

Public Comments & DNR Responses to Proposed Guidance

Meeting Infiltration Performance Standard of ch. NR 151, Wis. Adm. Code

The DNR received comments from 6 individuals. Thank you to all for taking the time to review and comment on the proposed guidance. The public comments are summarized and or abbreviated below with DNR responses.

Comment	Public Comment	DNR Response	Recommend Change to Draft? Y/N
1 - Site Engineering Service	If some municipalities have these rules, then why not let other communities decide for themselves, if they want to add additional requirements?	DNR promulgated non-agricultural performance standards in year 2002, which includes the infiltration performance standard at the direction of the Wisconsin Legislature pursuant to s. 281.16 (2), Wis. Stats. The Wisconsin Legislature further directed DNR under 2013 Wisconsin Act 20 to develop uniform construction site and storm water management standards for municipalities to follow pursuant to s. 281.33, Wis. Stats.	N
2 - Site Engineering Service	The proposed rules would add more uncertainty when looking at a site, and more arbitrary, undefined requirements that could be enforced upon a designer or developer.	This is not a proposed rule but rather guidance to help clarify existing infiltration requirements under ch. NR 151, Wis. Adm. Code, which were initially promulgated in 2002. This guidance documents DNR's implementation expectations that already exist.	N
3 - Long Island Engineering	I think the guidance is sound with the exception of the section on "Best Infiltration Area". This is a tricky concept. Sites are developed for business of some sort, not for infiltration. I feel developers should be allowed to optimize their layouts so the layout best fits their needs. There are enough constraints already with zoning setbacks and protective area setbacks. I don't think the DNR would want to open that door where DNR staff has too much	If the developer/designer is able to meet the entire infiltration volume standard without claiming an infiltration site exemption or prohibition then using the "best" infiltration areas on the site for infiltration is not necessary. However, if the infiltration volume standard is not fully achieved then the best infiltration areas would need to have been considered in the site layout and not after the layout of buildings and other	Y

	input on site layout. BUT! I do agree that with statement #3. "is the developer using the location of the building on the best infiltration area as an excuse for not meeting the performance standard?" That should definitely not be allowed. IF DNR staff thinks that may be the case they should have the right to question the layout, but when doing the layout I think it unfair for the developer to consider "is this the best for infiltration"...	structures has occurred. Suitable infiltration areas need to be identified early so they can be considered during the site layout process and integrated into the site's layout to the MEP as appropriate.	
4 - Site Engineering Service	It strikes me that this "guidance" is composed from a very one-sided perspective. Tell me, is the DNR staff clairvoyant to look inside the developer's head to determine: "3. Is the developer using the location of the building on the best infiltrating area as an excuse for not meeting the performance standard?"	DNR did not mean to imply that the developer intentionally placed a building over the best infiltration area to avoid having to infiltrate. However, DNR has had situations where infiltration was not considered until after site layout occurred and there were no suitable areas for infiltration remaining. This approach does not qualify as designing to meet the infiltration standard to be maximum extent practicable pursuant to s. NR 151.124, Wis. Adm. Code.	N
5 - City of De Pere	On page 3, reviewers are to ask themselves three questions regarding <u>Best Infiltration Area</u> . None of the three questions recommends any consideration of economic/financial impacts. A fourth question should be added as follows: "4. What are the economic/financial impacts to moving the building/parking or requiring modifications to the design on the site if required to meet infiltration?"	See response to comment 3. The infiltration standard contains the provision that the standard is to be met to the maximum extent practicable (MEP). MEP is defined under s. NR 151.006, Wis. Adm. Code, and economic/financial factors are considerations in determining MEP.	Y
6. Site Engineering Service	If you sincerely want to encourage design creativity, you should consider offering some type of incentive. For instance, if the local community could flex their zoning/setback/density requirements for developers who are trying to find a way to fit infiltration on a site. But again, that would need to occur at the local level.	DNR does not have control over the incentives you suggest such as local zoning setbacks and density restrictions.	N

