

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: July 3, 2008

FILE REF: ASTAC Minutes NR 528

TO: ASTAC

FROM: Tom Portle and Jack Connelly

SUBJECT: Accumulated Sediment Technical Advisory Committee (ASTAC) meeting held on April 23, 2008 at DATCP in Madison, WI.

ASTAC members present: Jim Bachhuber, Earthtech; Jeremy Balousek, Dane County Land Conservation; Greg Fries, City of Madison; Lori Grant, River Alliance of Wisconsin; Paul Kent, Municipal Environmental Group; Thomas Marquardt, Wisconsin Towns Association; and Pat Stevens of the Wisconsin Builders Association

ASTAC members not present: Lynita Docken, WDOT and Jim McMillan, DOA

WDNR Staff Present: Jack Connelly, Dan Graff, Mary Anne Lowndes, Dennis Mack and Tom Portle
Following is a report on the main points from the ASTAC meeting held on April 23, 2008 at DATCP in Madison as well as a discussion of other draft code revisions based on internal and external comments and management recommendations. The main points are that the reorganized rule:

- Deemphasizes landspreading which had unintentionally carried more weight in previous versions by relocating it in the restructured rule.
- Increases the off-site disposal options for non-licensed disposal practices.
- Employs two certification forms (one for disposal, the other for use) instead of one and revises their content to accommodate the new structure and make the self-certification process easier. Includes corresponding code revisions to support this.

Discussion/ Code Reference ¹	Action
NR 528.02 Applicability Paul pointed out we should make the code clearer that the rule does not apply to sedimentation devices used during construction. Instead it applies only after the construction permit is completed.	Language was added under 528.02(3)(e).

¹ NOTE FROM 12/22/08: The reader is advised that the proposed administrative code has been revised since these minutes were drafted. Thus, numerical references, such as NR 528.07 may now instead be NR 528.06. In other cases, input has resulted in structural changes. For example, there is no longer a distinction made between sediment use and disposal resulting in the combination of NR 528.07 and NR 528.08 into NR 528.07.

<p>528.03 Definitions Definitions “Use and Disposal” Discussed definition of storm water sedimentation structure and address infiltration ponds under this rule.</p>	<p>Language in definitions slightly reworked. Definition revised to include infiltration basins.</p>
<p>NR 528.04 Locational criteria, performance standards and ceiling levels</p>	<p>Language consolidated and moved to front of rule.</p>
<p><u>Locational criteria</u> Lori pointed out that the setbacks in the table seem to be more for landspreading and could be less strict for the non-landspreading uses.</p>	<p>Rule amended to make clear that locational criteria are more generally applicable to landspreading and to clarify when the locational criteria in Table 1 do and do not apply.</p>
<p>Jeremy mentioned 500 ft. setback to wetlands vs. lakes is more restrictive and would eliminate half the county. Paul indicated that in shoreland zoning and ch. 30 they use lakes or streams and that wetlands are handled differently. This criteria lumps them all together.</p>	<p>No change. Tom clarified that originally the TAC requested that we use the ch. 30 numbers so that there would be no conflicts.</p>
<p><u>Performance standards</u></p>	<p>Note added to point out other chapters and codes that may apply.</p>
<p><u>Ceiling levels</u> There was some discussion as to the need for firm numbers (levels) for parameters in sediment data besides those select parameters addressed in the Ceiling level Table 2.</p>	<p>No change to table but it was relocated to front of rule. Agree. Needs to be addressed in technical guide document. Note added to certification form to guide the user. Jack indicated DNR would solicit input from the group when developing the guide document, and that the guide document would give the user ranges for the different parameters found in sediment in Wisconsin and other states. *</p>

* It is important to note that developing regulatory levels for all parameters would require a process well beyond the scope of this rule-making effort. It would entail a very sophisticated effort involving modeling and assumptions. If pursued, this would likely become very contentious and delay the process.

<p>NR 528.05 Sediment evaluation and certification requirements. (1) <u>CERTIFICATION FORM.</u> – ASTAC wanted reference to “protect public health and the environment” removed from certification statement.</p>	<p>Done. Major revision in form and rule language. Now two forms.</p>
<p>NR 528.05 Sediment evaluation and certification requirements. (cont.) (2) <u>DRAINAGE AREA EVALUATION</u> (3) <u>SAMPLING</u></p>	<p>Helps to clarify who is to certify and if and when sampling is required. Also code and forms make clear when and where drainage area characteristics may serve as a surrogate for sampling and analysis.</p>
<p>ASTAC discussed situations and possible conditions where sediment sampling could be minimized. Some discussion about allowing the same sediment manager to use the sediment in a development next door, even though the sediment manager would not be in control of the site. ASTAC would like to allow for use and not sampling if it is controlled by the same person. General idea that the flexibility contained in the original idea of the code to require less sediment sampling in low risk situations is lost.</p>	<p>The code is written this way to provide a clear, risk related, break point That is easily understandable – that is “<i>within the same drainage area</i>” and “<i>on property owned or controlled by the sediment manager</i>”.</p>

<p>NR 528.05 Sediment evaluation and certification requirements. (cont.) Lori thought we should allow accumulated sediment that meets the criteria to be used in one of the non-landspreading activities and not require sampling. We allow this as long as it's used in the drainage area and is controlled by sed. manager. If it was to be landspread, testing would be required.</p>	<p>We have made changes to reflect this concept not only in the use scenario but also took the basic concept and applied it under non-licensed landfill disposal as well under new NR 528.07(2) (See below.)</p>
<p>ASTAC wanted to try to reduce situations that require sediment sampling.</p>	<p>Rule amended to allow use of existing data in some cases in lieu of new sampling and analysis. (NR 528.05(3)(a)4.) Also added a note. (NR 528.05(3) intro.) Based on determination that the land use in the drainage basin did not change significantly by the next time they sampled, the sediment would not need to be sampled a second time.</p>
<p>(4) SEDIMENT SAMPLE DATA EVALUATION</p>	<p>Note added to rule that references the technical support document. Language consolidated and moved to front of rule. Rule slightly revised to distinguish between routine parameters and those that are indicator parameters. Added a corresponding note on the certification form.</p>
<p>ASTAC believes accumulated sediment is perhaps best used in landscape berms – this should be emphasized more.</p>	<p>Best addressed in forthcoming technical support document.</p>
<p>NR 528.06 Management decisions and general requirements.</p>	<p>Language made more specific and moved forward in rule. Applies except where otherwise noted.</p>
<p>NR 528.07 Disposal of accumulated sediment. (1) LICENSED LANDFILL DISPOSAL. (2) DISPOSAL OTHER THAN IN A LICENSED LANDFILL.</p>	<p>Rule made more specific and linked to certification forms. Language specifies when locational criteria and general management requirements do and do not apply.</p>

<p>NR 528.07 Disposal of accumulated sediment (cont.)</p>	<p>We have expanded the possibility of disposal in a nonlicensed landfill. Further, we have taken the advice of the ASTAC (intended for use scenario) and provided similar flexibility for nearby sites that are under the ownership or control of the sediment manager. This also makes the rule more internally consistent on this point.</p>
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<p>NR 528.08 Use of accumulated sediment ASTAC believes that sediment application rate limits are too low. Impractical. Nutrient management plans may be “show stopper.”</p>	<p>No change except deemphasized landspreading. More options for disposal other than in a licensed landfill. (Also see below under discussion items).</p>
<p>Note: The department considered removing landspreading from the code but decided it should stay and possibly be less emphasized. Greg thought the rule may influence the way they plan things. Might grade a site and leave depressions that could be filled over time. Rearranged and deemphasized role of landspreading.</p>	
<p>Paul asked about how difficult it would be to modify a nonmetallic mining reclamation permit to accommodate this non-landspreading management use option.</p>	<p>Dan said it’s not difficult to amend.</p>

<p><u>Table 3 Soil factors for site evaluation</u> ASTAC wanted more flexibility in the use of a wider range of soil types.</p>	<p>Site selection table amended to not disallow any soil type out of hand but rather to allow risk management via site selection or management practices such as incorporation.</p>
<p>NR 528.09 Dedicated sites and certain specific cases. (1) DEDICATED SITE. (2) SMALL QUANTITY, COARSE GRAINED SEDIMENT DISPOSAL.</p>	<p>Rearranged and made more specific. Now fits with forms and allows explicit criteria and requirements to be readily applied to dedicated sites and small quantities of coarse-grained sediment</p>

<p>“Coarse Material Management” ASTAC requested a clear approach that allows removal of coarse grained material that could accumulate even if it wasn’t in a forebay or a designed and engineered forebay.</p>	<p>Rearranged and more specific language added “Small Quantity, Coarse Grained Sediment Disposal” for clarity. No longer limits to forebay.</p>
<p>NR 528.10 Record retention.</p>	<p>Relocated and renumbered.</p>
<p>NR 528.11 Department assistance.</p>	<p>Relocated and renumbered.</p>
<p>NR 528.12 Sediment Management Program Evaluation</p>	<p>Added as a voluntary approach.</p>

Other Discussion Items:

DNR handed out the costs Jim Bachhuber had provided for sampling sediment.

Other Discussion Items: (cont.)

Application rate

The TAC members believe 5 tons per acre is unrealistic. Practically they can't spread it this thin. Jeremy indicated 5 Tons/Acre is the same amount that erodes off a field each year. Could only be spread this thin as liquid slurry. Tom said the level is based on metals loadings. Sludge is spread at 2 tons per acre. Jeremy and Greg said practically it won't be landspread or that in their view, the technology is not there to spread it thinner. *As indicated above, we considered removing landspreading from the code but decided it should stay and be less emphasized.*

Jeremy also thought the nutrient management plan would be a show stopper. This material would have too much phosphorus to allow its use in a plan that limits phosphorus.

[MENTIONED ABOVE.]

Greg indicated most sediment can't be dewatered on site. If you remove the sediment using mechanical means such as a backhoe you get 50 percent solids and 50 percent liquid. If you dewater, you might get 75 percent solids. Greg doesn't believe it's realistic to think there will be much dewatering on site – it takes up space which usually is not available and stinks.

Pat wondered whether the language in NR 528.02(3) allows local governments to implement more restrictive measures than the state. *Dan said yes and no depending on the local authority.*

Biofilters have become very popular. Greg estimated the City of Madison has installed 200 in the last five years. They are designed to take up the smallest amount of area to meet the treatment needs. They're designed to treat runoff from parking lots and also to treat oil and grease.

The concentration of contaminants would likely be higher and if we allowed them in the rule, we'd need to add more parameters to the basic list such as PAHs. Infiltration ponds are more parallel with sedimentation ponds. Their failure is from sedimentation.

Next steps

DNR solicited comments, by July 21, 2008, on the reorganized and amended draft NR 528 sediment rule as well as these minutes and the certification forms.