

Report to
Legislative Council Rules Clearinghouse
NR 152, Wis. Adm. Code
Natural Resources Board Order No. WT-04-17

Wisconsin Statutory Authority

This permanent rule is required under s. 281.33(4), Wis. Stats., for the purposes of ensuring voluntary uniformity of local regulations for controlling urban runoff and to serve as a means of distributing these ordinances to local units of government.

Federal Authority

Federal regulations do not require states to create model ordinances for the regulation of construction site erosion control and post-construction storm water management. This rule revision is solely to fulfill a state statutory requirement to prepare the model ordinances by administrative rule.

Comparison of Adjacent States

Each of the neighboring states has some variation of construction site erosion control and/or post-construction storm water model ordinances in the form of guidance available to their local units of government. None of the neighboring states require their departments to develop construction site erosion control or post-construction storm water management model ordinances for local units of government by state statute. However, other states do require that the regulated community (Municipal Separate Sewer System Storm Water Permittees) develop a construction site runoff control ordinance to require proper soil erosion and sediment control.

- Illinois Department of Natural Resources developed "Model Stormwater Management Ordinance" (https://www.dnr.illinois.gov/WaterResources/Documents/IL_Model_Stormwater_Ordinance.pdf)
- The "Iowa Model Construction Site Erosion and Sediment Control Model Ordinance" was prepared by the Iowa Association of Municipal Utilities in coordination with the Iowa Stormwater Partnership and funded from a grant by the Iowa Department of Natural Resources (http://www.iowastormwater.org/documents/filelibrary/files/ordinances/EandSC_Model_Ordinance_User_Guide_4E908F51DA014.pdf)
- Minnesota Pollution Control Agency "Model Erosion and Sediment Control Ordinance" (<https://www.pca.state.mn.us/sites/default/files/wq-strm2-16b.pdf>).
- Michigan does not have a soil erosion and sediment control model ordinance, but has a low impact development storm water model ordinance developed and reviewed by environmental consultants in their "Low Impact Development Manual for Michigan"

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule addresses s. 281.33(4), Wis. Stats., whereas the Department is required to prepare model ordinances for construction site erosion and sediment control and for storm water management in the form of an administrative rule.

In 2002, the model ordinances were first promulgated as ch. NR 152, Wis. Adm. Code. Furthermore, under s. 281.16(2)(a), Wis. Stats., the Department is required to prescribe by rule the performance standards for nonpoint sources that are not agricultural facilities or agricultural practices. Also in 2002, these non-agricultural and transportation facility performance standards were promulgated in ch. NR 151, Wis. Adm. Code. Chapters NR 151 and 152, Wis. Adm. Code, are companion rules, such that ch. NR 152 contains the performance standards in ch. NR 151 applicable to construction site erosion control and post-construction storm water management. Revisions to update the performance standards in ch. NR 151, Wis. Adm. Code,

authorized under s. 281.16(2)(a), Wis. Stats., became effective January 2011.

The objective of the proposed rule is to update and revise ch. NR 152, Wis. Adm. Code, to incorporate the 2011 revisions to ch. NR 151, Wis. Adm. Code. The rule revision will update the previous model ordinances to incorporate the updated performance standards, remove obsolete language, and promote consistency with implementation of the performance standards. Additionally, a local unit of government that chooses to enact an ordinance utilizing the model ordinances will be in compliance with the uniform statewide standards established by the Department pursuant to s. 281.33(3)(a), Wis. Stats. Pursuant to s. 281.33(3)(d), Wis. Stats., the Department has deemed the performance standards of ch. NR 151, Wis. Adm. Code, as the uniform statewide standards.

Agency Procedures for Promulgation

A public hearing is required and will be held on January 16, 2018. Adoption by the Natural Resources Board will follow in January and then the governor will be asked to sign the rule, followed by legislative review

Description of any Forms (attach copies if available)

There are no forms associated with this rule.

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