

DNR Approves Changes to Erosion Control/Storm water Rules
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On Wednesday, June 23, the Wisconsin Natural Resources Board adopted changes to the rules establishing performance standards for erosion control and storm water (NR 151). Next, the rule package heads to the Legislature for review. Although the effective date of the rule package may vary based upon legislative action, DNR estimates a possible effective date as early November 1, 2010. For a copy of the rule, [click here](#).

WBA worked extensively on this rule package (including testifying before the Natural Resources Board), and obtained numerous changes in the package during the multi-year development process.

The rule contains some major changes in regard to the construction site performance standards. For sites disturbing one acre or more, the current standard is to reduce sediment load carried in runoff by 80% compared to no controls. Under the rule modifications, the standard would change, two years after the effective date of the rule, to limiting sediment load carried in runoff to no more than 5 tons/acre/year of sediment from initial grading to final stabilization. While DNR has indicated this new standard is generally equivalent to the old standard, the new standard will have different impacts on a site by site basis.

The rule also contains a requirement to implement certain erosion control practices, and contains requirements as to how these erosion control practices will be implemented. DNR added some of these requirements to comply with certain mandates contained in the federal EPA rule regulating the construction and development industry. However, DNR did not incorporate a numeric water clarity standard contained in the federal rule into this rule, but is planning to do so in a later rule revision.

Another change in the construction site erosion control requirements is that DNR will now be regulating sites for erosion control that disturb less than one acre. However, these standards do not apply to one and two family sites, because these sites are already regulated by the Department of Commerce.

In addition to the changes to the standards for erosion control, the standards for controlling stormwater after construction is complete are also being modified. Some of the key changes include:

- **Redevelopment:** Under the existing rule, redevelopment sites are exempt from stormwater requirements if they do not result in any increase in exposed parking lots or roads. Significantly, under the revised rule, this exemption is being eliminated. In addition, the revised rule modifies the “total suspended solids” standard for redevelopment.
- **Infiltration:** DNR is changing the how it examines infiltration. DNR is changing the infiltration rates to base them on “connected imperviousness” rather than whether the land is being used for residential development or nonresidential development. This may impact some high density residential or multifamily developments. In a nutshell, the standard for these areas are being decreased, but the maximum amount of land that DNR can require to be used to meet this standard is being increased.
- **Protective Areas:** This rule currently prevents putting impervious surfaces within certain distances from waterways and wetlands. For “highly susceptible” wetlands, the revised rule expands the setback distance from 50 to 75 feet, and redefines these types of wetlands to include “calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps and ephemeral ponds.”

On the positive note, however, the DNR eliminated the 75 foot setback requirement from wetlands in areas of “special natural resource interest”, which resulted in a high level of protection for some lower quality wetlands due to their location.

If you have any questions regarding this rule package, please contact Pat Stevens at pstevens@wisbuild.org.