 7965, Madison, WI 53707-7965, or by calling (608) 267-3615. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02,

85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats., relating to construction site erosion control and storm water management procedures for department actions.

SECTION 1. Trans 401.01(1) and (2) are amended to read:

Trans 401.01(1) This chapter is promulgated under the authority of ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats.

(2) As specified in s. 30.12(4)(a) and (b), Stats., activities affecting waters of the state as defined in s. 144.01, Stats., that are carried out under the direction and supervision of the department in connection with highway and, bridge or other transportation project design, location, construction, reconstruction, maintenance and repair are not subject to the prohibitions or permit or approval requirements specified under ss. ~~29.29, 30.11, 30.12, 30.123, 30.195, 30.20, 59.971, 61.351, 62.231, 87.30 or ch. 144 or 147, Stats., unless 29.601, 30.11, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231 or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48, if the activity is not accomplished in accordance with interdepartmental liaison procedures established by the department of natural resources and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity.~~

SECTION 2. Trans 401.02 is repealed.

SECTION 3. Trans 401.03(1)(intro.), (a) and (b) are amended to read:

Trans 401.03(1)(intro.) This chapter shall ~~apply~~ applies to the following actions:

(a) Any action ~~administered~~ directed and supervised by the department that relates to an airport, railroad, highway or bridge or other transportation facility construction or maintenance project for which plans are developed and ~~which~~ that may cause a discharge to waters of the state, including selected sites.

(b) Any action by a person ~~which requires a permit from or the approval of the department and which~~ that relates to a utility facility project and that may cause a discharge to waters of the state. This chapter applies only to actions within the area described in a permit issued by the department of transportation. Actions outside the area of a permit issued by the department of transportation are subject to regulation by the department of natural resources.

SECTION 4. Trans 401.03(1)(c) is created to read:

Trans 401.03(1)(c) Construction or reconstruction of a highway designated under s. 86.32 as a connecting highway, or any improvement, as defined in s. 86.31(1)(b), Stats., of a connecting highway.

SECTION 5. Trans 401.03(2) is renumbered Trans 401.03(2)(a) and amended to read:

Trans 401.03(2)(a) ~~With the exception of the use of erosion control and storm water management measures as required under s. Trans 401.06(4),~~ Except as provided in par. (b), this chapter does not apply to an action administered directed and supervised by the department that is considered routine maintenance or that addresses an emergency, nor does it apply to an action not administered directed and supervised

by the department that involves the installation of a driveway by a person for residential use or agricultural use, as defined in s. 91.01(1), Stats.

SECTION 6. Trans 401.03(2)(b) is created to read:

Trans 401.03(2)(b) Routine maintenance activities shall employ best management practices described in s. Trans 401.06(1), but no other provisions of this chapter apply to routine maintenance.

NOTE: Actions administered directed and supervised by the department which that are regulated by and comply with this chapter and that are subject to the department's interdepartmental liaison cooperative agreement with the department of natural resources are deemed considered to be in compliance with s. 147.021 283.33, Stats., and the requirements of ch. NR 216.

SECTION 7. Trans 401.04(1), (1)(note)(intro.), 1., 3. and 4. are amended to read:

Trans 401.04(1) "Best management practices" or "BMPs" means structural or nonstructural measures which are temporary or permanent measures, methods, procedures and, practices, techniques or devices employed to avoid or minimize soil, sediment and pollutant movement, or to manage storm water runoff, onto or off a site, developed in consultation with the department of natural resources.

NOTE: Best management practices that are applicable under this chapter are identified in the The Wisconsin Department of Transportation specifications and manuals listed below identify best management practices that apply under this chapter. However, they are not all inclusive and others best management practices other than those listed may be applicable to any given situation.

1. Sections 107.18, 107.19, 107.20 and, 628 and 631 of the Standard Specifications for Road and Bridge Construction of the Wisconsin Department of Transportation. Copies of these sections may be obtained from the Wisconsin Department of Transportation, Office of Construction, P. O. Box 7916, Madison, Wisconsin 53707-7916.

3. Chapter Chapters 10 and 13 of the Facilities Development Manual of the Wisconsin Department of Transportation, Division of Highways Transportation Infrastructure Development. A copy of this chapter Copies of these chapters may be obtained from the Wisconsin Department of Transportation, Office of Design Division of Transportation Infrastructure Development, P. O. Box 7916 7965, Madison, Wisconsin 53707-7916 53707-7965.

4. Chapters 2 and 10 of the Highways Construction and Materials Manual of the Wisconsin Department of Transportation, Division of Highways Transportation Infrastructure Development. Copies of these chapters may be obtained from the Wisconsin Department of Transportation, Office of Construction Division of Transportation Infrastructure Development, P. O. Box 7916 7965, Madison, Wisconsin 53707-7916 53707-7965.

SECTION 8. Trans 401.04(1)(note)5. is repealed.

SECTION 9. Trans 401.04(3) and (5) are amended to read:

Trans 401.04(3) "Construction" or "maintenance" means, ~~but is not limited to,~~ includes clearing and grubbing, demolition, excavating, pit trench de-watering, filling or grading.

