to prepare an erosion control plan for the utility facility project. An erosion control plan is not required for a minor utility facility project.

SECTION 37. Trans 401.07(1) is renumbered Trans 401.07(1j) and Trans 401.07(1j)(a) to (f), as renumbered, are amended to read:

(1j)(a) The erosion control plan shall be ~~based on selected design storms and~~ developed as part of a project's design. Temporary best management practices in the erosion control plan shall be based on at least a 2-year 24-hour design storm or a 2-year design storm with a duration equal to the time of concentration. Permanent best management practices in the erosion control plan shall be based on at least a 10-year 24-hour design storm or a 10-year design storm with a duration equal to the time of concentration.

~~**NOTE: At a minimum, the 2-year, 24-hour rainfall design storm is used for the design of temporary erosion control and storm water management measures, and the 10-year, 24-hour rainfall design storm is used for the design of permanent erosion control and storm water management measures.**~~

(b) The erosion control plan shall identify the best management practices to be employed ~~prior to~~ before, during and after the completion of construction or maintenance activity, including the best management practices that will be employed to prevent pollution caused by storm water discharge after completion of the project. The department's erosion control plan shall require the use of best management practices, alone or in combination as appropriate, that are specified in the standardized erosion control reference matrix published under sub. (1m). The department may require the use of a best management practice not specified in the matrix only if all of the following apply:

1. The department determines through best professional judgment that those other best management practices will control erosion as effectively as the BMPs specified in the matrix published under sub. (1m).

2. The department specifies in writing the reason for selecting that other best management practice.

(c) The erosion control plan may be prepared in written or pictorial format, or both formats, as necessary and appropriate to convey the design, intent, use and placement of ~~erosion control and storm water management measures~~ best management practices.

(d)1. ~~In the case of a project administered~~ For projects directed and supervised by the department, ~~when~~ if the department of natural resources, acting through the interdepartmental liaison ~~cooperative agreement~~ procedures established ~~by the department of natural resources and the department~~ under s. 30.12(4), Stats., identifies areas or resources that require added safeguards, the erosion control plan shall include ~~such~~ those areas or resources and the specific added safeguards as determined in consultation with the department of natural resources. This subdivision applies to any utility facility project that the department determines will be completed in conjunction with or in advance of a transportation facility project that is directed and supervised by the department.

2. ~~In the case of a project not administered by the department, the responsible~~ For a utility facility project not described in subd. 1., the utility person shall consult with the department of natural resources to identify any areas or resources that require added safeguards. When the department of natural resources identifies areas or

resources that require added safeguards, the ~~erosion control plan~~ utility person shall include ~~such~~ in the erosion control plan those areas or resources and the specific added safeguards as determined in consultation with the department of natural resources.

NOTE: Any activity involving a utility facility that does not require a permit issued by the department of transportation, and any action or area that is associated with a utility facility project but that is not authorized by a permit issued by the department of transportation, is subject to regulation by the department of natural resources.

(e) The erosion control plan may be developed as a separate project document or in segmented form throughout the project's documents, including, ~~but not limited to,~~ plans, special provisions, specifications and drawings.

(f) ~~In the case of~~ For a utility facility project that is not considered minor, ~~not administered by the department, the erosion control plan may not be implemented prior to its written approval by the department. A responsible~~ a utility person shall submit the erosion control plan to the department for its approval along with its request for a permit ~~from or approval of the department~~ for the project. The erosion control plan shall include selected sites, if any. The department may not approve the erosion control plan unless the utility person provides some evidence that it has consulted with the department of natural resources as required under sub. (1)(d)2. No person may implement an erosion control plan for a utility facility project, unless the department has approved the erosion control plan in writing.

SECTION 38. Trans 401.07(1m) is created to read:

Trans 401.07(1m) STANDARDIZED EROSION CONTROL REFERENCE MATRIX. (a) The department of transportation, acting jointly with the department of natural resources, shall develop a standardized erosion control reference matrix that

identifies best management practices that, when applied as specified in the matrix, meet the performance standards of this chapter, ch. NR 216 and ch. NR 151. The matrix shall address slope erosion and channel erosion and shall identify best management practices that prevent erosion, trap sediment, dissipate flow velocities, and direct the flow of runoff, and that minimize turbidity or silting of surface water caused by site erosion, discharge or runoff. The matrix may consider a variety of site conditions, including drainage area and slope distance. If the secretaries of both agencies, or their designees, recommend, in writing, the use of the matrix, the department of transportation shall publish the matrix in the facilities development manual. Once published, only the joint written statement of the secretaries of both agencies, or their designees, may amend the matrix.

(b) The department shall review the matrix published under par. (a) at least annually. In performing the review, the department shall consult with the department of natural resources, with an association representing a majority of county highway departments in this state, with a trade association representing transportation facility construction contractors who contract with this state, and with a trade association representing a majority of utility service providers in this state. In performing the review, the department shall consider the best management practices and site conditions described in the matrix, and each best management practice that was required in an erosion control plan during the preceding 12 months that was not specified in the matrix. If upon completing its review the department determines that the matrix should be amended, it shall present its recommendations to the secretary of the department and to the secretary of natural resources.

SECTION 39. Trans 401.07(2)(intro.) and (c) are amended to read:

Trans 401.07(2)(intro.) CONTENT. The erosion control plan for a project ~~site~~ shall include, at a minimum, the following items:

(c) A description of the intended sequence of major land disturbing activities ~~which disturb soils for major portions of the site~~.

SECTION 40. Trans 401.07(2)(f) is repealed.

SECTION 41. Trans 401.07(2)(g) is repealed and recreated to read:

Trans 401.07(2)(g) Wherever permanent infiltration devices will be employed, the depth to seasonal high groundwater, as determined under s. Trans 401.06(7), depth to top of bedrock, whichever depth is less, and any existing data describing the surface soil and subsoil at the project site.

SECTION 42. Trans 401.07(2)(i)(intro.), (i)5. to 8., (j)(intro.) and (j)1. to 3. are amended to read:

Trans 401.07(2)(i)(intro.) A site map ~~which~~ that includes the following items:

5. Location of major structural and non–structural ~~controls~~ best management practices identified in the plan.

6. Location of areas where ~~stabilization~~ best management practices will be employed for stabilization.

7. Areas ~~which~~ that will be vegetated following construction or maintenance activities.

8. ~~Wetlands~~ Location, area and extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.

(j)(intro.) A description of appropriate ~~erosion control and storm water management measures which~~ best management practices that will be ~~used or performed~~ employed at the site ~~to prevent sediments or pollutants reaching waters of the state. The plan shall clearly describe the appropriate erosion control and storm water management measures for each major activity identified and the timing during the construction or maintenance process that the measures will be implemented~~. The description ~~of erosion controls~~ shall include, when appropriate, the following minimum requirements:

1. ~~Description of erosion control and storm water management measures, including a schedule for implementing them. Site plans shall ensure that~~ The preservation of existing vegetation ~~is preserved~~ where attainable and ~~that~~ the stabilization of disturbed portions of the project site ~~are stabilized~~.

2. Description of structural practices to divert flow away from exposed soils, to store flows or to otherwise limit runoff and discharges from the project site. Unless ~~otherwise~~ specifically approved in writing by the department, structural measures shall be installed on upland soils.

3. Management of overland flow at the project site~~, unless otherwise controlled by outfall controls~~.

SECTION 43. Trans 401.07(2)(j)5. is renumbered Trans 401.08(2)(a)2m.

SECTION 44. Trans 401.07(2)(j)9. and (3)(title), (a) and (b)(intro.) are amended to read:

Trans 401.07(2)(j)9. Proper disposal of building and waste material at the project site.

