

MAMSWaP Quarterly Meeting

Overview of Proposed Amendments to NR 151

Jim Bertolacini
WDNR Storm Water Program



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Topics

(discussion focused on non-ag elements of rule)

- Historical background
- Overview of current rule and proposed changes/considerations
- Highlights of specific issues
- Further information
- Questions

Please Note:

Proposed changes summarized today are the result of internal drafting and discussions with Technical Advisory Committee. Public notice draft not yet available, nor has authorization for public hearings yet been requested from the DNR Board.

Historical Background

➤ 1997 Act 27 & 1999 Act 9

- Required changes to DNR and DATCP runoff rules to address continued threats to Wisconsin waters
- Amendments to Chapter 281, stats.
- Resulted in the creation, repeal/recreation, or amendment of several rules
 - NR 151 – Runoff Management (Performance Standards)
 - NR 152 - Model Ordinances
 - NR 153 - TRM Grants
 - NR 154 - BMPs & Cost-Share Conditions
 - NR 155 - Urban NPS Grants
 - NR 120 - Priority Watershed & Priority Lake
 - NR 216 - Storm Water Discharge Permits
 - NR 243 - Animal Feeding Operations
 - ATCP 50 – Soil & Water Resource Management

Historical Background (cont.)

- Key requirements for runoff management and performance standards
 - DNR to establish non-agricultural performance standards & process for developing technical standards
 - DNR to establish agricultural performance standards & prohibitions
 - DATCP to establish agricultural conservation practices & technical standards
 - DNR & DATCP to define when cost-share requirements have been met
- Non-ag performance standards implemented via NR 216
- NR 151 promulgated October 2002 without ag buffer standards
- DNR Board approved proceeding with amending NR 151 Oct. '06
- Non-ag Advisory Committee meetings Oct. '07, Nov. '07, Dec. '07, Feb. '08
- Timeline: Promulgation in 2009 at earliest

<http://dnr.wi.gov/runoff/rules/nr151/rulerevision.htm>

Proposed NR 151 Amendments
Subject to Change

May 1, 2008

Overview of Current Rule and Proposed Changes/Considerations

- Subchapter I – General Provisions
- Subchapter II – Agricultural Performance Standards & Prohibitions
- Subchapter III – Non-Agricultural Performance Standards
- Subchapter IV – Transportation Facility Performance Standards
- Subchapter V – Technical Standards Development

Subch. I – General Provisions

- Purpose
- Definitions
 - **Proposed change: Add TMDL, impaired water, Subch. IV definitions**
- Regional treatment exclusion
- Targeted performance standards
- **Proposed change: Impact to performance standards under TMDLs**



Subch. II - Ag Performance Standards and Prohibitions

- Affects livestock & crop producers
- Standards for:
 - Sheet, rill & wind erosion
 - Manure storage facilities
 - Clean water diversions
 - Nutrient management
- Manure management prohibitions



Proposed Changes to Subch. II - Ag Performance Standards & Prohibitions

➤ Establish 2 new statewide cropland standards

- Phosphorus Index
 - Goal: Reduce P delivery to surface waters
- Tillage Setback



- Subchapter IV – Transportation Facility Performance Standards
 - Proposed change: Maintain transportation applicability but fold into Subch. III

- Subchapter V – Technical Standards Development
 - No substantive changes proposed

Subchapter III – Non-Agricultural Performance Standards

- NR 151.11 Construction site performance standard
 - Current: Reduce sediment by 80% during the construction phase
 - **Proposed change: Discharge no more than 5 tons/ac/yr of sediment load**
 - Reason:
 - Measurable using RUSLE2 construction module
 - Consistent with expression of TMDL

➤ NR 151.12 Post-construction performance standard

- 151.12(5)(a)2 - total suspended solids performance std. for redevelopment
 - Current: Exemption from all performance standards if not increasing parking lot or roads. If not exempt, then a 40% TSS reduction as compared to no controls.
 - **Proposed change: Remove exemption. Require 50% TSS reduction on proposed parking areas and internal roads as compared to no controls. No control required on roofs or landscaped areas.**
 - Reason:
 - Exemption was resulting in few redevelopment sites reducing TSS. Parking lots and roads carry a high TSS load. Some control is needed.
 - TSS reduction on redevelopment sites helps MS4s meet their 40% TSS reduction performance standard.

