

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 24, 2017
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3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)

Chapter NR 152, Wis. Adm. Code: Model Ordinances for Construction Site Erosion and Sediment Control and Post-Construction Storm Water Management

4. Subject

Revision of Chapter NR 152, Wis. Adm. Code, relating to model ordinances for construction site erosion and sediment control and post-construction storm water management

5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected None
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7. Fiscal Effect of Implementing the Rule

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget	

8. The Rule Will Impact the Following (Check All That Apply)

<input type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors
<input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).  
**\$0 - \$50,000 (minimal)**

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?

Yes    No

11. Policy Problem Addressed by the Rule

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.

The model ordinances incorporate the performance standards contained in NR 151 for construction site erosion and sediment control and post-construction control of storm water runoff from non-agricultural sites. Revisions to update the performance standards in NR 151 became effective January 2011.

The objective of the proposed rule is to update and revise NR 152 to incorporate the 2011 revisions to NR 151. 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 among local units of government.

Having model ordinances available to local units of government provides time savings to its staff resources and assurance that its local ordinances conform with the uniform statewide standards.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The primary entities who will be directly affected by the proposed rule are local government units. While this rule is to assist local governments in developing ordinances consistent with the ch. NR 151, Wis. Adm. Code, performance standards, it is these local ordinances themselves that will impact development in the community where it is enacted. This rule is only tangentially involved because use of the model ordinances is voluntary. The authority for a municipality to adopt local ordinances is found in state statute. This rule does not invoke or create any new authority.

In 2015, prior to the decision to revise the rule, the department updated the model ordinances as department guidance rather than in a rule due to a timing issue for permitted municipalities. The City of Fitchburg, City of Madison, North East Wisconsin Stormwater Consortium (NEWSC), and the United States Environmental Protection Agency provided public comment. These comments were technical and clarifying in nature.

In September 2017, the department contacted municipalities and consultants representing municipalities and developers throughout northeast, southeast, and southern Wisconsin to assess the use and gather feedback on the model ordinance guidance published in 2015. The department found municipalities are either using the model ordinance guidance word-for-word, as a baseline, or not using the model ordinances. Among each of these scenarios, it was very common for municipalities to receive little or no feedback during the comment period. The municipalities using the model ordinance guidance as a baseline also included additional requirements because of Total Maximum Daily Loads (TMDLs) or other more stringent requirements in their local area (volume or flooding control). Municipalities are authorized under state statute to adopt standards beyond the performance standards in NR 151 to address a TMDL or to control volume or flooding. The model ordinances do not address TMDLs or volume/flooding since the decision of whether to include those issues or not are at the discretion of the municipality. Municipalities not using the model ordinance guidance were found to be using either their county's ordinance as a model or their consortium's model (such as Dane County or NEWSC). It was noted during this outreach effort that it was rare for developers to become concerned over the model ordinances because they know they already must follow the NR 151 state performance standards under their storm water construction permit. Some concerns were raised by developers when local ordinances were proposed to be more stringent, but again, this proposed rule does not provide any guidance or recommendations for addressing TMDL or volume/flooding issues.

In addition, the department is provided a public comment period on this economic impact analysis from November 10 through November 25, 2017. No comments were received during this time period.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

No local government units were involved in this draft EIA. The department is providing a comment period on this economic impact analysis whereas all local governmental units will have the opportunity to participate in the development of the final EIA.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Chapter NR 152 will have minimal fiscal impact (if any) on either state or local governments. The only state fiscal impact anticipated is that associated with the development and distribution of the model ordinances. These costs were anticipated as part of the workload identified in the fiscal estimates in the 2011 NR 151 updates. The fiscal impact to the

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state may also be reduced since uniformity of local ordinances with the state standards facilitates consistency and reduced staff review time statewide.

There is minimal impact to local units of government as adoption of the ordinance is not required by this rule. 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 these requirements are already in place at the state level. The cost associated with adopting the model ordinances is administrative and expected to be minimal and are not triggered by this rule. Changes in this rule package simply codify existing requirements outlined in NR 151 performance standards. The fiscal impact to the regulated community may be reduced since uniformity of local ordinances with the state standards “levels the playing field” and creates a consistent and predictable expectation statewide.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

A local unit of government that uses the model ordinances will benefit by being assured that its local ordinances conform with the uniform statewide standards for construction site erosion and sediment control and post-construction storm water management (pursuant to NR 151) since the standards are incorporated into the model ordinances. Having model ordinances available also provide time savings in the ordinance development process for local units of government. Additionally, the use of these model ordinances by a local unit of government is voluntary. Furthermore, incentives are included in the grant programs identified in NR 153 and 155 for municipalities that adopt performance standards into their ordinances. Municipalities can earn points towards their grant score if they plan to develop or update their ordinances to be consistent with the NR 151 performance standards, or if they already have ordinances in place that are consistent with the performance standards. Municipalities can also earn grant monies to assist with funding where their project is to develop or update their ordinances to meet the performance standards.

One alternative would be to not update the rule. This may result in a local unit of government using the obsolete model ordinances currently in the existing version of NR 152 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.

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#### 16. Long Range Implications of Implementing the Rule

Providing model ordinances to local units of government will ensure consistent implementation of the statewide performance standards regarding to construction site erosion control and post-construction storm water management well into the future.

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#### 17. Compare With Approaches Being Used by Federal Government

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.

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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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](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](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"

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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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