(3)(title) AMENDMENTS; UTILITY FACILITY PROJECTS. (a) No ~~amendments shall be made by a prime contractor or responsible~~ utility person ~~to~~ may amend an erosion control plan unless the amendment is approved in writing by the department.

(b)(intro.) Subject to the written approval of the department, the utility person shall amend the erosion control plan for a project ~~site shall be amended~~ whenever any of the following occurs:

SECTION 45. Trans 401.07(3)(b)1. is repealed.

SECTION 46. Trans 401.07(3)(b)2. and 3. are amended to read:

Trans 401.07(3)(b)2. There is a change in design, construction, operation or maintenance at the project site or selected site ~~which~~ that has the reasonable potential for a discharge to waters of the state and ~~which~~ that has not been ~~otherwise~~ addressed in the plan.

3. The ~~erosion control and storm water management measures~~ best management practices required by the plan fail to ~~reduce~~ avoid or minimize adverse impacts to waters of the state caused by a discharge.

SECTION 47. Trans 401.07(3)(b)4. is created to read:

Trans 401.07(3)(b)4. There is a change in a borrow site or material disposal site that the plan has not addressed.

SECTION 48. Trans 401.07(3)(c) is repealed.

SECTION 49. Trans 401.08(intro.) is repealed.

SECTION 50. Trans 401.08(1)(a) is amended to read:

Trans 401.08(1)(a) ~~An~~ The prime contractor shall prepare an ECIP for a project, shall ~~be provided to~~ provide the ECIP to the appropriate district office of the department

of transportation, and shall either ~~delivered~~ deliver personally or ~~mailed~~ send the ECIP by registered or certified mail, return receipt requested, to the appropriate ~~district environmental impact coordinator~~ regional liaison of the department of natural resources ~~by the prime contractor~~ and to the department of transportation, at least 14 days ~~prior to~~ before the pre-construction conference, or at a time ~~otherwise~~ and manner agreed upon by the department of transportation, department of natural resources and prime contractor.

SECTION 51. Trans 401.08(1)(am) and (ar) are created to read:

Trans 401.08(1)(am) The prime contractor shall select best management practices from the matrix published under s. Trans 401.07(1m)(a) when preparing an ECIP. The prime contractor may not employ best management practices that are not specified in the matrix unless the department of transportation has specifically approved that use in writing.

(ar) The department of transportation may not hold a pre-construction conference until at least 14 days after the prime contractor delivered or mailed the ECIP to the department of natural resources, unless either of the following occurs before the pre-construction conference is held:

1. The district director of the department of transportation has notified the regional director of the department of natural resources in writing that the department of transportation intends to hold the pre-construction conference.

2. The department of natural resources consents to the pre-construction conference. If the department of natural resources consents, the department of natural resources shall have 14 days after the prime contractor delivered or mailed the ECIP to

the department of natural resources to review the ECIP and deliver written comments to the department of transportation and to the prime contractor. At the earliest practicable time, but not more than 7 days after receiving such written comments, the department of transportation shall hold a conference with the prime contractor, the department of natural resources and any other affected parties to consider the department of natural resources' comments.

SECTION 52. Trans 401.08(1)(b) is repealed.

SECTION 53. Trans 401.08(1)(c) to (h), (2)(a)1. to 4., and (b)(intro.), (b)1. to 7. are amended to read:

Trans 401.08(1)(c) The prime contractor shall follow the ECIP ~~shall be used by a prime contractor in developing and implementing erosion control and storm water management measures~~ to implement the erosion control plan for a project and to implement best management practices for the project site and any selected sites, ~~if any~~.

(d) The ECIP shall be prepared in a detailed, written and pictorial format ~~which~~ that identifies the schedule, timing and methodology for a prime contractor's implementation of the project's erosion control plan.

(e) The ECIP shall detail any changes to the project's erosion control plan ~~as~~ that are approved in writing by the department. The detailed changes in a department-approved ECIP supersede contradictory provisions of the erosion control plan.

(f) The ECIP shall include information on how and when ~~erosion control and storm water management measures~~ best management practices will be implemented in anticipation of the sizes and locations of the ~~disturbed~~ areas on which land disturbing activity occurs, and shall address ~~erosion control and storm water management~~

~~measures~~ best management practices for each stage of land disturbing activity at a project site or selected site.

(g) The ECIP shall ~~provide for~~ require the removal of temporary ~~erosion control and storm water management measures~~ best management practices in accordance with s. Trans 401.06(2).

(h) ~~The ECIP may not be implemented prior to~~ No person may implement an ECIP before its written approval by the department in consultation with the department of natural resources.

(2)(a)1. The name, address, telephone number, and principal contact of the contractor responsible for installation and maintenance of ~~erosion control and storm water management measures~~ best management practices at the project sites.

2. A description of the intended timetable and sequence of major land disturbing activities~~, such as grubbing, excavating or grading, which disturb soils for major portions at the sites~~.

3. A description of ~~erosion control and storm water management measures, including~~ best management practices and a schedule for implementing them at the project sites.

4. A description of any additions, amendments, deletions or modifications to the erosion control plan or to any of the contract documents ~~which~~ that pertain to erosion control and storm water management for the project sites.

(b)(intro.) The ECIP shall also include, at a minimum, a narrative and pictorial description of each of the selected sites, if any, the total area of each selected site and the area of each selected site that is expected to undergo excavation, and attendant

~~erosion control and storm water management measures~~ best management practices for the selected sites. If the combined area of ~~all sites, including the project site, disturb~~ the project site and all selected sites on which land disturbing activity is likely to occur is 5 or more acres, as determined by the department, the prime contractor shall include in the ECIP the following items for each of the selected sites ~~shall be included in the ECIP~~:

1. If known, the name and mailing address of the selected site.

2. The quarter, quarter-quarter, section, township, range, and the county in which the selected site is located.

3. The name, address, telephone number, and principal contact of the contractor or other person responsible for installation and maintenance of ~~erosion control and storm water management measures~~ best management practices at the selected site.

4. A narrative description of the site and the nature of the activities to be performed at the selected site.

5. A description of the intended sequence of major land disturbing activities ~~which disturb soils for major portions of the site~~.

6. An estimate of the total area of the selected site that is expected to be disturbed by construction activities.

7. Estimates, including calculations, if any, of the runoff coefficient of the selected site before and after completion of construction activities.

SECTION 54. Trans 401.08(2)(b)8. is repealed.

SECTION 55. Trans 401.08(2)(b)9. is repealed and recreated to read:

Trans 401.08(2)(b)9. Wherever permanent infiltration devices will be employed, the depth to groundwater, as determined by the department under s. Trans 401.06(7), and any existing data describing the surface soil and subsoil at the selected site.

SECTION 56. Trans 401.08(2)(b)11.(intro.), 11.e. and g., 12.(intro.), 12.a. to c., and 14., and (3)(intro.), (a) and (b) are amended to read:

Trans 401.08(2)(b)11.(intro.) A site map ~~which~~ that includes the following items:

e. Location of major structural and non–structural ~~controls~~ best management practices identified in the plan.

g. Areas ~~which~~ that will be vegetated following construction or maintenance activities.

