STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES	:	NOTICE OF TIME PERIOD FOR COMMENTS FOR THE ECONOMIC IMPACT ANALYSIS

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Department of Safety and Professional Services relating to application and compliance procedures. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Greg DiMiceli, Administrative Rules Coordinator
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935
Gregory.DiMiceli@Wisconsin.gov

The deadline for submitting economic impact analysis comments is August 30, 2016.

PROPOSED ORDER

An order of the Department of Safety and Professional Services to renumber and amend SPS 360, SPS 302, SPS 303, SPS 320 to 325

to amend SPS 360 relating to erosion control, sediment control and storm water

Analysis prepared by the Department of Safety and Professional Services.

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 Admidinstrative Code.

Section 101.02 (1), Stats. Reads, "The department shall adopt reasonable and proper rules and regulations relative to the exersice 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:
N/A

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, 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.

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. Comments must be received on or before August 30, 2016 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 360.04 (6) is repealed.
SECTION 2. SPS 360.12 is repealed.
SECTION 2, SPS 360.13 (2) is repealed.
SECTION 3. SPS 360.21 (2) is repealed.
SECTION 4. SPS 360.30 is repealed.
SECTION 5. 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 6. 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.

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.

(1) General requirements. 1. The erosion control permit application shall be reviewed by a certified commercial building inspector.

(2) Municipal Fees. The municipality shall, by ordinance, determine fees to cover expenses of plan examination, inspection and the issuance of the Wisconsin uniform building permit.

(END OF TEXT OF RULE)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated 3/31/16 Agency _____
Secretary
Department of Saftey and Professional Services