- 151.12(5)(b) - peak flow control performance standard
 - Current:
 - Post-development peak flow rate for 2-yr/24-hr storm must match the pre-development peak flow rate.
 - Curve number based on “good hydrologic condition” for appropriate land cover. Curve number for cropland is specified.
 - Not applicable if no increase in elevation of receiving water by 0.01 ft for 2-yr/24-hr storm.
 - **Proposed change:**
 - Post-development peak flow rate for the 1-yr, 24-hr and the 2-yr, 24-hr storm must match the corresponding pre-development 1 and 2 year storms.
 - Curve numbers for forest, grassland, and cropland will be defined.
 - Not applicable if discharge directly to >10 ac lake or large stream (to be determined).
 - Reason for change:
 - New research shows that the current standard is not protective of the bank full condition.
 - Better define receiving waters with minimal impact.

- 151.12(5)(c) - infiltration performance standard
 - Current:
 - Residential development must infiltrate 90% of the pre-development infiltration volume; non-residential development must infiltrate 60% of pre-development infiltration volume.
 - Infiltration exclusions and exemptions.
 - **Propose change:**
 - <10% connected impervious land uses need not infiltrate.
 - 10%-40% connected impervious land uses must infiltrate 90% of pre-development infiltration volume (parks through medium density residential).
 - >40-80% connected impervious land uses must infiltrate 75% of pre-development infiltration volume (high density residential, multi-family, office parks, institutional, medium to light industrial).
 - >80% connected impervious must infiltrate 60% of pre-development infiltration volume (commercial strips, shopping centers, downtown).
 - Source area prohibitions, infiltration site prohibitions, infiltration site limitations, source area exemptions, infiltration site exemptions.

151.12(5)(c) - infiltration performance standard (cont.)

➤ Reason for change:

- The 90% goal was too hard for high density residential and multi-family to meet. Many non-residential developments were not required to even consider infiltration because the 60% goal was too easy to meet. Separating development type by % connected imperviousness better reflects the ability of the development to meet the goal.
- Current infiltration exclusions and exemptions are confusing; need to better define infiltration scenarios.

➤ Percent connected imperviousness will be defined

- NR 151.12(5)(d) - protective area performance standard
 - Current: Other than for calcareous fens or wetlands in ASNRIs (Areas of Special Natural Resource Interest), the majority of wetlands have a 50 feet protective area standard.
 - **Proposed change: Increase the protective area standard to 75 feet for sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps and ephemeral ponds.**
 - Reason for change: The above wetlands are very high quality and to protect their value, a greater setback is needed.

➤ NR 151.12(h) – swale treatment applicability

- Current: Located in Subch. IV under transportation facility post- construction performance standard.
- **Proposed change: Move to Subch. III, comply with swale technical standard.**

➤ NR 151.13 Developed urban area performance standard

- NR 151.13(2) – permitted municipalities
 - Current: 20% TSS reduction by 3/10/08; 40% TSS reduction by 3/10/13
 - **Proposed change:**
 - 20% TSS reduction by 3/10/08 or within 2 years of receiving permit coverage
 - If permit coverage received after effective date of amended NR 151, 40% TSS reduction within 7 years of permit coverage (no change for current permittees)
 - Evidence of meeting performance standard using acceptable models and model versions
 - Reason for change: Provide for consistent compliance timeframes; provide certainty in modeling effort

Highlights of Specific Issues

➤ Turf Nutrient Management

- Currently in NR 151.13 and NR 151.14 with 3/10/08 deadline
- Applies to municipally and non-municipally owned non-ag properties
- Responsible party – Landowner
- Requires nutrient management plan on larger than 5 acre non-ag sites where fertilizers are applied
- Nutrient management plan based on soil tests to maintain optimal health of the lawn or garden vegetation
- Apply only what the crop needs and provide for protection of water resources
- **Proposed change: Apply to all non-ag properties**
- Interim Turf Nutrient Management tech standard no.1100/fact sheet

<http://dnr.wi.gov/runoff/stormwater/techstds.htm#Turf>

Highlights of Specific Issues (cont.)

- Achievement of 20%/40% performance standard
 - **NR 216.07(6)** – TSS control requirements of s. NR 151.13 (2) (b) 1. b. and 2. (20%/40%) may be achieved on a regional basis across an urban area or on an individual basis
 - **Section 2.7.1 of MS4 permit** - Permittee may elect to meet the 20% TSS standard on a watershed or regional basis by working with other permittee(s) to provide regional treatment that collectively meets the standard.
 - **June 6, 2005 TSS Reduction Guidance** – 20%/40% TSS control may also be applied on a regional basis by involving several municipalities.
- Model Ordinances/Interplay with Local Ordinances
 - Proposed changes to NR 151 will likely require future changes to NR 152 and local ordinances

Further Information

- DNR NR 151 Rule Revision Website

<http://dnr.wi.gov/runoff/rules/nr151/rulerevision.htm>

- Background, information of both ag and non-ag revision process including advisory committee (AC), AC meeting dates and handouts, draft language
- Information on public notice draft and hearings will be posted

Questions?

