

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WT-04-17

Relating to: The revision of ch. NR 152, Wis. Adm. Code, Model Ordinances for Construction Site Erosion Control and Post-Construction Storm Water Management

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

Under s. 281.33(4), Wis. Stats., the Department is required to prepare model zoning ordinances for construction site erosion 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.

Pursuant to s. 281.33(4), Wis. Stats., the Department will make the model ordinances available to local units of government to secure so far as practicable the voluntary uniformity of local regulation regarding construction site erosion and sediment control and storm water management. Use of either model ordinance by a local unit of government is voluntary. However, a local unit of government that uses the model ordinances will be assured that its local ordinances conform with the uniform statewide standards for construction site erosion and sediment control and post-construction storm water management since the standards are incorporated into the model ordinances in ch. NR 152, Wis. Adm. Code.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Pursuant to s. 281.33(4), Wis. Stats., the Department is required to prepare model zoning ordinances for construction site erosion control and storm water management in the form of an administrative rule. The current ch. NR 152, Wis. Adm. Code, includes two model ordinances. One is a model ordinance (“Chapter NR 152 Appendix A”) for construction site erosion control and the other is a model ordinance (“Chapter NR 152 Appendix B”) for post-construction storm water management. The two model ordinances were last revised in 2002, promulgated as ch. NR 152, Wis. Adm. Code.

This rule revision will incorporate the 2011 updates to ch. NR 151, Wis. Adm. Code. No new policies are being proposed by the rule. The model ordinances will solely reflect the existing policies established under ss. 281.16(2)(a) and 281.33(3), Wis. Stats.

One alternative would be to not update the rule. This may result in a local unit of government using an obsolete model ordinance without the most up-to-date performance standards, which would not serve the goal of uniformity and consistency in the development of local ordinances. Another alternative would be to provide the model ordinances as Department guidance rather than in a rule. The Department has already updated the model ordinances as guidance so that they are available to local units of government. However, this alternative alone is not in conformance with s. 281.33(4), Wis. Stats., which requires the Department to prepare the model ordinances via the rule-making process.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 281.33(4), Wis. Stats., directs the Department to prepare model ordinances for construction site erosion and storm water management in the form of an administrative rule.

s. 283.33(4): “MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall prepare a model zoning ordinance for construction site erosion control at sites described in sub. (3)(a)1.a. and b. and for storm water management in the form of an administrative rule. The model ordinance is subject to s. 227.19 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any city, village, town or county that submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

Approximately 120 hours or less of staff time will be spent to develop and promulgate the rule.

6. List with description of all entities that may be affected by the proposed rule :

This rule makes the model ordinances available to any local unit of government that chooses to utilize them. Local units of government are not required to use the model ordinances. However, if a local unit of government does use them, it will be assured that its local ordinances contain the uniform statewide standards established by the Department.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

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.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The economic impact of implementing this rule is expected to be minimal.

9. Anticipated number, month and locations of public hearings:

The Department will hold one public hearing in Madison summer of 2017.

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