(5) "Corrective action" means ~~the changes necessary, in conformance with best management practices, to existing practices or structures because of the failure of those practices or structures to avoid or minimize a discharge, and action that is taken in response to a discharge, or to the threat of a discharge, to minimize or prevent the discharge.~~ "Corrective action" may include preventative maintenance of existing best management practices, or the implementation of, new or different erosion control and storm water management measures best management practices.

SECTION 10. Trans 401.04(7) is repealed and recreated to read:

Trans 401.04(7) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

SECTION 11. Trans 401.04(7m) is created to read:

Trans 401.04(7m) "Directed and supervised by the department" means any of the following:

(a) An activity undertaken under a bid let by the department, unless the bid specifies that this chapter does not apply.

(b) An activity undertaken under a contract to which the department is a party, unless the contract specifies that this chapter does not apply.

(c) An activity undertaken using funds awarded by the department under a grant agreement that specifies that the department is administering the project or that this chapter applies.

(d) The construction or maintenance of any highway or portion of a highway located on a federal-aid system, unless no state or federal funds are used, or unless all state and federal funds used are awarded under a grant agreement that does not specify that the department is directing and supervising, or administering, the project.

(e) Any federal-aid project on which the department is serving as the supervising agency.

NOTE: Activities not directed and supervised by the Department are subject to erosion control and stormwater management regulation by the Department of Natural Resources.

SECTION 12. Trans 401.04(8) and (9) are amended to read:

Trans 401.04(8) "Discharge" means the release movement of pollutants or sediments from a project site or selected site as a result of erosion or storm-water runoff.

(9) "Disturbed area" means an area on a project site or selected site where ~~construction or maintenance activity has or will take place resulting in the displacement of stable soils~~ land disturbing activity has occurred.

SECTION 13. Trans 401.04(11) is repealed.

SECTION 14. Trans 401.04(13m) is created to read:

Trans 401.04(13m) "Highway" has the meaning given in s. 340.01(22), Stats.

SECTION 15. Trans 401.04(14) is repealed and recreated to read:

Trans 401.04(14) "Infiltration system" means a device or practice that is designed specifically to encourage the entry and movement of surface water into or through underlying soil. "Infiltration system" does not include natural entry and movement of surface water into or through underlying soil in pervious areas such as lawns. "Infiltration system" does not include minimal entry and movement of surface water into or through underlying soil from practices such as swales or roadside channels that are designed for conveyance and pollutant removal only.

SECTION 16. Trans 401.04(15) is amended to read:

Trans 401.04(15) "Inspector" means an ~~employee~~ employee or authorized representative of the department assigned to make inspections of work or materials.

SECTION 17. Trans 401.04(15m) is created to read:

Trans 401.04(15m) "Land disturbing activity" means any manmade alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in increased runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, and filling and grading activities, but does not include routine maintenance. "Land disturbing activity" does not include activities, such as tree trimming or brush removal, that involve only the cutting or removing of vegetation above the ground by a utility person.

SECTION 18. Trans 401.04(16) to (19), (21) and (23) to (25) are amended to read:

Trans 401.04(16) "Material disposal site" means an area that is outside of a project site which, is used for the lawful disposal of surplus materials or materials unsuitable for use within the project site, and is under the direct control of the contractor. "Material disposal site" does not include a private landfill that is not managed by the contractor or a municipally owned landfill.

(17) "~~Permanent erosion control and storm water management measures~~ best management practices" means those best management practices employed ~~prior to, during and that are intended to remain in place after completion of construction or maintenance activity~~ final stabilization.

(18) "Person" means an individual, institution, business, corporation, limited liability company, partnership, association, joint venture, governmental subdivision or agency, or any other legal entity, except the term does not include the department, or its officers or ~~employees~~ employees acting in their official capacities.

(19) "Pollutant" has the meaning specified given in s. 447.015(13) 283.01(13), Stats.

(21) "Prime contractor" means a person authorized or awarded a contract to perform, ~~either directly or through the use of~~ using subcontractors, all the work of a project administered directed and supervised by the department.

(23) "Project diary" means a diary of a project's activities kept by a project engineer or inspector, including all inspection report forms and any erosion control inspection forms completed under s. Trans 401.10.

(24) "Project engineer" means an ~~employee~~ employee or authorized representative of the department who is in charge of the engineering details and the field administration of a project.

(25) "Project site" means the site area of a project on which land disturbing activity occurs, excluding borrow sites and material disposal sites.

SECTION 19. Trans 401.04(25m) is created to read:

Trans 401.04(25m) "Routine maintenance" means an activity that involves less than 5 acres of land disturbance and that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of an existing transportation facility.

SECTION 20. Trans 401.04(26) is renumbered Trans 401.04(35r) and amended to read:

Trans 401.04(35r) "Responsible Utility person" means the person having not employed by the department that has control over a utility facility project that ~~is not administered by the department.~~

SECTION 21. Trans 401.04(26) is created to read:

Trans 401.04(26) "Runoff" means storm water or precipitation, including rain, snow or ice melt, that moves on land surface via sheet or channelled flow.

SECTION 22. Trans 401.04(27) is amended to read:

Trans 401.04(27) "Runoff coefficient" means the fraction of total precipitation that will leave a project site or selected site as ~~storm water~~ runoff based on land use, soil and drainage characteristics.

SECTION 23. Trans 401.04(29) is repealed and recreated to read:

Trans 401.04(29) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

SECTION 24. Trans 401.04(31) is amended to read:

Trans 401.04(31) "Selected sites" means any borrow site or material disposal site used exclusively for projects administered directed and supervised by the department. Incidental sales of excavated material directly to consumers may not be considered under this subsection.

SECTION 25. Trans 401.04(32) is repealed.

SECTION 26. Trans 401.04(35) is amended to read:

Trans 401.04(35) "~~Temporary erosion control and storm water management measures~~ best management practices" means those best management practices employed during construction or maintenance activity that are not intended to remain in place after final stabilization.

SECTION 27. Trans 401.04(35d), (35g) and (35m) are created to read:

Trans 401.04(35d) "Time of concentration" means the time it takes for flow to reach the drainage basin outlet from the hydraulically most remote point in the drainage basin.

(35g) "Transportation facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095(1)(b), Stats.

(35m) "Utility facility project" means the portion of an activity that cannot proceed without a permit issued by the department, and that relates to a pipe, pipeline, duct, wire line, conduit, pole, tower, or other fixed equipment or structure used for the

transmission, conveyance or distribution of communications, electric power, light, heat, fuel, gas, oil, petroleum products, water, steam, fluids, sewerage, drainage, irrigation or similar facilities. A utility facility project is considered 'minor' if all excavated soils will be replaced the same day as the excavation or immediately the next day and for which the cumulative disturbed area is less than one acre. "Utility facility project" does not include maintenance activities for which the department requires no additional permit.

SECTION 28. Trans 401.04(36) is amended to read:

Trans 401.04(36) "Waters of the state" has the meaning specified given in s. 144.01(19) 283.01(20), Stats., but does not include groundwater.

SECTION 29. Trans 401.05(1), (2)(intro.) and (5) are amended to read:

Trans 401.05(1) Investigate the intended project site and design the project to avoid or minimize adverse effects which that may be caused by erosion or a discharge to waters of the state.

(2) ~~Design erosion control and storm water management measures or select~~ best management practices for the project to:

(5) Establish a thorough preventative maintenance program which that can be reasonably be implemented as appropriate within the context of the standard specifications for the type of project being developed or through the use of special contract provisions.

SECTION 30. Trans 401.06(intro.) is repealed.

SECTION 31. Trans 401.06(1) to (4) are amended to read:

Trans 401.06(1) GENERAL. ~~Erosion control and storm water management measures~~ Best management practices shall be employed to avoid or minimize soil,

sediment and pollutant movement, or to manage storm water runoff, onto or off a project site or selected site, including the avoidance or minimization of discharges to off-site areas, public sewer inlets and waters of the state. ~~Where an erosion control and storm water management measure fails to adequately perform as intended, other such measures may be employed by a prime contractor or responsible person with the written approval or at the direction of the project engineer or inspector.~~

(2)(title) ~~REMOVAL OF TEMPORARY EROSION CONTROL AND STORM WATER MANAGEMENT MEASURES~~ BEST MANAGEMENT PRACTICES. At the direction of the project engineer or inspector, or as required by the project's erosion control plan or erosion control implementation plan, ~~a~~ A prime contractor or responsible utility person, as appropriate, shall remove or cause the removal of all temporary ~~erosion control and storm water management measures~~ best management practices at a site when permanent ~~erosion control and storm water management measures~~ best management practices have been installed to the satisfaction of the project engineer or inspector or when the project engineer or inspector determines that temporary ~~erosion control and storm water management measures~~ best management practices are no longer required for the purpose intended as ~~determined by the project engineer or inspector~~ and orders their removal. The department shall ~~remove or cause to be removed all temporary best management practices at a project site or selected site when permanent best management practices have been installed, if the department has accepted the project as final before the temporary best management practices are removed.~~

(3) TRACKING. Soils tracked by construction or maintenance equipment from a project site or selected site onto a public or private paved roadway or sidewalk shall be minimized to the maximum extent practicable. ~~To this end, a temporary roadway consisting of at least gravel or a hard surface may be constructed if deemed necessary and appropriate by the project engineer or inspector.~~ Soils The contractor or utility person shall clean or remove soils tracked onto a public or private paved roadway or sidewalk shall be cleaned or otherwise removed by the contractor or responsible person, as appropriate, in a manner consistent with this chapter within 24 hours after the occurrence, or as within the period directed by the project engineer or inspector after such tracking, whichever period is shorter, to prevent sedimentation of the tracked soils into waters of the state.

(4) SEDIMENT CLEANUP AND REMOVAL. Off-site The contractor shall clean up or remove sediment deposition occurring discharged as a result of a discharge due to a storm event shall be cleaned up or otherwise removed by the contractor or responsible person in a manner consistent with this chapter and in a timely fashion as conditions allow at the direction of the project engineer or inspector. All The utility person shall clean up or remove sediment discharged because of a storm event in a manner consistent with this chapter and in a timely fashion as conditions allow at the direction of the department's authorized representative. The contractor or utility person shall clean up or remove other off-site sediment deposition occurring as a result of discharged by construction or maintenance activity shall be cleaned up or otherwise removed by the contractor or responsible person at the end of each work day. Costs

incurred under this subsection because of a storm event shall be borne as provided in s. Trans 401.12.

