

Chapter NR 151

RUNOFF MANAGEMENT

Subchapter I – General Provisions

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Subchapter I – General Provisions

NR 151.001 Purpose. This chapter establishes runoff pollution performance standards for non-agricultural facilities and transportation facilities and performance standards and prohibitions for agricultural facilities and practices designed to achieve water quality standards as required by s. 281.16(2) and (3), Stats. This chapter also specifies a process for the development and dissemination of department technical standards to implement the non-agricultural performance standards as required by s. 281.16(2)(b), Stats. If these performance standards and prohibitions do not achieve water quality standards, this chapter specifies how the department may develop targeted performance standards in conformance with s. NR 151.004.

NR 151.002 Definitions. In this chapter:

(1) "Adequate sod, or self-sustaining vegetative cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

(2) "Agricultural facilities and practices" has the meaning given in s. 281.16(1), Stats.

(3) "Average annual rainfall" means a typical calendar year of precipitation, excluding snow, ~~as defined by the department for users of models such as SLAMM and P8, or equivalent methodology which is considered typical.~~

(4) "Best management practices" or "BMPs" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

(5) "Combined sewer system" means a system for conveying both sanitary sewage and stormwater runoff.

(6) "Connected imperviousness" means an impervious surface ~~that is directly connected to~~ connected to the a separate storm sewer or waters of the state ~~via a separate storm sewer via or~~ an impervious flow path.

(7) "Construction site" means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.

(8) "DATCP" means the department of agriculture, trade and consumer protection.

(9) "Department" means the department of natural resources.

(10) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

(11) "Development" means residential, commercial, industrial or institutional land uses and associated roads.

(12) "Effective infiltration area" means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

(13) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

(14) "Exceptional resource waters" means waters listed in s. NR 102.11.

(14m) "Existing development" means development in existence on October 1, 2004 or development for which a notice of intent was received by the department of natural resources or the department of commerce on or before October 1, 2004

(15) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

(16) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of runoff, except discharges authorized by a WPDES permit or any other discharge not requiring a WPDES permit such as water line flushing, landscape irrigation, individual residential car washing, fire fighting and similar discharges.

(17) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of surfaces that typically are impervious.

(18) "In-fill area" means an undeveloped area of land located within existing urban sewer service areas, surrounded by already existing development or existing development and natural or man-made features where development cannot occur. The in-fill area must have been in existence on October 1, 2004 or was part of a notice of intent that was received by the department or the department of commerce by October 1, 2004.

(19) "Infiltration" means the entry and movement of precipitation or runoff into or through soil.

(20) "Infiltration system" means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

(21) "~~Karst feature~~Direct conduits to groundwater" means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

(22) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(23) "Landowner" means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.

(24) "Local governmental unit" has the meaning given in s. 92.15(1)(b), Stats.

(25) "MEP" or "maximum extent practicable" means a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

(26) "Municipality" has the meaning given in s. 281.01 (6), Stats.

(27) "Navigable waters" and "navigable waterway" has the meaning given in s. 30.01(4m), Stats.

(28) "New development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.

(29) "NRCS" means the natural resources conservation service of the U.S. department of agriculture.

(30) "Ordinary high water mark" has the meaning given in s. NR 115.03(6).

(31) "Outstanding resource waters" means waters listed in s. NR 102.10.

(32) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.

Note: Percent fines can be determined using the "American Society for Testing and Materials", volume 04.02, "Test Method C117-95 Standard Test Method for Materials Finer than 75- μ m (No. 200) Sieve in Material Aggregates by Washing". Copies can be obtained by contacting the American society for testing and materials, 100 Barr Harbor Drive, Conshohocken, PA 19428-2959, or phone 610-832-9585, or on line at: "<http://www.astm.org/>".

(33) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

(34) "Pervious surface" means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or similar vegetated areas are examples of surfaces that typically are pervious.

(35) "Pollutant" has the meaning given in s. 283.01(13), Stats.

