

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
WA-22-08

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11(2)(a) and 289.05, 289.06, 289.07 and 299.11, Stats., interpreting s. 289.43, 289.91 and 299.11, Stats., the Department of Natural Resources will hold a public hearing on creation of ch. NR 528, Wis. Adm. Code, relating to the management of accumulated sediment from storm water management structures.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

February 11, 2009
Wednesday

Wausau Room at Marathon County Public Library at 11 a.m.
300 N. 1st St.
Wausau, WI 54403
[Parking is available in the JC Penney ramp, kitty-corner from library at the intersection of E. Washington and N. 1st Street]

February 12, 2009
Thursday

Room G09 State Natural Resources Building (GEF 2) at 11 a.m.
101 South Webster St.
Madison, WI 53707

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. WA-22-08.) Written comments on the proposed rule may be submitted via U.S. mail to Mr. Jack Connelly, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Johnston.Connelly@Wisconsin.gov. Comments may be submitted until February 20, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Jack Connelly, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267-7574.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. As the DNR's position of Small Business Regulatory Coordinator is currently vacant, if you have questions regarding the impact to small businesses you may contact Jack Connelly by E-mail at Johnston.Connelly@Wisconsin.gov or by phone at (608) 267-7574.

Related statute or rule:
None

Plain language analysis:

With an ever-increasing volume of sediment to be managed in the cleaning of storm water and sediment control structures, coupled with a need to maximize the effectiveness of reduced department staff resources, it is necessary to develop an innovative and proactive regulatory approach. This proposed rule would create a framework of self regulation for the management of sediment obtained when cleaning storm water sediment control structures. The proposed rule would place the department in an oversight role, thereby minimizing and targeting uses of scarce staff resources. Further, the proposed rule provides a reasonable, safe and consistent approach in managing end uses of accumulated sediment. The department has worked with a Technical Advisory Committee (TAC) to obtain input and advice from affected stakeholders.

Summary of, and comparison with, existing or proposed federal regulation:

There are no federal regulations pertaining explicitly to the management of sediment accumulated in storm water and sediment control structures. The sediment is generated as a consequence of compliance with the storm water discharge permit program of the federal Clean Water Act.

Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Adjacent states have not developed specific rules to address the material that accumulates in storm water management structures. However, they do have rules to address other dredge materials and they use those rules to answer questions about where to go with accumulated sediment in storm water ponds.

Iowa has a permit by rule approach to land application of any material. This is currently a catch-all for all material disposal and they are considering going to designating beneficial uses. Under the permit by rule approach, if the material meets a set of criteria they do not need a permit for disposal. The criteria include testing for petroleum content and following setback parameters similar to the Federal EPA 503 Biosolids Rule which establishes standards for the use and disposal of municipal sewage sludge. This approach is similar to Wisconsin's intent to have a rule that provides enough information for the user to self certify that they have used or disposed of the material properly. Iowa has found that the permit by rule approach results in very few contacts or questions from the public.

Minnesota also has a general management approach for dredged material that the accumulated sediment from storm water ponds would fall into. The state recognizes that it would be beneficial to customize the rules to address accumulated sediment from storm water. Similar to the rule proposed here, dredged material can be handled differently depending on the amount of sand in the material, how much material is being handled, what testing suggests about the contaminant levels and the potential disposal sites. For example, in Minnesota, no permit is needed for disposal of less than 3,000 cubic yards with 93% or more sands. The rule proposed here establishes a de minimus of 100 cubic yards for material with 85% or more sands. For all other sediment Minnesota requires an extensive sediment characterization of the pollutant levels in the material and this information determines the management options and whether the disposal qualifies for a general or individual permit. The general permit sets thresholds and criteria that if met, allows a streamlined permit process. The rule proposed here would not require a permit at all and the sediment manager would only contact the department if they were concerned about the results of the sediment characterization and had questions about what end use option to select. Minnesota also encourages consideration of use or reuse options rather than disposal in a landfill.