SECTION 32. Trans 401.06(5) is repealed and recreated to read:

Trans 401.06(5) PUBLIC SEWER INLET PROTECTION. The contractor or utility person, in accordance with best management practices, shall protect downslope, off-site public sewer inlets reasonably subject to a discharge and downslope, on-site public sewer inlets.

SECTION 33. Trans 401.06(6) and (7) are amended to read:

Trans 401.06(6) BUILDING MATERIAL AND OTHER WASTE DISPOSAL. All The contractor or utility person shall properly manage and dispose of building materials and other wastes shall be properly managed and disposed of by the contractor or responsible person, as appropriate, to prevent pollutants and debris from being carried off a site by wind or water runoff. No person shall may permit the discharge of any solid materials, including building materials, to be discharged in violation of chs. 30 and 31, Stats., or section 404 permit requirements. All The contractor or utility person shall dispose of building material and other solid wastes, including surplus materials from a project and materials not suitable for use on a project, shall be disposed of by the contractor or responsible person in accordance with all applicable federal, state and local laws, regulations, rules and ordinances relating to the disposal of solid wastes.

NOTE: For Contact the local fire department for directions on proper disposal of flammable, combustible, toxic materials and other hazardous substances, contact the local fire department.

(7) GROUNDWATER LIMITATIONS. When permanent infiltration systems are used, the department shall conduct appropriate on-site testing shall be conducted to determine if the seasonal high water groundwater elevation is within 5 feet of the

bottom of the proposed practice infiltration system. If permanent infiltration structures systems are to be used and there is a municipal well within 400 400 feet or a non-public well within 400 100 feet, the groundwater flow must be identified in accordance with the provisions specified in either ch. NR 110 or 214.

SECTION 34. Trans 401.06(8) is renumbered Trans 401.06(8)(a) and amended to read:

Trans 401.06(8)(title) PROHIBITED DISCHARGES DISCHARGE VELOCITY;
SITE DEWATERING. (a) Velocity The contractor or utility person shall place velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from a structure to a water course so that maintains and protects the natural physical and biological characteristics and functions are maintained and protected of the water course.

SECTION 35. Trans 401.06(8)(b) is created to read:

Trans 401.06(8)(b) No contractor or utility person may direct site dewatering effluent into waters of this state, unless the sediment in effluent has been reduced to the maximum extent practicable and the discharge does not create an erosion problem downstream prior to entering waters of the state, or unless the department of natural resources has approved the action.

SECTION 36. Trans 401.07(intro.) is renumbered Trans 401.07(1g) and amended to read:

Trans 401.07 Erosion control plan. (1g)(title) GENERAL RESPONSIBILITY.

(a) ~~In the case of a project administered by the department, the~~ The department shall

prepare the erosion control plan for a project site and, in the case of a project not administered directed and supervised by the department, a responsible.

(b) A utility person shall prepare the erosion control plan for the any utility facility project that is not considered a minor utility facility project, unless the department elects to prepare an erosion control plan for the utility facility project. An erosion control plan is not required for a minor utility facility project.

SECTION 37. Trans 401.07(1) is renumbered Trans 401.07(1j) and Trans 401.07(1j)(a) to (f), as renumbered, are amended to read:

(1j)(a) The erosion control plan shall be based on selected design storms and developed as part of a project's design. Temporary best management practices in the erosion control plan shall be based on at least a 2-year 24-hour design storm or a 2-year design storm with a duration equal to the time of concentration. Permanent best management practices in the erosion control plan shall be based on at least a 10-year 24-hour design storm or a 10-year design storm with a duration equal to the time of concentration.

NOTE: At a minimum, the 2-year, 24-hour rainfall design storm is used for the design of temporary erosion control and storm water management measures, and the 10-year, 24-hour rainfall design storm is used for the design of permanent erosion control and storm water management measures.

(b) The erosion control plan shall identify the best management practices to be employed prior to before, during and after the completion of construction or maintenance activity, including the best management practices that will be employed to prevent pollution caused by storm water discharge after completion of the project. The department's erosion control plan shall require the use of best management practices, alone or in combination as appropriate, that are specified in the standardized erosion

control reference matrix published under sub. (1m). The department may require the use of a best management practice not specified in the matrix only if all of the following apply:

1. The department determines through best professional judgment that those other best management practices will control erosion as effectively as the BMPs specified in the matrix published under sub. (1m).

2. The department specifies in writing the reason for selecting that other best management practice.

(c) The erosion control plan may be prepared in written or pictorial format, or both formats, as necessary and appropriate to convey the design, intent, use and placement of erosion control and storm water management measures best management practices.

(d)1. ~~In the case of a project administered by the department, when~~ For projects directed and supervised by the department, if the department of natural resources, acting through the interdepartmental liaison cooperative agreement procedures established by the department of natural resources and the department under s. 30.12(4), Stats., identifies areas or resources that require added safeguards, the erosion control plan shall include such those areas or resources and the specific added safeguards as determined in consultation with the department of natural resources. This subdivision applies to any utility facility project that the department determines will be completed in conjunction with or in advance of a transportation facility project that is directed and supervised by the department.

