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Chapter Comm 60

EROSION CONTROL, SEDIMENT CONTROL AND STORM WATER MANAGEMENT

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Note: Beginning January 1, 2010, this chapter is under the authority of the Department of Natural Resources. As of that date, the regulation of erosion at sites that are for the construction of public buildings and buildings that are places of employment is transferred by 2009 Wisconsin Act 28 from the Department of Commerce to the Department of Natural Resources, which regulates erosion control and post-construction storm water management under s. 283.33, Stats., and ch. NR 216, Wis. Adm. Code. See the Note following s. NR 216.42 (4), Wis. Adm. Code.

Subchapter I — Introduction

Comm 60.01 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.

Note: Other agencies may have regulations that may affect the site design and construction activities for a building. The regulations may necessitate additional administrative procedures or inspections for compliance with such regulations.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Comm 60.02 Scope. This chapter applies to all sites where land disturbing construction activities occur during the construction of buildings and structures serving as public buildings and places of employment.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Comm 60.03 Owners responsibility. The owner or owner's agent is responsible for complying with this chapter.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Comm 60.04 Definitions. In this chapter:

(1) "Control practice" means a method or device implemented to prevent or reduce erosion or the resulting deposition of soil or sediment.

(2) "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 storm water runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(3) "Municipality" means any city, village, town or county in this state.

(4) "Owner" means any person or legal entity holding fee title, an easement or other interest in property that allows the person to undertake land disturbing construction activity.

(5) "Stabilized" means the condition where vegetation is established or other practices are in place on exposed soil surfaces so as to reduce erosion.

(6) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm

water, after the site has undergone stabilization, following completion of the construction activity.

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

Note: Under s. 283.01 (20), Stats., "waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Subchapter II — Administration and Enforcement

Comm 60.10 Governmental oversight. (1) MUNICIPAL ORDINANCES. Pursuant to s. 101.1205 (5m), Stats., a municipality may continue to administer and enforce a local ordinance related to erosion and sediment control at building sites where land disturbing construction activities are to occur if the ordinance meets all of the following conditions:

(a) The ordinance standards are more stringent than the standards of this chapter.

(b) The ordinance was in effect on January 1, 1994.

(2) MUNICIPAL AUTHORITY. Nothing in this chapter shall prevent a municipality from any of the following:

(a) Instituting administrative erosion and sediment control requirements such as plan review, permitting or inspecting and the associated fees to cover the costs of those requirements.

(b) Implementing erosion and sediment control requirements that are more stringent than the standards of this chapter when directed by an order of the United States environmental protection agency or by an administrative rule of the department of natural resources under s. NR 151.004.

(c) Regulating erosion and sediment control for sites that are not under the scope of this code.

Note: This code does not apply to buildings that are not public buildings, places of employment or buildings and projects exempted under s. 101.05, Stats. For example: farm buildings, buildings on Indian reservations or buildings owned by the federal government are not buildings under the scope of this chapter. Erosion control and storm water management standards enacted by municipalities, the Department of Natural Resources or the U.S. Environmental Protect Agency may apply in these cases.

(3) DNR AUTHORITY. This code shall not be construed to affect the authority of the department of natural resources to enforce chapters 281 and 283, Stats., and administrative rules promulgated there under.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Comm 60.11 Certified municipalities. Certified municipalities in conformance with s. Comm 61.60 may serve as the department's agent for all notices referenced under s. Comm 60.12 and all inspections referenced under ss. Comm 60.14 and 60.15.

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Comm 60.12 Required submittals. (1) NOTICE OF INTENT. (a) A notice of intent along with an erosion and sediment control plan summary in a format prescribed by the department shall be filed by the owner or owner's agent when land disturbing construction activity involves one or more acres.

Note: Copies of the notice of intent form SBD-10376 are available from the Safety and Buildings Division at P.O. Box 7162, Madison, WI 53707-7162, or by telephone 608/266-3151 and 608/264-8777 (TTY), or at the Safety and Buildings' web site at www.commerce.wi.gov/SB.

(b) The notice of intent shall be submitted at least 7 days prior to commencement of land disturbing construction activity unless a shorter time period is permitted by the department.

(c) A site specific erosion and sediment control plan and a storm water management plan shall be prepared and completed prior to submitting the notice of intent.

Note: Section Comm 2.36 states the amount of the fee remitted to the department when a notice of intent is filed.

(d) The submittal of a notice of intent to the department for a construction site with one or more acres of land disturbing construction activity constitutes an application for coverage under a storm water construction site general permit issued by the department of natural resources pursuant to s. 283.33, Stats., and ch. NR 216, which contains erosion control standards established by the department of commerce pursuant to s. 101.1205, Stats.

Note: Although construction site notices of intent are submitted to the Department of Commerce, coverage under the Department Natural Resources' storm water construction site general permit is required by the United States Environmental Protection Agency in accordance with its delegation of Clean Water Act permit authority to the Department of Natural Resources.

Note: Department of Natural Resources rules under s. NR 216.42 (4) state: "Storm water discharges from construction sites for public buildings and buildings that are places of employment regulated by the department of commerce pursuant to s. 101.1205, Stats., in a manner which is equivalent to this subchapter shall be deemed to hold a WPDES permit issued pursuant to this subchapter." Sites deemed to hold a WPDES permit are subject to DNR enforcement for violations of permit conditions.

(2) NOTICE OF TERMINATION. (a) The owner or owner's agent shall submit a notice of termination in a format prescribed by the department for a site where a notice of intent is required under this section.

(b) The notice of termination shall be submitted when all of the following have occurred:

1. All land disturbing construction activities have ceased.
2. All disturbed areas have been stabilized. A disturbed area shall be considered stabilized by vegetation when a perennial cover has been established with a density of at least 70%.
3. All temporary erosion and sediment control practices have been removed.

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Comm 60.13 Plans. (1) EROSION AND SEDIMENT CONTROL. (a) 1. An erosion and sediment control plan shall be prepared that delineates the practices to be employed for the site where land disturbing construction activity is to occur.

2. An erosion and sediment control plan shall be of sufficient detail so as to document compliance with s. Comm 60.20.

3. An erosion and sediment control plan shall show the areas of land disturbance and location of all control practices to be employed to comply with this chapter.

4. An erosion and sediment control plan shall show the pre-construction ground surface contour lines at intervals appropriate for conditions present within the proposed disturbed areas.

5. An erosion and sediment control plan shall identify the initial downstream receiving water of the state from the building site.

(b) 1. An erosion and sediment control plan and any revisions to the plan shall be maintained at the construction site for the duration of the land disturbing construction activities.

2. An erosion and sediment control plan and any revisions shall be made available to the department, municipality or delegated inspection agency providing the required inspections.

(2) STORM WATER MANAGEMENT. (a) A written storm water management plan shall be prepared for a site where one or more acres of land disturbing construction activity is to occur.

(b) The storm water management plan shall delineate and describe the post-construction storm water management practices to be employed to comply with s. NR 151.12.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Comm 60.14 Inspections. (1) A person certified in accordance with ch. Comm 5 as a soil erosion inspector or commercial building inspector shall conduct all inspections performed for the purpose of administering and enforcing the erosion and sediment control provisions under this chapter.

(2) The inspections of the erosion and sediment control practices under this chapter shall be conducted as required under s. Comm 61.41.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Comm 60.15 Violations and penalties. (1) NOTICE OF NONCOMPLIANCE. (a) *Notification.* Upon finding of noncompliance, the inspector administering and enforcing the erosion and sediment control provisions under this chapter shall notify the owner or owner's agent in writing of the violations to be corrected and the time period allowed for compliance.

(b) *Timing of orders.* Except as provided in par. (c), the time period allowed for compliance shall be determined based on the severity of the noncompliance in relation to the potential soil loss or damage to the waters of the state.

(c) *Stop work order.* 1. Pursuant to s. 101.1205, Stats., the department or a certified municipality may issue a special order directing an immediate cessation of construction work on other facets of the building until compliance with the erosion and sediment control provisions under this chapter is attained.

2. Construction work may resume once the erosion and sediment control compliance corrections have been completed.

(2) PENALTIES. Penalties for violations of this chapter shall be assessed in accordance with s. 101.02 (13), Stats.

Note: Section 101.02 (13), Stats., provides for fines of up to \$100 for each violation of rules promulgated under this section. Each day of continued violation may constitute a separate offense.

Note: For a site where one or more acres of land disturbing construction activity occurs, the Department of Natural Resources has the ability to inspect and pursue enforcement action under the issuance of the Wisconsin Pollutant Discharge Elimination System, WPDES, General Permit pursuant to chapter NR 216.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Subchapter III — Erosion and Sediment Control

Comm 60.20 Erosion and sediment control. (1) GENERAL. (a) Where land disturbing construction activity is to occur erosion and sediment control practices shall be employed, as necessary, and maintained to prevent or reduce the potential deposition of soil or sediment to all of the following:

1. The waters of the state.
2. Adjacent properties.

(b) Land disturbing construction activities, except those activities necessary to implement erosion or sediment control practices, may not begin until the sediment control practices are in place for each area to be disturbed in accordance with the erosion and sediment control plan.

(c) Erosion and sediment control practices shall be maintained until the disturbed areas are stabilized. A disturbed area shall be considered stabilized when a perennial cover has been established with a density of at least 70%.

(d) Erosion and sediment control practices shall either be approved by the department or listed by the department of natural resources in accordance with the process under s. NR 151.32 (2).

Note: Listed practices can be found through the Safety and Buildings Division website at www.commerce.state.wi.us/SB or by contacting the Safety and Buildings Division at (608) 266-3151.

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(2) MANDATED PRACTICES. Specific practices at each site where land disturbing construction activity is to occur shall be utilized to prevent or reduce all of the following:

- (a) The deposition of soil from being tracked onto streets by vehicles.
- (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
- (c) The discharge of sediment from disturbed areas into abutting waters of the state.
- (d) The discharge of sediment from drainage ways that flow off the site.
- (e) The discharge of sediment by dewatering activities.
- (f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

(3) CONTROL STANDARDS. Including the practices under sub. (2), additional erosion and sediment control practices shall be employed, as necessary, to accomplish one of the following:

(a) A potential annual cumulative soil loss rate of not more than one of the following:

- 1. Five tons per acre per year where sand, loamy sand, sandy loam, loam, sandy clay loam, clay loam, sandy clay, silty clay or clay textures are exposed.
- 2. Seven and a half tons per acre per [year] where silt, silty clay loam or silt loam textures are exposed.

(b) A reduction of at least 80% of the potential sediment load in storm water runoff from the site on an average annual basis as compared with no sediment or erosion controls for the site when the land disturbing construction activity involves one or more acres.

(c) A reduction of at least 40% of the potential sediment load in storm water runoff from the site on an average annual basis as compared with no sediment or erosion controls for the site where less than one acre of land disturbing construction activity is to occur.

Note: See appendix for further explanatory material regarding compliance solutions for 80 and 40% reductions.

(4) SOIL LOSS ANALYSIS. Potential soil loss shall be determined using an engineer analytical modeling acceptable to the department.

Note: The Revised Universal Soil Loss Equation II is an example of an acceptable method to determine soil loss.

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Comm 60.21 Monitoring. (1) The owner or owner's agent shall check the erosion and sediment control practices for maintenance needs at all the following intervals until the site is stabilized:

- (a) At least weekly.
- (b) Within 24 hours after a rainfall event of 0.5 inches or greater. A rainfall event shall be considered to be the total amount of rainfall recorded in any continuous 24 hour period.
- (c) At all intervals that are cited on the erosion and sediment control plan.

(2) (a) The owner or owner's agent shall maintain a monitoring record when the land disturbing construction activity involves one or more acres.

(b) The monitoring record under par. (a) shall contain at least the following information:

- 1. The condition of the erosion and sediment control practices at the intervals specified under sub. (1).
- 2. A description of the maintenance conducted to repair or replace erosion and sediment control practices.

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Comm 60.22 Maintenance. (1) (a) Except as provided in par. (c), off-site sediment deposition resulting from the failure of an erosion or sediment control practice shall be cleaned up by the end of the next day.

Note: Contact the Department of Natural Resources before attempting to clean up any sediment deposited or discharged into the waters of the state.

(b) Except as provided in par. (c), off-site soil deposition, resulting from construction activity, that creates a nuisance shall be cleaned up by the end of the work day.

(c) A municipality may enact more stringent requirements regarding cleanup of soil or sediment deposition onto public ways.

(2) (a) Except as required in par. (b), the owner or owner's agent shall complete repair or replacement of erosion and sediment control practices or devices as necessary within 48 hours of an interval specified under s. Comm 60.21.

(b) When the failure of erosion or sediment control practices results in an immediate threat of sediment entering public sewers or the waters of the state, procedures shall be implemented immediately to repair or replace the practices.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.

Subchapter IV — Storm Water Management

Comm 60.30 Storm water management. Storm water management practices shall be employed in accordance with s. NR 151.12 and maintained when the land disturbing construction activity involves one or more acres.

Note: See appendix for further explanatory material.

History: CR 05-113: cr. Register December 2006 No. 612, eff. 4-1-07.