Michigan considers the material in storm water ponds and catch basin sumps to be process water once it comes time to clean it out. When the liquid portion is separated from the solid material it is covered under a set of rules that governs liquid industrial waste. In some cases it can be discharged to the sanitary sewer system, if approved by the local sewer authority, but other options are available. The solids are handled as a solid waste under a separate set of rules. Testing of certain parameters is required before disposing of the material although the most likely disposal is to a landfill. The transporter of the material has to meet applicable transporter requirements.

Illinois has limited guidance on what to do with sediment that accumulates in storm water ponds. If the contents are strictly storm water and there is no septic or sewage mixed in, then it can be disposed of anywhere in an upland location, but not in the floodway. No sampling or any other testing or evaluation is required. Storm water pond sediment is not considered a solid waste unless the agency is aware of, or notified that, a spill of some contaminant occurred in the drainage basin. Anyone removing sediment from a storm water pond will be cautioned that they must check with the Army Corps of Engineers if they are close to a waterway to see if a permit is required.

Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

There is an increasing number storm water and sediment control structures coming on-line as a result of more comprehensive storm water control requirements imposed by the USEPA's revisions to the storm water discharge permit program of the Clean Water Act. The department, in accord with its responsibilities as a delegated program, then promulgated revisions to ch. NR 216, effective August 1, 2004. To address the increase in both the number of structures and the volume of accumulated sediment, the department has developed a streamlined approach to sediment management featuring self-regulation. The department has identified stakeholders who will be affected by the proposed rule and formed a Technical Advisory Committee (TAC) comprised of representatives of these organizations and interests. The department has met with this TAC five times in 2007 and 2008 to obtain their input and advice in writing rule language for this streamlined approach to sediment management.

Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

The proposed rule for sediment management, ch. NR 528, is expected to reduce costs to small businesses. Currently, compliance with the department's existing rules, ch. NR 216, Wis. Adm. Code, is resulting in an increase in the number of storm water practices for small business. Routine maintenance of these sediment control structures generates accumulated sediment. Under existing solid waste rules, the NR 500 series, a person responsible for cleaning out a sedimentation pond may either transport the sediment to a licensed landfill or apply to the solid waste program for an exemption. By eliminating the need to apply for an exemption and removing the need for the department to approve the end use chosen by small business, the costs to small business will be reduced.

The proposed rule is also expected to reduce costs to small business by simplifying and clarifying the process and thereby providing known expectations for small business. Further, because the department's role is greatly reduced, costs owing to any delays that result from the current departmental review process for sediment management proposals is eliminated. Because of the proposed self regulation process, project timing would be completely under the control of the small business.

Likewise, because submittal of reports to the department is eliminated, costs normally associated with submitting these reports are eliminated. Instead, the self-certification process provides a logical flow through the sediment evaluation and management process and all data and records are maintained by the small business. Further, costs associated with sediment sampling and lab analysis are reduced under the proposed rule because the number of parameters is greatly reduced in most cases. Even when more analysis is warranted because indications of contamination are detected, it is likely that the simplified requirements in the proposed rule will still reduce sediment evaluation costs. Current department rules do not specify how the sediment must be characterized so staff can be inconsistent in what they require and in an effort to be prudent, often choose an extensive list of compounds for which to analyze. The proposed rule includes a specific list that is considerably shorter and thus reduces sampling costs.

Effect on Small Business:

The rule revisions will have a neutral to net positive effect on small businesses since they would otherwise have to comply with existing requirements. Under existing rules a sediment manager, when cleaning out a storm water management structure, must either take the sediment to a licensed landfill or apply with the Waste and Materials Management program for an exemption. This proposed rule would eliminate the requirement to apply for an exemption when the sediment manager determines that the sediment is clean enough to take to an end use site. Further, the proposed rule provides other end use options that will usually be less expensive than costs associated with the transportation distance to the licensed landfill and the tipping fees at the landfill.

Agency contact person:

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NOTICE IS HEREBY FURTHER GIVEN, pursuant to s. 227.17(3)(e), Stats., that the DNR has made a determination that the proposed rules have no fiscal effect on state government and the fiscal effect on local government and the private sector is indeterminate.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Jack Connelly in writing at DNR, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707; by E-mail to Johnston.Connelly@Wisconsin.gov ; or by calling (608) 267-7574 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary