

Report From Agency

REPORT TO LEGISLATURE

NR 152, Wis. Adm. Code

Board Order No. WT-04-17
Clearinghouse Rule No. 17-097

Basis and Purpose of the Proposed Rule

Section 281.33(4), Wis. Stats., directs the Department to prepare model ordinances for construction site erosion and sediment control, and for post-construction 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 reflects the ch. NR 151 performance standards applicable to construction site erosion and sediment 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 reflect the 2011 revisions to ch. NR 151, Wis. Adm. Code. The rule revision will update the previous model ordinances to reflect 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.

Summary of Public Comments

No public comments were received during the public comment period or public hearing.

Modifications Made

No public comments were received. The only modifications made to the rule were based on the Wisconsin Legislative Council Rules Clearinghouse Report.

Appearances at the Public Hearing

The department conducted a public hearing in Madison on January 16, 2018. No one from the general public appeared at the hearing.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis and fiscal estimate due to no comments received.

Response to Legislative Council Rules Clearinghouse Report

All clearinghouse comments were related to form, style, placement, punctuation, or language clarity and were incorporated into the rule as suggested.

Final Regulatory Flexibility Analysis

This proposed rule does not impact small businesses. The primary entities who will be directly affected by this proposed rule are local government units. The local government units may be impacted by the administrative costs incurred in developing or updating their local ordinances. These administrative costs would be incurred whether they choose to use these model ordinances as guidelines or not. This rule is to assist local governments in developing ordinances consistent with the existing NR 151 performance standards, which are already being implemented at a statewide level.

There may be a perception that the regulated community will be fiscally impacted by the rule if a local unit of government chooses to adopt the model ordinances, but any cost will be minimal as compliance with the performance standards are already in place at the state level. The model ordinances will benefit the development community by facilitating uniformity and consistency with the existing NR 151 performance standards where the local ordinances are enacted. The desire for uniformity is the explicit purpose of s. 281.33(4), Stats., directing the department to prepare the model ordinances by administrative rule. The economic impact of implementing this rule is expected to have minimal fiscal impact (if any).