7 - General Engineering Company	Near the bottom of page 3, in the sections entitled "Excavation to Suitable Soil" and "Fill to Suitable Soil" it is mentioned that "Local authorities have the authority to select a maximum depth that they consider to be reasonable." If local authorities do not specify, or if it is in a rural area with no governing ordinance, will the DNR specify the reasonable depth? As a designer it is nice to have that number up front to save on the time spent calling DNR stormwater specialists to discuss, and it seems less subjective than the individual reviewer giving a number that could vary person to person. As a designer, I want to do what is right, and not cheat the system, but on the other hand, my client is who will be paying to excavate or fill soil, and it is hard for me to tell them they need to spend the money to over-excavate if no authority is stipulating that.	The guidance will clarify that DNR expects excavation down to a depth of 5 feet below grade to reach suitable soils for infiltration. DNR has removed the section regarding the expectation to bring in sand to increase separation from groundwater or bedrock. This is still a viable alternative but DNR will not require it where the site is otherwise exempt from the infiltration standard.	Y
8 - Site Engineering Service	Who decides if it's "practical" to truck in 2 feet of sand for infiltration on a given site? Is cost a factor? Is the length of haul considered?	See response to comment 7.	Y
9 - Davy Engineering	<p><u>Excavation to Suitable Soil:</u> DNR needs to provide a recommended depth. We agree that the "local administration" should have the authority to select a maximum depth that they consider reasonable; however, additional guidance is needed. DNR should provide a suggested minimum of 1-foot for excavation. DNR should have no more than 2-feet for the additional excavation as the maximum.</p> <p><u>Fill for Suitable Soil:</u> DNR needs to provide a recommended depth. We agree that the "local administration" should have the authority to select a maximum depth that they consider reasonable; however, additional guidance is needed. You provide one example from Dane County. Again, DNR</p>	See response to comment 7.	Y

	should provide a suggested minimum of 1-foot for excavation. DNR should have no more than 2-feet for the additional excavation as the maximum for this guidance.		
10 - City of De Pere	There are several references to “reasonable” within this document. Reasonable needs to be quantifiable. It is very challenging to address reasonable as a designer when dealing with different WDNR staff. “Reasonable” is interpreted differently between the WDNR and others. “Reasonable” needs to be tied to economic/financial impacts.	We have added more quantification to the document such as that identified in response to comment 7. See response to comment 5 with respect to economic/financial factors being consideration under MEP.	Y
11 - General Engineering Company	I have reviewed DNR Guidance #3800-2013-05 (Meeting Infiltration Performance Standard of Ch. 151, Wis. Adm. Code) and overall thought it was very well written, practical, and will be effective once final adoption is complete. I only had one item stick out to me as a consulting engineer that could be expanded on a little. Thanks for putting this document together. I hope you received a number of comments that will help staff and plan-preparers alike. I appreciate your hard work to help keep Wisconsin a great place to live and work.	Comment appreciated.	N
12 - Davy Engineering	Overall the guidance is appreciated. <u>Infiltration of Off-site Runoff</u> : These are good guidelines.	Comment appreciated.	N
13 - Davy Engineering	<u>Source Area Infiltration Prohibitions</u> : The reference to NR 151.123(3) is wrong, because this section does not exist. Would it be NR 151.124 (3)(a)? What does the reference mean to chapter NR 140? Is testing required to determine if contamination is not associated with the runoff? No test should be required. DNR should provide more guidance on this issue and how it applies to NR 140.	The reference to s. NR 151.123(3) will be changed to s. NR 151.124 (3)(a). DNR does not require testing of storm water that is infiltrated to show that groundwater standards of ch. NR 140 are met. DNR has development infiltration design standards where the system is to be designed to be protective of groundwater standards. DNR has prohibitions on infiltrating certain sources of runoff and filtering layer requirements to help address	Y

		groundwater protection. If an individual deviates from DNR's recommended infiltration design standards under the allowance of s. NR 151.124 (6), the individual must still have a design that is protective of ch. NR 140 groundwater standards.	
14 - ICECOR	Could there be a section added to avoid the laboratory testing of the soil for infiltration rate if there is a local known soil type and/or a PE or PG will sign off certifying that it is the soil type? Example: around lake superior have red clay. It can be the Misoulki, Ontenagon, etc but all are clay and have hyd conductivity less than 1×10^{-6} cm/s and more toward 10^{-7} to 10^{-8} .	DNR has guidance addressing this issue within DNR Site Evaluation for Stormwater Infiltration Standard 1002, section V, step C.5. This section identifies that "clayey" soils (sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay) are automatically considered to have an infiltration rate of less than 0.6 in/hr and do not require testing. For soils other than "clayey" soils, in-field infiltration testing at the bottom of the proposed infiltration device would be required to prove that the in-field infiltration rate is less than 0.6 in/hr. This has been clarified in the guidance under <u>Measured Infiltration Rate</u> .	Y

The final guidance was approved in March 2014.

Prepared by:

Eric S. Rortvedt, Storm Water Engineer
(608) 273-5612
Eric.Rortvedt@wisconsin.gov