(36) "Pollution" has the meaning given in s. 281.01(10), Stats.

(37) "Population" has the meaning given in s. 281.66(1)(c), Stats.

(38) "Preventive action limit" has the meaning given in s. NR 140.05(17).

(39) "Redevelopment" means areas where development is replacing older development.

(40) "Runoff" means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

(41) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

(42) "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

(a) Is designed or used for collecting ~~water~~ or conveying runoff.

(b) Is not part of a combined sewer system.

(c) Is not ~~draining to a storm water treatment device or system~~ part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

(d) Discharges directly or indirectly to waters of the state.

(43) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water, after the site has undergone final stabilization, following completion of the construction activity.

(44) "Targeted performance standard" means a performance standard that will apply in a specific area, where additional practices beyond those contained in this chapter, are necessary to meet water quality standards.

(45) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

(46) "Top of the channel" means an edge, or point on the landscape landward from the ordinary high water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet landward from the ordinary high water mark, the top of the channel is the ordinary high water mark.

(47) "TR-55" means the United States department of agriculture, natural resources conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.

Note: Copies of this document may be inspected at the offices of the department's bureau of watershed management, NRCS, the secretary of state and the ~~revisor of statutes~~ Legislative Reference Bureau, all in Madison, WI.

(48) "Transportation facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095(1)(b), Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the department of commerce pursuant to s. 101.1205, Stats. or transportation facility construction sites that are part of a larger common plan of development, such as local roads within a residential or industrial development.

(49) "Type II distribution" means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973", which is incorporated by reference for this chapter. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

Note: Copies of this document may be inspected at the offices of the department's bureau of watershed management, NRCS, the secretary of state and the ~~revisor of statutes~~[Legislative Reference Bureau](#), all in Madison, WI.

(50) "Waters of the state" has the meaning given in s. 283.01 (20), Stats.

(51) "WPDES permit" means a Wisconsin pollutant discharge elimination system permit issued under ch. 283, Stats.

(52) "Total maximum daily load" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still insure attainment of the applicable water quality standard. There are 4 components to the total maximum daily load: point source allocation, non-point source allocation, reserve capacity and margin of safety.

(53) "Impaired water" means a waterbody impaired in whole or in part and listed by the department pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7, for not meeting a water quality standard, including a water quality standard for a specific substance or the waterbody's designated use.

(54) "Highway" has the meaning given in s. 340.01(22), Stats.

(55) "Minor reconstruction" means reconstruction that is limited to 1.5 miles in continuous or aggregate total length of realignment that does not exceed 100 feet in width of roadbed widening and that does not include replacement of a vegetated drainage system with a non-vegetated drainage system except where necessary to convey runoff under a highway or private road or driveway.

Note: A road reconstruction project that will convert an open drainage system into a curb and gutter drainage system does not qualify as minor reconstruction.

(56) "Private road or driveway" has the meaning given in s. 340.01(46), Stats.

(57) "Public-use airport" has the meaning given in 49 USC 47102(17):

(58) "Public mass transit facility" means any area of land or water which is used, or intended for use, by bus or light rail, and any appurtenant areas which are used, or intended for use, by bus or light rail, including buildings or other facilities or rights-of-way, either publicly or privately owned, that provide the public with general or special service on a regular and continuing basis.

(59) "Public trail" means any of the following: a "state ice age trail area" designated under s. 23.17 (2), Stats., a state trail under s. 23.175(2)(a), Stats., an "all-terrain vehicle trail" under s. 23.33(1)(d), Stats., an "off-the-road motorcycle trail" under s. 23.33(9)(b)4, Stats., a "recreational trail" under s. 30.40(12m), Stats., a "walkway" under s. 30.40(22), Stats., a state trail under s. 84.06(11), Stats., a "bikeway" under s. 84.60(1)(a), Stats., a "snowmobile trail" under s. 350.01(17), Stats., a "public snowmobile corridor" under s. 350.12(3j)(a)1, Stats., or any other trail open to the public as a matter of right.