2. ~~In the case of a project not administered by the department, the responsible~~
For a utility facility project not described in subd. 1., the utility person shall consult with
the department of natural resources to identify any areas or resources that require
added safeguards. When the department of natural resources identifies areas or
resources that require added safeguards, the ~~erosion control plan~~ utility person shall
include ~~such in the erosion control plan those~~ areas or resources and the specific
added safeguards as determined in consultation with the department of natural
resources.

NOTE: Any activity involving a utility facility that does not require a permit issued by the department of transportation, and any action or area that is associated with a utility facility project but that is not authorized by a permit issued by the department of transportation, is subject to regulation by the department of natural resources.

(e) The erosion control plan may be developed as a separate project document
or in segmented form throughout the project's documents, including, but not limited to,
plans, special provisions, specifications and drawings.

(f) ~~In the case of~~ For a utility facility project that is not considered minor, not
~~administered by the department, the erosion control plan may not be implemented prior~~
~~to its written approval by the department. A responsible a utility person shall submit the~~
~~erosion control plan to the department for its approval along with its request for a permit~~
~~from or approval of the department for the project. The erosion control plan shall~~
~~include selected sites, if any. The department may not approve the erosion control plan~~
~~unless the utility person provides some evidence that it has consulted with the~~
~~department of natural resources as required under s. Trans 401.07(1)(d)2. No person~~
~~may implement an erosion control plan for a utility facility project, unless the department~~
~~has approved the erosion control plan in writing.~~

SECTION 38. Trans 401.07(1m) is created to read:

Trans 401.07(1m) **STANDARDIZED EROSION CONTROL REFERENCE MATRIX.** (a) The department of transportation, acting jointly with the department of natural resources, shall develop a standardized erosion control reference matrix that identifies best management practices that, when applied as specified in the matrix, meet the performance standards of this chapter, ch. NR 216 and ch. NR 151. The matrix shall address slope erosion and channel erosion and shall identify best management practices that prevent erosion, trap sediment, dissipate flow velocities, and direct the flow of runoff, and that minimize turbidity or silting of surface water caused by site erosion, discharge or runoff. The matrix may consider a variety of site conditions, including drainage area and slope distance. If the secretaries of both agencies, or their designees, recommend, in writing, the use of the matrix, the department of transportation shall publish the matrix in the facilities development manual. Once published, only the joint written statement of the secretaries of both agencies, or their designees, may amend the matrix.

(b) The department shall review the matrix published under par. (a) at least annually. In performing the review, the department shall consult with the department of natural resources, with an association representing a majority of county highway departments in this state, with a trade association representing transportation facility construction contractors who contract with this state, and with a trade association representing a majority of utility service providers in this state. In performing the review, the department shall consider the best management practices and site conditions described in the matrix, and each best management practice that was required in an

erosion control plan during the preceding 12 months that was not specified in the matrix. If upon completing its review the department determines that the matrix should be amended, it shall present its recommendations to the secretary of the department and to the secretary of natural resources.

SECTION 39. Trans 401.07(2)(intro.) and (c) are amended to read:

Trans 401.07(2)(intro.) **CONTENT.** The erosion control plan for a project site shall include, at a minimum, the following items:

(c) A description of the intended sequence of major land disturbing activities which disturb soils for major portions of the site.

SECTION 40. Trans 401.07(2)(f) is repealed.

SECTION 41. Trans 401.07(2)(g) is repealed and recreated to read:

(g) Wherever permanent infiltration devices will be employed, the depth to groundwater, as determined under s. Trans 401.06(7), and any existing data describing the surface soil and subsoil at the project site.

SECTION 42. Trans 401.07(2)(i)(intro.), (i)5. to 8., (j)(intro.) and (j)1. to 3. are amended to read:

Trans 401.07(2)(i)(intro.) A site map which that includes the following items:

5. Location of major structural and non-structural controls best management practices identified in the plan.

6. Location of areas where stabilization best management practices will be employed for stabilization.

7. Areas which that will be vegetated following construction or maintenance activities.

8. Wetlands Location, area and extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.

(j)(intro.) A description of appropriate erosion control and storm water management measures which best management practices that will be used or performed employed at the site to prevent sediments or pollutants reaching waters of the state. The plan shall clearly describe the appropriate erosion control and storm water management measures for each major activity identified and the timing during the construction or maintenance process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

1. Description of erosion control and storm water management measures, including a schedule for implementing them. Site plans shall ensure that The preservation of existing vegetation is preserved where attainable and that the stabilization of disturbed portions of the project site are stabilized.

2. Description of structural practices to divert flow away from exposed soils, to store flows or to otherwise limit runoff and discharges from the project site. Unless otherwise specifically approved in writing by the department, structural measures shall be installed on upland soils.

3. Management of overland flow at the project site, unless otherwise controlled by outfall controls.

SECTION 43. Trans 401.07(2)(j)5. is renumbered Trans 401.08(2)(a)2m.

SECTION 44. Trans 401.07(2)(j)9. and (3)(title), (a) and (b)(intro.) are amended to read:

Trans 401.07(2)(j)9. Proper disposal of building and waste material at the project site.

(3)(title) AMENDMENTS; UTILITY FACILITY PROJECTS. (a) ~~No amendments shall be made by a prime contractor or responsible utility person to~~ may amend an erosion control plan unless the amendment is approved in writing by the department.

(b)(intro.) Subject to the written approval of the department, the utility person shall amend the erosion control plan for a project site shall be amended whenever any of the following occurs:

SECTION 45. Trans 401.07(3)(b)1. is repealed.

SECTION 46. Trans 401.07(3)(b)2. and 3. are amended to read:

Trans 401.07(3)(b)2. There is a change in design, construction, operation or maintenance at the project site or selected site which that has the reasonable potential for a discharge to waters of the state and which that has not been ~~otherwise~~ addressed in the plan.

3. The ~~erosion control and storm water management measures~~ best management practices required by the plan fail to ~~reduce~~ avoid or minimize adverse impacts to waters of the state caused by a discharge.

SECTION 47. Trans 401.07(3)(b)4. is created to read:

Trans 401.07(3)(b)4. There is a change in a borrow site or material disposal site that the plan has not addressed.

SECTION 48. Trans 401.07(3)(c) is repealed.

SECTION 49. Trans 401.08(intro.) is repealed.

SECTION 50. Trans 401.08(1)(a) is amended to read:

Trans 401.08(1)(a) ~~An~~ The prime contractor shall prepare an ECIP for a project, shall be provided to provide the ECIP to the appropriate district office of the department of transportation, and shall either delivered deliver personally or mailed send the ECIP by registered or certified mail, return receipt requested, to the appropriate district environmental impact coordinator regional liaison of the department of natural resources by the prime contractor to the department of transportation, at least 14 days prior to before the pre-construction conference, or at a time otherwise and manner agreed upon by the department of transportation, department of natural resources and prime contractor.

SECTION 51. Trans 401.08(1)(am) and (ar) are created to read:

Trans 401.08(1)(am) The prime contractor shall select best management practices from the matrix published under s. Trans 401.07(1m)(a) when preparing an ECIP. The prime contractor may employ best management practices not specified in the matrix only if the department of transportation has specifically approved that use in writing. The department's approval of an ECIP does not constitute approval of the use of best management practices not specified in the matrix.

(ar) The department of transportation may not hold a pre-construction conference until at least 14 days after the prime contractor delivered or mailed the ECIP to the department of natural resources, unless either of the following occur:

1. The district director of the department of transportation has notified the regional director of the department of natural resources in writing that the department of transportation intends to hold the pre-construction conference.

2. The department of natural resources consents to the pre-construction conference. If the department of natural resources consents, the department of natural resources shall have 14 days after the pre-construction conference to review the ECIP and deliver written comments to the department of transportation and to the prime contractor. At the earliest practicable time after receiving such written comments, the department of transportation shall hold a conference with the prime contractor, the department of natural resources and any other affected parties to consider the department of natural resources' comments.

SECTION 52. Trans 401.08(1)(b) is repealed.

SECTION 53. Trans 401.08(1)(c) to (h), (2)(a)1. to 4., and (b)(intro.), (b)1. to 7. are amended to read:

Trans 401.08(1)(c) The prime contractor shall follow the ECIP shall be used by a prime contractor in developing and implementing erosion control and storm water management measures to implement the erosion control plan for a project and to implement best management practices for the project site and any selected sites, if any.

(d) The ECIP shall be prepared in a detailed, written and pictorial format which that identifies the schedule, timing and methodology for a prime contractor's implementation of the project's erosion control plan.

(e) The ECIP shall detail any changes to the project's erosion control plan as that are approved in writing by the department. The detailed changes in a department-approved ECIP supersede contradictory provisions of the erosion control plan.

(f) The ECIP shall include information on how and when erosion control and storm water management measures best management practices will be implemented in

anticipation of the sizes and locations of the disturbed areas on which land disturbing activity occurs, and shall address erosion control and storm water management measures best management practices for each stage of land disturbing activity at a project site or selected site.

(g) The ECIP shall ~~provide for~~ require the removal of temporary erosion control and storm water management measures best management practices in accordance with s. Trans 401.06(2).

(h) ~~The ECIP may not be implemented prior to~~ No person may implement an ECIP before its written approval by the department in consultation with the department of natural resources.

(2)(a)1. The name, address, telephone number, and principal contact of the contractor responsible for installation and maintenance of erosion control and storm water management measures best management practices at the project sites.

2. A description of the intended timetable and sequence of major land disturbing activities, such as grubbing, excavating or grading, which disturb soils for major portions at the sites.

3. A description of erosion control and storm water management measures, including best management practices and a schedule for implementing them at the project sites.

4. A description of any additions, amendments, deletions or modifications to the erosion control plan or to any of the contract documents which that pertain to erosion control and storm water management for the project sites.

(b)(intro.) The ECIP shall also include, at a minimum, a narrative and pictorial description of each of the selected sites, if any, the total area of each selected site and the area of each selected site that is expected to undergo excavation, and attendant erosion control and storm water management measures best management practices for the selected sites. If the combined area of all sites, including the project site, disturb the project site and all selected sites on which land disturbing activity is likely to occur is 5 or more acres, as determined by the department, the prime contractor shall include in the ECIP the following items for each of the selected sites shall be included in the ECIP:

1. If known, the name and mailing address of the selected site.
2. The quarter, quarter-quarter, section, township, range, and the county in which the selected site is located.
3. The name, address, telephone number, and principal contact of the contractor or other person responsible for installation and maintenance of erosion control and storm water management measures best management practices at the selected site.
4. A narrative description of the site and the nature of the activities to be performed at the selected site.
5. A description of the intended sequence of major land disturbing activities which disturb soils for major portions of the site.
6. An estimate of the total area of the selected site that is expected to be disturbed by construction activities.
7. Estimates, including calculations, if any, of the runoff coefficient of the selected site before and after completion of construction activities.

SECTION 54. Trans 401.08(2)(b)8. is repealed.

SECTION 55. Trans 401.08(2)(b)9. is repealed and recreated to read:

Trans 401.08(2)(b)9. Wherever permanent infiltration devices will be employed, the depth to groundwater, as determined by the department under s. Trans 401.06(7), and any existing data describing the surface soil and subsoil at the selected site.

SECTION 56. Trans 401.08(2)(b)11.(intro.), 11.e. and g., 12.(intro.), 12.a. to c., and 14., and (3)(intro.), (a) and (b) are amended to read:

Trans 401.08(2)(b)11.(intro.) A site map which that includes the following items:

e. Location of major structural and non-structural controls best management practices identified in the plan.

g. Areas which that will be vegetated following construction or maintenance activities.

12.(intro.) A description of appropriate erosion control and storm water management measures which best management practices that will be used or performed employed at the selected site to prevent sediments and pollutants from reaching waters of the state. The plan shall clearly describe the appropriate erosion control and storm water management measures best management practices for each major activity identified and the timing during the construction process that the measures will be implemented. The description of erosion controls best management practices shall include, when appropriate, the following minimum requirements:

a. Description of erosion control and storm water management measures permanent or temporary best management practices, including a schedule for implementing them. Site plans shall ensure that the preservation of existing vegetation

~~is preserved where attainable wherever practicable and that the stabilization of disturbed portions of the selected site are stabilized.~~

b. Description of structural practices to divert flow runoff away from exposed soils, to store flows or to otherwise limit runoff and the discharge of pollutants from the selected site. Unless otherwise specifically approved in writing by the department, structural measures shall be installed on upland soils.

c. Management of overland flow at the selected site, unless otherwise controlled by outfall controls.

14. A description of the procedures to maintain in good and effective operating condition, ~~vegetation, erosion control and storm water management measures~~ best management practices and other protective measures.

(3)(intro.) AMENDMENTS. Subject to the written approval of the department, a prime contractor shall amend the ECIP whenever the project engineer determines:

(a) There is a change in design, construction, operation or maintenance at a project site or selected site which that has the reasonable potential for a discharge to waters of the state and which that has not otherwise been addressed in the plan ECIP.

The department shall pay for changes under this paragraph that are necessitated by department action. The prime contractor shall pay for all other changes under this paragraph, unless the department agrees to pay for the change.

(b) The ~~erosion control and storm water management measures~~ best management practices required by the plan fail to reduce adverse impacts to waters of the state caused by a discharge. Subject to s. Trans 401.12, the department shall pay for changes under this paragraph.

SECTION 57. Trans 401.08(3)(c) is created to read:

Trans 401.08(3)(c) An amendment approved under this subsection supersedes any contradictory provisions of the erosion control plan.

SECTION 58. Trans 401.09(title) is amended to read:

Trans 401.09(title) Maintenance of erosion control and storm water management measures best management practices.

SECTION 59. Trans 401.09(intro.) and (1) are renumbered Trans 401.09(1g) and (1m) and amended to read:

Trans 401.09(1g) (title) GENERAL RESPONSIBILITY. A prime contractor or responsible utility person, as appropriate, shall be responsible for the implementation, installation and maintenance of erosion control and storm water management measures implement, install and maintain best management practices at a site.

(1)(m)(title) PRIOR TO BEFORE AND DURING CONSTRUCTION OR MAINTENANCE ACTIVITY. Prior to Before and during the period of construction or maintenance activity at a site, the prime contractor or responsible utility person shall implement, install and maintain, or cause to be performed, all erosion control and storm water management measures at the site, as best management practices required by the erosion control plan, the ECIP and the requirements of this chapter. The prime contractor or responsible utility person shall also implement any corrective action that is ordered as a result of an inspection under s. Trans 401.105. A responsible utility person shall notify the appropriate department representative at least 24 hours prior to before the installation of erosion control and storm water management measures at a project site. After the installation of permanent stabilization of disturbed areas is completed at a

site, the prime contractor or responsible person shall remove or cause the removal of all temporary erosion control and storm water management measures in accordance with s. Trans 401.06(2) best management practices.