12.(intro.) A description of appropriate ~~erosion control and storm water management measures which~~ best management practices that will be ~~used or performed~~ employed at the selected site to prevent sediments and pollutants from reaching waters of the state. The plan shall clearly describe the appropriate ~~erosion control and storm water management measures~~ best management practices for each major activity identified and the timing during the construction process that the measures will be implemented. The description of ~~erosion controls~~ best management practices shall include, when appropriate, the following minimum requirements:

a. Description of ~~erosion control and storm water management measures~~ permanent or temporary best management practices, including a schedule for implementing them. Site plans shall ensure ~~that~~ the preservation of existing vegetation ~~is preserved where attainable~~ wherever practicable and ~~that~~ the stabilization of disturbed portions of the selected site ~~are stabilized~~.

b. Description of structural practices to divert ~~flow~~ runoff away from exposed soils, to store flows or to otherwise limit runoff and the discharge of pollutants from the selected site. Unless ~~otherwise~~ specifically approved in writing by the department, structural measures shall be installed on upland soils.

c. Management of overland flow at the selected site~~, unless otherwise controlled by outfall controls~~.

14. A description of the procedures to maintain, in good and effective operating condition, vegetation, ~~erosion control and storm water management measures~~ best management practices and other protective measures.

(3)(intro.) AMENDMENTS. Subject to the written approval of the department, a prime contractor shall amend the ECIP whenever the project engineer determines:

(a) There is a change in design, construction, operation or maintenance at a project site or selected site ~~which~~ that has the reasonable potential for a discharge to waters of the state and ~~which~~ that has not ~~otherwise~~ been addressed in the ~~plan~~ ECIP. The department shall pay for changes under this paragraph that are necessitated by department action. The prime contractor shall pay for all other changes under this paragraph, unless the department agrees to pay for the change.

(b) The ~~erosion control and storm water management measures~~ best management practices required by the plan fail to reduce adverse impacts to waters of the state caused by a discharge. Subject to s. Trans 401.12, the department shall pay for changes under this paragraph.

SECTION 57. Trans 401.08(3)(c) is created to read:

Trans 401.08(3)(c) An amendment approved under this subsection supersedes any contradictory provisions of the erosion control plan.

SECTION 58. Trans 401.09(title) is amended to read:

Trans 401.09(title) Maintenance of ~~erosion control and storm water management measures~~ best management practices.

SECTION 59. Trans 401.09(intro.) and (1) are renumbered Trans 401.09(1g) and (1m) and amended to read:

Trans 401.09(1g) (title) GENERAL RESPONSIBILITY. A prime contractor or ~~responsible~~ utility person, as appropriate, shall ~~be responsible for the implementation, installation and maintenance of erosion control and storm water management measures~~ implement, install and maintain best management practices at a site as required in the contract documents, as defined in s. Trans 401.12(1)(a).

(1)(m)(title) ~~PRIOR TO~~ BEFORE AND DURING CONSTRUCTION OR MAINTENANCE ACTIVITY. ~~Prior to~~ Before and during the period of construction or maintenance activity ~~at a site~~, the prime contractor or ~~responsible~~ utility person shall implement, install and maintain, or cause to be performed, all ~~erosion control and storm water management measures at the site, as~~ best management practices required by the erosion control plan, the ECIP and the requirements of this chapter. The prime contractor or ~~responsible~~ utility person shall also implement any corrective action that is ordered ~~as a result of an inspection~~ under s. Trans 401.105. A ~~responsible~~ utility person shall notify the appropriate department representative at least 24 hours ~~prior to~~ before the installation of ~~erosion control and storm water management measures at a project site. After the installation of permanent stabilization of disturbed areas is completed at a~~

~~site, the prime contractor or responsible person shall remove or cause the removal of all temporary erosion control and storm water management measures in accordance with s. Trans 401.06(2)~~ best management practices.

SECTION 60. Trans 401.09(2)(a) and (b) are amended to read:

Trans 401.09(2)(a) ~~In the case of a project administered by the department, when construction or maintenance activities are completed, the department shall make an inspection of the project site and of the selected sites, if any, to ensure that the permanent erosion control and storm water management measures are adequate and functioning properly. If the inspection of a site reveals that the erosion control and storm water management measures are not adequate or not functioning properly, the prime contractor, upon notification from the department or based on its own inspection and consultation with the department, shall promptly take the appropriate corrective action. Where the prime contractor proposes corrective action based on its own inspection of a site, the prime contractor shall immediately request approval from the department for such corrective action.~~ Upon the department's written acceptance of permanent ~~erosion control and storm water management measures~~ best management practices at a site, or upon the department's granting of partial acceptance for a portion of work, the prime contractor's responsibility to maintain those accepted ~~measures~~ best management practices, or that portion of work for which partial acceptance is granted, shall cease except for any responsibility for defective work or materials or for damages caused by its own operations.

(b) In the case of a utility facility project ~~not administered by the department~~, a ~~responsible~~ utility person shall promptly notify the department upon completion of all

construction or maintenance activities and the installation of all permanent ~~erosion control and storm water management measures~~ best management practices at a project site. Within a reasonable time after ~~such~~ that notification by the ~~responsible~~ utility person, the department shall ~~make an inspection of~~ inspect the project site to ensure that the permanent ~~erosion control and storm water management measures~~ best management practices are adequate and functioning properly. If the inspection of the project site reveals that the ~~erosion control and storm water management measures~~ best management practices are not adequate or not functioning properly, the ~~responsible~~ utility person, upon notification from the department or based on its own inspection, shall promptly take the appropriate corrective action. Where the ~~responsible~~ utility person takes corrective action based on its own inspection of a project site, the ~~responsible~~ utility person shall immediately notify the department of ~~such~~ that corrective action.

~~**NOTE: The maintenance procedures and inspection sequences within Chapter 3, Wisconsin Construction Site Best Management Practices handbook, are not adopted as a part of this chapter. The handbook is available through Document Sales, 202 South Thornton Avenue, P. O. Box 7840, Madison, Wisconsin 53707-7840; phone (608) 266-3358.**~~

SECTION 61. Trans 401.10(intro.) is repealed.

SECTION 62. Trans 401.10(1) is amended to read:

Trans 401.10(1) GENERAL. ~~Inspections shall be made by the~~ The project engineer or inspector ~~to~~ shall inspect the project site and any selected site of a project described in s. Trans 401.03(1)(a) or (c). A utility person shall, and the department's authorized representative may, inspect the site of a utility facility project. The inspection shall determine whether ~~erosion control and storm water management measures~~ best management practices for a project required by the erosion control plan, the ECIP and

other contract documents, as defined in s. Trans 401.12(1)(a), are properly implemented, ~~correctly~~ installed, ~~and adequate~~ and ~~properly~~ functioning ~~for the purposes intended~~, determine whether the best management practices for a project site or selected site are adequate for the purposes intended and for the site conditions, and ~~to~~ identify any corrective action that is necessary ~~at a site~~. The project engineer or inspector shall invite the prime contractor, or his or her designee, to accompany the project engineer or inspector during inspections described in sub. (2) at least one hour before commencing the inspection. The project engineer or inspector is not required to wait more than one hour after such invitation, or past the time stated for the inspection, before commencing the inspection. A utility person shall allow a department representative to accompany the utility person during any inspection of a utility facility project. An inspector who inspects a site shall provide a copy of the completed inspection report form to the project engineer immediately following the inspection. Within 24 hours after completing an inspection, the person who performs the inspection shall deliver a copy of the completed inspection report to the appropriate department representative. Inspections shall continue at the frequency required in sub. (2) until the installation of permanent stabilization of disturbed areas is completed and the temporary ~~erosion control and storm water management measures~~ best management practices are removed ~~by the prime contractor or responsible person as provided by s. Trans 401.06(2)~~.

NOTE: Inspectors are encouraged to provide reasonable advance notice. One hour is the minimum required advance notice. More time may be appropriate to provide the prime contractor a real opportunity to accompany an inspector.

SECTION 63. Trans 401.10(2)(title) is repealed and recreated to read:

Trans 401.10(2) WHEN REQUIRED.

SECTION 64. Trans 401.10(2)(intro.) and (a) are repealed.

SECTION 65. Trans 401.10(2)(a)1., 2. and 3. are renumbered Trans 401.10(2)(intro.), (a) and (b) to (d), and are amended to read:

Trans 401.10(2)(intro.) ~~At~~ Inspections shall be conducted at least once per week during the time construction or maintenance activity is being pursued on a project site or selected site, and at all of the following times:

(a) Within 24 hours after every precipitation event ~~which~~ that produces 0.5 inches of rain or more during a 24–hour period, or ~~which~~ that results in any discharge, to determine the appropriate corrective action, if any. The department of transportation shall notify the department of natural resources within 24 hours after learning of any ~~known~~ prohibited discharge from a project site or selected site into waters of the state.

(b) At each stage, as new portions of a project site or selected site are disturbed~~,~~ ~~when~~.

(c) Upon completing the installation of permanent ~~stabilization of~~ best management practices to stabilize disturbed areas ~~is completed~~ at a project site or selected site~~, and at~~.

(d) At the completion of the project. The inspection to be performed at the completion of the project shall be made ~~prior to final payment to the prime contractor~~ before the department provides the prime contractor with written notice of final acceptance of the project.

SECTION 66. Trans 401.10(2)(b) is repealed.

SECTION 67. Trans 401.10(3) is renumbered Trans 401.105 and amended to read:

Trans 401.105 Corrective action. (1)(a) An inspector who believes that changes or corrections are needed to best management practices may, by written order delivered to the prime contractor, temporarily suspend work until the project engineer is notified and decides all questions at issue. The prime contractor shall respond to the order in a manner consistent with the contract documents, as defined in s. Trans 401.12(1)(a). The project engineer ~~or inspector~~ shall, by written notice, inform the prime contractor ~~or responsible person~~ whenever an inspection of a project site or selected site reveals the need for changes or corrections to ~~existing erosion control and storm water management measures~~ best management practices.

(b) The department shall prescribe an erosion control order form for use whenever a corrective action is ordered on any project directed and supervised by the department. The department shall publish the form in the construction and materials manual. The project engineer shall include a copy of the completed inspection report with every erosion control order issued.

NOTE: Erosion control order forms may be obtained upon request by writing to the Department's Division of Transportation Infrastructure Development, Bureau of Environment, P. O. Box 7965, Room 451, Madison, WI 53707-7965, or by calling (608) 267-3615.

(2) Upon receipt of ~~such written notification, which shall indicate the need for~~ an erosion control order form ordering changes or corrections to existing ~~erosion control and storm water management measures~~ best management practices, the prime contractor ~~or responsible person~~ shall implement, or cause to be implemented, the necessary corrective action within the time specified in the order or, if no time is specified, within 24 hours after receiving the order ~~or as directed by the project engineer or inspector~~. The prime contractor ~~or responsible person~~ shall ~~return~~ deliver

the ~~written notification~~ erosion control order form to the project engineer ~~or inspector~~ upon completion of the corrective action and ~~indicate thereon~~ shall include on the form a description of the corrective action implemented and the date completed.

(3) The department may approve or reject any completed corrective action by inspecting the affected area within 16 hours after the prime contractor or utility person delivers the completed erosion control order form to the project engineer or, for utility facility projects, to the department's authorized representative. The department shall consider all matters required in an erosion control order satisfactorily completed after that 16 hours has elapsed, or at 12 noon on the day the 16 hours expires, whichever is later, unless within the later of those 2 times the department has inspected and rejected the corrective action implemented. If a discharge occurs after the prime contractor or utility person delivers the erosion control order form under this section but before the later of those 2 times, the prime contractor or utility person shall have an opportunity to demonstrate that the corrective action was completed as required prior to the discharge. If the department does not reject any completed corrective action within the time specified in this subsection, the department may compel corrective action at the affected area only by issuing a new erosion control order.

(4) Notwithstanding any time period permitted under this section for completing corrective action, a prime contractor is considered not in compliance with the contract documents, as defined in s. Trans 401.12(1)(a), for any area or matter described in the erosion control order form as requiring changes or corrections until such time as the change or correction is satisfactorily completed, as determined under sub. (3).

(5) Written notices are considered delivered to a prime contractor for purposes of this section when the written notice is presented to the head representative of the prime contractor then available on the project site or selected site, or when written notice is delivered to the prime contractor's principal place of business, whichever occurs earlier. Written notices are considered delivered to a project engineer or to the department when the written notice or form is presented to the project engineer or to the authorized department representative then available on the project site, or when written notice is delivered to the project engineer's principal place of business, whichever occurs earlier.

SECTION 68. Trans 401.10(4)(intro.) is amended to read:

Trans 401.10(4)(intro.) REPORT. ~~All inspections shall be documented by a written~~ The department shall prescribe an inspection report form for documenting the findings of an erosion control inspection for use statewide on all projects directed and supervised by the department other than utility facility projects. The inspector shall document each inspection on the inspection report form. The ~~written~~ inspection report ~~may be included as~~ is considered part of a project diary ~~and~~. The department shall publish the inspection report form in the construction and materials manual, and the form takes effect upon publication. The inspection report and any form required for use on utility facility projects shall contain all of the following:

SECTION 69. Trans 401.10(4)(ag) and (am) are created to read:

Trans 401.10(4)(ag) The names of the inspector, prime contractor or utility person, and erosion control subcontractor.

(am) The project identification number or permit number.

SECTION 70. Trans 401.10(4)(b) is amended to read:

Trans 401.10(4)(b) Any comments concerning the effectiveness of in–place ~~erosion control and storm water management measures~~ best management practices.

SECTION 71. Trans 401.10(4)(c) is renumbered Trans 401.10(4)(c)2. and amended to read:

Trans 401.10(4)(c)2. Any reasonable corrections needed to restore, maintain or increase the effectiveness of existing ~~erosion control and storm water management measures~~ best management practices.

SECTION 72. Trans 401.10(4)(c)1., 3. and 4. are created to read:

Trans 401.10(4)(c)1. A statement of whether each type of best management practice required by the ECIP complies with that plan. The inspection report shall specify the location and deficiency of any best management practices that do not comply with the erosion control plan, the ECIP and any other contract documents, as defined in s. Trans 401.12(1)(a).

3. The prime contractor is not required to make any corrections as a result of an inspection unless an erosion control order is issued under s. Trans 401.105.

4. A utility person shall take any corrective action that is consistent with the permit issued by the department and that is ordered, verbally or in writing, by the department or the department's authorized representative.

SECTION 73. Trans 401.10(4)(d) is amended to read:

Trans 401.10(4)(d) ~~Notes on~~ Written notes commemorating any verbal communications between the project engineer ~~or~~, inspector ~~and the~~, contractor or ~~responsible~~ utility person regarding erosion control and storm water management.

SECTION 74. Trans 401.10(4m) is created to read:

Trans 401.10(4m) REPORT AVAILABLE TO CONTRACTOR. Within 24 hours after completing an inspection, the project engineer or inspector shall post the completed inspection report prepared under sub. (4) on the site to which the report relates.

SECTION 75. Trans 401.10(5) and (6) are amended to read:

Trans 401.10(5) REVIEW. The department shall ~~maintain~~ make copies of the written inspection reports ~~which require corrective action on a site,~~ either separately or as part of the project diary, available for review by other agencies and the public.

(6) RECORDS. After a project is completed and the final inspection has been made, the department shall maintain copies of the written inspection reports ~~shall be maintained by the department~~ and erosion control orders in the project's files, or with the project's permit application or approval document, if any, for a period of not less than 3 years after the date the department accepted the completed project.

SECTION 76. Trans 401.105(1m) is created to read:

Trans 401.105(1m) An authorized representative of the department shall inform the utility person, verbally or in writing, whenever an inspection of the project site by the department reveals the need for changes or corrections to best management practices. A utility person shall comply with any corrective action order, written or verbal, issued by the department's authorized representative within the time specified in the order or, if no time is specified, within 24 hours after receiving the order. Upon completing the corrective action, the utility person shall notify the appropriate department representative of the corrective action taken and the date completed.

SECTION 77. Trans 401.106 and Trans 401.107 are created to read:

Trans 401.106 Post-construction performance standard. (1) DEFINITIONS. In this section:

(a) "Average annual rainfall" means the rainfall determined by the following year and location for the location nearest the project site: Madison, 1981 (Mar. 12-Dec. 2); Green Bay, 1969 (Mar. 29-Nov. 25); Milwaukee, 1969 (Mar. 28-Dec. 6); Minneapolis, 1959 (Mar. 13-Nov. 4); Duluth, 1975 (Mar. 24-Nov. 19).

(b) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, or Technical Release 55 for Windows (Win TR-55), 2002.

NOTE: TR-55 is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Office of General Counsel. Copies may be obtained by writing to the U.S. Department of Agriculture, Natural Resources Conservation Service, Conservation Engineering Division, 14th and Independence Avenue, SW., Room 6136-S, Washington, DC 20250. The phone number for the division is: 202-720-2520, and the fax number is: 202-720-0428. TR-55 is available electronically at: http://www.wcc.nrcs.usda.gov/water/quality/common/tr55/tr55.html

(2) PLAN. The department shall develop and implement a written plan that includes the requirements of subs. (3) to (10) for each transportation facility. This plan may be part of the erosion control plan.

(3) TOTAL SUSPENDED SOLIDS. Best management practices shall be designed, installed and maintained to control total suspended solids carried in runoff from the transportation facility as follows:

(a) For transportation facilities first constructed on or after the effective date of this subsection....[revisor inserts date], by design, reduce the suspended solids load to the maximum extent practicable, based on an average annual rainfall, as compared to

no runoff management controls. A reduction in total suspended solids by at least 80% meets the requirements of this paragraph.

(b) For highway reconstruction and non-highway redevelopment, by design, reduce to the maximum extent practicable the total suspended solids load by at least 40%, based on an average annual rainfall, as compared to no runoff management controls. A 40% or greater total suspended solids reduction shall meet the requirements of this paragraph. In this paragraph, "redevelopment" means the construction of residential, commercial, industrial or institutional land uses and associated roads as a substitute for existing residential, commercial, industrial or institutional land uses.

(c) Notwithstanding pars. (a) and (b), if the design cannot achieve the applicable total suspended solids reduction specified, the design plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

(4) PEAK DISCHARGE. (a) By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development site conditions for the 2-year 24-hour design storm or to the 2-year design storm with a duration equal to the time of concentration applicable to the transportation facility. Pre-development conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 2 below shall be used.

Table 2 – Maximum Pre-Development Runoff Curve Numbers for Cropland Areas				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

NOTE: The curve numbers in Table 2 represent mid-range values for soils under a good hydrologic condition where conservation practices are used and are selected to be protective of the resource waters.

(b) This subsection does not apply to:

1. A transportation facility where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving surface water by more than 0.01 of a foot for the 2-year 24-hour storm or for a 2-year design storm with a duration equal to the time of concentration.

NOTE: Hydraulic models, such as HEC-2 or an equivalent methodology, may be used to determine the change in surface water elevations.

2. A highway reconstruction site.

(5) INFILTRATION. (a) Except as provided in pars. (d) to (g), BMPs shall be designed, installed and maintained to infiltrate runoff to the maximum extent practicable in accordance with one of the following:

1. Infiltrate sufficient runoff volume so that the post-construction infiltration volume shall be at least 60% of the pre-construction infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

2. Infiltrate 10% of the post-development runoff volume from the 2-year 24-hour design storm with a type II distribution. Separate curve numbers for pervious and

impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(b) Pre-development condition shall be the same as specified in sub. (4)(a).

(c) Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with par. (g). Pretreatment may include, but is not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

NOTE: To minimize potential groundwater impacts it is desirable to infiltrate the cleanest runoff. To achieve this, a design may propose greater infiltration of runoff from low pollutant sources such as roofs, and less from higher pollutant source areas such as parking lots.

(d) The following are prohibited from meeting the requirements of this subsection, due to the potential for groundwater contamination:

1. Areas associated with tier 1 industrial facilities identified in s. NR 216.21(2)(a), including storage, loading, rooftop and parking.

2. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2)(b).

NOTE: Runoff from tier 2 parking and rooftop areas may require pretreatment before infiltration.

3. Fueling and vehicle maintenance areas.

4. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

5. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

6. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

7. Areas within 400 feet of a well serving a community water system as specified in ch. NR 811 or within 100 feet of a well serving a non-community or private water system as specified in ch. NR 812 for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

8. Areas where contaminants of concern, as defined in s. NR 720.03(2), are present in the soil through which infiltration will occur.

9. Any area where the soil does not exhibit any of the following characteristics between the bottom of the infiltration system and seasonal high groundwater and top of bedrock:

a. At least a 3-foot soil layer with 20 percent fines or greater. In this subdivision paragraph, "percent fines" means the percentage of a given sample of soil, which passes through a #200 sieve.

b. At least a 5-foot soil layer with 10 percent fines or greater. In this subdivision paragraph, "percent fines" means the percentage of a given sample of soil, which passes through a #200 sieve.

c. Where the soil medium within the infiltration system does not filter pollutants from water at least as effectively as the soils described in subd. 9.a. or b.

(e) Projects undertaken in the following areas are not required to meet the requirements of this subsection:

1. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the bottom of the infiltration system.

2. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

3. Areas in which a new project is replacing existing residential, commercial, industrial or institutional land uses or associated roads, or both.

4. Undeveloped areas of less than 5 acres located within existing urban sewer service areas and surrounded by existing, residential, commercial, industrial or institutional land uses.

5. Any area during periods when the soil at that area is frozen.

6. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

7. Highways.

(f) Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this subsection.

(g)1. Infiltration systems designed in accordance with this subsection shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point

of standards application as determined under ch. NR 140. However, if specific information indicates that compliance with a preventive action limit is not achievable at that location, then the infiltration system may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

2. Notwithstanding subd.1., the discharge from BMPs shall remain below the enforcement standard at the point of standards application, as determined under ch. NR 140.

(6) BUFFER AREAS. (a) In this subsection, "buffer area" means an area of land that commences at the ordinary high-water mark of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following applicable widths, as measured horizontally from the ordinary high-water mark or delineated wetland boundary:

1. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in s. NR 103.04, 75 feet.

2. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

3. For lakes, 50 feet.

4. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineation shall be made in

accordance with s. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The buffer area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

5. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

6. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

(ag) In par. (a)1., 4. and 5., determinations of the extent of the buffer area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

(am) In this subsection, "buffer area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

(b)1. Beginning with land acquired on or after the effective date of this chapter ... [revisor inserts date] for a transportation facility, no impervious surface that is part of a transportation facility may be constructed within a buffer area, unless the department determines, in consultation with the department of natural resources, that there is no practical alternative. If there is no practical alternative to locating an impervious part of a transportation facility within a buffer area, the transportation facility may be constructed

in the buffer area only to the extent the department, in consultation with the department of natural resources, determines is reasonably necessary, and the department shall state in the erosion control plan or in the plan prepared under sub. (2) why it is necessary to construct the transportation facility within a buffer area.

2. If a transportation facility is constructed within a buffer area, adequate sod or self-sustaining vegetative cover, such as grasses, forbs, sedges and duff layers of leaves and woody debris, of 70% or greater shall be established and maintained in the area that is the width of the buffer area, or the greatest width practical, and throughout the length of the buffer area in which the transportation facility is located. The adequate sod or self-sustaining vegetative cover required under this subdivision shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high-velocity flows occur.

NOTE: Vegetative cover may be measured using the line transect method described in the University of Wisconsin-Extension publication number A3533, titled "Estimating Residue Using the Line Transect Method". Seeding of non-aggressive vegetative cover is recommended in the buffer areas. Vegetation that is flood and drought tolerant and that has an extensive root system is preferable.

3. Best management practices such as filter strips, swales or wet detention basins, that are designed to control pollutants from non-point sources may be located in the buffer area.

4. This subsection does not apply to:

a. Areas in which a new project, other than a highway, is replacing existing residential, commercial, industrial or institutional land uses.

b. Transportation facilities that cross or access surface waters, such as boat landings, bridges and culverts.

c. Transportation facilities from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(7) FUELING AND VEHICLE MAINTENANCE AREAS. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

(8) LOCATION AND REGIONAL TREATMENT EXCLUSION. (a) BMPs may be located on a project site, or off a project site as part of a regional storm water device, practice or system.

(b) Runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this section. Permanent BMPs may be located in non-navigable surface waters.

(c) Except as provided in par. (d), post-construction runoff from a transportation facility first constructed after the effective date of this subsection....[revisor inserts date] shall meet the requirements of this section before entering a navigable surface water.

(d) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the requirements of this section if all of the following apply:

1. The BMP was constructed prior to the effective date of this chapter ... [revisor inserts date] and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Stats., permit.

2. The BMP is designed to treat runoff from upland development that is constructed after the BMP was constructed.

(e) The discharge of runoff from a BMP, such as a wet detention pond, is subject to this chapter.

(9) TIMING. The BMPs required under this section shall be installed before the project site has undergone final stabilization.

(10) SWALE TREATMENT. (a) Except as provided in par. (b), transportation facilities that use swales for runoff conveyance and pollutant removal satisfy all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

1. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

NOTE: It is preferred that tall and dense vegetation be maintained within the swale due to its greater effectiveness at enhancing runoff pollutant removal.

2. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second based on a 2-year 24-hour design storm or on a 2-year design storm with a duration equal to the time of concentration. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, the flow velocity shall be reduced to the maximum extent practicable.

NOTE: The swale design may include check dams to slow runoff flows and improve pollutant removal. Transportation facilities with continuous features such as curb and gutter, sidewalks or parking lanes do not comply with the design requirements of this subsection. However, a limited amount of structural measures such as curb and gutter may be allowed as necessary to account for other concerns such as human safety or resource protection.

(b) Notwithstanding par. (a), the department shall consult with the department of natural resources' liaison to the department of transportation to determine whether other provisions of this section are necessary to achieve water quality standards. This paragraph applies only to a transportation facility that has an average daily traffic of 2,500 or more, and from which the initial surface water of the state that runoff from the transportation facility directly enters is any of the following:

1. An outstanding resource water.

2. An exceptional resource water.

3. Waters listed in s. 303(d) of the federal Clean Water Act, 33 USC 1344, as amended, that are identified as impaired in whole or in part, due to nonpoint source impacts.

4. Waters for which targeted performance standards are promulgated under s. NR 151.004.

Trans 401.107 Developed urban area performance standard. (1) The department shall develop and implement a storm water management plan to control pollutants from transportation facilities that are owned and operated by the department and located within municipalities regulated under subch. I of ch. NR 216. The plan shall do the following to the maximum extent practicable:

(a) Beginning not later than March 10, 2008, implement a storm water management plan that is designed to attain at least a 20% reduction in total suspended

solids in runoff that enters waters of the state as compared to no storm water management controls.

(b) Beginning not later than March 10, 2013, implement a storm water management plan that is designed to attain at least a 40% reduction in total suspended solids in runoff that enters waters of the state as compared to no storm water management controls.

(2) The department shall inform and educate appropriate department staff and any transportation facility maintenance authority contracted by the department of transportation to maintain transportation facilities described in sub. (1)(intro.) regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.

SECTION 78. Trans 401.11 is amended to read:

Trans 401.11 Enforcement. The project engineer ~~and inspector~~ shall ~~have the authority to~~ enforce ~~the provisions of~~ this chapter, except that for utility facility projects a representative of the department shall enforce this chapter. This authority shall include~~,~~ ~~but not be limited to,~~ ordering the suspension of work on a project, including work at the project site or at any selected sites, for ~~such~~ the period ~~or periods~~ of time ~~as deemed~~ considered necessary in the interest of public safety or convenience, or for ~~such~~ the period ~~or periods~~ of time ~~as deemed~~ considered necessary due to the failure ~~on the part~~ of a contractor or ~~responsible~~ utility person to comply with any ~~or all~~ of the requirements of this chapter, including the failure of a prime contractor or ~~responsible~~ utility person to implement within the prescribed time period a corrective action ordered ~~in response to an inspection~~ under s. Trans 401.105. An inspector, by written order delivered to the

prime contractor, or by written or verbal order delivered to a utility person, may temporarily suspend work until the project engineer or appropriate department representative is notified and decides all questions at issue.

SECTION 79. Trans 401.12 is created to read:

Trans 401.12 Liability for prohibited discharge. (1) In this section:

(a) "Contract documents" means the written agreement between the department and the prime contractor that sets forth the obligations of the parties to the contract, including the invitation for bids, proposal, contract form and contract bond, standard specifications, supplemental specifications, interim supplemental specifications, special provisions, addenda, general plans, detailed plans, erosion control plan, ECIP, notice to proceed, permits issued by the department, and any contract change orders and agreements required to complete the construction of the work in an acceptable manner, including authorized extensions and erosion control orders.

(b) "Progress schedule" means the schedule that establishes completion dates for activities required in the contract documents, and interim completion dates, including revisions and updates to that schedule.

(2) Except as provided in sub. (3), activity necessitated by a prohibited discharge from a project or selected site shall be considered a department-directed revision to the contract and the department shall pay all costs associated with the discharge in accordance with contract documents.

(3)(a) The prime contractor shall pay all costs associated with a prohibited discharge from a project site or selected site if any of the following apply:

1. The prime contractor was not in compliance with the contract documents at the time of the prohibited discharge, and the failure to comply was a substantial contributing factor in causing, failing to prevent, or worsening the discharge. An inspection report prepared under s. Trans 401.10 that identifies non-compliance with the ECIP is not considered non-compliance with an ECIP unless an erosion control order is issued under s. Trans 401.105 and the changes or corrections required by the erosion control order have not been satisfactorily completed.

2. The performance under the contract documents has fallen behind the progress schedule and the prime contractor has not submitted to the project engineer a revised progress schedule within 5 days after receiving a written request from the project engineer to revise the progress schedule. This subdivision applies only if the failure to comply with the progress schedule was a substantial contributing factor in causing, failing to prevent, or worsening the discharge.

(b)1. This subsection does not apply to any of the following prohibited discharges:

a. Discharges occurring after the project has been completed and accepted as final in the manner prescribed in the contract documents.

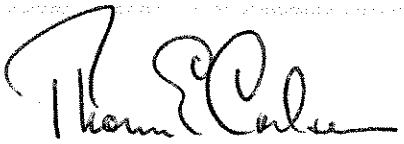
b. Discharges occurring from any portion of work for which the department has granted partial acceptance as provided in the contract documents.

2. This section does not apply to prohibited discharges from a utility facility project.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month beginning after publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this 28th day of August, 2002.



THOMAS E. CARLSEN
Acting Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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PART 3
CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **02-081**

AN ORDER to repeal Trans 401.02, 401.04 (1) (note) 5., (11) and (32), 401.06 (intro.), 401.07 (2) (f) and (3) (b) 1. and (c), 401.08 (intro.), (1) (b) and (2) (b) 8. and 401.10 (intro.) and (2) (intro.), (a) and (b); to renumber Trans 401.07 (2) (j) 5.; to renumber and amend Trans 401.03 (2), 401.04 (26), 401.06 (8), 401.07 (intro.) and (1), 401.09 (intro.) and (1) and 401.10 (2) (a) 1. to 3., (3) and (4) (c); to amend Trans 401.01 (1) and (2), 401.03 (1) (intro.), (a) and (b), 401.04 (1), (note) (intro.), 1., 3. and 4., (3), (5), (8), (9), (15) to (19), (21), (23) to (25), (27), (31), (35) and (36), 401.05 (1), (2) (intro.) and (5), 401.06 (1) to (4), (6) and (7), 401.07 (2) (intro.), (c), (i) (intro.) and 5. to 8. and (j) (intro.), 1. to 3. and 9. and (3) (title), (a), (b) (intro.), 2. and 3., 401.08 (1) (a), (c) to (h), (2) (a) 1. to 4., (b) (intro.) and 1. to 7., 11. (intro.), e. and g., 12. (intro.) and a. to c. and 14. and (3) (intro.), (a) and (b), 401.09 (title) and (2) (a) and (b), 401.10 (1), (4) (intro.), (b) and (d), (5) and (6) and 401.11; to repeal and recreate Trans 401.04 (7), (14) and (29), 401.06 (5), 401.07 (2) (g), 401.08 (2) (b) 9. and 401.10 (2) (title); and to create Trans 401.03 (1) (c), 401.04 (7m), (13m), (15m), (26), (35d), (35g) and (35m), 401.06 (8) (b), 401.07 (1m) and (3) (b) 4., 401.08 (1) (am) and (ar) and (3) (c), 401.10 (4) (ag), (am) and (c) 1., 3. and 4., (4m) and (4r), 401.105 (1m), 401.106, 401.107 and 401.12, relating to construction site erosion control and storm water management procedures for department actions.

Submitted by **DEPARTMENT OF TRANSPORTATION**

06-03-2002 RECEIVED BY LEGISLATIVE COUNCIL.

07-01-2002 REPORT SENT TO AGENCY.

RS:MCP

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☑ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL
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CLEARINGHOUSE RULE 02-081

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The statutory cross-reference in s. Trans 401.03 (1) (c) should include "Stats.," after the citation.

b. In s. Trans 401.04 (31), the defined term should be "Selected site." Also, the meaning of the added sentence to this subsection is unclear. Is the intent of the sentence to state: "'Selected site' does not include a site from which incidental sales of excavated material are made directly to consumers."?

c. In s. Trans 401.04 (35m), the quotation marks around the word "minor" should be deleted.

d. In s. Trans 401.07 (1j) (f), the reference "s. Trans 401.07 (1) (d) 2." should be replaced by a reference to "sub. (1) (d) 2."

e. In SECTION 401, the text should begin with the notation "Trans 401.07 (2) (g)."

f. In s. Trans 401.107 (1), the subunits should be shown as "(a)" and "(b)."

g. The initial applicability provision should be reviewed carefully. It does not appear that the intent of the department is that the rule should apply only to the three types of actions specified. As drafted, the rule seems to suggest that. Typical initial applicability provisions state that a statute or rule first applies to actions that have been commenced at the time the rule takes effect, except for actions that have reached a certain point in the regulatory approval process. If this is the department's intent, the three items in the initial applicability would be restated in the

negative, to constitute an exception to the general rule of applicability. For example, the rule would not apply to an action for which a final environmental impact statement has been approved on the effective date of the chapter.

4. Adequacy of References to Related Statutes, Rules and Forms

Sections Trans 401.105 (1) and 401.10 (4) appear to refer to newly created department forms. If so, the requirements of s. 227.14 (3), Stats., should be met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Trans 401.04 (7m) (a) and (b), does the phrase "unless the bid specifies that this chapter does not apply" mean that the parties simply can contract out of ch. Trans 401 and any regulation at all or does it mean that, in accordance with the note following par. (3), if the activity is not regulated by ch. Trans 401, it will be regulated by the Department of Natural Resources? This should be clarified.

b. In s. Trans 401.08 (1) (a), it appears the word "and" should be inserted before the phrase "to the department of transportation."

c. Section Trans 401.08 (1) (ar) presumably means that the department may hold a pre-construction conference if the events described in either subd. 1. or 2. occur. However, the phrasing of the paragraph could be read to mean that if either of the events in subd. 1. or 2. occur then a pre-construction conference could be held prior to 14 days after the prime contractor delivered or mailed the ECIP to the Department of Natural Resources.

d. In s. Trans 401.105, reference is made to both a prime contractor and a utility person in subs. (1) and (3). However, a utility person is not referred to in subs. (2), (4), and (5). Perhaps the utility person is not referred to in subs. (2) and (4) because of the creation of s. Trans 401.105 (1m) and the differences in these provisions regarding when corrective action should be taken. See also s. Trans 401.11 referring to the failure of a utility person to implement within the prescribed time period a corrective action ordered under s. Trans 401.105. The use of the term "utility person" in these provisions should be reviewed for consistent use.

e. Section Trans 401.106 (1g) is, at best, unclear. First, the subsection appears to be an applicability provision; thus, its title "delayed effective date" is inappropriate. Next, the provision seems to be saying, colloquially:

> A number of activities are not regulated by this chapter but will be regulated in the future by the Department of Natural Resources (DNR), but until DNR actually regulates these activities, we will regulate the activities, but only if we want to.

The reader should be made aware, possibly through an appropriate cross-reference, of those transportation facility construction activities that are not otherwise subject to regulation under ch. Trans 401. Also, a note to this provision should be included that provides some explanation of why these activities are not now subject to rules administered by DNR and when

such regulation is anticipated. Finally, the rule should propose some standards under which ch. Trans 401 will be applied to activities that are otherwise not subject to ch. Trans 401.

f. In s. Trans 401.106 (3) (a), the use of the word "new" may be unclear. It is preferred drafting style to specifically describe the regulated activity by using a phrase such as: "For transportation facilities constructed or modified on or after the effective date of this section .... [revisor inserts date]." [See also, sub. (9) (c).]

g. Section Trans 401.106 (5) (d) 9. could be clarified. Presumably, an area which meets two of the characteristics described in subpars. a. to c., but does not meet the third characteristic, will be prohibited from meeting the requirements of sub. (5). However, the introduction to sub. (5) (d) 9. could be read to mean that the area must fail to meet all of the characteristics specified in subpars. a. to c. before the area is prohibited from meeting the requirements of sub. (5). The provision should be reviewed. Also, in subpar. c. presents a situation in which the soil medium within the infiltration system does not provide an equivalent level of protection. To what is the level of protection equivalent?

PART 4

CR 02-081

ANALYSIS OF FINAL DRAFT OF TRANS 401

(a) **Need for Amended Rule**. This revised chapter Trans 401 is an integral part of a series of administrative rules and interdepartmental cooperation coordinated with DNR to strengthen Wisconsin's nonpoint source water pollution abatement programs and related water regulations. The changes to ch. Trans 401 are intended to protect the environment from nonpoint source water pollution originating from transportation facility construction and operation at least as effectively as the nonpoint source water pollution abatement programs and related water regulations proposed by DNR (principally proposed NR 151). This coordination of rules is intended to provide equal protection to the environment by prescribing similar practices for transportation projects undertaken by the state under regulation of this Trans 401 and for transportation projects undertaken by local units of government under regulation of proposed NR 151.

This rule revises construction site erosion control and storm water management for transportation facility projects directed and supervised by DOT. The rule also creates new 'post-construction' performance standards for storm water management.

(b) **Modifications as a Result of Testimony at Public Hearing**. The public hearing was held in Madison on July 12, 2002. No modifications were made to the rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing**. No one appeared/registered at the hearing.

(d) **Response to Legislative Council Recommendations**. The Legislative Council made several recommendations to the proposed rule. The Department's response is as follows:

2.a. Adopted.

2.b. The first recommendation has been adopted. The last sentence of s. Trans 401.04(31) is intended to allow incidental sales of excavated material, while still considering the site to be used exclusively for WisDOT projects (and without considering the site to be a commercial pit). Gravel pits, for example, will occasionally sell cash-and-carry material to local residents from sites opened and used principally for WisDOT projects. Such sites should be considered 'selected sites' for which erosion control plans are prepared under ch. Trans 401, instead of being considered commercial pits subject to DNR regulation.

2.c. – 2.g. Adopted.

4. Adopted.

5.a. In a sense, the draft language allows WisDOT to contract out of ch. Trans 401 coverage. However, if the activity is not 'directed and supervised by the department', the exemption under s. 30.12(4) for WisDOT activities does not apply, and the activity is therefore subject to regulation by the Department of Natural Resources by operation of statute. Nevertheless, the draft language of s. Trans 401.04(7m) has been modified to require a bid to state both that ch. Trans 401 does not apply OR that the activity is subject to regulation by DNR.

5.b. Adopted.

5.c. The intent is to allow WisDOT to hold a pre-construction conference before 14 days have elapsed since the contractor delivered the ECIP to DNR. Ideally, DNR will have at least 14 days to review an ECIP so that it may contribute meaningfully to the pre-construction conference. However, contractor delays in submitting the ECIP to DNR may make it impracticable to reschedule or delay a pre-constructing conference. In such cases, WisDOT will proceed with the conference and consider DNR's comments after the conference.

5.d. The Department has deleted from s. Trans 401.105(1) any references to "utility person." The draft already addressed inspections of utility projects and corrective action orders for utility projects, at proposed s. Trans 401.105(1m) (section 76). Most of the provisions in s. Trans 401.105 are aimed at the 'safe harbor provisions' or immunity afforded to a contractor for discharges and environmental responses. Because utilities generally are advancing only their own aims, rather than contracting to provide a public good like a highway, they remain fully liable for discharges caused by their actions.

5.e. The Department has deleted this section. DNR and DOT have worked closely to develop functionally identical rules regulating post-construction nonpoint source pollution originating from transportation facilities. DNR's regulations are in NR 151, which will apply to transportation facilities.

5.f. See changes at Trans 401.106(3)(a) and (8)(c).

5.g. The post-construction performance standards are copied from proposed NR 151, which establishes erosion control and storm water management for transportation projects not directed and supervised by WisDOT. DNR and WisDOT intend to provide the same degree of environmental protection from transportation facilities, regardless of whether the facility is constructed or operated by WisDOT or by a local unit of government. The Department is therefore reluctant to change significantly the phrasing or organization of these common provisions in ch. Trans 401. Nevertheless, the Department has specified that the 'equivalent protection' should be the minimum filtration resulting from the types of soils described in s. Trans 401.106(5)(d)9.a. and b., and have repeated the definition of 'percent fines' twice in order to remove it from 401.106(5)(d)9.(intro.).

(e) **Final Regulatory Flexibility Analysis**. This proposed rule will have no adverse impact on small businesses.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 401.02, 401.04(1)(note)5., (11) and (32), 401.06(intro.), 401.07(2)(f), (3)(b)1. and (c), 401.08(intro.), (1)(b), (2)(b)8., 401.10(intro.), (2)(intro.), (a) and (b); renumber TRANS 401.07(2)(j)5.; renumber and amend TRANS 401.03(2), 401.04(26), 401.06(8), 401.07(intro.) and (1), 401.09(intro.) and (1), 401.10(2)(a)1. to 3., (3) and (4)(c); amend TRANS 401.01(1) and (2), 401.03(1)(intro.), (a) and (b), 401.04(1), (1)(note)(intro.), 1., 3. and 4., (3), (5), (8), (9), (15) to (19), (21), (23) to (25), (27), (31), (35) and (36), 401.05(1), (2)(intro.) and (5), 401.06(1) to (4), (6) and (7), 401.07(2)(intro.), (c), (i)(intro.), (i)5. to 8., (j)(intro.), (j)1. to 3. and 9., (3)(title), (a), (b)(intro.), (b)2. and 3., 401.08(1)(a), (c) to (h), (2)(a)1. to 4., (b)(intro.), (b)1. to 7., 11.(intro.), 11.e. and g., 12.(intro.), 12.a. to c. and 14., (3)(intro.), (a) and (b), 401.09(title), (2)(a) and (b), 401.10(1), (4)(intro.), (4)(b) and (d), (5) and (6), 401.11; repeal and recreate TRANS 401.04(7), (14) and (29), 401.06(5), 401.07(2)(g), 401.08(2)(b)9., and 401.10(2)(title); and create TRANS 401.03(1)(c), 401.04(7m), (13m), (15m), (26), (35d), (35g) and (35m), 401.06(8)(b), 401.07(1m) and (3)(b)4., 401.08(1)(am), (ar) and (3)(c), 401.10(4)(ag) and (am), (c)1., 3. and 4., (4m) and (4r), 401.105(1m), 401.106, 401.107 and 401.12, relating to construction site erosion control and storm water management procedures for department actions	**NOTICE OF HEARING AND TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats., and interpreting ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **12th** day of **July**, 2002, at **10:00 AM**, to consider the amendment of

chapter Trans 401, Wisconsin Administrative Code, relating to construction site erosion control and storm water management procedures for department actions.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business July 19, 2002, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Dan Scudder, Department of Transportation, Bureau of Environment, Room 451, P. O. Box 7965, Madison, WI 53707-7965.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats.

STATUTES INTERPRETED: ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats.

General Summary of Proposed Rule. Currently, statutes require the department of transportation ("DOT") to establish standards for the control of soil erosion related to highway and bridge construction that is paid with state or federal funds. The statutes also exempt transportation facility projects directed and supervised by DOT (including highway, airport, harbor, and railroad projects) from numerous environmental prohibitions, and from permit or approval requirements administered by the department of natural resources ("DNR"), if DOT coordinates the exempted project with DNR through interdepartmental cooperation.

This revised chapter Trans 401 is an integral part of a series of administrative rules and interdepartmental cooperation coordinated with DNR to strengthen Wisconsin's nonpoint source water pollution abatement programs and related water regulations. The changes to Trans 401 are intended to protect the environment from nonpoint source