(60) "Railroad" means any area of land or water which is used, or intended for use, in operating a railroad as defined in s. 85.01(5), Stats., and any appurtenant areas which are used, or intended for use,

for railroad buildings or other railroad facilities or rights-of-way, together with all railroad buildings and facilities located thereon.

(61) "Reconditioning" has the meaning given in s. 84.013(1)(b), Stats.

(62) "Reconstruction" has the meaning given in s. 84.013(1)(c), Stats.

(63) "Resurfacing" has the meaning given in s. 84.013(1)(d), Stats.

(64) "Transportation facility authority" means any person or entity that is authorized to approve work on a transportation facility by contract, permit or with its own forces or by force account. A permit or approval granted by the department pursuant to ch. 283, Stats., does not qualify as authorization needed to meet this definition.

NR 151.003 Regional treatment exclusion for existing development and post-construction runoff. (1) ~~Post-construction r~~unoff from existing development or post-construction 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 subchs. III ~~and IV~~prior to the BMP. ~~Post-construction BMPs may be located in non-navigable surface waters.~~

Note: While regional treatment facilities are appropriate for control of pollutants from post-construction and existing development they should not be used for construction site sediment removal.

(2) Except as allowed under sub. (3), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water or wetland.

(3) Post-construction runoff ~~from any development~~ within a navigable surface water that flows into a BMP is not required to meet the performance standards of subchs. III ~~and IV~~prior to the BMP if:

(a) 1. The BMP was constructed prior to October 1, 2002, and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Stats., permit; or

2. The BMP received a permit issued under ch. 30, Stats prior to October 1, 2002; and

(b) The BMP is designed to provide runoff treatment from future upland development.

(4) Runoff from existing development, redevelopment and in-fill areas shall meet the applicable post-construction performance standards of subch. III -in accordance with pars. (a) and (b).

(a) ~~To the maximum extent practicable,~~ BMPs shall be located to treat runoff prior to discharge to navigable surface waters and wetlands, to the maximum extent practicable.

(b) ~~Post-construction~~ BMPs for such runoff ~~may be~~ located in a navigable surface water or wetland if allowable under ~~shall meet~~ all other applicable federal, state and local regulations such as ch. NR 103 and ch. 30, Stats.

Note: This allows the location of BMPs in navigable surface waters where necessary to augment management practices upstream of the navigable surface water to meet the performance standards.

(5) The discharge ~~of runoff~~ from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter prior to reaching waters of the state.

Note: This section does not supersede any other applicable federal, state or local regulation such as ch. NR 103 and ch. 30, Stats.

NR 151.004 State targeted performance standards. For some areas, implementation of the statewide performance standards and prohibitions in this chapter may not be sufficient to achieve water quality standards. In those cases, the department shall determine if a specific waterbody will not attain water quality standards after substantial implementation of the performance standards and prohibitions in this chapter, using ~~actual or predicted~~ modeling or monitoring. If the department finds that water quality standards will not be attained using statewide performance standards and prohibitions but the implementation of targeted performance standards would attain water quality standards, the department shall promulgate the targeted performance standards by rule.

Note: Pursuant to s. 281.16(2)(a) and (3)(a), Stats., the performance standards shall be designed to meet state water quality standards.

NR 151.005 Performance Standards for Total Maximum Daily Loads. For impaired waters the implementation of statewide performance standards and prohibitions in this chapter may not be sufficient to meet water quality standards. If a federal environmental protection agency approved TMDL determines through monitoring or modeling that water quality standards will not be attained using statewide performance standards and prohibitions the department shall identify in the TMDL, enhancements to the performance standards and prohibitions in this chapter necessary to meet the allocations specified in the TMDL.

Note: TMDLs are subject to public review as defined in the continuing planning process developed under s. 283.83.