

**Report From Agency**

STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULEMAKING : ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND  
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES  
PROFESSIONAL SERVICES : ADOPTING RULES  
: (CLEARINGHOUSE RULE 16-052)  
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ORDER

An order of the Department of Safety and Professional Services to repeal SPS 360.04 (6), 360.12, 360.13 (2), 360.21 (2), 360.30 and to amend SPS 360.01, 360.02, 360.11 and to create SPS 360.02 (Note) relating to erosion control, sediment control and storm water.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections 101.02 (1), 101.1206 (1) and 101.1206 (7)

**Statutory authority:**

Sections 227.11(2)(a) and 101.63 (intro) and (1) (intro), 101.63 (7m), Stats.

**Explanation of agency authority:**

Wisconsin Statutes § 227.135, authorizes the Department to promulgate rules modifying Chapters SPS 360, 302, 303, 320 to 325 of the Wisconsin Administrative Code.

Section 101.02 (1), Stats. Reads, “The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.”

Section 101.1206 (1) Stats. Reads, “The department shall establish statewide standards for erosion control at building sites that have a land disturbance that is less than one acre in area and that are for the construction of public buildings and buildings that are places of employment.”

Section 101.1206 (7) Stats. Reads, “The department shall promulgate rules for the administration of this section.”

**Related statute or rule:**

NR 216.42

**Plain language analysis:**

This rule will remove ambiguities and obsolete provisions within SPS 360 relating to erosion control and storm water management at construction sites over one acre in size.

The authority to establish standards for erosion control at construction sites over one acre, as well as standards for storm water management, were granted to the Department of Natural Resources (DNR) by 2013 Act 20. The purpose of this rule is to eliminate conflicts between SPS 360 of this department and rules promulgated by the DNR. Specifically, this rule will eliminate regulation of erosion control at construction sites over one acre and will eliminate references to storm water management.

**Summary of, and comparison with, existing or proposed federal regulation:**

Federal regulations require erosion and sediment controls on construction sites over one acre. No existing or proposed federal regulations address construction sites under one acre.

**Comparison with rules in adjacent states:**

**Illinois:**

An Internet search has revealed that Illinois has a two phase erosion and stormwater plan. Under Phase I, operators are required to obtain permit coverage for construction activity that resulted in a total land disturbance of 5 acres or more. Phase II reduces that project size to 1 acre or more.

**Iowa:**

An Internet search has revealed that Iowa requires any land-disturbing activity that will “disturb” an area of one or more acres is required to have a permit for its storm water discharge. Erosion control is not required for disturbed land areas of less than 25,000 square feet, unless a political subdivision by ordinance establishes a smaller exception.

**Michigan:**

An Internet search has revealed that Michigan requires that construction activities which disturb one or more acres of land are required to obtain a National Pollutant Discharge Elimination System.

**Minnesota:**

An Internet search has revealed that in Minnesota erosion control is required for construction activity that results in land disturbance of equal to or greater than one acre or a common plan of development or sale that disturbs greater than one acre.

**Summary of factual data and analytical methodologies:**

This department rule is based upon 2015 Wisconsin Act 211.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The anticipated economic impact of implementing this rule is minimal. The rule is not likely to have a significant impact on a substantial number of small businesses.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [Jeffrey.Weigand@Wisconsin.gov](mailto:Jeffrey.Weigand@Wisconsin.gov), or by calling (608) 267-2435.

**Agency contact person:**

Greg DiMiceli, Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at [Gregory.DiMiceli@Wisconsin.gov](mailto:Gregory.DiMiceli@Wisconsin.gov).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Greg DiMiceli, Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8366, Madison, WI 53708-8366, or by email to [Gregory.DiMiceli@Wisconsin.gov](mailto:Gregory.DiMiceli@Wisconsin.gov). Comments must be received on or before August 30, 2016 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. SPS 360.01 is amended, to read:

**SPS 360.01 Purpose.** The purpose of this chapter is to establish uniform standards and criteria for the design, installation and maintenance of erosion and sediment control practices at building construction sites ~~and minimum performance standards for post construction storm water management on building sites~~ under the authority of Ch. 101, Stats., so as to protect the waters of the state.

SECTION 2. SPS 360.02 is amended to read:

**SPS 360.02 Scope.** This chapter applies to erosion control permits required at all sites where land disturbing construction activities of less than one acre occur during the construction of buildings and structures serving as public buildings and places of employment.

SECTION 3. SPS 360.02 (Note) is created to read:

**Note:** Authority over erosion and sediment control at construction sites having a land-disturbance area of one acre or more, including all authority for all the requirements in this section, was transferred to the Department of Natural Resources (DNR) under 2103 Wisconsin Act 20, sections 1712 and 2088. Consequently, the Department of Safety and Professional Services no longer administers the requirements in this section. Information regarding the DNR permit requirements and standards may be available at: <http://dnr.wi.gov/topic/stormwater/construction>.

SECTION 4. SPS 360.04 (6) is repealed.

SECTION 5. SPS 360.11 is amended to read:

**SPS 360.11 Certified municipalities.** Certified municipalities in conformance with s. SPS 361.60 may serve as the department's agent for all ~~notices referenced under s. SPS 360.12 and~~ inspections referenced under ss. SPS 360.14 and 360.15.

SECTION 6. SPS 360.12 is repealed.

SECTION 7. SPS 360.13 (2) is repealed.

SECTION 8. SPS 360.21 (2) is repealed.

SECTION 9. SPS 360.30 is repealed.

SECTION 10. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)  
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