SECTION 60. Trans 401.09(2)(a) and (b) are amended to read:

Trans 401.09(2)(a) In the case of a project administered by the department, when construction or maintenance activities are completed, the department shall make an inspection of the project site and of the selected sites, if any, to ensure that the permanent erosion control and storm water management measures are adequate and functioning properly. If the inspection of a site reveals that the erosion control and storm water management measures are not adequate or not functioning properly, the prime contractor, upon notification from the department or based on its own inspection and consultation with the department, shall promptly take the appropriate corrective action.

Where the prime contractor proposes corrective action based on its own inspection of a site, the prime contractor shall immediately request approval from the department for such corrective action. Upon the department's written acceptance of permanent erosion control and storm water management measures best management practices at a site, or upon the department's granting of partial acceptance for a portion of work, the prime contractor's responsibility to maintain those accepted measures best management practices, or that portion of work for which partial acceptance is granted, shall cease except for any responsibility for defective work or materials or for damages caused by its own operations.

(b) In the case of a utility facility project not administered by the department, a responsible utility person shall promptly notify the department upon completion of all

construction or maintenance activities and the installation of all permanent erosion control and storm water management measures best management practices at a project site. Within a reasonable time after such that notification by the responsible utility person, the department shall make an inspection of inspect the project site to ensure that the permanent erosion control and storm water management measures best management practices are adequate and functioning properly. If the inspection of the project site reveals that the erosion control and storm water management measures best management practices are not adequate or not functioning properly, the responsible utility person, upon notification from the department or based on its own inspection, shall promptly take the appropriate corrective action. Where the responsible utility person takes corrective action based on its own inspection of a project site, the responsible utility person shall immediately notify the department of such that corrective action.

NOTE: ~~The maintenance procedures and inspection sequences within Chapter 3, Wisconsin Construction Site Best Management Practices handbook, are not adopted as a part of this chapter. The handbook is available through Document Sales, 202 South Thornton Avenue, P. O. Box 7840, Madison, Wisconsin 53707-7840; phone (608) 266-3358.~~

SECTION 61. Trans 401.10(intro.) is repealed.

SECTION 62. Trans 401.10(1) is amended to read:

Trans 401.10(1) GENERAL. ~~Inspections shall be made by the~~ The project engineer or inspector to ~~shall inspect the project site and any selected site of a project~~ described in s. Trans 401.03(1)(a). A utility person shall, and the department's authorized representative may, inspect the site of a utility facility project. The inspection shall determine whether erosion control and storm water management measures best management practices for a project required by the erosion control plan, the ECIP and

other contract documents, as defined in s. Trans 401.12(1), are properly implemented, correctly installed, and adequate and properly functioning for the purposes intended, determine whether the best management practices for a project site or selected site are adequate for the purposes intended and for the site conditions, and to identify any corrective action that is necessary at a site. The project engineer or inspector shall invite the prime contractor, or his or her designee, to accompany the project engineer or inspector during inspections described in sub. (2) at least one hour before commencing the inspection. The project engineer or inspector is not required to wait more than one hour after such invitation, or past the time stated for the inspection, before commencing the inspection. A utility person shall allow a department representative to accompany the utility person during any inspection of a utility facility project. An inspector who inspects a site shall provide a copy of the completed inspection report form to the project engineer immediately following the inspection. Within 24 hours after completing an inspection, the person who performs the inspection shall deliver a copy of the completed inspection report to the appropriate department representative. Inspections shall continue at the frequency required in sub. (2) until the installation of permanent stabilization of disturbed areas is completed and the temporary erosion control and storm water management measures best management practices are removed by the prime contractor or responsible person as provided by s. Trans 401.06(2).

NOTE: Inspectors are encouraged to provide reasonable advance notice. One hour is the minimum required advance notice. More time may be appropriate to provide the prime contractor a real opportunity to accompany an inspector.

SECTION 63. Trans 401.10(2)(title) is repealed and recreated to read:

Trans 401.10(2) WHEN REQUIRED.

SECTION 64. Trans 401.10(2)(intro.) and (a) are repealed.

SECTION 65. Trans 401.10(2)(a)1., 2. and 3. are renumbered Trans 401.10(2)(intro.), (a) and (b) to (d), and are amended to read:

Trans 401.10(2)(intro.) At inspections shall be conducted at least once per week during the time construction or maintenance activity is being pursued on a project site or selected site, and at all of the following times:

(a) Within 24 hours after every precipitation event which that produces 0.5 inches of rain or more during a 24-hour period, or which that results in any discharge, to determine the appropriate corrective action, if any. The department of transportation shall notify the department of natural resources within 24 hours after learning of any known prohibited discharge from a project site or selected site into waters of the state.

(b) At each stage, as new portions of a project site or selected site are disturbed, when.

(c) Upon completing the installation of permanent stabilization of best management practices to stabilize disturbed areas is completed at a project site or selected site, and at.

(d) At the completion of the project. The inspection to be performed at the completion of the project shall be made prior to final payment to the prime contractor before the department provides the prime contractor with written notice of final acceptance of the project.

SECTION 66. Trans 401.10(2)(b) is repealed.

SECTION 67. Trans 401.10(3) is renumbered Trans 401.105 and amended to read: