



DATE: Nov. 4, 2009

FILE REF: 3200

TO: Natural Resources Board

FROM: Matthew J. Frank

SUBJECT: Revised request for authorization to hold public hearings for Board Order Number WT-14-08, modifications to Chapters NR 151, Runoff Management; NR 153, Targeted Runoff Management Grant Program; and NR 155, Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program.

**Note:** The original proposal was presented to the Natural Resources Board on October 21, 2009. The Board tabled the item pending receipt from staff of a specifically-worded revision to SECTION 13 of the Order that clarifies department policy. The revised language beginning at page 14 of the Order disallows future storm water best management practices (BMPs) such as detention ponds that would be located in navigable waters. Such “in-line” storm water BMPs for new development are disallowed by current rules, but are permissible for runoff from existing development, redevelopment and in-fill development areas, although they may be illegal under the federal Clean Water Act. (SECTION 13 of the Order amends ss. NR 151.003 and 151.004, Wis. Adm. Code.)

## **1. Why These Rules are Being Proposed**

### **a. Events or actions that triggered the proposal**

Several actions are triggering the proposal to revise these rules which have been in effect since 2002. A resolution passed by the Natural Resources Board on May 22, 2002 directed the department to incorporate an agricultural buffer performance standard into administrative code. Another action is an increased effort by the federal government and the state to address the problem of state waters that have been declared impaired, primarily by polluted runoff. A third action was the promulgation in 2007 of revisions to ch. NR 243, Animal Feeding Operations, which necessitates changes to ch. NR 151 to make the rules consistent with each other. A fourth action was the passage by the state legislature in October 2007 authorizing the department, under s. 281.65 (4e), Wis. Stats., to fund runoff Notices Of Discharge (NODs) issued to non-permitted livestock facilities outside of the Targeted Runoff Management grant process. Revisions to ch. NR 153 are needed to codify the funding process. A fifth action was the transfer of responsibilities relating to commercial building site erosion control from the Department of Commerce to the Department of Natural Resources in 2009 Wisconsin Act 28.

Other actions and events that occurred since the rules were first promulgated include the availability of research results showing that some performance standards may not be providing the level of protection originally intended, improved data sets for use in models and improved methods of calculating phosphorus and sediment delivery to receiving waters and the emergence of data generated by municipalities that caused concern about meeting future performance standards for developed urban areas. Implementation of the performance standards since 2002 has demonstrated that portions of the runoff administrative rules need language changes to clarify intent.

### **b. Issues addressed by this rule**

The control of polluted runoff from both agricultural and non-agricultural sources is a major issue for the department and Wisconsin citizens. The drafters of the original ch. NR 151 included a performance standard requiring buffers in agricultural areas, but the department removed it from the final draft when stakeholders failed to reach consensus on the components of the standard. The Senate Committee on Environmental Resources directed the department to initiate a revision to the nonpoint source administrative rules to incorporate an agricultural buffer performance standard following research conducted by the University of Wisconsin on the function of agricultural riparian buffers under Wisconsin conditions. A research report, *The Wisconsin Buffer Initiative Report*, was presented to the department in December, 2005 to help guide the development of a buffer performance standard. An underlying assumption of the research was that buffers by themselves would not result in the desired water quality outcomes, but must be part of a larger conservation system. Chapter NR 151 needs to be modified to include a new performance standard consistent with this assumption.

In addition, a new agricultural performance standard is proposed in ch. NR 151 that addresses the issue of water pollution from the discharge of process wastewater from non-permitted livestock operations. The current performance standards and prohibitions only address the discharge of manure. Process wastewater means wastewater from the production area directly or indirectly used in the operation of an animal feeding operation that results from: a) spillage or overflow from animal or poultry watering systems, b) washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities, c) direct contact swimming, washing, or spray cooling of animals or dust control, or d) water that comes into contact with any raw materials or animal byproducts including manure, feed, milk, eggs or bedding. Sources of greatest concern include feed storage leachate and milk house waste. Process wastewater discharge is of sufficient concern that USDA has developed technical standards for its management. The proposed performance standard requires that livestock producers have no significant discharge of process wastewater to waters of the state.

To address the issue of controlling polluted runoff from non-agricultural sources, the department is proposing modifications to existing performance standards detailed below. Some modifications are needed to achieve the level of control that was anticipated with the original performance standard after further research showed more protective measures were needed. Other changes are needed to make the rule consistent with other rules and approaches. Changes to the developed urban area performance standard are proposed based on the emergence of data by municipalities showing barriers to future compliance. Others are needed to address previously exempt sources of pollution. The transfer of responsibility to DNR for construction site erosion control on commercial sites necessitates modifications to the construction erosion control performance standard.

The presence of impaired waters throughout the state is another issue that the department has resolved to address. This renewed emphasis on restoration of impaired waters necessitates a new performance standard in ch. NR 151 that allows higher levels of non-point source pollution control in areas where Total Maximum Daily Loads (TMDLs) have been approved. Modifications to ch. NR 153 create two funding categories for projects implemented to meet the water quality goals of TMDLs.

The need for a timely resolution of serious discharges from non-permitted animal feeding operations to waters of the state, such as manure runoff following a rain storm, is an issue that was addressed when the department obtained authority to fund certain NODs. Prior to this legislative action, the only funding option available to help landowners who received an NOD through ch. NR 243 was the TRM grant process, which takes a year from start of application to grant award. Because of the competitive nature of the TRM grant, there was no guarantee that a project would be selected for funding. The new legislative

authority creates a separate grant application process for NOD projects that enables the department to address significant livestock-related runoff events in a timely manner. Chapter NR 153 is proposed to be modified to codify the NOD grant process.

## **2. Summary of the Rules**

### **Chapter NR 151, Runoff Management**

**Existing Rule:** This chapter, which became effective in 2002, establishes runoff pollution performance standards for non-agricultural practices, including transportation, and performance standards and prohibitions for agricultural facilities and practices. These standards and prohibitions are intended to achieve water quality standards. The chapter establishes implementation and enforcement procedures for the agricultural performance standards and prohibitions (the non-agricultural performance standards are largely implemented through ch. NR 216) and specifies a process for the development and dissemination of department technical standards to implement the performance standards. In some areas of the state, where the performance standards may not achieve the desired water quality, the chapter proposes a process to establish, by rule, targeted performance standards. The code also includes requirements for department review of local livestock operation ordinances that exceed state performance standards and prohibitions for agricultural sources of pollution.

#### ***Proposed Changes:***

##### **NR 151, Subchapter I—General Provisions**

**Modification to Regional Treatment Exclusion Section—NR 151.003 (4)** This subsection provides that to get credit toward the performance standards of subchapter III of ch. NR 216, BMPs designed to treat runoff from existing development, post-construction runoff from redevelopment, or post construction runoff from in-fill development must be located prior to navigable waters or wetlands. However, it also provides that credit may be given for such BMPs located in navigable waters or wetlands if construction commenced before the effective date of the new rule, and all applicable regulations were followed. This will “grandfather” those BMPs started in navigable waters or wetlands in reliance on the current rules, but will disallow BMPs for runoff from existing development, redevelopment and in-fill development if located in navigable waters or wetlands after the new rule’s effective date.

**New Performance Standard for Total Maximum Daily Loads—NR 151.005** Requires that best management practices be designed to meet the nonpoint source load allocation in an approved TMDL area.

##### **NR 151, Subchapter II—Agricultural Performance Standards and Prohibitions**

**New and Modified Definitions—NR 151.015** Some definitions are created or revised to be consistent with definitions in revised ch. NR 243 or other sections of ch. NR 151. The direct runoff definition is expanded to apply to a greater number of pollution sources and to include groundwater impacts consistent with state statutory requirements. A definition of feedlot is added to clarify applicability of the statutory prohibitions. Definitions are created that relate to new performance standards for phosphorus index, tillage setback and process wastewater while others are revised to clarify intent.

**Modification to the Sheet, Rill and Wind Erosion Performance Standard—NR 151.02** As revised, the standard would apply to pastures in addition to cropland.

**New Tillage Setback Performance Standard—NR 151.03** A key addition is a performance standard that would not allow tillage within 20 feet of the top of the channel of a waterbody. Harvesting of self-sustaining vegetative cover would be allowed. The purpose of this performance standard is to protect the integrity of streambanks and shorelines and to substantiate the calculations in the phosphorus index, which measure overland flow but not bank erosion.

**New Phosphorus Index Performance Standard—NR 151.04** Another key addition is a phosphorus index (PI) performance standard for croplands, pastures and winter grazing areas. The phosphorus index is a land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to the nearest waterbody. The standard would specify a maximum average PI of 6 with a cap of 10 on any individual year. The proposed performance standard includes an accounting period over which compliance is measured. It consists of the current year and the previous 7 years, and moves forward each consecutive year creating a rolling time period not to exceed 8 years. The proposed standard would also prohibit the application of nutrients or manure by mechanical means such as manure spreading or commercial fertilizer application directly into surface waters.

The phosphorus index and the tillage setback performance standards are proposed in lieu of a buffer standard. A buffer is a best management practice that the department supports and cost-shares, but the ultimate outcome of a water quality buffer is to reduce nutrient loads to waterbodies. The phosphorus index is a true performance standard since it does not specify the best management practices to be used to achieve the target number.

**Modifications to Manure Storage Facilities Performance Standard—NR 151.05** The manure storage facilities performance standard is proposed to be revised to align with language in revised ch. NR 243 regarding minimum required volume and margin of safety requirements.

**New Process Wastewater Handling Performance Standard—NR 151.055** A new performance standard is proposed that will allow the department to regulate significant discharges of process wastewater from non-permitted livestock operations including feed storage leachate and milkhouse waste to state waters.

**Modifications to the Nutrient Management Performance Standard—NR 151.07** The language was modified to focus the performance standard on reduced delivery of nutrients to surface waters rather than on soil concentrations. This change acknowledges that test levels are not the sole indication of delivery and brings the performance standard into better alignment with revised NRCS Technical Standard 590.

**Modifications to the Implementation and Enforcement Procedures for Cropland Performance Standards and Livestock Performance Standards—NR 151.09 and 151.095** Section NR 151.095 was clarified to explain that the term “new facilities” includes certain manure storage facilities either built on or after October 1, 2002 and subsequently abandoned or built on or prior to October 1, 2002 but abandoned within the operations and maintenance period of a cost-share agreement. This means that cost sharing will not have to be offered to require proper closure of facilities that were in compliance with manure storage performance standards and are subsequently abandoned. Eligible technical assistance services that must be provided as part of the cost-share offer are clarified. The provision that notices must include language regarding the right to appeal was deleted to be consistent with the notice requirements in ch. NR 243 (no appeal rights provisions are required). Furthermore, notice of appeal rights is not required by state statutes or case law, and landowners have adequate opportunities to challenge department decisions in the stepped enforcement process.

## **NR 151, Subchapter III—Non-Agricultural Performance Standards**

**Modifications to the Construction Site Performance Standard—NR 151.11** The proposal would change the current standard from 80 percent sediment reduction to a maximum allowable rate of 5 tons per acre per year. This change would apply to all construction sites including commercial sites. This modification results in a measurable number expressed as a load, making it consistent with the way total maximum daily loads are calculated. The change to a number also provides equity with the sheet, rill and wind erosion performance measure—5 tons per acre per year is roughly equivalent to the most prevalent tolerable soil loss rate in the state. Compliance with this standard would be determined based on modeling results.

### **Modifications to the Post-construction Performance Standard—NR 151.12**

- **Total Suspended Solids (TSS) Performance Standard for Redevelopment—NR 151.12 (5) (a) 2.:** The proposal is to 1) remove the current exemption from meeting all performance standards in cases where there is no increase in the footprint of parking lots or roads when they are reconstructed, and 2) require a 50 percent reduction in TSS on proposed parking areas and internal roads instead of the current 40 percent TSS reduction that only applied to non-exempt sites. Removing the exemption will result in better control of runoff from parking lots and roads, which carry a high TSS load. TSS reduction on redevelopment sites helps regulated municipal separate storm sewer systems meet their 40 percent TSS reduction performance standard.
- **Peak Flow Control Performance Standard—NR 151.12(5)(b):** The proposal is to modify the standard to include the 1-year, 24-hour design storm along with the current 2-year, 24-hour design storm as rates that must match the pre-development 1- and 2-year storms. The proposed changes are based on new research showing the current standard is not protective of the bank-full condition. The pre-development curve number will be set for woodland, grassland and cropland.
- **Infiltration Performance Standard—NR 151.12(5)(c):** The current standard requires that for residential development, 90 percent of the pre-development infiltration volume must be infiltrated, and for non-residential development, the infiltration amount is 60 percent. The proposal is to specify 3 levels of connected impervious conditions and assign an infiltration percentage to each level that better reflects the ability of the development to meet the goal. Other changes in this section are structural to reflect the original intent.
- **Protective Area Performance Standard—NR 151.12(5)(d):** The proposal is to increase the setback from 50 feet to 75 feet for certain high quality wetlands such as sedge meadows, open and coniferous bogs, low prairies, calcareous fens, coniferous swamps, lowland hardwood swamps and ephemeral ponds. This is a change from the current determination of high quality wetlands using ch. NR 103.

### **Modifications to the Developed Urban Area Performance Standard—NR 151.13**

Proposed revisions to this section include clarifying language, changing the implementation schedule to occur within the 2-year time period of permit issuance, options for municipalities that may have difficulty meeting the 40 percent total suspended solids reduction requirement, specifying the use of models or equivalent methodology to demonstrate compliance, specifying the elements to be included in a long term storm water management plan and laying out review procedures, explaining “maximum extent practicable” as it applies to this performance standard and allowing credit toward meeting the total suspended solids performance standard for certain practices that are not accounted for in the computer

models. The explanation of “maximum extent practicable” includes a cap on expenditures for municipalities.

### **NR 151, Subchapter IV—Transportation Performance Standards**

The proposal would eliminate this subchapter and move the provisions to Subchapter III, with some minor modifications to the swale treatment section and the definition of minor reconstruction. The swale treatment performance standard exemption of s. NR 151.24(10) will be recreated in s. NR 151.129 with one modification. The current language indicates the swale must be able to achieve a certain flow velocity under specific conditions. The proposed language will reference compliance with an existing technical standard for swales.

### **Chapter NR 153, Targeted Runoff Management Grant Program**

**Existing Rule:** Chapter NR 153 contains policy and procedures for administering the targeted runoff management grant program. The department may make grants under this program to governmental units for the purpose of reducing both agricultural and urban nonpoint source pollution. Grants to a governmental unit may be used to cost share the installation of best management practices as well as to support a variety of local administrative and planning functions. A governmental unit may use grant funding to control pollution sources on land it owns or operates, but most frequently the grant funds will be forwarded to private landowners and operators through cost-share agreements.

As required by statute, the department selects projects for funding by using the competitive scoring system set forth in the rule. The department scores and selects projects annually with advice from the Wisconsin Land and Water Conservation Board. The scoring system considers fiscal accountability, cost effectiveness, water quality, extent of pollutant control, project evaluation and monitoring, likelihood of success and regulatory storm water management requirements for the City of Racine. Projects can be up to 3 years in duration unless the department grants an extension, limited to one year. Projects may be located anywhere in the state and must be consistent with county land and water resources management plans prepared under chapter ATCP 50 and department priorities established on a geographic basis.

**Proposed Revisions:** Proposed changes to ch. NR 153 would focus on maximizing department flexibility in allocating grant funds. The new structure will allow the department to focus considerable resources on impaired waters while maintaining the ability to focus selected grants on high quality surface waters and ground water. Revisions for TRM grants would place a limit on the amount of money a grantee could receive in a given grant period, modify the grant criteria and procedures regarding eligibility, modify allowable adjustments to final grant awards and define maximum project size for certain project types. New sections of the rule are created to include administrative policies and procedures necessary to implement the notice of discharge funding program. Cost-share allowances would be expanded to include permit fees and replacement of BMPs under certain circumstances. Cost sharing would no longer be eligible for “new” cropland practices and livestock facilities.

**New TRM Grant Project Categories—NR 153.14** One major proposed change is the creation of four project categories for TRM instead of the current one. The categories would include both large-scale and small-scale projects, each with or without TMDLs, allowing the department to accommodate projects of different scale, objectives and geographic distribution. The proposal would help the state make progress in meeting its obligation to address impaired waters including implementation of TMDLs.

**New Provisions for Funding Notices of Discharge through TRM Grants—NR 153.145 and 153.205.**

These sections, authorized in October 2007 under s. 281.65 (4e), Stats., would create a mechanism outside the competitive TRM process to fund notices issued under ch. NR 243 to non-permitted agricultural operations. The purpose is to provide financial assistance to landowners in meeting the regulatory requirements of a notice. Under this proposal, the department would make grants to governmental units, which in turn will enter into cost-share agreements with landowners receiving a ch. NR 243 notice from the department. Under this proposal, the department has the discretion to award reduced grants for projects that must comply with a notice regardless of cost sharing.

**Monetary Cap on Grant Awards—NR 153.20 (2 ) (d) 3. b.** The proposal would allow the department to place a limit on the amount of money a grantee could receive in a given grant period. The department could use this option to ensure that grant awards are dispersed to a greater number of applicants and/or a broader geographic distribution.

**Chapter NR 155**

**Current Rule:** Chapter NR 155 contains policy and procedures for administering the urban nonpoint source and storm water management grant program authorized under s. 281.66, Wis. Stats. The goal of this grant program is to achieve water quality standards, minimize flooding, protect groundwater, coordinate urban nonpoint source management activities with the municipal storm water discharge permit program and implement the non-agricultural nonpoint source performance standards under ch. NR 151.

The department may make grants under this program to governmental units for practices to control both point and nonpoint sources of storm water runoff from existing urban areas, and to fund storm water management plans for developing urban areas and areas of urban redevelopment. Urban areas include commercial land use, industrial land use (excluding non-municipal industrial areas regulated under ch. NR 216) or areas with a population density of at least 1,000 per square mile. The department may also make grants to the board of regents of the University of Wisconsin System to control urban storm water runoff from campuses in selected locations.

As required by statute, the department selects projects for funding by using the competitive scoring system set forth in the rule. The scoring system considers fiscal accountability, cost effectiveness, water quality, extent of pollutant control, project evaluation and monitoring, likelihood of success and regulatory storm water management requirements for the City of Racine. Projects will be consistent with department priorities established on a watershed or other geographic basis. Projects can be up to 2 years in duration unless the department grants an extension, limited to one year. The department uses the grant policies and procedures in ch. NR 155, with some modifications, to fulfill its remaining grant obligations to urban grantees in the priority watershed program.

**Proposed Revisions:**

The department is proposing to increase its management oversight and accountability of grants while at the same time increasing flexibility in the way the grants are used. One proposed revision would place a limit on the amount of money a grantee could receive in a given grant period. The department would also increase its management oversight of grants by approving all contracts, regardless of cost. Another proposal would allow the use of local assistance grants to pay for work done by competent staff rather than hiring an outside consultant, thus increasing local government's flexibility to control costs. Other changes are proposed to help assure greater consistency between ch. NR 216 permit requirements and products produced under the grant program.

The department proposes to increase accountability by adding requirements that hired consultants must be competent in storm water management, all outstanding grants be completed on schedule prior to a new grant award, a final report be submitted and that the department may deny a grant to an otherwise eligible project if there is a potential impact on historic sites, cultural resources, endangered resources or a problem interaction with hazardous sites.

### **3. How this Proposal Affects Existing Policy**

The department has made a commitment to performance-based pollution control. These proposals strengthen the policy of addressing nonpoint source pollution control through both agricultural and non-agricultural performance standards.

The proposed revisions to ch. NR 151, Subchapter II and ch. NR 153 will affect the department's policy of development and implementation of TMDLs. The federal government requires states to develop TMDLs for waters that are listed as impaired under the Clean Water Act, section 303(d). The ch. NR 151 proposal allows for higher levels of control if needed to achieve an approved TMDL while the ch. NR 153 proposal recommends a mechanism to direct a portion of the TRM funding to TMDL areas.

The proposed revisions to ch. NR 151, Subchapter III affect the department's policy of addressing polluted runoff from construction sites and developed urban areas, including transportation projects. The department and the Environmental Protection Agency recognize urban storm water pollution as a significant source of degraded rivers and lakes and have had programs in place since the early 1990s to attempt to address these sources.

The creation of a funding mechanism to quickly target livestock-related runoff events reinforces a policy shift away from addressing nonpoint sources of pollution within large watersheds over many years and towards a policy of targeting scarce financial resources at significant pollution sources in smaller geographic areas within shorter time frames.

### **4. Has Board dealt with these issues before?**

- a. When?**
- b. Board action?**

The Board dealt with these issues on several occasions in the past. The most recent occasion occurred during deliberations on the original drafting of ch. NR 151, when an ad hoc committee of UW-Madison scientists and other interested parties presented a report entitled *Filter Strips and Buffers on Wisconsin's Private Lands: An Opportunity for Adaptive Management* to the NRB in May, 2002. The Board accepted the report and asked the UW-College of Agriculture and Life Sciences to conduct the research and activities to address the recommendations and submit a final report to the NRB by December 31, 2005. The final report was submitted to the department on December 29, 2005 and presented to and accepted by the Board at its February, 2006 meeting.

Prior to that, the Board adopted chs. NR 151, NR 153, NR 155 and five related administrative rules on May 22, 2002. Also at that time, in response to the Senate Environmental Committee's request for modifications, the Board approved germane modifications to the rules and approved a resolution directing research on buffers and incorporation of a performance standard into administrative rule based on the research.

On January 27, 1998, recommendations to accomplish the nonpoint source program redesign, developed by a joint DNR and DATCP work group, were presented to a tri-Board meeting of the Natural Resources, Agriculture, Trade and Consumer Protection, and the Land and Water Conservation Boards. At the January, 1998 meeting, the Natural Resources Board endorsed the process and timeline for redesigning the nonpoint source programs. The final product of this effort was a Department/DATCP joint report, entitled Nonpoint Source Program Redesign Initiative that was sent to the Natural Resources Board for the December 8, 1999 meeting. The report details the recommendations for performance standards, a technical standards development process and an implementation and enforcement strategy that forms the structure of the nonpoint source program redesign.

The Natural Resources Board dealt with the manure management prohibitions that are part of ch. NR 151 in 1994 when the Board authorized the department to convene an ad hoc advisory committee to develop a comprehensive proposal to resolve animal waste-related water quality problems in the state. The Animal Waste Advisory Committee (AWAC) presented their recommendations in a report at the January, 1995 Natural Resources Board meeting and an analysis of those recommendations at the February 1995 Board meeting. The Board adopted a resolution at the February, 1995 meeting to accept and endorse the AWAC recommendations, and directed the department to work towards implementing the recommendations by working with interested legislators and other parties on statutory changes and through the rule-making process.

## **5. Who will be impacted by the proposed rules? How?**

In addition to those who are already required to comply with the agricultural performance standards currently in ch. NR 151, agricultural producers whose croplands, pastures and livestock facilities were in existence when the standards become effective may be impacted by the following requirements:

- Agricultural producers must meet a minimum phosphorus index (PI) of 6.
- Cropland operators will be required to meet the tillage setback performance standard.
- Livestock producers will be required to meet the process wastewater performance standard.
- Producers who use pastures will be required to meet the sheet, rill and wind performance standard.
- Producers in areas with impaired waters that have approved TMDLs may need to meet a more restrictive PI number that may require a change in management practices or may need to implement additional practices to meet a load allocation in a TMDL.

These requirements can only be required for existing facilities and practices if cost sharing is offered to the producer or landowner.

The following non-agricultural entities and individuals will be impacted regardless of the availability of cost sharing:

- Landowners, construction contractors, including transportation or other persons with responsibility for construction sites will be required to control sediment and other pollutants during and after construction in accordance with the revisions to the performance standards prescribed in ss. NR 151.11 and NR 151.12.
- Municipalities with storm water permits issued under ch. NR 216 may have more flexibility in meeting the total suspended solids requirement through proposed revisions to ch. NR 151.13 that would be better aligned with department guidance and permit language.
- Transportation facilities may be impacted by the change in swale treatment and the merging of the transportation performance standards with the non-agricultural performance standards.

## **6. Environmental Analysis**

The Bureau of Environmental Analysis and Review has determined that these rule revisions are a Type III action under ch. NR 150, Wis. Adm. Code, and no environmental analysis is required.

### **7. Small Business Analysis**

The effects of the proposed rule changes on small businesses are addressed in detail in the attached Small Business Analysis.

## SMALL BUSINESS ANALYSIS

Contact: Carol Holden – WT/3

### **A. Describe the compliance and/or reporting requirements imposed on small business and whether they can be made less stringent.**

#### Agricultural

Agricultural operations (livestock and crop producers) are required to comply with the new performance standards and modifications to the performance standards contained in NR 151, just as they are for the existing performance standards and manure management prohibitions. Producers who are in compliance with the existing nutrient management performance standard may already be in compliance with the phosphorus index and tillage setback performance standards. The phosphorus index standard is included in nutrient management technical standard 590. The maintenance of streambank integrity, as proposed through a tillage setback standard, is an assumption of the phosphorus index calculation. In circumstances where the phosphorus index has been determined to be insufficient to achieve water quality standards in areas where a total maximum daily load (TMDL) has been approved, a phosphorus index lower than six may be the established performance standard, requiring a higher level of compliance. The process wastewater performance standard may require producers to have higher levels of pollution control to be in compliance. The annual cap included in the phosphorus index performance standards may mean that some producers will need to modify their tillage practices to reduce the rate of cropland soil erosion.

For existing agricultural facilities and practices, compliance is only required if cost sharing is provided at 70% of the eligible costs, or up to 90% for cases of economic hardship. If actions needed to comply with the rules only involve minor management changes that aren't eligible for cost sharing, then a producer must implement those practices to comply with the standards without cost sharing. New agricultural facilities and practices that were established after the effective date of the new and modified performance standards will need to comply regardless of the availability of cost sharing. In other words any new facilities or practices installed or constructed after the performance standards are in effect must be installed or implemented in compliance with the new standards.

The proposed code changes do not require crop producers and livestock operators with less than 1,000 animal units to report to the department. Counties that choose to implement the performance standards and prohibitions via ordinances may require some form of reporting. It is not possible to determine what type of reporting or the impact such reporting would have on these types of operations. In general, the purpose of relying on performance standards and prohibitions is more conducive to minimal reporting, allowing operations to rely on more visual, rather than technical, methods of determining compliance. Reporting required by counties would likely be minimal due to the large number of facilities that will need to meet the standards.

#### Non-agricultural

The compliance and reporting requirements for businesses involved with construction sites, including commercial sites, will not change. The rule revisions provide for a clarification of the performance standards when developing an erosion and sediment control plan or a storm water management plan, but do not require additional reporting. Small businesses have been meeting the current reporting and compliance requirements of the permit program. It is not anticipated that small businesses undertaking new construction, whether it be for commercial or industrial sites, will have a harder time meeting the reporting and compliance requirements than any other industry or commercial development.

### **B. Describe the schedules or deadlines for compliance or reporting and whether these schedules/deadlines can be made less stringent for small business.**

#### Agricultural

Existing livestock operations with less than 1,000 animal units and crop producers are only required to comply with the new and modified performance standards if cost sharing is provided. Implementation schedules and deadlines, consequently, are dependent on when cost-sharing dollars are available. The code sets up time frames for compliance once dollars are available. Counties, however, may have different time frames established although cost sharing is still required. Since compliance is contingent on cost-share availability and cost-share dollars will be limited each year, it may be years before the standards are fully implemented and less stringent time frames would only stretch compliance out further. New crop producers and livestock facilities with less than 1,000 animal units will need to comply with the new and modified performance standards from the date the rule becomes effective, regardless of the availability of cost sharing. It is more cost effective for new facilities to construct best management practices or otherwise comply with performance standards up front rather than correct problems later on.

#### Non-agricultural

The proposed revisions did not change the schedule for compliance and reporting. A Notice of Intent (NOI) is still required to be submitted 14 days prior to commencing construction. Once construction commences, the required plans must be followed. This rule refines the performance standards for the erosion and sediment control plan and storm water management plan and does not change the time schedule. New industrial permittees will continue to have requirements to submit a Storm Water Pollution Prevention Plan prior to construction of a new site. As part of their construction NOI, their storm water management plan and best management practice implementation will have a clear set of performance standards to meet.

### **C. Can compliance or reporting requirements for small business be consolidated or simplified?**

#### Agricultural

Department compliance and reporting requirements for agricultural operations and facilities are not expected to change as a result of the proposed code changes. For crop producers and livestock operations with less than 1,000 animal units, the majority of compliance efforts will be handled through the counties. The counties can provide a convenient, accessible contact for operations and several counties have developed compliance checklists and/or tracking and reporting systems to consolidate and simplify compliance identification and verification. As for reporting, as mentioned above, the proposed rule revisions do not require additional reporting.

#### Non-Agricultural

For commercial development, the department will be assuming the responsibilities formerly held by the Department of Commerce to regulate storm water discharges from commercial building sites in a manner that meets NR 151 requirements. The rule revisions simplify the construction erosion control requirements that Commerce formerly imposed.

### **D. Can performance standards be established for small businesses in lieu of design or operational standards?**

For both agricultural and non-agricultural operations, the program requirements are already in the form of performance standards. Many of these promote self-assessments on behalf of the operation because they can be easily recognized and complied with via site management or low-cost improvements. However, meeting some of the performance standards may require technical assistance with designs, operational standards or written management plans.

### **E. Can small businesses be exempted from any or all requirements of the rule?**

#### Agricultural

Crop producers and livestock operations with less than 1,000 animal units cannot be wholly exempted from applicable performance standards and prohibitions because (1) the authorizing statute was

specifically established to apply to these operations (i.e. nonpoint source agricultural operations), and (2) they are the sectors that need to give further consideration to the impacts of their operations on water quality. Conditional exemptions based on the availability of cost sharing do exist.

#### Non-agricultural

Small businesses that undertake construction are required to comply with the construction erosion control and storm water management requirements of NR 151. Construction site erosion, whether it is from a small business or a large one is still potentially a major water quality problem and these sites have been equally regulated with the large businesses under NR 216. A small business building and parking lot can have a greater impact than a large business depending on the amount of imperviousness, and its proximity to a water resource. If small business were to be exempt from meeting the performance standards, then the level of control and the attainment of water quality standards would be significantly diminished.

### **F. Initial Regulatory Flexibility Analysis**

#### **1. Describe the type of small business that will be affected by the recommendations.**

##### Agricultural

The types of small business affected by these recommendations are crop and livestock producers. The Wisconsin Agricultural Statistics Service estimates that in 2007 there were about 76,000 farms in Wisconsin (68,000 livestock operations). Most of these operations meet the definition of a small business. In addition, agricultural consulting firms, crop consultants and others who provide planning and engineering services to farms will need to become familiar with the revisions to the performance standards.

##### Non-Agricultural

Any small business and associated professionals involved with construction will be affected by these rule revisions. This includes developers, engineers, contractors and others in the building profession as well as small commercial establishments that meet the definition of small business. As part of the new construction they must meet the performance standards both for the construction phase and the post-construction phase as identified in an erosion and sediment control plan and in a storm water management plan. Small businesses established after the effective date of the proposed rule that are required to obtain industrial storm water permits must also meet post-construction performance standards by designing and installing BMPs as part of their industrial storm water pollution prevention plan. Construction erosion control and post-construction storm water management are federal requirements.

#### **2. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rules.**

##### Agricultural

The proposed rule revisions do not add any additional reporting requirements, but may slightly revise the records that are kept for nutrient management plan implementation. Reporting or bookkeeping may be required by local ordinances or in cases of department enforcement.

##### Non-Agricultural

The reporting requirements for the non-agricultural performance standards did not change--small businesses must still submit a Notice of Intent 14 days prior to construction and during construction, as required by their construction site permit, they must keep records of weekly site inspections and inspections after a significant storm to assure that the best management practices are functioning properly.

#### **3. Describe the type of professional skills necessary for the compliance with the rule.**

##### Agricultural

The new performance standards and revisions establish an acceptable level of performance for agricultural operations. However, the level of professional skill required to comply with the performance standards depends on the specific performance standard. While familiarity with software such as SNAP Plus and RUSLE2 will be needed to determine the phosphorus index, this is already a requirement to meet the existing nutrient management performance standard. County staff and department staff, where necessary, will work with producers to ensure compliance with the performance standards. Financial and technical assistance will be extended to the operation by the county staff. Consultants experienced in working with these issues are also available in the private sector. For operators who prefer to work with consultants and for situations where excessive workload or other concerns at the county level necessitate it, technical assistance from consultants can typically be cost shared at similar rates.

#### Non-Agricultural

In order to comply with the revised performance standards, a small business will need an erosion and sediment control plan and a storm water management plan, just as they did for the original performance standards. Depending on the site and the size of the facility this may require the assistance of a licensed professional engineer. Some may do this already as part of the building plan, while others may contract this activity out separately. The potential need to hire a consultant already exists under the current NR 216 and small businesses have been meeting this need.

### Fiscal Estimate — 2009 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated  <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number  Bill Number	Amendment Number if Applicable  Administrative Rule Number WT-14-08
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**Subject**

Revisions to chapters NR 151, NR 153 and NR 155, Wis. Admin. Code, pertaining to runoff management and related grant programs.

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |   |

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No
- Decrease Costs

**Local:**  No Local Government Costs

1.  Increase Costs  
 Permissive     Mandatory
2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory
4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

**Rules Summaries:**

NR 151, Runoff Management: Proposed revisions create new statewide performance standards (P Index, tillage setback, process wastewater control), require BMPs to meet the nonpoint source component of an approved total maximum daily load (TMDL), modify existing agricultural and non-agricultural performance standards and make minor changes to the implementation and enforcement provisions of the rule.

NR 153, Targeted Runoff Management and Notice of Discharge Grants: Proposed revisions for TRM create four competitive project categories, strengthen links between grants requirements and local implementation performance standards and prohibitions, modify application requirements and establish limits on the total amount of grant funding that a grantee can receive in a grant year.

NR 155, Urban NPS Pollution Abatement and Storm Water Mgmt. Grants: Proposed revisions increase the department's oversight of subcontracts, increase grantee accountability for final products, provide more flexibility over how grants are used, and limit grantee awards in a given grant period.

**State Fiscal Effect**

Proposed rule revisions will result in an increased demand on agency staff devoting more time to training, education, grant oversight, enforcement and development of guidance and procedures. The department estimates that a total of 10.5 FTEs will be needed to implement all three rules as described below.

**Long-Range Fiscal Implications**

State cost-share grants to fully implement the process wastewater performance standard would be \$9.3 million or \$930,000 annually if awarded over a 10-year period. However, this estimate is dependent upon the availability of cost-share funds to implement the standard.

Prepared By:	Telephone No.	Agency
Joseph Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

## Fiscal Estimate — 2009 Session

### Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-14-08

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#### Assumptions Used in Arriving at Fiscal Estimate – Continued

NR 151, Subchapter II: Implementing and enforcing the new performance standards along with the modifications to the existing standards will require approximately 1 FTE per DNR region, or 5 FTEs statewide. Two water resource engineer positions plus 3 water resources management specialists will assist with field investigations, provide implementation guidance to department and county staff, especially in TMDL areas, and support modeling efforts and in-field evaluation designed to determine the effectiveness of these performance standards and prohibitions. This ongoing work effort will entail 2,080 hours per year per region. Salary and fringe-related costs for the engineer positions are \$150,966.40 [2,080 hours x \$36.29/hour (salary + fringe) x 2 FTE], in addition to \$5,000 in supplies costs [\$2,500/FTE x 2 FTE]. Salary and fringe-related costs for the specialist positions are \$200,241.60 [2,080 x \$32.09/hour (salary + fringe) x 3 FTE], in addition to \$7,500 in supplies costs [\$2,500/FTE x 3 FTE].

NR 151, Subchapter III: For the revisions to the non-agricultural performance standards, 1.0 water resources management specialist FTE would be needed to update the construction site erosion control and post-construction storm water management model ordinances, coordinate activities not implemented under NR 216 (such as the revisions to the construction site erosion control and the developed urban area performance standards that are not permitted under NR 216), review storm water management plans, provide training to regional staff and others and conduct general implementation activities. Salary and fringe-related costs are \$66,747.20 [2,080 hours x \$32.09/hour (salary + fringe)], in addition to \$2,000 in supplies costs.

A 1.0 FTE water resources management engineer will also be required for both urban and agricultural modeling support associated with new and revised performance standards and to develop evaluation tools to measure BMP effectiveness. This FTE will use existing runoff computer modeling programs and provide support and training to department staff and consultants on the use and interpretation of these models and their results. Salary and fringe-related costs are \$75,483.20 [2,080 hours x \$36.29/hour (salary + fringe)], in addition to \$2,000 in supplies costs.

NR 153 and NR 155: The department anticipates that 0.5 FTE will be needed to develop new grant eligibility criteria and scoring procedures for the four new grant categories and the notice of discharge grant program in revisions to NR 153. This Natural Resources Financial Assistance Specialist FTE will also provide the additional oversight and review required by the revisions to NR 155. Salary and fringe-related costs are \$33,373.60 [1,040 x \$32.09/hour (salary + fringe)], in addition to \$1,000 in supplies costs.

A 0.5 FTE per region (2.5 total) are needed to oversee and inspect projects as they are implemented. This function is needed to implement the revisions calling for increased department oversight and accountability. These water resource engineering positions are important to ensure that public funding is spent in an environmentally sound manner. Salary and fringe-related costs are \$188,708 [1,040 hours x \$36.29/hour (salary + fringe)], in addition to \$6,250 in supplies costs [\$1,250 per region x 5 regions].

A 0.5 water resources management specialist FTE, located in the central office would be responsible for identifying and tracking agricultural notices of discharge for inclusion in the NOD grant program that is part of the revisions to NR 153. Salary and fringe-related costs are \$33,373.60 [1,040 hours x \$32.09/hour (salary + fringe)], in addition to \$1,000 in supplies costs.

In summary, the Department estimates total salary, fringe and supplies costs for the 10.5 FTE to be \$773,644.

The new process wastewater performance standard prohibits the discharge of wastewater, primarily milkhouse waste, from animal feeding or production areas. The state cost is expected to be \$9,312,500 to completely implement the standard statewide. The estimate is based on the following assumptions:

- There are approximately 14,000 dairy farms in the state with an avg. herd size of 87 cows. (Ed Jesse, Growth and Transition in Wisconsin Dairying, Marketing and Policy Briefing Paper # 96, Nov. 2008).

- About 28% of dairy farms (~4,000) have long term storage that is assumed to be sufficient to handle process wastewater and 61% (~8,500) haul manure daily (Manure Management on Wisconsin Farms, PATS Research Report, #15, Jan. 2006).

- Assuming that 75% (6,375) of those that daily haul will install milkhouse waste management systems on their own as part of modernization or expansion and 25% (2,125) will be required to install them using state cost-share at 70%, the state costs would be \$7,437,500 ( $\$5,000 \times 70\% \text{ cost share rate} \times 2,125 \text{ farms}$ ). The \$5,000 per system cost is based on the avg. cost of installation of 26 milkhouse management systems, Engineering Milkhouse Waste Installed, 2007, Appleton Technical Center Area).

- The remaining 1,500 dairy farms that do not daily haul or have long term storage will need storage and/or milkhouse management systems to comply with the performance standard. Assume that 75% of these 1,500 farms (1,125) will install storage facilities as part of modernization or expansion and 25% (375) will be required to install them using state cost-share at 70%.

- When storage systems are built they will need to be sized to accommodate milkhouse waste and other process wastewater. The typical storage facility is built to accommodate 90 - 180 days of storage (avg. = 135 days). To accommodate the additional storage of milkhouse waste and other process wastewater, an increase of 30% (~40 days) of capacity would be needed or a total avg. storage capacity of 175 days.

- Costs for a manure storage facility are ~ 40% fixed costs and 60% variable costs, so the cost of the additional storage capacity would be ~20% of the total costs ( $60\% \times 30\%$ ).

-Using an avg. of the payment estimate based on NRCS cost-share rates for waste storage facility technical standard 313 (\$1.69 per animal unit per days of storage capacity) the cost for a typical manure storage facility would be \$36,082 ( $\$1.69 \times 122 \text{ a.u.} \times 175 \text{ days}$ ). The cost for the additional capacity for process wastewater would be \$7,216 ( $\$36,082 \times 20\%$ ) and the state share of the costs at a 70% rate would be ~\$5,000. Total costs would be \$1,875,000 ( $\$5,000 \times 375 \text{ facilities}$ ).

- At the 70% cost-share rate, the combined state costs for milkhouse management systems and manure storage facilities would be \$9,312,500. The state share will likely come from TRM grants. The rate of implementation is subject to funding. Funding for the 2009-2011 biennium was \$7million, but this amount is not guaranteed for future biennia.

Implementation of the phosphorus index and tillage setback performance standards is not anticipated to result in additional costs beyond the staff needs that are addressed above. However, in areas of that state where TMDLs are established, the state may need to cost share the installation of best management practices that will be needed to achieve a higher level of control than in non-TMDL areas. Cost estimates will vary depending on the extent of the water resource impairment, the degree to which agricultural runoff contributes to the impairment and the types of best management practices that may be needed for a particular location. One demonstration project in northeastern Wisconsin looked at 416 agricultural best management practice scenarios applied to a largely-agricultural 36 sq. km. sub-watershed typical of those in the Lower Fox River TMDL area. The optimal scenario of best management practice combinations that produced the maximum phosphorus load reduction had a total cost of about \$350,000 for the sub-watershed or \$164.75 per kg of phosphorus reduced. Based on these estimates more precise costs will be developed as part of each TMDL implementation plan, but those costs are too variable to estimate at this time. The state share would be 70 percent of the cost or 90 percent for cases demonstrating economic hardship.

The state transportation sector will have increased costs for highway reconstruction projects and possibly for minor highway reconstruction projects (maximum of 1.5 miles long and 100 feet wide). The proposed revisions will result in a ten percent increase in control of total suspended solids from highway reconstruction projects and a 50 percent increase for minor highway reconstruction projects that were previously exempt. The revisions will probably not require any change in technology, but may require more area dedicated to best management practices resulting in additional purchase of right-of-way. The change from zero to 50% for minor highway reconstruction projects will require best management practices where they were not previously required. These costs will vary a great deal depending on the location of the reconstruction projects, the cost of real estate for purchase of right-of-way and the type of BMP that will need to be chosen to fit the conditions. For these reasons, it was not feasible to estimate the fiscal impact on the state transportation sector.

#### Local Fiscal Impact

Implementation of the new agricultural performance standards will require county staff to become educated and trained on the methodologies that will be used, including the use of computer models. Staff will also need to educate landowners about the new requirements and modifications to other performance standards that may affect them and the programs in which they participate, such as Farmland Preservation Program. Tracking and reporting systems will need to be expanded to accommodate the new compliance requirements. Additional compliance determinations and potentially working with new landowners will need to be made involving more staff time.

For municipalities that are responsible for construction sites of one acre or greater, the proposed revisions to the construction site performance standard should have no impact, nor will the proposed revisions to the infiltration, peak flow and protective area performance standards which were made with the intent of compensating for unintended consequences of the original standards. While some entities may be required to do more to meet the standards, others will be able to do less. The net fiscal effect is expected to be neutral.

Some permitted municipalities may experience a fiscal impact in meeting the 40% total suspended solids reduction standard. Those municipalities that previously had the option of locating a detention pond in a non-navigable water will no longer have that option and may need to select a more costly BMP to comply with the standard. However, the department added a provision to allow more time to meet the standard and thus spread out the costs over a longer timespan. The department was unable to estimate the resulting fiscal impact because each situation is highly variable.

However, if there is reconstruction involving a parking lot or road, there will be a fiscal impact. The existing rule exempts reconstruction that does not result in the increase in size of exposed parking lots and roads. Under the revised rule, the exemption would be removed and those sites would be required to control 50% of the total suspended solids discharged from the parking lot or road. For municipalities that are responsible for highway reconstruction, proposed revisions will increase the level of control of total suspended solids an additional ten percent (from 40% to 50%) resulting in a fiscal impact. The additional level of control would likely involve an additional purchase of right-of-way, new best management practices or modifications to existing controls. Minor highway reconstruction was previously exempt from regulation but under the revised rule only the first acre would be exempt. The rest of the project would need to meet 50% total suspended solids reduction.

The department estimates that the total costs resulting from a 10% increase in TSS control for highway and road reconstruction would range \$30,915,000 to \$46,352,250 annually. These estimates are based on the following assumptions:

- There are about 700 to 2,000 (avg. 1,350) non-DOT highway and road lane miles reconstructed each year [county projects under WisDOT oversight (100-125) + other county projects (200-250) + town (200-800) + city/village (200-800)].
- The typical right of way width for a town/county highway is 66 feet. Assuming half of that is one lane, the amount of land disturbance per lane would be 4 acres [(33 ft. x 5,280 ft./mi.) / 43,560 sq. ft./acre]. Total construction acreage would be an avg. of 5,400 acres (4 ac. / lane mile x 1,350 avg. total lane miles).
- The change from 40% TSS control to 50% control would result in a cost increase of 10 – 15%.
- Typical road BMPs include swales, catchbasin devices, bioretention or biofilters, depending on the size and constraints of the site.
- Estimated costs of typical biofiltration or bioretention devices range from \$15,000 - \$40,000 per acre (avg = \$27,500 per acre) and can go as high as \$150,000 per acre depending on where in the state the site is located, and whether the construction is part of other construction activities or a stand-alone retrofit.
- Estimated costs of swales range from \$47,900 to \$126,000 per acre (avg = \$87,000 per acre).
- Assuming a 50-50 combination of swales and bioretention/biofiltration devices and using avg. cost estimates for BMPs, a 10 % increase in annual costs would be \$30,915,000 (2,700 ac. x \$2,750 per ac. for biofiltration) + (2,700 ac. x \$8,700 per ac.) for swales]. A 15% increase would be \$46,352,250 (2,700 ac. x \$4,125 per ac. for biofiltration) + (2,700 ac. x \$13,043 per ac. for swales).

It was not possible to estimate the total number of parking lots or minor reconstruction projects per year. But on a per project basis, the numbers given in the road construction estimates could be used but wet detention ponds might be used along with bioretention or biofiltration devices. A wet detention pond typically ranges from \$7,000 to \$25,000 per acre of commercial or industrial land, depending on the cost of land values.

#### Private Sector Impact

The department does not believe that that the rule revisions will have a significant fiscal impact on the private sector. In the agricultural portion of NR 151, the phosphorus index performance standard specifies a PI of 6 calculated over an 8-year period not to exceed a PI of 10 in any year. The tillage setback performance standard does not allow tillage but does allow harvesting within 20 feet of the bank. Neither of these performance standards are anticipated to have additional fiscal impacts on the private sector. A phosphorus index of 6 and the concept of stable bank conditions are consistent with NRCS technical standard 590 used to implement the existing nutrient management performance standard. The annual PI cap of 10 may mean that some producers may need to modify their tillage practices to reduce the rate of soil erosion from cropland.

In areas of that state where TMDLs are established, agricultural producers may need to pay 30 percent of the costs (10 percent for cases of economic hardship) of best management practices that must be installed to achieve the load reduction. Cost estimates are too variable to estimate at this time and will depend on the extent of the water resource impairment, the degree to which agricultural runoff contributes to the impairment and the types of best management practices that may be needed for a particular location (see the example in the state section of this document).

The process wastewater performance standard cannot be enforced without providing the landowner with at least 70% cost sharing. The state portion is estimated to be \$9,312,500 million statewide. The maximum amount that landowners would be responsible for totals ~\$2,800,000 million statewide. Portions of this amount are typically offset with federal or local government funding.

The proposed revisions to the construction site performance standard should have minor impact. Technical standards are being developed that will prescribe management options for controlling erosion on small construction site. Proposed revisions to the infiltration, peak flow and protective area performance standards may result in some entities having to design and install a higher level of BMP control to meet the standards, others will be able to do less than previously. The net fiscal effect is expected to be neutral.

If there is reconstruction involving a parking lot or road, there will be a fiscal impact. The existing rule exempts reconstruction that does not result in the increase in size of exposed parking lots and roads, but the revised rule removes the exemption and those sites would be required to control 50% of the total suspended solids discharged from the parking lot or road. requiring new best management practices or modifications to existing controls. It was not possible to estimate the total number of parking lots or minor road reconstruction projects per year. But on a per project basis, typical BMPs would include swales, catchbasin devices, bioretention or biofilters, wet detention ponds, or combinations of these depending on the size, location and constraints of the site.

- Estimated avg. cost of typical biofiltration or bioretention devices is \$27,500 per acre, and can go as high as \$150,000 per acre depending on where in the state the site is located. Estimated avg. costs of swales is \$87,000 per acre and a wet detention pond typically ranges from \$7,000 to \$25,000 per acre of commercial or industrial land, depending on the cost of land values

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**Fiscal Estimate Worksheet — 2009 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-14-08

**Subject**

Revisions to chapters NR 151, NR 153 and NR 155, Wis. Admin. Code, pertaining to runoff management and related grant programs.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$ 748,894	\$ -
(FTE Position Changes)		( 10.50 FTE )	(- FTE )
State Operations — Other Costs		24,750	-
Local Assistance		0	-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$ 773,644	\$ -
<b>B. State Costs by Source of Funds</b>		<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR		\$ 773,644	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	<b>Increased Revenue</b>	<b>Decreased Revenue</b>
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>Total State Revenues</b>		\$	\$ -

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 773,644	\$ 30.9 - 46.4 million
Net Change in Revenues	\$	\$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

**ORDER OF THE STATE OF WISCONSIN**  
**NATURAL RESOURCES BOARD**  
**REPEALING, AMENDING, REPEALING AND RECREATING AND CREATING**  
**RULES**

The Wisconsin Natural Resources Board proposes an order to repeal NR 151.002 (21), 151.015 (17), 151.09 (5) (a) 3. h. and (6) (a) 3.e., 151.095 (6) (a) 3.h. and (7) (a) 3.e., 151.12 and 151.20 to 151.26, 153.12 (22) and (28), 153.15 (2) (c), 153.22 (3) (k), 153.23 (1) (f), 153.24, 153.27 (5), 155.16 (1) (c) 2. a., d., e. and f. and 3., (d) 3., 6.,7. and 9. and (f), 155.17 (2) (d), 155.18 (3), 155.19 (4) (d), 155.23 (1) (f), 155.24 and 155.27 (5); to amend NR 151.002 (3), (6), (17), (18), (25), (42), (47) (note), (48) and (49) (note), 151.003 (title), 151.003, 151.004, 151.015 (7) and (18) (c) and (d), 151.02 (title) and (intro.), 151.05 (title), (2) (a), (4) (title) and (4), 151.06 (title), 151.09 (1), (3) (b), (4) (b) 2., 3. and 4., (c) 3. and (d) 2. a., and c., (5) (b) 2. b., (6) (b) 1. b. and (7) (b), 151.095 (1), (4) (b), (5) (b) 2. c. and 5., (c) 3. and (d) 2. a. and c., (6) (b) 2. b., (7) (b) 1. b. and (8) (b), 151.11 (title), 151.11, 151.13 (title), (1) (title), (1) and (2), 151.14 (title), 151.14, 151.15, 151.30 to 151.32, 153 (title), 153.10, 153.11 (1) and (3), 153.12 (8), (19), (23) to (27), (29) and (31), 153.13, 153.15 (1) (a), (c) and (g), (2) (b), (d), (e) and (y), (3) (b) 1, (4) (a) 3. and (6) (b), 153.18, 153.22 (1) (a), (3) (d), (f), (j), (m) and (n), (6) (b) 1. and 2., (7), (8), (9) and (11), 153.23 (1) (c) and (e), 153.26 (1), (5) and (7), 153.27 (3) (b) and (4) (a), 153.28 (1) (b) 1., 2. b., 3. and 5., NR 155.12 (7), 155.13 (1) (intro.), 155.14 (3), 155.15 (1) (a), and (e), 155.16 (1) (b), (c) (intro.), 1.a. and 2.c. and (e), 155.17 (2) (b) 2., 155.18 (2), 155.19 (3) (a) and (b), 155.21 (2) and (4) (d) 3., 155.22 (3) (i), (4), (10) and (11), 155.23 (1) (c), 155.26 (1) and (6), 155.27 (3) (b) and 155.28 (1) (b) 3.; to repeal and recreate NR 151.015 (1), (8) and (16), 151.07, 153.12 (1), 153.14, 153.15 (2) (a) and (j), 153.16, 153.17, 153.19, 153.20, 153.21, 153.25, 155.15 (2) (g), 155.20, 155.25 and 155.27 (4); and to create NR 151.002 (11m), (14g), (14r), (15m), (16m), (25m), (34m), (38c), (38g), (38L), (38p), (38t), (38x), (39m), (46m), (48m) and (49m), 151.005, 151.006, 151.015 (13g), (15e), (15m), (15s) and (25), 151.03, 151.04, 151.05 (2) (am), 151.055, 151.121 to 151.129, 151.13(2)(e)1 and 2, 151.135, 153.11 (1m), 153.12 (5m), (12m), (18g), (18r), (19m), (31m), (32g) and (32r), 153.145, 153.15 (2) (ag), and (ar), 153.205, 153.22 (3) (o) and (p) and (12), 153.27 (4) (c), 153.29 (1) (e) 3. g., 155.17 (2) (b) 13. and 14. and 155.23 (3) and (4), relating to runoff pollution performance standards and prohibitions, the targeted runoff management grant program and the urban nonpoint source and storm water management grant program, and affecting small business.

WT-14-08

Analysis Prepared by Department of Natural Resources

1. **Statutory authority:** Sections 227.11(2) (a), 281.16, 281.19, 281.65 and 281.66, Stats.
2. **Statutes interpreted:** Sections 281.16, 281.65 and 281.66, Stats.
3. **Explanation of agency authority:**

Section 227.11(2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. The department considers the rules created by this Order to be necessary to effectuate the purposes of ss. 281.16, 281.65 and 281.66, Stats. Section 281.16, Stats., authorizes the department to prescribe by rule performance standards for non-agricultural practices, and, in consultation with department of agriculture, trade and consumer protection, prescribe performance standards and prohibitions for agricultural practices and facilities, s. 281.19, Stats., grants authority to the department to issue general orders and promulgate rules pertaining to the abatement of water pollution, s. 281.65, Stats., establishes the framework for the targeted runoff management grant program that provides financial assistance for nonpoint sources of pollution to governmental units and state agencies and allows governmental units to request financial assistance to address manure management problems for which notices of discharge have been issued and s. 281.66, Stats., establishes the framework for the urban nonpoint source and storm water management program that provide financial assistance to governmental units to control both point and nonpoint sources of storm water runoff from existing urban areas, developing urban areas and areas of urban redevelopment.

**4. Related statute or rule:** Chapter 92 and s. 283.33, Stats., and chs. ATCP 50, NR 120, 152, 154, 216 and 243.

**5. Plain language analysis of the rule:**

Chapter NR 151, Runoff Management

The rule adds new and modifies existing performance standards that address nonpoint source pollution from both agricultural and non-agricultural sources, including transportation. The new performance standards include:

- a setback from waterbodies in agricultural fields within which no tillage would be allowed;
- a limit on the amount of phosphorus that may run off croplands as measured by a phosphorus index;
- a prohibition against significant discharge of process wastewater from milk houses, feedlots, and other similar sources;
- a standard that requires implementation of best management practices designed to meet a load allocation specified in an approved Total Maximum Daily Load (TMDL).

Modifications are made to the agricultural performance standards addressing cropland soil erosion control, nutrient management and manure storage. The rule also changes the non-agricultural performance standards that address construction site erosion control, post-construction storm water management and developed urban areas. The subchapter addressing transportation performance standards is moved to the non-agricultural performance standards sections. The agricultural implementation and enforcement sections are modified to clarify cost-share eligibility and to better align with the department's stepped enforcement procedures. Some definitions are added and other definitions that are no longer used are deleted.

Chapter NR 153, Targeted Runoff Management And Notice Of Discharge Grant Programs

This existing rule contains policies and procedures for administering targeted runoff management grants to reduce both agricultural and urban nonpoint source pollution. Grants may be used to cost share the installation of best management practices as well as to support a variety of local administrative and planning functions. Projects are selected through a competitive scoring system and generally take two to three years to complete.

The revisions create four project categories for the targeted runoff management grant program instead of one category in the existing rule. The categories include large-scale/TMDL implementation, large-scale/non-TMDL control, small-scale/TMDL implementation and small-scale/non-TMDL control projects. The rule will help the state make progress in meeting its obligation to address impaired waters by focused funding of projects addressing TMDLs.

To implement recent statutory changes to the grant program, the rule creates a mechanism outside the competitive TRM process to fund Notices of Discharge (NODs) issued under ch. NR 243. Other provisions allow the department more flexibility in allocating grant funds and ensure an equitable scoring system. Portions of ch. NR 153 are repealed and recreated to accommodate the newly created categories, to eliminate or add definitions, clarify and expand restrictions on cost sharing, require the establishment of a local ch. NR 151 implementation program as a grant condition and allow for additional safeguards in the application documents.

#### Chapter NR 155, Urban Nonpoint Source Pollution Abatement And Storm Water Management Grant Program

This existing rule contains policy and procedures for administering the urban nonpoint source and storm water management grant program authorized under s. 281.66, Stats. The department may make grants under this program to governmental units for practices to control both point and nonpoint sources of storm water runoff from existing urban areas, and to fund storm water management plans for developing urban areas and areas of urban redevelopment. The goal of this grant program is to achieve water quality standards, minimize flooding, protect groundwater, coordinate urban nonpoint source management activities with the municipal storm water discharge permit program and implement the non-agricultural nonpoint source performance standards under ch. NR 151. Grants to a governmental unit may be used to cost share the installation of best management practices as well as to support a variety of local administrative and planning functions. The department may also make grants to the board of regents of the University of Wisconsin System to control urban storm water runoff from campuses in selected locations. Projects are selected through a competitive scoring system and generally take one to two years to complete.

The revisions to ch. NR 155 increase the department's management oversight and accountability of grants while at the same time increase flexibility in how the grants are used. The revisions limit on the amount of money a grantee may receive in a given grant year, increase the department's management oversight of grants by approving all contracts, regardless of cost, provide the department greater flexibility in awarding funds and allow for additional safeguards in the application documents.

The rule also allows the use of local assistance grants to pay for work done by competent in-house staff rather than hiring an outside consultant thus increasing local government's flexibility to control costs. The rule adds requirements that hired consultants be competent in storm water management, all outstanding grants be completed on schedule prior to a new grant award, a final report be submitted and that the department may deny a grant to an otherwise eligible project if there is a potential impact on hazardous sites in addition to historic sites, cultural resources or endangered resources. Other parts of ch. NR 155 are repealed and recreated to define terms, clarify concepts and merge similar sections, giving the department greater flexibility in awarding funds.

#### **6. Summary and comparison with existing and proposed federal regulations:**

The rule revisions are consistent with federal regulations that apply to control of nonpoint sources of pollution, animal feeding operations, nutrient management and storm water management. While federal regulations do not apply specifically to cropland practices or livestock operations that have only nonpoint source runoff, there are federal regulations for concentrated animal feeding operations (point sources) that specify control of nutrients entering surface waters. Certain modifications also better align state grant funding priorities with those of the federal government regarding total maximum daily loads.

The rule's phosphorus index performance standard is based on national policy and guidelines on nutrient management issued by the US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) in April, 1999. The national policy and guidelines suggested the use of one of three phosphorus risk assessment tools, the most comprehensive of which is the phosphorus index. Prior to the adoption of this national policy, states began developing phosphorus-based nutrient management guidelines or regulations. The tillage setback performance standard is based on the phosphorus index calculation that assumes no tillage to the edge of the bank. The performance standard specifying BMPs to meet the load requirements of approved TMDLs will help the state to control nonpoint source pollutants to achieve federally required and approved TMDLs. The control of process wastewater discharge is of sufficient concern that USDA has developed technical standards for management of process wastewater.

## **7. Comparison of similar rules in adjacent states:**

In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the phosphorus index in some form but none have proposed using it as a statewide performance standard as this rule does. The rule differs from the adjacent states' rules because it has more detail in its phosphorus index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost sharing must be made available to existing agricultural operations before the state may require compliance with the standards.

### Illinois

Illinois does not have a tillage setback requirement, but it does offer a property tax incentive for the construction of livestock waste management facilities including the development of vegetative filter strips. The filter strips must be in cropland that is surrounding a surface-water or groundwater conduit, must be part of a conservation plan, and must have a uniform groundcover. The minimum and maximum widths that are eligible for the tax reduction is determined by the slope. Illinois does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state. In addition to tax incentives, Illinois relies on federal Clean Water Act section 319 funds from US EPA to fund nonpoint source projects in the state.

Illinois requires that permit applicants follow a series of technical standards that are in the Illinois Urban Manual for both construction and post-construction. If the developer uses the technical standards they are considered in compliance, unless an inspection indicates that the technical standard is not working adequately. The developer will then need to make changes to their construction site or storm water management plan.

### Iowa

Iowa requires that nutrient management plans for livestock operation of 500 or more animal units be based on the phosphorus index. The rule's version of the phosphorus index uses Iowa's "quasi-modeling" approach but the equations are based on Wisconsin research. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharge to waters of the state, polluting waters of the state and discharge to road ditches.

Iowa does not have a performance standard approach to construction projects, but does require BMP implementation. There is no specific goal for post-construction other than to have a storm water management plan similar to the way Wisconsin's program was set up before ch. NR 151 was promulgated in 2002. The requirement on the municipality is to try to control runoff from new development. There are no specific goals.

Iowa is making an effort to coordinate the development of TMDLs with the implementation of water quality improvement plans based on TMDLs. There is not yet a separate funding source specifically for implementing TMDL plans, but there are several different funding sources currently used for watershed project implementation, including section 319 funds and three different sources of state-funded watershed implementation funds. There is also a state-funded lakes restoration fund which may be partly used for watershed restoration work. Wherever possible, watershed projects try to leverage EQIP and other federal sources of funds.

Iowa does not currently offer a separate source of funds for Animal Feeding Operation BMPs in response to a Notice of Discharge violation. However, Iowa does not preclude a producer from funding because of a Notice of Violation (NOV), except in the case where the NOV results in the requirement for an NPDES permit. Funding from State Revolving Funds and federal section 319 cannot be used for BMPs requiring an NPDES permit, but can be used for non-permitted BMPs. EQIP funds in Iowa are currently allocated such that counties with water quality livestock projects receive 40 percent of the eligible points when scoring for EQIP funding. The Iowa Department of Agriculture and Land Stewardship has a nutrient management program designed to offer financial assistance for livestock producers for manure management, but the program has not been funded in over 10 years.

### Michigan

Michigan does not require a separation distance between tillage activities and waterbodies. The state's rules regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

Within permits that apply to municipal separate storm sewer systems (MS4s), Michigan has similar performance standards for post-construction total suspended solids control and peak flow control in new development. It has a minimum treatment volume standard of one inch (or ½ inch if technically supported) where they must achieve an 80 percent total suspended solids reduction. It also has a channel protection criteria where the post-peak flow rate and volume must match the pre-peak flow rate and volume for all storms up to the 2-yr, 24-hr event. The peak flow control standard is more stringent than this rule because it also controls volume. Wisconsin is trying to control streambank erosion by controlling a greater number of smaller storms. Michigan has also identified some water bodies that are not required to meet the channel protection standard, similar to Wisconsin's approach. Michigan has an option to use low impact development to meet these two standards, which is very different from Wisconsin. However, unlike Wisconsin, Michigan is only implementing these performance standards on new development in municipalities that have an MS4 permit. Also, if the municipality had an ordinance in place prior to this rule that

addressed water quality for new development even if the performance standard was not included, they are grandfathered in.

Michigan has a pass through grant (section 319 and Clean Michigan Initiative funds) that places a priority on projects that will restore impaired waters or achieve progress toward meeting TMDL load reductions. Michigan does not have a program similar to the rule's mechanism to fund NODs outside of a competitive grant process.

Minnesota:

Minnesota does not have a tillage setback requirement along all waterbodies in agricultural areas, but the state does require a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD<sub>5</sub> (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD<sub>5</sub>.

For non-agricultural practices, Minnesota recently reissued construction permits that require infiltration and the need for additional BMPs when sites are located near s. 303 (d) or outstanding resource waters. Its permit generally is more prescriptive in terms of how to design a BMP for optimal control, but it is not usually presented as a performance standard which would provide more flexibility. Based on Minnesota's documentation, it appears to require BMPs that will achieve an 80 percent total suspended solids reduction and ones that will infiltrate the first half inch of runoff from impervious surfaces. Minnesota requires more BMPs, including temperature control, if the receiving water has special needs such as ORW/ERW waters or s. 303 (d) waters.

Minnesota provides funding for TMDLs through its Clean Water Legacy Act and section 319 of the federal Clean Water Act. The state does not have a funding mechanism to fund notices of discharge specifically, but is looking for ways to provide more financial support for runoff from feedlots. There is a state cost-share program which is used alone or in combination with federal cost share.

**8. Summary of factual data and analytical methodologies used in the rules and how any related findings support the regulatory approach chosen:**

The rule's agricultural performance standards were developed with input from an advisory committee that met four times between December 2007 and February 2008. The following research results and methodologies were analyzed as part of the development of these standards.

Phosphorus Index:

The Wisconsin Buffer Initiative: A Report to the Natural Resources Board of the Wisconsin Department of Natural Resources by the University of Wisconsin-Madison, College of Agricultural and Life Sciences. Dec. 22, 2005.

The following series of articles focused on the watershed targeting approach used in the Wisconsin Buffer Initiative report:

Diebel, M. W., J.T. Maxted, P. J. Nowak, and M. J. Vander Zanden. 2008. Landscape planning for agricultural nonpoint source pollution reduction I: A geographical allocation framework. *Environmental Management* 42 (5): 789-802.

Maxted, J. T., Diebel, M. W., and M. J. Vander Zanden. 2009. Landscape planning for agricultural nonpoint source pollution reduction II: Balancing watershed size, number of watersheds, and implementation effort. *Environmental Management* 43 (1): 60-68.

Diebel, M. W., J.T. Maxted, D. Robertson, S. Han, and M. J. Vander Zanden. 2009. Landscape planning for agricultural nonpoint source pollution reduction III: Assessing phosphorus and sediment reduction potential. *Environmental Management* 43 (1): 69-83.

The following studies of in-field runoff sediment and phosphorus concentrations provided some of the data that was used in building phosphorus index equations:

Panuska, J.C., K.G. Karthikeyan and P.S. Miller. 2008. Impact of surface roughness and crusting on particle size distribution of edge-of-field sediments. *Geoderma* 145: 315 – 324.

Panuska, J.C., K.G. Karthikeyan and J.M. Norman. 2008. Sediment and phosphorus losses in snowmelt and rainfall runoff from three corn management systems. *Trans. ASABE* 51: 95 – 105.

Panuska, J.C., K.G. Karthikeyan. 2009. Phosphorus and organic matter enrichment in snowmelt and rainfall runoff from agricultural fields. *Geoderma* XX: XX –XX (in review).

The following articles about the in-field runoff monitoring methods to collect the runoff phosphorus data that are used to validate the phosphorus index:

Bonilla, C.A., D.G. Kroll, J. M. Norman, D.C. Yoder, C.C. Molling, P.S. Miller, J.C. Panuska, J. B. Topel, P.L. Wakeman, and K.G. Karthikeyan. 2006. Instrumentation for measuring runoff, sediment, and chemical losses from agricultural fields. *Journal of Environmental Quality* 35:216-223.

Stunetebeck, T.D., M.J. Komiskey, D.W. Owens, and D.W. Hall. 2008. Methods of data collection, sample processing and data analysis for edge-of-field, stream gaging, subsurface tile, and meteorological stations at Discovery Farms and Pioneer Farm in Wisconsin, 2001-7. U.S. Geological Survey Open File report 2008-1015. 51 p.

The following paper showed one year's worth of research that validated the Wisconsin phosphorus index.

Bundy, L. G., A. P. Mallarino, and L. W. Good. 2008. Field-Scale Tools for Reducing Nutrient Losses to Water Resources. Pp. 159-170 in Final Report: Gulf Hypoxia and Local Water Quality Concerns Workshop. September 26-28, 2005, Ames, Iowa. Sponsored by Iowa State University and EPA. Organized by the MRSHNC, Upper Mississippi River Sub-basin Hypoxia Nutrient Committee. St. Joseph, Michigan.

The following paper in press shows that simple runoff phosphorus loss models, like the Wisconsin phosphorus index can work well:

Vadas, P. A., L.W. Good, P.A. Moore Jr., and N. Widman. 2009. Estimating phosphorus loss in runoff from manure and phosphorus for a phosphorus loss quantification tool. *Journal of Environmental Quality* (in press).

The following document shows all the phosphorus index equations on the internet:

Good, L. W. and J. C. Panuska. 2008. Current calculations in the Wisconsin P Index. Available at: <http://wpindex.soils.wisc.edu> .

The following models were used in the development of the Wisconsin phosphorus index:

RUSLE 2 (Revised Universal Soil Loss Equations, version 2), USDA-NRCS official RUSLE2 Program and Database and Training materials and User's Guides are available from [http://fargo.nserl.purdue.edu/rusle2\\_dataweb/RUSLE2\\_Index.htm](http://fargo.nserl.purdue.edu/rusle2_dataweb/RUSLE2_Index.htm) The draft user's guide on this site is on the link labeled "RUSLE2 Technology."

Snap-Plus 1.129.1, 1/20/2009 Copyright 2003-2008 by University of Wisconsin Regents Software developed by P Kaarakka, L.W. Good, and J. Wolter in the Department of Soil Science, UW Madison. This a software program links models for nutrient management (SNAP), conservation assessment (RUSLE2) and the Wisconsin Phosphorus Index (PI) into one software program for multi-year nutrient and conservation planning. The most current version is available at <http://www.snapplus.net/>.

Process wastewater performance standard:

The rule's performance standard requires that livestock producers have no significant discharge of process wastewater to waters of the state. Sources of greatest concern include feed storage leachate and milk house waste. Process wastewater discharge is of sufficient concern that USDA has developed technical standards for its management. Environmental aspects of milking center waste water and feed storage leachate, including waste characteristics and water quality impacts, are included in:

*Pollution Control Guide for Milking Center Wastewater Management*. Springman, R.E., Payer, D.D and B.J. Holmes. 1994. University of Wisconsin-Extension, 44 pages.

"Silage Leachate Control". Wright, Peter, in *Silage: Field to Feedbunk, Proceedings from the North American Conference, Hershey, Pennsylvania, February 11-13, 1997. Pages 173 – 186. NRAES, editor.*

"Environmental Problems with Silage Effluent". Graves, R.E., and P.J. Vanderstappen. USDA Natural Resources Conservation Service, National Water Management Center Publication. 6 pages

"Base Flow Leachate Control." Wright, Peter and P.J. Vanderstappen. Paper No. 94-25 60, ASCE Meeting Presentation at the 1994 International Winter Meeting, Atlanta Ga., December 13 – 16, 1994.7 pages.

The USDA technical standard for managing milk house waste and feed storage leachate discharges is: *Waste Treatment (no. 629)*. USDA, Natural Resources Conservation Service. August, 2008. 22 pages.

Modifications to the non-agricultural performance standards were developed with input from a technical advisory committee that met four times between October 2007 and February 2008. Changes to the protective areas performance standard are based on the department's Guidance for the Establishment of Protective Areas for Wetlands in Runoff Management Rules, Wisconsin Administrative Code NR 151 in the Waterway and Wetland Handbook, Ch. 10. Department staff gathered information from municipal engineers and conducted analyses under various scenarios using analytical models to provide information to the technical advisory committee including:

- analysis showing the impact of redevelopment on total suspended solids loads, recommendations and estimated costs for control practices,
- analysis of the infiltration performance standards modifications for different land uses.

## **9. Analysis and supporting documentation used to support the small business analysis:**

The department concluded that the revisions to chs. NR 151, 153 and 155 will result in additional compliance requirements for small businesses, but the rules will not result in additional reporting requirements for small businesses. Rather than mandate specific design standards, the rules either establish new performance standards or revise existing performance standards.

Compliance requirements for agricultural producers vary depending on the type of operation and the performance standard, but the revisions to the rules will not change the existing compliance requirements for agricultural operations. Under state law, compliance with the performance standards is not required for existing nonpoint agricultural facilities and practices unless cost sharing is made available for eligible costs. A less stringent compliance schedule is not included for agricultural producers because compliance is contingent on cost sharing and in many cases, it can take years for a county or the state to provide cost share money to a producer.

Agricultural producers who are in compliance with the existing nutrient management performance standard may already be in compliance with the new phosphorus index and tillage setback performance standards. A phosphorus reduction strategy is included in NRCS nutrient management technical standard 590 (Sept. 5, 2005). A phosphorus index of 6 or less is specified in the PI strategy in Criteria C, 2 of the technical standard. The concept of streambank integrity, as proposed through a tillage setback performance standard, is an assumption of the phosphorus index calculation, which estimates phosphorus delivery to the stream via overland flow, but not from bank erosion or other means that soil, manure or fertilizer might enter the stream from farming operations. In circumstances where the phosphorus index has been determined to be insufficient to achieve water quality standards in areas where an approved total maximum daily load (TMDL) has been approved, a higher level of pollution control may be required. An owner or operator in this situation would be required to implement BMPs designed to meet the load allocation in the TMDL.

The rule revisions will not change the schedules for compliance and reporting requirements for non-agricultural businesses. These requirements are the same as those specified in ch. NR 216. In determining whether non-agricultural small businesses can be exempted from the rules, the department concluded that because the requirements of ch. NR 151, Subchapter III are based on federal requirements the state cannot exempt those businesses. Also, the impacts from certain small business construction activities can have as large a water quality impact as from large businesses.

In determining the compliance and reporting effects, the department considered 1) the existing performance standards and prohibitions in ch. NR 151, 2) the requirements of NRCS technical standard 590 needed to meet the nutrient management performance standard, 3) assumptions contained in the Wisconsin Phosphorus Index, 4) compliance and reporting requirements under ch. NR 216, Subchapter II, 5) agreement with the department of commerce to regulate storm water discharges from commercial building sites under one permit, and 6) feedback from members of advisory committees that included small business owners and organizations.

#### **10. Effect on small business, including how this rule will be enforced:**

The overall effect on small businesses may be increased time, labor and money spent on BMPs or planning tools, but there will not be a significant economic impact on small business. However, for agricultural producers the proposed new agricultural performance standards and the revised existing agricultural performance standards are not enforceable unless 70 percent cost sharing is provided, or up to 90 percent for economic hardship cases. The rules will be enforced either through county ordinances, DNR stepped enforcement procedures or a combination of the two.

Small businesses in the construction industry will not see an effect from the changes to the construction performance standard, but may experience increased costs from the changes to some of the post-construction performance standards. Most of the businesses affected by the changes to the total suspended solids standard will be commercial and it is difficult to estimate how many of those would be classified as small businesses. The modifications to the infiltration and the protective area performance standards may add additional costs, but they are expected to be small. Businesses affected will be both large and small. The rule will be enforced through permits required under ch. NR 216, or through local ordinances. For the non-agricultural performance standards, cost sharing is not required for compliance. However, the department may award grants for certain BMPs and planning activities.

**11. Agency contact:**

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Madison, WI 53707-7921  
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**12: Place where comments are to be submitted and deadline for submittal:**

To be determined.

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SECTION 1. NR 151.002 (3) and (6) are amended to read:

**NR 151.002 (3)** “Average annual rainfall” means a typical calendar year of precipitation, ~~excluding snow, which is considered typical~~ as determined by the department for users of models such as SLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.

**Note:** Information on how to access SLAMM and P8 and the average annual rainfall files for five locations in the state, as published periodically by the department, is available at: <http://dnr.wi.gov/runoff/models/index.htm> or by contacting the storm water management program at (608) 267-7694.

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

**Note:** An example of an impervious flow path would be roof runoff flowing across a lawn of less than 20 feet, to the driveway, to the street and finally to the storm sewer. The

department has a guidance document to aid in the application of this term at [http://dnr.wi.gov/runoff/stormwater/guidance/Errata\\_Guidance\\_TSS.pdf](http://dnr.wi.gov/runoff/stormwater/guidance/Errata_Guidance_TSS.pdf).

SECTION 2. NR 151.002 (11m), (14g), (14r), (15m), and (16m) are created to read:

**NR 151.002 (11m)** “Direct conduits to groundwater” mean wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

**(14g)** “Existing development” means development in existence on October 1, 2004 or development for which a notice of intent was received by the department or the department of commerce on or before October 1, 2004.

**(14r)** “Filtering layer” means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority.

**(15m)** “Highway” has the meaning given in s. 340.01(22), Stats.

**(16m)** “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.

SECTION 3. NR 151.002 (17) and (18) are amended to read:

**NR 151.002 (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, gravel or paved 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~~ developed area or ~~existing development~~ developed area and natural or man-made features where development cannot occur. For the purposes of s. NR 151.13, “in-fill area” does not include any area that was part of a notice of intent that was received by the department or the department of commerce on or after October 1, 2004, such that it was already covered by the post-construction performance standards of s. NR 151.122.

SECTION 4. NR 151.002 (21) is repealed.

SECTION 5. NR 151.002 (25) is amended to read:

**NR 151.002 (25)** “MEP” or “maximum extent practicable” means a different 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~~ achieving a performance standard identified in subch. III, as determined in accordance with s. NR 151.006.

SECTION 6. NR 151.002 (25m), (34m), (38c), (38g), (38L), (38p), (38t), (38x), and (39m) are created to read:

**NR 151.002 (25m)** "Minor reconstruction of a highway" means highway 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 reconstruction of a highway project that will convert an open drainage system into a curb and gutter drainage system does not qualify as minor reconstruction of a highway.

**(34m)** “Private road or driveway” has the meaning given in s. 340.01 (46), Stats.

**(38c)** “Public-use airport” has the meaning given in 49 USC 47102 (21):

**(38g)** “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.

**(38L)** “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.

**(38p)** “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.

**(38t)** “Reconditioning of a highway” has the meaning given in s. 84.013 (1) (b), Stats.

**(38x)** “Reconstruction of a highway” has the meaning given in s. 84.013 (1) (c), Stats.

**(39m)** “Resurfacing of a highway” has the meaning given in s. 84.013 (1) (d), Stats.

SECTION 7. NR 151.002 (42) is amended to read:

**NR 151.002 (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 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.

SECTION 8. NR 151.002 (46m) is created to read:

**NR 151.002 (46m)** “Total maximum daily load” or “TMDL” 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 ensure attainment of the applicable water quality standard.

SECTION 9. NR 151.002 (47) (note) and (48) are amended to read:

**NR 151.002 (47) Note:** Copies of this document may be inspected at the offices of the department's bureau of watershed management, the natural resources conservation service, the secretary of state and the legislative reference bureau, all in Madison, WI. ~~Copies may be obtained from the DNR bureau of watershed management, P.O. Box 7921, Madison, WI 53707.~~

**(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.

SECTION 10. NR 151.002 (48m) is created to read:

**NR 151.002 (48m)** "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.

SECTION 11. NR 151.002 (49) (note) is amended to read:

**NR 151.002 (49) Note:** Copies of this document may be inspected at the offices of the department's bureau of watershed management, the natural resources conservation service, the secretary of state and the legislative reference bureau, all in Madison, WI. ~~Copies may be obtained from the DNR Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707.~~

SECTION 12. NR 151.002 (49m) is created to read:

**NR 151.002 (49m)** "USEPA" means the U.S. environmental protection agency.

SECTION 13. NR 151.003 (title), 151.003 and 151.004 are amended to read:

**NR 151.003 (title) Regional treatment exclusion for existing development and post-construction runoff.** (1) ~~Post-construction runoff within a non-navigable surface water~~ Runoff from existing development and runoff from post-construction development, including new development, redevelopment and in-fill development areas, that flows into a BMP located within

a non-navigable surface water, such as a wet detention pond, is not required to meet the performance standards of ~~subchs. subch. III and IV~~ prior to the BMP. ~~Post-construction BMPs may be located in non-navigable surface waters.~~

**Note:** Regional treatment facilities should not be used for construction site sediment removal. See s. NR 151.11.

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

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

(a) 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; and

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

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

(a) ~~To the maximum extent practicable,~~ Except as provided in par. (b), BMPs shall be located to treat such runoff prior to discharge to navigable ~~surface~~ waters or wetlands.

(b) ~~Post-construction~~ BMPs for such runoff, ~~may be~~ that are located in a navigable ~~surface water~~ waters or wetlands and for which construction commenced before the effective date of this section . . . [legislative reference bureau inserts date] ~~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.

**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~~ Implementation of the statewide performance standards and prohibitions in this chapter may not be sufficient to achieve water quality standards under chs. NR 102 to 105. In those cases, using modeling or monitoring, 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.

SECTION 14. NR 151.005 and 151.006 are created to read:

**NR 151.005 Performance standards for total maximum daily loads.** An owner or operator of a nonpoint source subject to this chapter shall implement BMPs designed to meet the load allocation in a USEPA and state-approved TMDL.

**Note:** A USEPA and state-approved TMDL should determine, through monitoring or modeling, load allocations to meet water quality standards in chs. NR 102 to 105. The department should identify, in a USEPA- and state-approved TMDL or in an areawide water quality management plan or plan amendment approved under ch. NR 121, nonpoint source control needs including BMPs, soils loss rates, or phosphorus index numbers to attain the load allocation specified in the TMDL.

**NR 151.006 Applicability of maximum extent practicable.** Maximum extent practicable, or MEP, applies when the applicant for a storm water discharge permit demonstrates to the department's satisfaction that the performance standard is not achievable. The applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of human safety and welfare, protection of endangered and threatened resources, and preservation of historic properties in making the assertion that the performance standard cannot be met and that a different level of control is the maximum extent practicable.

SECTION 15. NR 151.015 (1) is repealed and recreated to read:

**NR 151.015 (1)** “Accounting period” means the crop rotation period over which compliance is measured and consists of the current year and extends back the previous 7 years moving forward each consecutive year creating a rolling time period not to exceed 8 years.

SECTION 16. NR 151.015 (7) is amended to read:

**NR 151.015 (7)** ~~“Direct runoff” means a discharge of a significant amount of pollutants to waters of the state resulting from any of the following practices~~ includes, but is not limited to, any of the following:

(a) ~~Runoff from a manure storage facility~~ Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.

(b) ~~Runoff from an animal lot that can be predicted to reach surface waters of the state through a defined or channelized flow path or man-made conveyance~~ Runoff of stored manure, including manure leachate, that discharges a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.

(c) ~~Discharge of leachate from a manure pile~~ Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s. NR 154.04(3).

(d) ~~Seepage from a manure storage facility~~ Discharge of a significant amount of leachate from stored manure to waters of the state.

(e) ~~Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s. NR 154.04(3).~~

SECTION 17. NR 151.015 (8) is repealed and recreated to read:

**NR 151.015 (8)** “Feedlot” means a barnyard, exercise area or other outdoor area where livestock are concentrated for feeding or other purposes and self-sustaining vegetative cover is not maintained. “Feedlot” does not include a pasture or winter grazing area.

SECTION 18. NR 151.015 (13g), (15e), (15m) and (15s) are created to read:

**NR 151.015 (13g)** “Margin of safety level” has the meaning given in s. NR 243.03 (37).

(15e) “Overflow” means discharge of manure to the environment resulting from flow over the brim of a facility or from flow directed onto the ground through a man-made device including a pump or pipe.

(15m) “Pasture” means land on which livestock graze or otherwise seek feed in a manner that maintains the vegetative cover over all of the grazing or feeding area.

(15s) “Phosphorus index” or “P-index” means Wisconsin’s agricultural land management planning tool for assessing the potential of a cropped or grazed fields to contribute phosphorus to the nearest stream or lake.

SECTION 19. NR 151.015 (16) is repealed and recreated to read:

**NR 151.015 (16)** “Process wastewater” has the meaning given in s. NR 243.03 (53).

SECTION 20. NR 151.015 (17) is repealed.

SECTION 21. NR 151.015 (18) (c) and (d) are amended to read:

**NR 151.015 (18) (c)** An area within 300 feet upslope or 100 feet downslope of ~~karst features~~ direct conduits to ground water.

(d) A channel ~~with a cross-sectional area equal to or greater than 3 square feet~~ that flows to a ~~karst feature~~ direct conduit to ground water.

SECTION 22. NR 151.015 (25) is created to read:

**NR 151.015 (25)** “Winter grazing area” means a cropland or pasture meeting applicable agricultural standards and prohibitions where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period of October 1 to April 30.

SECTION 23. NR 151.02 (title) and (intro.) are amended to read:

**NR 151.02 (title) Sheet, rill and wind erosion performance standard**. All land where crops or feed are grown, including pastures, shall be ~~cropped~~ managed to achieve a soil erosion rate equal to, or less than, the “tolerable” (T) rate established for that soil.

SECTION 24. NR 151.03 and 151.04 are created to read:

**NR 151.03 Tillage setback performance standard. (1)** All crop producers shall comply with this section.

(2) Tillage may not be conducted within 20 feet of the top of the channel. Crops grown within 20 feet of the top of the channel may be harvested provided that the area stays in self-sustaining vegetative cover and is not subjected to tillage operations.

**Note:** The purpose of this section is to provide bank stabilization and prevent soil from being directly deposited in water bodies through tillage operations.

**NR 151.04 Phosphorus index performance standard. (1)** All crop and livestock producers shall comply with this section.

(2) Croplands, pastures and winter grazing areas shall average a phosphorus index of 6 over the accounting period and may not exceed a phosphorus index of 10 on any individual year within the accounting period. Best management practices may be used alone or in combination to meet the requirements of this section.

(3) Producers may not apply nutrients or manure directly, through mechanical means, to surface waters.

**Note:** Calculation of the phosphorus index can be accomplished using SNAP-Plus or an equivalent methodology. Information on SNAP-Plus can be found at <http://www.snapplus.net/>.

SECTION 25. NR 151.05 (title) is amended to read:

**NR 151.05 (title) Manure storage facilities performance standard.**

SECTION 26. NR 151.05 (2) (a) is amended to read:

**NR 151.05 (2) (a)** New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility; and minimize leakage of the facility in order to comply with groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage to the equivalent volume of a 25 year, 24-hour storm, whichever is greater. The levels of materials in the storage facility may not exceed the margin of safety level.

SECTION 27. NR 151.05 (2) (am) is created to read:

**NR 151.05 (2)** (am) Storage facilities that are constructed or significantly altered on or after the effective date of this rule . . . [legislative reference bureau inserts date] shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.

SECTION 28. NR 151.05 (4) (title) and (4) are amended to read:

**NR 151.05 (4)** (title) ~~FAILING AND LEAKING EXISTING FACILITIES.~~ (a) Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health, or fish and aquatic life, or are causing a violation of groundwater standards shall be upgraded, replaced or abandoned in accordance with this section.

(b) Levels of materials in storage facilities may not exceed the margin of safety level.

**Note:** Manure storage facilities sometimes temporarily store relatively small amounts of non-agricultural wastes, such as septage or organic food wastes. Management of these mixed wastes is addressed in natural resources conservation service technical standards and may be subject to additional regulatory and cost-sharing requirements.

SECTION 29. NR 151.055 is created to read:

**NR 151.055 Process wastewater handling performance standard. (1)** All livestock producers shall comply with this section.

**(2)** There may be no significant discharge of process wastewater to waters of the state.

SECTION 30. NR 151.06 (title) is amended to read:

**NR 151.06 (title) Clean water diversions performance standard.**

SECTION 31. NR 151.07 is repealed and recreated to read:

**NR 151.07 (title) Nutrient management performance standard. (1)** All crop producers and livestock producers that apply manure, commercial fertilizer or other nutrients directly or through contract to agricultural fields shall comply with this section.

**Note:** Manure management requirements for concentrated animal feeding operations covered under a WPDES permit are contained in ch. NR 243.

(2) This performance standard does not apply to industrial waste and byproducts regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, septage regulated under ch. NR 113 or manure directly deposited by pasturing or grazing animals on fields dedicated to pasturing or grazing.

**Note:** The amounts and methods of application of industrial waste and byproducts, municipal sludge and septage are not regulated by the nutrient management performance standard. However, nutrient management plans developed in accordance with this performance standard must account for these nutrient sources when applying manure and other nutrient sources regulated by this standard.

**Note:** In accordance with ss. ATCP 50.04, 50.48 and 50.50, nutrient management planners, Wisconsin certified soil testing laboratories and dealers of commercial fertilizer are advised to make nutrient management recommendations based on the performance standard for nutrient management, s. NR 151.07, to ensure that their customers comply with this performance standard.

(3) (a) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan that is designed to minimize the discharge of nutrients to waters of the state for the purpose of complying with state surface and ground water quality standards.

(b) Nutrient management plans for croplands in watersheds that contain impaired waters or in watersheds that contain outstanding or exceptional resource waters shall meet the following criteria:

1. Unless otherwise allowed under an approved TMDL, the plan shall be designed to maintain or reduce delivery of nutrients contributing to the impairment of an impaired water.
2. The plan shall be designed to maintain or reduce delivery of nutrients to an exceptional or outstanding resource water, except the plan may allow an increase in nutrient delivery to an exceptional or outstanding resource water provided it will not alter the background water quality of the water.

**Note:** It is expected that producers will meet the requirements of this subsection through the use of in-stream water quality modeling or the phosphorus index. For impaired waters with approved TMDLs, the TMDLs would provide the basis for allowable increases or required decreases in nutrient delivery. For impaired waters without approved TMDLs, outstanding resource waters and exceptional resource waters, the producer could demonstrate compliance with this standard by maintaining or reducing phosphorus index values for each field draining to

the surface water. For impaired waters without approved TMDLs, outstanding resource waters and exceptional resource waters the producer could also demonstrate compliance with this standard by documenting that any increase in a field's area-weighted phosphorus index value would be offset by comparable decrease in the area-weighted phosphorus index values from other fields contained in the producer's nutrient management plan that drain to the resource water. All fields must, however, comply with the phosphorus index performance standard under s. NR 151.04.

(c) In this standard, outstanding or exceptional resource waters are identified in ch. NR 102.

SECTION 32. NR 151.09 (1), (3) (b), (4) (b) 2., 3., and 4., (c) 3., and (d) 2. a. and c., are amended to read:

**NR 151.09 (1) PURPOSE.** The purpose of this section is to identify the procedures the department will follow in implementing and enforcing the cropland performance standards pursuant to ss. 281.16 (3) and 281.98, Stats. This section will also identify circumstances under which an owner or operator of cropland is required to comply with the cropland performance standards. In this section, "cropland performance standards" means performance standards in ss. NR 151.005, 151.02, 151.03, 151.04 and 151.07.

**(3) (b) General requirements.** If any cropland is meeting a cropland performance standard on or after the effective date of the standard, the cropland performance standard shall continue to be met by the existing landowner or operator, heirs or subsequent owners or operators of the cropland. If a landowner or operator alters or changes the management of the cropland in a manner that results in noncompliance with the performance standard, the landowner or operator shall bring the cropland back into compliance, regardless of whether cost-sharing is made available. This paragraph does not apply to croplands completing enrollment determined to be existing under sub. (4) (b) 2.

**Note:** The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records or other information to determine whether a change has occurred.

**(4) (b) 2.** An existing cropland also includes land enrolled October 1, 2002, in the conservation reserve or conservation reserve enhancement program administered by the U.S. department of agriculture. This subdivision does not apply to croplands re-enrolled after October 1, 2002.

3. A new cropland is one that does not meet the definition under subd. 1. or 2., including:

a. Land without a previous history of cropping that is converted to cropland after the effective date of the standard. "Without a previous history of cropping" means land where crops have not been grown and harvested for agricultural purposes in the last 10 years prior to the conversion to cropland.

b. Cropland that is in existence and in compliance with a performance standard on or after the effective date of the standard and that undergoes a change in a cropland practice that results in non-compliance with the performance standards.

**Note:** The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records or other information to determine whether a change has occurred.

4. Change in ownership may not be used as the ~~sole~~ basis for determining whether a cropland is existing or new for purposes of administering this subsection.

(c) 3. ~~The technical assistance eligibility provisions identified in ss. NR 153.15 (1) and 153.16 (1) or ch. ATP 50 shall be used in identifying eligible costs for planning, design and construction services. Eligible technical assistance costs include best management practice planning, design, installation supervision and installation certification.~~

(d) 2. a. Cost share dollars are offered in accordance with either of the following: the department has entered into a runoff management grant agreement under ch. NR 153 or a nonpoint source grant agreement under ch. NR 120, and a notice under sub. (5), including any required offer of cost sharing, has been issued by the department or a municipality; or the department directly offers cost share assistance and issues a notice under sub. (5).

c. In cases of economic hardship determined in accordance with s. NR 154.03 (3), the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., ~~cover not less than 70% and not greater than 90% of the eligible costs to implement the best management practices or other corrective measures needed to meet a cropland performance standard.~~ provide cost sharing consistent with the hardship determination.

SECTION 33. NR 151.09 (5) (a) 3. h. is repealed.

SECTION 34. NR 151.09 (5) (b) 2. b. is amended to read:

**NR 151.09 (5) (b) 2. b.** The length of the compliance period shall be ~~from~~ not less than 60 days ~~to~~ nor more than 3 years unless otherwise provided for in this subdivision.

SECTION 35. NR 151.09 (6) (a) 3. e. is repealed.

SECTION 36. NR 151.09 (6) (b) 1. b. and (7) (b) are amended to read:

**NR 151.09 (6) (b) 1. b.** The length of the compliance period shall be ~~from~~ not less than 60 days ~~to~~ nor more than 3 years unless otherwise provided for in this subdivision.

**(7) (b) *Enforcement following notice and direct enforcement.*** The department shall provide notice to the landowner or operator of an existing cropland in accordance with subs. (5) and (6) prior to the department initiating enforcement action under s. 281.98, Stats., except in cases of repeated mismanagement. In such cases, the department may pursue direct enforcement under s. 281.98., Stats., for the second and subsequent offenses.

**Note:** The implementation and enforcement procedures in this section are limited to actions taken by the department under s. 281.98, Stats., for noncompliance with a cropland performance standard. Pursuant to other statutory authority, the department may take direct enforcement action without cost sharing against a crop producer for willful or intentional acts or other actions by a landowner or operator that pose an immediate or imminent threat to human health or the environment.

**Note:** An owner or operator of a new cropland is required to meet the cropland performance standards by incorporating necessary management measures at the time the new cropland is created. This requirement shall be met regardless of cost sharing. The department may pursue direct enforcement under s. 281.98, Stats., against landowners or operators of new croplands not in compliance.

SECTION 37. NR 151.095 (1), (4) (b) and (5) (b) 2. c. and 5., (c) 3. and (d) 2. a., and c. are amended to read:

**NR 151.095 (1) PURPOSE.** The purpose of this section is to identify the procedures the department will follow in implementing and enforcing the livestock performance standards and prohibitions pursuant to ss. 281.16(3) and 281.98, Stats. If a livestock performance standard is also listed as a cropland performance standard under s. NR 151.09, the department may choose the procedures of either s. NR 151.09 or this section to obtain compliance with the standard. This

section will also identify circumstances under which an owner or operator of a livestock facility is required to comply with livestock performance standards and prohibitions. In this section, "livestock performance standards and prohibitions" means the performance standards and prohibitions in ss. NR 151.005, 151.05, 151.055, 151.06 and 151.08.

**Note:** The nutrient management standard in s. NR 151.07 should be implemented through the procedures in s. NR 151.09.

(4) (b) *General requirements.* If any livestock facility is meeting a livestock performance standard or prohibition on or after the effective date of the standard or prohibition, the livestock performance standard or prohibition shall continue to be met by the existing owner or operator, heirs or subsequent owners or operators of the facility. If an owner or operator alters or changes the management of the livestock facility in a manner that results in noncompliance with a livestock performance standard or prohibition, the owner or operator shall bring the livestock facility back into compliance regardless of cost-share availability.

**Note:** The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records or other information to determine whether a change has occurred.

(5) (b) 2. c. A livestock facility that is in existence and in compliance with a livestock performance standard or prohibition on or after the effective date of the livestock performance standard or prohibition and that undergoes a change in the livestock facility that results in noncompliance with the livestock performance standard or prohibition. This includes manure storage facilities that fail to meet the requirements of s. NR 151.05 (3) and were either constructed on or after October 1, 2002, or were constructed prior to October 1, 2002 and subject through October 1, 2002 to the operation and maintenance provisions of a cost share agreement.

5. Change in ownership may not be used as the ~~sole~~ basis for determining whether a livestock facility is existing or new for purposes of administering this subsection.

(c) 3. ~~The technical assistance eligibility provisions identified in ss. NR 153.15 (1) and 153.16 (1) or ch. ATCP 50 shall be used in identifying eligible costs for planning, design and construction services.~~ Eligible technical assistance costs include best management practice planning, design, installation supervision and installation certification.

(d) 2. a. Cost-share dollars are offered in accordance with either of the following: the department has entered into a runoff management grant agreement under ch. NR 153 or a nonpoint source grant agreement under ch. NR 120, and a notice under sub. (6) or under s. NR

243.24(4), including any required offer of cost sharing, has been issued by the department or a municipality; or the department directly offers cost share assistance and issues a notice under sub. (6) or under s. NR 243.24(4)

c. In cases of economic hardship determined in accordance with s. NR 154.03 (3), the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., ~~cover not less than 70% and not greater than 90% of the eligible costs to implement the best management practices or other corrective measures needed to meet a cropland performance standard or prohibition~~ provide cost sharing consistent with the hardship determination.

SECTION 38. NR 151.095 (6) (a) 3. h. is repealed.

SECTION 39. NR 151.095 (6) (b) 2. b. is amended to read:

**NR 151.095 (6) (b) 2. b.** The length of the compliance period shall be ~~from~~ not less than 60 days ~~to~~ nor more than 3 years unless otherwise provided for in this subdivision.

SECTION 40. NR 151.095 (7) (a) 3. e. is repealed.

SECTION 41. NR 151.095 (7) (b) 1. b. and (8) (b) are amended to read:

**NR 151.095 (7) (b) 1. b.** The length of the compliance period shall be ~~from~~ not less than 60 days ~~to~~ nor more than 3 years unless otherwise provided for in this subdivision.

**(8) (b) *Enforcement following notice and direct enforcement.*** The department shall provide notice to the owner or operator of an existing livestock facility in accordance with sub. (6) or (7) prior to the department initiating enforcement action under s. 281.98, Stats., except in cases of repeated mismanagement such as allowing repeated manure storage overflows where the department may pursue direct enforcement under s. 281.98., Stats., for the second and subsequent offenses.

**Note:** The implementation and enforcement procedures in this section are limited to actions taken by the department under s. 281.98, Stats., for noncompliance with a livestock performance standard or prohibition. Pursuant to other statutory authority, the department may take direct enforcement action without cost sharing against a livestock producer for willful or intentional acts or other actions by a producer that pose an imminent or immediate threat to human health or the environment.

**Note:** An owner or operator of a new livestock facility is required to meet the livestock performance standards and prohibitions at the time the new facility is created. This requirement shall be met regardless of cost sharing.

SECTION 42. NR 151.11 (title) and 151.11 are amended to read:

**NR 151.11 (title) Construction site performance standard for new development and redevelopment.** (1) DETERMINATION OF AVERAGE ANNUAL BASIS. In this section, average annual basis is calculated using the appropriate ~~annual~~-rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.

**Note:** The universal soil loss equation and its successors revised universal soil loss equation and revised universal soil loss equation 2, utilize an R factor which has been developed to estimate ~~annual~~-soil erosion, averaged over extended time periods. The R factor can be modified to estimate monthly and single-storm erosion. ~~A design storm can be statistically calculated to provide an equivalent R factor as an average annual calculation.~~

(2) APPLICABILITY. Except as provided under sub. (3), this section applies to ~~all the~~ following:

~~(a) A construction site that has 5 or more acres of land disturbing construction activity, unless any of the following are met:~~

~~1. The department has received a notice of intent for the construction project in accordance with subch. III of ch. NR 216 before October 1, 2002.~~

~~**Note:** Prior to submitting a notice of intent pursuant to subch. III of ch. NR 216, a construction site erosion control plan in conformance with s. NR 216.46 and a storm water management plan in conformance with s. NR 216.47 must be developed.~~

~~2. The department of commerce has received a notice of intent for the construction project in accordance with s. Comm 61.115 before October 1, 2002.~~

~~**Note:** Section Comm 61.115 was repealed effective 4-1-07.~~

~~3. A bid is advertised or construction contract signed where no bid is advertised, before October 1, 2002.~~

~~(b) After March 10, 2003, any construction site that has at least one acre of land disturbing construction activity, except where bids are advertised, or construction contracts~~

~~signed where no bids are advertised, before October 1, 2002. any construction site with land disturbing construction activity.~~

~~**Note:** The 5 and 1 acre land disturbance thresholds are consistent with subch. III of ch. NR 216 and EPA phase II storm water discharge rules regarding applicability of land disturbing construction permits.~~

**(3) EXEMPTIONS.** This section does not apply to the following:

~~(a) Construction projects that are exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity.~~

~~(b) Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.~~

~~**Note:** Transportation facility performance standards are given in subch. IV.~~

~~(e) (a) Nonpoint discharges from agricultural facilities and practices.~~

~~**Note:** This exemption is for nonpoint discharges from agricultural facilities and practices such as cropping and pasturing. Subch. III of ch. NR 216 also exempts nonpoint discharges, but regulates point source discharges of storm water, such as the construction of barns, manure storage facilities, sand settling lanes and barnyard runoff control systems. Under s. NR 216.42 (2) these construction sites are subject to the construction performance standards of this section.~~

~~(d) (b) Nonpoint discharges from silviculture activities.~~

~~(e) Routine maintenance for project sites that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.~~

~~(c) A construction site where the department has received a notice of intent in accordance with subch. III of ch. NR 216 before the effective date of this rule . . . [legislative reference bureau inserts date].~~

~~(d) A construction site where the department of commerce has received a notice of intent in accordance with ch. Comm 60 before the effective date of this rule . . . [legislative reference bureau inserts date].~~

**(4) RESPONSIBLE PARTY.** ~~The landowner or other person performing services to meet the performance standards of this subchapter, through a contract or other agreement, shall comply with this section.~~ The landowner of the construction site, the transportation facility authority or other person contracted or obligated by other agreement to implement and maintain construction site BMPs shall comply with this section. However, BMPs that are no longer necessary for erosion and sediment control shall be removed by the authority in charge of maintenance.

**Note:** ~~Other persons include anyone responsible for disturbing the land or implementing or maintaining BMPs, such as a general contractor or landscape architect.~~

**(5) PLAN.** A written plan shall be developed and implemented for each construction site and shall incorporate the requirements of this section.

**Note:** The written plan may be that specified within s. NR 216.46, ch. TRANS 401.07, the erosion control portion of a construction plan or other plan.

**(6) REQUIREMENTS.** The plan required under sub. (5) shall include the following:

(a) Best management practices that, by design, ~~achieve discharge no more than 5 tons per acre per year, or to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls, until the construction site has undergone final stabilization from initial grading to final stabilization.~~ No person shall be required to ~~exceed an 80% sediment reduction to meet the requirements of this paragraph~~ discharge less than 5 tons per acre per year to comply with maximum extent practicable. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment ~~reduction~~ performance standard shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.

**Note:** Soil loss prediction tools such as revised universal soil loss equation 2 that estimate the sediment load leaving the construction site under varying land and management conditions, or methodology identified in subch. V., may be used to calculate sediment reduction.

(b) Notwithstanding par. (a), if BMPs cannot be designed and implemented to ~~reduce meet the maximum sediment load by 80%, on an average annual basis~~ discharge performance standard of 5 tons per acre per year, the plan shall include a written and site-specific explanation of why the ~~80 percent reduction goal~~ 5 tons per acre per year performance standard is not attainable and the sediment load shall be reduced to the maximum extent practicable.

(c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:

1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
2. Prevent the discharge of sediment as part of site de-watering.
3. Protect separate storm drain inlet structures and culverts from receiving sediment where sediment may be delivered off-site or to on-site waters of the state.

(d) The use, ~~storage and disposal~~ of chemicals, cement and other compounds and materials ~~used~~ on the construction site shall be managed during the construction period to prevent their transport by runoff into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

(7) LOCATION. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

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

**Note:** In accordance with subch. V, the department has developed technical standards to help meet the construction site performance standards. These technical standards are available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

SECTION 43. NR 151.12 is repealed.

SECTION 44. NR 151.121 to 151.129 are created to read:

**NR 151.121 Post-construction performance standards. (1) GENERAL.** In this section “post-construction site” means a construction site subject to regulation under this subchapter, after construction is completed and final stabilization has occurred.

**(2) APPLICABILITY.** This section applies to a post-construction site or transportation facility, ~~that is or was subject to the construction performance standards of s. NR 151.11~~ resulting from one or more acres of land disturbance, except any of the following:

- (a) A post-construction site where the department received a notice of intent for the construction site, in accordance with subch. III of ch. NR 216, before the effective date of this rule . . . [legislative reference bureau inserts date].

(b) A post-construction site where the department of commerce received a notice of intent, in accordance with its rules adopted pursuant to s. 101.1205, Stats., before the effective date of this rule . . . [legislative reference bureau inserts date].

(c) A post-construction site or transportation facility with less than 10 percent connected imperviousness based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, this does not include exemption from the protective area standard of s. NR 151.125.

(d) Agricultural facilities and practices.

**Note:** This exemption includes both point and nonpoint discharges from agricultural facilities and practices. Therefore post-construction structures such as barns, manure storage facilities, sand settling lanes and barnyard runoff control systems will be covered under subch. II and will not be subject, under s. NR 216.47 (1), to the post-construction performance standards of this section.

(e) Underground utility construction, but not including the construction of any above ground structures associated with utility construction.

(f) Reconditioning or resurfacing of a highway.

**(3) RESPONSIBLE PARTY.** The landowner of the post-construction site, the transportation facility authority or other person contracted or obligated by other agreement to implement and maintain post-construction storm water BMPs shall comply with this section.

**(4) STORM WATER MANAGEMENT PLAN.** A written storm water management plan shall be developed and implemented for each post-construction site and shall incorporate the requirements of ss. NR 151.122 to 151.129.

**Note:** Examples of storm water management plans that may be used to comply with this section may be that specified in s. NR 216.47, the municipal storm water management program specified in s. NR 216.07 (5), or the plan specified in s. TRANS 401.106 (2).

**NR 151.122 Total suspended solids performance standard. (1) REQUIREMENT.** Based on an average annual rainfall, as compared to no runoff management controls, best management practices shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site in accordance with Table 1. or to the maximum extent practicable:

<b>Table 1. TSS reduction</b>	
<b>Development Type</b>	<b>TSS Reduction</b>
New Development	80 percent
In-fill $\geq$ 5 acres	80 percent
New Transportation Facilities	80 percent
In-fill < 5 acres on or after October 1, 2012	80 percent
Redevelopment	50 percent of load from parking areas and roads not including where a person is required by a municipality to reconstruct a municipal road as part of a redevelopment project. The load from the municipal road reconstruction is not included in this project, but in a separate municipal project.
Highway Reconstruction	50 percent
Impervious Area over One Acre for Minor Reconstruction of a Highway	50 percent
In-fill < 5 acres and before October 1, 2012	40 percent

(2) MAXIMUM EXTENT PRACTICABLE. Notwithstanding sub. (1), if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation of why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable. No person shall be required to exceed the applicable total suspended solids reduction to meet the requirements of maximum extent practicable.

**Note:** Pollutant loading models such as DETPOND, SLAMM, P8 or equivalent methodology may be used to evaluate the efficiency of the design in reducing total suspended solids. Information on how to access these models is available at: <http://dnr.wi.gov/runoff/models/index.htm> or by contacting the department’s storm water management program at (608) 267-7694. Use the most recent version of the model and the

rainfall files and other parameter files identified for Wisconsin users unless directed otherwise by the regulatory authority.

**Note:** The total suspended solids reduction performance standard applies to the area of land disturbance. However, runoff from off-site drainage areas can affect the efficiency of practices designed to control total suspended solids. When designing best management practices, off-site runoff must be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency must be compensated for by increasing the size of the best management practice accordingly.

**NR 151.123 Peak discharge performance standard. (1) REQUIREMENT.** By design, BMPs shall be employed to maintain or reduce the 1-year, 24-hour and the 2-year, 24-hour post-construction peak runoff discharge rates to the 1-year, 24-hour and the 2-year, 24-hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable. Pre-development condition shall be cropland, woodland or grassland, or a combination, whichever best represents the pre-development condition. The runoff curve numbers in Table 2 shall be used.

<b>Table 2. Maximum Pre-Development Runoff Curve Numbers</b>				
<b>Runoff Curve Number</b>	<b>Hydrologic Soil Group</b>			
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

**Note:** Where the pre-development condition is a combination of woodland, grassland or cropland, the runoff curve number should be pro-rated by area.

**(2) EXEMPTIONS.** This paragraph does not apply to:

(a) A post-construction site where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles.

(b) A redevelopment post-construction site, including a transportation facility that is part of a redevelopment project.

(c) An in-fill development area of less than 5 acres.

(d) A highway reconstruction or minor reconstruction of a highway site.

**Note:** The intent of s. NR 151.123 is to minimize streambank erosion under bank-full conditions.

**NR 151.124 Infiltration performance standard. (1) REQUIREMENT.** BMPs shall be designed, installed and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:

(a) *Low imperviousness.* For development with less than 40 percent connected imperviousness, such as parks, cemeteries and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1 percent of the post-construction site is required as an effective infiltration area.

(b) *Moderate imperviousness.* For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

(c) *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

**Note:** A histogram showing the relationship between connected imperviousness and land use is available at [http://dnr.wi.gov/runoff/stormwater/guidance/Errata\\_Guidance\\_TSS.pdf](http://dnr.wi.gov/runoff/stormwater/guidance/Errata_Guidance_TSS.pdf)

**(2) PRE-DEVELOPMENT.** Pre-development condition shall be the same as specified in s. NR 151.123.

**Note:** A model that calculates runoff volume, such as SLAMM, P8 or an equivalent methodology may be used. For performance standards based on an average annual rainfall, specific rainfall files for five geographic locations around the state may be used. Information on how to access SLAMM and P8 and the rainfall files is available at:

<http://dnr.wi.gov/runoff/models/index.htm> or by contacting the department's storm water management program at (608) 267-7694. Use the most recent version of the model and the parameter files for Wisconsin users unless directed otherwise by the regulatory authority.

(3) SOURCE AREAS. (a) *Prohibitions*. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions of sub. (6):

1. Areas associated with a tier 1 industrial facility identified in s. NR 216.21 (2) (a), including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.

2. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21 (2) (b).

**Note:** Runoff from the employee and guest parking and rooftop areas of a tier 2 facility may be infiltrated but runoff from the parking area may require pretreatment.

3. Rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.

(b) *Exemptions*. Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:

1. Parking areas and access roads less than 5,000 square feet for commercial development.

2. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under par. (a).

3. Redevelopment post-construction sites.

4. In-fill development areas less than 5 acres.

5. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

6. Transportation facility reconstruction and minor reconstruction of highway sites.

7. Highways.

(4) LOCATION OF PRACTICES. (a) *Prohibitions*. Infiltration practices may not be located in the following areas:

1. Areas within 1,000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.

2. Areas within 400 feet of a community water system well as specified in s. NR 811.16 (4) or within the separation distances listed in s. NR 812.08 for any private well or non-community well for runoff infiltrated from commercial (including multi-family residential), industrial and institutional land uses or regional devices for one- and two-family residential development.

3. Areas where contaminants of concern, as defined in s. NR 720.03 (2), are present in the soil through which infiltration will occur.

(b) *Separation distances.* 1. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3.:

<b>Table 3. Separation Distances and Soil Characteristics</b>		
<b>Source Area</b>	<b>Separation Distance</b>	<b>Soil Characteristics</b>
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	
All Other Impervious Source Areas	3 feet or more	Filtering Layer

2. Notwithstanding par. (b), applicable requirements for injection wells classified under ch. NR 815 shall be followed.

(c) *Infiltration rate exemptions.* Infiltration practices may be credited toward meeting the requirement under the following conditions, but the decision to infiltrate under these conditions is optional:

1. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.

2. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the USDA method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay or clay.

(5) **ALTERNATE USE.** Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.

(6) **GROUNDWATER STANDARDS.** (a) Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

(b). Notwithstanding par. (a), the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(7) **PRETREATMENT.** Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with sub. (6). Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

(8) **MAXIMUM EXTENT PRACTICABLE.** Where the conditions of subs. (3) and (4) limit or restrict the use of infiltration practices, the performance standard of s. NR 151.124 shall be met to the maximum extent practicable.

**NR 151.125 Protective areas performance standard. (1) DEFINITION.** In this section, “protective area” means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, “protective area” does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.

(a) For outstanding resource waters and exceptional resource waters, 75 feet.

(b) For perennial and intermittent streams identified on a U.S. geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

(c) For lakes, 50 feet.

(d) For wetlands, 50 feet.

(e) For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps and ephemeral ponds.

**Note:** Information on wetland types can be found at:

<http://dnr.wi.gov/wetlands/types.html>. For ephemeral ponds a description is provided at: <http://dnr.wi.gov/org/land/er/communities/index.asp?mode=detail&Code=CLEPH390WI>

(f) For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetlands dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

(g) In pars. (d) to (f), determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

(h) Wetland boundary delineation shall be made in accordance with s. NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

(i) For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

(j) Notwithstanding pars. (a) to (i), the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.

**Note:** A stream or lake is not eligible for a lower protective area width even if contiguous to a less susceptible wetland.

(2) **APPLICABILITY.** This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to par. (4)

(3) **REQUIREMENTS.** The following requirements shall be met:

(a) Impervious surfaces of a non-transportation facility shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-specific explanation.

(b) No impervious surface of a transportation facility may be constructed within a protective area, unless the transportation facility authority determines, in consultation with the department, that there is no practical alternative. If there is no practical alternative to locating a transportation facility within a protective area, the transportation facility may be constructed in the protective area only to the extent the transportation facility authority, in consultation with the department, determines is reasonably necessary. The transportation facility authority shall state in the design plan prepared pursuant to s. NR 151.121 (4), why it is necessary to construct the transportation facility within a protective area.

(c) Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.

**Note:** It is recommended that seeding of non-invasive vegetative cover be used in the protective areas. Vegetation that is flood and drought tolerant and can provide long-term bank stability because of an extensive root system is preferable. Vegetative cover may be measured using the line transect method described in the University of Wisconsin extension publication number A3533, titled "Estimating Residue Using the Line Transect Method".

(d) Best management practices such as filter strips, swales or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.

**Note:** Other laws, such as ch. 30, Stats., and chs. NR 103, 115, 116 and 117 and their associated review and approval processes may apply in the protective area.

**(4) EXEMPTIONS.** This section does not apply to any of the following:

(a) Redevelopment post-construction sites.

(b) In-fill development areas less than 5 acres.

(c) Structures that cross or access surface waters such as boat landings, bridges and culverts.

(d) Structures constructed in accordance with s. 59.692 (1v), Stats.

(e) Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of ss. NR 151.121 to 151.123, except to the extent that vegetative ground cover is necessary to maintain bank stability.

**Note:** A vegetated protective area to filter runoff pollutants from post-construction sites described in par. (e) is not necessary since the runoff at that location is treated prior to entering the surface water. Other practices necessary to meet the requirements of this section, such as a swale or pond, will need to be designed and implemented to reduce runoff pollutants prior to runoff entering a surface water of the state. The requirements of ch. NR 103 still apply and should be considered before runoff is diverted to or from a wetland.

(f) Non-highway transportation redevelopment sites.

**NR 151.126 Fueling and vehicle maintenance areas performance standard.** Fueling and vehicle maintenance areas shall have BMPs designed, installed and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen, or to the maximum extent practicable.

**Note:** A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.

**NR 151.127 Location.** To comply with the standards required under this subsection, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003.

**NR 151.128 Timing.** The BMPs that are required under ss. NR 151.122 to 151.126 shall be installed before the construction site has undergone final stabilization.

**Note:** In accordance with subch. V, the department has developed technical standards to help meet the post-construction performance standards. These technical standards are available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

**NR 151.129 Swale treatment performance standard. (1) REQUIREMENT.** Except as provided in sub. (2), transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of ss. NR 151.122 to 153.124, if the swales are designed to do all of the following or to the maximum extent practicable:

(a) Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

**Note:** It is preferred that tall and dense vegetation be maintained within the swale due to its greater effectiveness at enhancing runoff pollutant removal.

(b) Swales shall comply with a technical standard developed under subch. V,

**Note:** Check dams may be included in the swale design to slow runoff flows and improve pollutant removal. Transportation facilities with continuous features such as curb and gutter, sidewalks or parking lanes do not comply with the design requirements of this section. However, a limited amount of structural measures such as curb and gutter may be allowed as necessary to account for other concerns such as human safety or resource protection.

**Note:** In accordance with subch. V, the department has developed technical standards to help meet the post-construction performance standards. These technical standards are available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

**(2) OTHER REQUIREMENTS.** (a) Notwithstanding sub. (1), the department may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

1. An outstanding resource water.
2. An exceptional resource water.
3. Waters listed in s. 303 (d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
4. Waters where targeted performance standards are developed pursuant to s. NR 151.004.

(b) The transportation facility authority shall contact the department's regional storm water staff or the department's liaison to the department of transportation to determine if additional BMPs beyond a water quality swale are needed under this subsection.

SECTION 45. NR 151.13 (title), (1) (title), (1) and (2) are amended to read:

**NR 151.13 (title) Developed urban area performance standard for municipalities. (1)**  
(title) ~~INFORMATION AND EDUCATION~~ INCORPORATED MUNICIPALITIES.

(a) *Applicability.* This ~~section~~ subsection applies to any incorporated municipality with an average density of 1,000 people per square mile or greater, based on the latest decennial census made by the U.S. census, as well as any commercial and industrial areas contiguous to these areas.

**Note:** The municipality has primary responsibility for complying with this section. However, the general population is expected to follow municipal ordinance requirements and requests to carry out activities such as: proper curbside placement of leaves for collection, relocating vehicles for street sweeping and utilizing proper disposal methods for oils and other chemicals.

(b) *Requirements.* For areas identified under par. (a), all of the following shall be implemented ~~by March 10, 2008:~~

1. A public information and education program, utilizing materials identified by the department, promoting beneficial on-site reuse of leaves and grass clippings and proper use of ~~lawn~~ turf and garden fertilizers and pesticides, proper management of pet wastes and prevention of dumping oil and other chemicals in storm sewers. ~~Information and education materials shall include instruction on how to apply fertilizers in accordance with a nutrient application schedule, based on appropriate soil tests, and the application of pesticides in accordance with an integrated pest management plan.~~

2. A municipal program, as appropriate, for the ~~collection and~~ management of leaf and grass clippings, including public education about this program.

3. The application of ~~lawn turf~~ and garden fertilizers ~~on~~ across five acres or more acres of municipally controlled properties, ~~with pervious surface over 5 acres each,~~ shall be done in accordance with a site specific nutrient application schedule based on appropriate soil tests. The nutrient application schedule shall be designed to maintain the optimal health of the ~~lawn turf~~ or garden vegetation.

Note: In accordance with subch. V, the department has developed a technical standard to help meet the nutrient management performance standard. The technical standard is available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

4. Detection and elimination of illicit discharges to storm sewers.

(2) PERMITTED MUNICIPALITIES. (a) *Applicability.* This ~~section~~ subsection applies to municipalities that are subject to the municipal storm water permit requirements of subch. I of ch. NR 216.

~~Note: A municipal separate storm sewer system could become subject to subch. I of ch. NR 216 if it is designated by the department under s. NR 216.025.~~

(b) *Program.* A municipality shall develop and implement a storm water management program, including the adoption and administration of any necessary ordinance, to meet the following requirements:

~~Note: The program to meet the requirements of this section may be the same as the municipal storm water management program required by s. NR 216.07(1) to (6) or some other plan.~~

1. 'Stage 1 requirements.' The municipalities listed under par. (a), shall implement the following ~~by March 10, 2008~~ within 2 years of receiving permit coverage under subch. I of ch. NR 216:

a. All of the requirements contained in sub. (1) (b).

b. ~~To the maximum extent practicable,~~ For runoff from existing development that enters waters of the state, as compared to no controls, a 20 percent reduction in total suspended solids in runoff that enters waters of the state as compared to no controls, or to the maximum extent practicable.

~~Note: It is expected that the municipality will be able to achieve the 20% reduction by municipal street sweeping, using either conventional or high efficiency sweepers, regular catch basin cleaning, de-icer management, and education to change human behavior toward reducing pollution.~~

2. 'Stage 2 requirements.' The municipalities listed under par. (a) shall implement one of the following for runoff from existing development that enters waters of the state, as compared to no controls:

a. ~~To the maximum extent practicable, the municipalities listed under par. (a) shall implement a, A 40 percent reduction in total suspended solids in runoff that enters waters of the state as compared to no controls, by March 31, 2013, or to the maximum extent practicable, if permit coverage was received under subch. I of ch. NR 216 prior to the effective date of this rule . . . [legislative reference bureau inserts date]. If such a municipality has determined that it will not achieve a 40 percent reduction in total suspended solids in runoff that enters waters of the state as compared to no controls by March 31, 2013, then on or before August 31, 2012 the municipality shall submit a report to the department demonstrating that it has implemented control measures to the maximum extent practicable as defined in par. (e), and shall submit a long term storm water management plan in accordance with subd. 3.~~

b. A 40 percent reduction in total suspended solids within 7 years of the date of receiving permit coverage for municipalities listed under par. (a), or to the maximum extent practicable, if receiving permit coverage under subch. I of ch. NR 216 after the effective date of this rule . . . [legislative reference bureau inserts date]. If such a municipality has determined that it will not achieve a 40 percent reduction in total suspended solids in runoff that enters waters of the state as compared to no controls, within 6 years and 6 months of receiving permit coverage, the municipality shall submit a report to the department demonstrating that it has implemented control measures to the maximum extent practicable as defined in par. (e), and shall submit a long term storm water management plan in accordance with subd. 3.

3. 'Long term storm water management plan.' Plans shall include the following elements:

a. A baseline report showing the existing development boundary, drainage basins and land uses; and applicable model results to justify the loading for total suspended solids for no controls and controls implemented by March 31, 2013 to meet the maximum extent practicable. Modeling shall conform to that in subd. 5.

b. Agreements with another municipality or municipalities to implement the 40 percent total suspended solids reduction on an 8 digit hydrologic unit code level, or on a regional basis per s. NR 216.07 (6).

c. An implementation plan and its associated timetable for control measures that would result in achieving a 40 percent reduction within a period not to exceed 10 years from the applicable compliance date in subd. 2 unless documentation in subd. 3. d. is provided. The plan shall include modeling data.

d. If control measures cannot achieve 40 percent within 10 years from the applicable compliance date in subd. 2, including the use of agreements with other municipalities, the plan shall demonstrate why 40 percent cannot be achieved and document the amount of reduction that will be achieved under the maximum extent practicable within 10 years from the applicable compliance date in subd. 2 and include an implementation plan and associated timetable for control measures that would result in achieving a 40 percent reduction.

4. 'Long term plan review.'

a. The department shall review the plan required under subd. 2.b. and provide comments within 6 months of receipt. The municipality shall address any revisions identified by the department.

b. The department shall accept documentation that demonstrates to the department's satisfaction that the 40 percent reduction will be met by March 31, 2013.

c. The department shall accept plans where the 40 percent reduction can be made within the schedule proposed by the municipality, but not to exceed 10 years from the applicable compliance date in subd. 2. However, the department upon review of the plan may request a modification of the schedule or control measures if the department determines that control measures can achieve the 40 percent reduction within a shorter timeframe. The acceptance of the plan shall include the provision in subdivision paragraph e.

d. The department shall accept a plan with an extended timetable beyond 10 years from the applicable compliance date in subd. 2 where the municipality has demonstrated to the department's satisfaction that the 40 percent reduction cannot be made within 10 years from the applicable compliance date in subd. 2. However, upon review of the plan the department may request a modification of the schedule or control measures if the department determines that control measures can achieve the 40 percent reduction within a shorter timeframe than proposed

by the municipality. The acceptance of the plan shall include the provision in subdivision paragraph e.

e. The municipality shall submit a report on an initial schedule set by the department and every 5 years thereafter documenting progress and reviewing whether changes in land use, local regulations, control technology or other factors have affected the use or timing of control measures meeting the maximum extent practicable. The report shall include a modeling analysis documenting progress and recommending any changes in control measures or timetables for achieving a 40 percent reduction.

5. 'Model requirements.' Evidence of meeting the performance standard of subd. 2. shall require the use of a model or an equivalent methodology approved by the department. Acceptable models and model versions include SLAMM version 9.2 and P8 version 3.4 or subsequent versions of those models. Earlier versions of SLAMM are acceptable if the municipality is not taking any credit for street cleaning.

**Note:** Information on how to access SLAMM and P8 and the relevant parameter files are available at: <http://dnr.wi.gov/runoff/models/index.htm> or by contacting the department's storm water management program at (608) 267-7694.

**Note:** It is expected that the municipality will be able to achieve the 40 percent reduction through with a combination of practices including the use of high efficiency street sweeping, or structural BMP retrofit practices. ~~The stage 2 requirements may include application of and installation of BMPs to~~ on privately owned lands, such as shopping centers, if the municipality can ensure that the BMPs will be maintained.

(c) *Location.* To comply with the standards required under this subsection, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003.

(d) (title) ~~Exclusion~~ *Exemption.* ~~This section does~~ The requirements of subds. 1. b. and 2. do not apply to areas subject to a permit under subch. II of ch. NR 216, but may be included at the discretion of the permitted municipality.

(e) *Application of maximum extent practicable to developed areas.*

1. For purposes of this section, maximum extent practicable means a combination of best management practices which is feasible and cost effective in reducing pollutants to surface waters. Cost-effective is determined by systematic comparison of alternative means of meeting

the 40 percent reduction which will consider the ratio of the total cost to pollutant reduction and best available technology. Feasibility is determined by a systematic consideration of alternatives that takes into account competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features.

2. The implementation of best management practices required by this section does not result in an annual expenditure greater than 0.37 dollars per thousand dollars of reported equalized value for the municipality. For purposes of this calculation, a 20 year amortization of debt service is associated with capital cost expenditures.

(f) Calculation of reduction. The department shall recognize total suspended solids reduction not otherwise accounted for in computer models for the implementation of programs, ordinances and other institutional controls that result in reductions of total suspended solids and are developed as a technical standard under s. NR 151.31.

SECTION 46. NR 151.135 is created to read:

**NR 151.135 Developed urban area performance standard for transportation facilities.** (1) APPLICABILITY. This section applies to transportation facilities under the sole and exclusive jurisdiction of the department of transportation that are located within a municipality regulated under subch. I of ch. NR 216.

**Note:** Transportation facilities that are not under the sole and exclusive jurisdiction of the department of transportation are subject to the performance standards in s. NR 151.13.

(2) REQUIREMENTS. (a) The department of transportation shall develop and implement a storm water management plan in consultation with the department to control pollutants from transportation facilities described in sub. (1), for runoff from existing transportation facilities that enters waters of the state as compared to no storm water management controls. By design, the plan shall do the following:

1. A 20 percent reduction in total suspended solids, beginning not later than a date consistent with the host municipality or to the maximum extent practicable.
2. A 40 percent reduction in total suspended solids in runoff by March 31, 2013, or to the maximum extent practicable.
3. Evidence of meeting the performance standard of this paragraph shall require the use of a model or an equivalent methodology approved by the department. Acceptable models and

model versions include SLAMM version 9.2 and P8 version 3.4 or subsequent versions of those models. An earlier version of SLAMM is acceptable if no credit is being taken for street cleaning.

**Note:** Information on how to access SLAMM and P8 and the relevant parameter files is available at: <http://dnr.wi.gov/runoff/models/index.htm> or by contacting the department's storm water management program at (608) 267-7694.

(b) The department of transportation shall inform and educate appropriate department of transportation staff and any transportation facility maintenance authority contracted by the department of transportation to maintain transportation facilities owned by the department of transportation regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.

SECTION 47. NR 151.14 (title), 151.14 and 151.15 are amended to read:

**NR 151.14 (title) ~~Non-municipal property fertilizer~~ Turf and garden nutrient management performance standard. (1) APPLICABILITY. This section applies when all of the following conditions are met:**

(a) ~~The property is not owned by a municipality. The property is not covered under s. NR 151.13 (1) (b) 3.~~

(b) ~~The property has over 5 acres of pervious surface where fertilizers are applied.~~  
Nutrients are applied to over 5 acres of turf or garden.

(c) The property discharges runoff to waters of the state.

(d) The property is not an agricultural facility or practice.

(e) The property is not a silviculture activity.

(2) RESPONSIBLE PARTY. The landowner shall comply with this section.

(3) REQUIREMENTS. ~~No later than March 10, 2008, the~~ The application of ~~lawn~~ turf and garden fertilizers on these properties shall be done in accordance with site-specific nutrient application schedules based on appropriate soil tests. The nutrient application schedule shall be designed to maintain the optimal health of the ~~lawn~~ turf or garden vegetation.

**Note:** ~~The landowner should consider using slow release fertilizers or "spoon feeding" nutrients to reduce the concentration of nitrates reaching groundwater.~~

Note: In accordance with subch. V, the department has developed a technical standard to help meet the nutrient management performance standard. The technical standard is available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

**NR 151.15 Implementation and enforcement.** (1) IMPLEMENTATION. This subchapter shall be implemented as follows:

(a) *Construction sites and post-construction sites.* ~~For sites defined in ss. NR 151.11 (2) and 151.12 (1) and (2):~~

~~1. The provisions of ss. NR 151.11 and ~~151.12~~ 151.121 to 151.129 shall be implemented through subch. III of ch. NR 216.~~

~~2. The department shall make available model ordinances that reflect and implement the performance standards in ss. NR 151.11 and 151.12.~~

Note: The department will revise available model ordinances to reflect the performance standards in ss. NR 151.11 and 151.121 to 151.129. These model ordinances are in ch. NR 152. Municipalities are encouraged to adopt the requirements of ss. NR 151.11 and ~~151.12~~ 151.121 to 151.129, into local ordinances ~~that reflect these models~~. Incentives are included in the grant programs identified in chs. NR 153 and 155, for municipalities that adopt the performance standards into their ordinances, provide an information and education program and track and report their enforcement activity.

(b) *Developed urban areas.* ~~1. The provisions of ss. NR 151.13 (1) and 151.14 shall be enforced under sub. (2).~~

~~2. The provisions of s. NR 151.13 (2) shall be implemented through subch. I of ch. NR 216.~~

(2) ENFORCEMENT. (a) The department shall enforce this subchapter under s. 281.98, Stats.

**Note:** The department may also enforce performance standards implemented through ch. NR 216 under ss. 283.89 and 283.91, Stats.

(b) If a transportation facility that is exempt from prohibitions, permit or approval requirements by s. 30.2022 (1), Stats., does not comply with the performance standards of this subchapter, the department shall initiate the conflict resolution process specified in the

cooperative agreement between the department of transportation and the department established under the interdepartmental liaison procedures under s. 30.2022 (2), Stats.

SECTION 48. NR 151.20 to 151.26 are repealed.

SECTION 49. NR 151.30 to 151.32 are amended to read:

**NR 151.30 Purpose.** This subchapter specifies the process for developing and disseminating technical standards to implement the performance standards in ~~subchs. and IV,~~ subch. III as authorized by s. 281.16 (2) (b), Stats., and establishes the procedures that the department shall use to determine if technical standards adequately and effectively implement, as appropriate, the performance standards in ~~subchs. III and IV~~ subch. III. This subchapter applies to technical standards developed or implemented by any agency of the state of Wisconsin.

**NR 151.31 Technical standards development process. (1)** The department shall develop and revise technical standards to implement the performance standards in ss. NR 151.11, ~~151.12~~ 151.121 to 151.129, 151.13, ~~151.23, 151.24 and 151.25~~ 151.135, and 151.14 through a process outlined as follows:

(a) The department may decide that a new or revised technical standard is necessary to implement a performance standard.

(b) Any person may request the department to develop or revise a technical standard designed to meet a performance standard. The request shall be made in writing to the director of the department's bureau of watershed management and shall include the performance standard for which technical standard development or revision may be needed, and an explanation why a new or revised technical standard is requested.

(c) The department shall evaluate a request submitted pursuant to par. (b), to determine if it is necessary to develop or revise a technical standard to implement a performance standard. If the department determines that a new or revised technical standard is not necessary to implement a performance standard, it shall reply to the requester in writing as to the reasons that a technical standard does not need to be developed or revised.

(d) If the department determines that a new or revised technical standard is necessary to implement a performance standard, it shall:

1. Determine the state agency responsible for the technical standard.

2. If the responsible state agency is not the department, request the responsible state agency to develop or revise a technical standard.

3. If the responsible agency denies the request to develop or revise a technical standard, the department may initiate conflict resolution procedures outlined under any existing memorandum of understanding or agreement between the department and the responsible agency. If no conflict resolution procedures exist, the department may attempt to resolve the disagreement through stepped negotiations between increasing higher levels of management.

(e) The department shall use the following procedures when it acts to develop or revise technical standards to implement the performance standards in ~~subchs. III and IV~~ subch. III.

1. Convene a work group to develop or revise the technical standard that includes agencies and persons with technical expertise and direct policy interest. The work group shall include at least one representative from the agency or person that made an initial request to develop or revise the technical standard.

2. The work group shall publish a class 1 public notice and consider public comments received on the technical standard prior to providing recommendations to the department under subd. 3.

3. The work group shall provide a recommended technical standard to the department within 18 months of its formation unless the director of the bureau of watershed management grants an extension to this deadline.

(f) 1. Notwithstanding other provisions of this section, and acting jointly with the department of transportation and in consultation with other appropriate stakeholders, the department shall:

a. Develop a technical standard that, by design, meets the performance standard established in ~~s. NR 151.23 (3)~~ s. NR 151.11 (6) for transportation facility construction sites. This technical standard shall address slope erosion and channel erosion and identify BMPs that may be used given a variety of site conditions.

b. Annually review this technical standard.

**Note:** This technical standard is sometimes referred to as the standardized erosion control reference matrix for transportation.

2. For transportation facility construction sites, the technical standard developed under this paragraph shall also indicate any conditions under which it may not be used to implement the performance standard established in ~~s. NR 151.23 (3)~~ s. NR 151.11 (6).

3. This technical standard and future revisions become effective upon signatures from both secretaries of the department and the department of transportation, or their designees.

(2) (a) Upon receipt of a proposed technical standard or technical standard revision, either developed by the department or a responsible state agency, the department shall determine if the technical standard will effectively achieve or contribute to achievement of the performance standards in ~~subchs. III and IV~~ subch. III. The department shall provide its determination in writing to the responsible state agency that prepared the proposed technical standard.

(b) If the department determines that a proposed technical standard will not adequately or effectively implement a performance standard in ~~subchs. III and IV~~ subch. III, the proposed technical standard may not be used to implement a performance standard in whole or in part.

(c) If the department determines that a proposed technical standard will adequately and effectively implement a performance standard in ~~subchs. III and IV~~ subch. III in whole or in part, the new or revised technical standard shall be used in lieu of any existing standards to implement the performance standard beginning with plans developed after the date of this determination.

(d) The department may determine a portion of a technical standard is adequate and effective to implement the performance standards under subch. III ~~or IV~~.

(3) The department shall accept technical standards and best management practices developed by the department, the department of commerce, the department of transportation or other appropriate state agencies, existing on October 1, 2002, unless the department identifies a technical standard as not adequate or effective to implement a performance standard in ~~subchs. III and IV~~ subch. III in whole or in part, and informs the responsible state agency of this determination and the basis for it.

(4) Until the processes under subs. (1) and (2) are completed, an existing technical standard identified by the department under sub. (3), or previously accepted by the department as adequate and effective to implement a performance standard under subch. III ~~or IV~~ shall be recognized as appropriate for use under this chapter.

(5) The department may identify technical standards that exist or are developed by qualified groups or organizations as adequate and effective to implement the performance standards under subch. III ~~or IV~~.

(6) Except as provided in ~~s. NR 151.26~~ s. NR 151.15 (2) (b), if a technical standard that the department determines is not adequate or effective to implement a performance standard in whole or in part is used to implement a performance standard under subch. III ~~or IV~~, the department may initiate enforcement proceedings for failure to meet the performance standard under s. 281.98, Stats.

**NR 151.32 Dissemination of technical standards.** (1) Technical standards developed or revised under this section may be made available through the responsible state agency's appropriate rules, manuals or guidance in keeping with normal publication schedules. If the responsible state agency does not publish appropriate manuals or guidance, the department shall request the agency provide the department with a copy of the technical standard. Where provided, the department shall publish or reproduce the technical standard for public use.

(2) The department shall maintain a list of technical standards that it has determined adequate and effective to implement the performance standards under subch. III ~~or IV~~ and make the list available upon request.

SECTION 50. Chapter NR 153 (title), 153.10 and 153.11 (1) are amended to read:

CHAPTER NR 153 (title) TARGETED RUNOFF MANAGEMENT AND NOTICE OF DISCHARGE GRANT PROGRAM PROGRAMS

**NR 153.10 Purpose.** The purpose of this chapter is to establish the administrative framework for the selection of targeted runoff management projects under s. 281.65 (4c), Stats., the selection of notice of discharge projects under s. 281.65 (4e), Stats., and implementation of these projects under s. 281.65, Stats. This chapter promotes management of urban and rural nonpoint pollution sources in critical geographic locations where nonpoint source related water quality problems and threats are most severe and control is most feasible. This chapter accelerates implementation of nonpoint source water pollution control in areas where funding available through s. 92.14, Stats., is inadequate to meet water quality goals.

**Note:** The department will not use this chapter to administer grants for activities ~~to control point source pollution, including activities required to comply with provisions~~ WPDES permit requirements of ch. NR 216 or 243, except if the grant is provided to the city of Racine to

comply with municipal storm water permit requirements. Chapter NR 155 is used by the department to administer grants for both point source and nonpoint source projects in urban areas as defined under s. 281.66 (1) (e), Stats. Projects that are located in urban areas but are not required to comply with ch. NR 216 are eligible to apply for funding under ch. NR 153 or 155, or both.

**NR 153.11 (1)** The department when acting to solicit and accept targeted runoff management project applications, score applications and select projects, under s. 281.65 (4c), Stats., for funding under s. 281.65, Stats.

SECTION 51. NR 153.11 (1m) is created to read:

**NR 153.11 (1m)** The department when accepting applications, selecting and funding notice of discharge projects under s. 281.65 (4e), Stats.

SECTION 52. NR 153.11 (3) is amended to read:

**NR 153.11 (3)** Governmental units when acting to submit applications to the department for projects under s. 281.65 (4c) or 281.65 (4e), Stats., receive grants from the department for projects under s. 281.65, Stats., and serve as cost-share providers to landowners, land operators or state agencies.

SECTION 53. NR 153.12 (1) is repealed and recreated to read:

**NR 153.12 (1)** "Acquisition cost" means the purchase price actually paid by the grantee and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

SECTION 54. NR 153.12 (5m) is created to read:

**NR 153.12 (5m)** "Cost-share recipient" means the receiver of cost-share funds from a provider.

SECTION 55. NR 153.12 (8) is amended to read:

**NR 153.12 (8)** "Force account work" means the use of the governmental unit's own employees or equipment for project planning, design, construction, construction related activities, inspection, ~~or~~ repair or improvement to a best management practice.

SECTION 56. NR 153.12 (12m), (18g) and (18r) are created to read:

**NR 153.12 (12m)** "Impaired water" means a water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

**(18g)** "Notice of discharge" means a notice issued from the department to a landowner or operator under s. NR 243.24.

**(18r)** "Notice of discharge project" means a project funded by the department under s. 281.65 (4e), Stats.

SECTION 57. NR 153.12 (19) is amended to read:

**NR 153.12 (19)** "Operation and maintenance period" means the length of time a best management practice included on a cost-share agreement or a runoff management grant agreement shall be operated and maintained to fulfill conditions of the agreement.

SECTION 58. NR 153.12 (19m) is created to read:

**NR 153.12 (19m)** "Priority lake" means any lake or group of lakes that are identified under s. 281.65 (3) (am), Stats.

SECTION 59. NR 153.12 (22) is repealed.

SECTION 60. NR 153.12 (23) to (27) are amended to read:

**NR 153.12 (23)** "Project" means a targeted runoff management project or a notice of discharge project.

**(24)** "Project area" means the geographic extent of a ~~targeted runoff management~~ project.

**(25)** "Project completion" means the expiration date of a runoff management grant agreement or the date all practice installations were certified as complete.

**(26)** "Project sponsor" means the governmental unit or state agency applying for and receiving grant assistance under s. 281.65 (4c) or 281.65 (4e), Stats., and this chapter.

(27) "Provider" means a governmental unit ~~when serving to administer~~ that administers cost-share funds through a cost-share agreement with a ~~private~~ landowner, ~~land~~ operator or state agency.

SECTION 61. NR 153.12 (28) is repealed.

SECTION 62. NR 153.12 (29) and (31) are amended to read:

**NR 153.12 (29)** "Runoff management grant agreement" means an agreement entered into between the department of natural resources and a state agency or governmental unit which establishes the terms under which funds are provided by the department for the installation of best management practices or the purchase of property or easements in a project funded under s. 281.65 (4c) or 281.65 (4e), Stats.

(31) "Targeted runoff management project" means either a TMDL or a non-TMDL control project selected by the department for funding under s. 281.65 (4c), Stats.

SECTION 63. NR 153.12 (31m), (32g) and (32r) are created to read:

**NR 153.12 (31m)** "TMDL" 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.

(32g) "US EPA" means the U.S. environmental protection agency.

(32r) "Watershed" means the geographic area draining to a specified portion of the surface or groundwater resource.

SECTION 64. NR 153.13 is amended to read:

**NR 153.13 Eligible applicants. (1)** Governmental units and federally recognized tribal governing bodies are eligible to apply for and receive ~~targeted runoff management grants~~ funding for projects administered under this chapter.

**Note:** A landowner or land operator that is not a governmental unit may not apply directly to the department for a targeted runoff management grant or a notice of discharge grant. However, a landowner or land operator may enter into a cost-share agreement with a governmental unit to receive grant funds awarded by the department under s. NR 153.20 or NR 153.205.

(2) A state agency, including the department, may apply for a targeted runoff management grant administered under this chapter for a project on land under state ownership or control if the project ~~affects a priority lake or is in a priority watershed area~~ area is within the boundaries of a priority watershed or priority lake project. The department may apply for a grant to purchase an easement for a targeted runoff management project or a notice of discharge project located in a priority watershed area or priority lake project. For purposes of this subsection, a priority watershed or priority lake project is considered to retain its project status through the end of the tenth year beyond the expiration date of the nonpoint source grant agreement entered into under s. NR 120.12.

**Note:** A state agency, including the department, may not apply directly to the department for a targeted runoff management grant ~~for a project if the project area is~~ located outside the boundaries of a priority watershed or priority lake ~~area~~ project. ~~However, for~~ For work in these areas a state agency, including the department, ~~may enter into a cost share agreement with a governmental unit to receive grant funds awarded to the governmental unit under s. NR 153.20~~ may only receive funds for a targeted runoff management project if a governmental unit submits an application on its behalf.

SECTION 65. NR 153.14 is repealed and recreated to read:

**NR 153.14 Eligible targeted runoff management projects. (1) APPLICABILITY.** This section applies only to targeted runoff management projects.

**(2) PROJECT CATEGORIES.** There are four categories of targeted runoff management projects eligible for funding under this chapter.

- (a) large-scale TMDL implementation project
- (b) small-scale TMDL implementation project
- (c) large-scale non-TMDL control project
- (d) small-scale non-TMDL control project

**(3) GENERAL ADMINISTRATIVE PROJECT CRITERIA FOR ALL PROJECTS.** Any project funded under this section shall meet all of the following administrative criteria:

- (a) The project application submitted under s. NR 153.17 shall specify the watershed, sub-watershed or specific site that will be served by the project.

(b) The project shall be consistent with priorities identified by the department on a watershed or other geographic basis.

(c) The project shall be consistent with the county land and water resources management plan approved under s. 92.10, Stats.

(d) The project may not have been allocated full cost-share funding by the department of agriculture, trade and consumer protection under the joint allocation plan approved under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

**(4) GENERAL WATER QUALITY CRITERIA FOR ALL PROJECTS.** Any project funded under this section shall implement nonpoint source pollution control in an area that is a target based on at least one of the following:

(a) The need for compliance with performance standards established by the department in ch. NR 151.

(b) The existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(c) The existence of outstanding or exceptional resource waters, as designated by the department under s. 281.15, Stats.

(d) The existence of threats to public health.

(e) The existence of an animal feeding operation that has received a notice of discharge under ch. NR 243 or a notice of intent to issue a notice of discharge.

(f) Other water quality concerns of national or statewide importance as identified by the department in application materials.

**(5) LARGE-SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY CRITERIA.** Large-scale TMDL implementation projects shall meet the following specific criteria:

(a) The project shall directly implement the pollutant-specific goals of either a draft TMDL, an EPA-approved TMDL, a draft TMDL implementation plan, a department approved TMDL implementation plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project shall be designed to control the most critical nonpoint pollution sources within a designated watershed area.

**Note:** The boundaries of the watershed area will be based on factors including the amount of funds available, the management needs identified in the TMDL and the management strategy set forth in the TMDL implementation plan.

(c) The project shall be limited to managing agricultural sources of nonpoint pollution.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost-effectively controlled.

(e) The intended project period may not exceed 3 years in duration, with the possibility of extension to 4 years if approved by the department.

**(6) SMALL-SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY CRITERIA.** Small-scale TMDL implementation projects shall meet the following specific criteria:

(a) The project shall directly implement the pollutant-specific goals of either a draft TMDL, an EPA-approved TMDL, a draft TMDL implementation plan, a department approved TMDL implementation plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project may focus on one or more sites or farms.

(c) The project may address nonpoint pollution from either agricultural or urban sources.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost-effectively controlled.

(e) The intended project period may not exceed two years in duration, with the possibility of extension to 3 years if approved by the department.

**(7) LARGE-SCALE NON-TMDL CONTROL PROJECTS.** Large-scale non-TMDL control projects shall meet the following specific criteria:

(a) The project shall implement water resource management goals included in a watershed plan or strategy acceptable to the department.

(b) The project shall be designed to control the most critical nonpoint pollution sources within a designated watershed area. The designated watershed area shall be not less than 8 square miles nor more than 39 square miles in areal extent.

**Note:** The Wisconsin Buffer Initiative finds that watersheds in this size range provide the best opportunity for cost-effectively solving surface water resource problems in threatened or partially degraded waters using agricultural nonpoint source pollution control best management practices. The Wisconsin Buffer Initiative is published by the University of Wisconsin College of Agricultural and Life Sciences. Copies are on file with the department and the secretary of state.

(c) The project shall be limited to managing agricultural sources of nonpoint pollution.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost-effectively controlled.

(e) The project shall focus on attainment of performance standards and prohibitions established by the department under s. 281.16 (3), Stats.

(f) The intended project period may not exceed 3 years in duration, with the possibility of extension to a fourth year if approved by the department.

**(8) SMALL-SCALE NON-TMDL CONTROL PROJECT.** Small-scale nonpoint source control projects shall meet the following specific criteria:

(a) The project may focus on one or more sites or farms.

(b) The project may address nonpoint pollution from either agricultural or urban sources.

(c) Agricultural projects shall be designed to achieve attainment of agricultural performance standards and prohibitions established by the department under s. 281.16 (3), Stats. Urban projects shall be designed to achieve attainment of non-agricultural performance standards established by the department under s. 281.16 (2), Stats.

(d) The intended project period may not exceed 2 years in duration, with the possibility of extension to 3 years if approved by the department.

**Note:** The purpose of TMDL implementation projects is to contribute to the cost-effective removal of surface waters from the state's impaired waters list in a way that is consistent with TMDLs and TMDL implementation plans. The degree to which compliance with state performance standards and prohibitions is needed to address these impairments will vary by waterbody.

The purpose of non-TMDL control projects is to improve degraded surface waters (including surface waters on the s. 303 (d) list that do not yet have TMDLs or TMDL

implementation plans), to improve degraded groundwater and to protect threatened and high quality surface and ground waters from degradation. These projects achieve their goals by implementing state performance standards and prohibitions.

Large-scale projects and small-scale TMDL implementation projects set control priorities based on a watershed plan or other process to identify needs and cost-effective strategies. Small-scale non-TMDL control projects are designed to implement state performance standards and prohibitions wherever they may occur, leading to a general reduction in nonpoint source pollution.

SECTION 66. NR 153.145 is created to read:

**NR 153.145 Eligible notice of discharge projects. (1)** This section only applies to notice of discharge projects.

**(2)** Eligibility for funding under this section includes notice of discharge projects that implement best management practices for animal waste management at animal feeding operations for which the department has issued a notice required under s. 281.65 (4e), Stats. Notice of discharge projects shall be designed to meet the water quality goals established in s. 281.65 (4e), Stats.

**Note:** The department may fund management practices to meet notice of discharge requirements in two ways. It may fund required management practices through a notice of discharge project authorized under s. 281.65 (4e), Stats. Alternatively, it may fund the required management practices under a targeted runoff management project authorized under s. 281.65 (4c), Stats. This chapter establishes separate requirements and procedures for each of these alternative funding mechanisms.

SECTION 67. NR 153.15 (1) (a), (c) and (g) are amended to read:

**NR 153.15 (1)** (a) The department may provide cost sharing for the construction or implementation of best management practices in projects ~~located either inside or outside of priority watershed and priority lake areas~~ selected for funding under the chapter. The department may attribute design and construction services costs to the cost of construction or implementation of the best management practice. State and local administrative permit fees are not reimbursable as part of the construction cost.

Note: Although local administrative fees are not reimbursable, the department may reimburse governmental units for design and construction services subject to the limitations of s. NR 153.27 (4).

(c) If the purpose of the best management practice is to comply with a non-agricultural performance standard under subch. III ~~or IV~~ of ch. NR 151, or if the purpose of the best management practice is to reduce pollution from a source for which a performance standard is not included in ch. NR 151, the best management practice shall meet one of the following criteria to be considered eligible for cost sharing under this chapter:

1. Be included in ch. NR 154.
2. Be included in subch. VIII of ch. ATCP 50.
3. Be available in accordance with the technical standards development and dissemination requirements of subch. V of ch. NR 151.
4. Be identified by the department as an interim best management practice or alternative design criteria in accordance with sub. (3) (b) 4.

(g) Best management practices funded under s. 20.866 (2) (te) or (tf), Stats., shall meet requirements for use of bond-sourced funding.

SECTION 68. NR 153.15 (2) (a) is repealed and recreated to read:

**NR 153.15 (2)** (a) Best management practices for croplands classified as “new” under s. NR 151.09 (4) (b) 3. or best management practices for livestock facilities classified as “new” under s. NR 151.095 (5) (b) 2.

SECTION 69. NR 153.15 (2) (ag) and (ar) are created to read:

**NR 153.15 (2)** (ag) Best management practices to address pollution from a livestock facility or cropland practice that was previously in compliance with standards and prohibitions on or after the date the standard or prohibition became effective under ch. NR 151, regardless of cost share history. The department may make an exception and provide cost sharing to replace practices or practice components previously cost shared by the department that are ineffective during the operation and maintenance period due to unforeseen design problems.

**Note:** If a source loses its compliance status because of changes to the standard, cost sharing may be offered for management measures needed to bring the source into compliance with the new standard.

(ar) Best management practices to address a pollution source for which the department included a previous offer of cost sharing as part of a notice issued pursuant to ch. NR 151 and the management practices were not installed within the required compliance period.

SECTION 70. NR 153.15 (2) (b) is amended to read:

**NR 153.15 (2) (b)** ~~Operation~~ Routine operation and maintenance of best management practices, ~~except that the~~. The department may provide cost sharing one time to re-establish a best management practice cost shared after October 1, 2002 that is damaged within the cost-share operation and maintenance period by natural causes beyond the control of the landowner or land operator.

SECTION 71. NR 153.15 (2) (c) is repealed.

SECTION 72. NR 153.15 (2) (d) and (e) are amended to read:

**NR 153.15 (2) (d)** Significant expansions of livestock operations are not eligible for cost sharing. The department shall use the criteria in this paragraph for determining whether an increase in the size of the livestock population constitutes a significant expansion and is ineligible for cost sharing. In this paragraph, "livestock population size" means the size of the livestock population, in animal units. In this paragraph, "base livestock population size" means the livestock population size determined when the department or governmental unit, including a county land conservation committee, ~~visits the site and~~ documents the size of the livestock population. In this paragraph, animal unit has the meaning given in ch. NR 243.

(e) Best management practice installation ~~activities started~~ activities started conducted prior to the signing of the runoff management grant agreement and the cost-share agreement. This paragraph does not preclude the department from providing reimbursement for structural best management practice design work commenced or completed prior to signing the runoff management grant agreement and the cost-share agreement, provided that practice construction ~~is commenced prior to reimbursement~~ commences after the grant agreement is signed by all parties.

SECTION 73. NR 153.15 (2) (j) is repealed and recreated to read:

**NR 153.15 (2) (j)** Urban best management practices associated with new construction or new development, including the following. In this subdivision, “new development” means development initiated after October 1, 2004 or development for which a notice of intent was received by the department or the department of commerce after October 1, 2004.

1. Construction site erosion control measures subject to the requirements of s. NR 151.11, except those required by this chapter to control erosion during construction of a best management practice.

2. Post-construction storm water management practices for new development subject to the requirements of ss. NR 151.121 to 151.129.

3. The department may consider redevelopment of an existing urban land use or infill development to be either existing development or new development for purposes of this paragraph. In making its determination, the department shall consider the type of land cover within and adjacent to the development and the areal extent of the development.

SECTION 74. NR 153.15 (2) (y), (3) (b) 1., (4) (a) 3., and (6) (b) are amended to read:

**NR 153.15 (2) (y)** ~~Correcting over-topping of a manure storage facility.~~ Best management practices to correct overtopping caused by mismanagement of a manure storage facility.

**(3) (b) 1.** The practices, design criteria, standards or specifications developed under this subsection may not be applied for the purpose of meeting an agricultural or urban performance standard identified in ch. NR 151 unless the department determines that existing practices, design criteria or technical standards contained in chs. NR 154 or ATCP 50 ~~are not capable of meeting~~ cannot cost-effectively meet the performance standards or, in the absence of a performance standard, the project water quality goals.

**(4) (a) 3.** The project shall have ~~an approved strategy~~ a strategy approved by the department for developing and disseminating information and education materials explaining the project and its management implications

**(6) (b)** The state cost-sharing amount shall be determined by multiplying the total eligible installation cost of an eligible practice multiplied by the cost-share rate, unless otherwise provided for in this chapter or in ch. NR 154. Where two or more practices are equally cost-

effective in reducing pollutants consistent with par. (a), the amount of cost sharing shall be based on the least cost practice.

SECTION 75. NR 153.16 and 153.17 are repealed and recreated to read:

**NR 153.16 Aids for local assistance activities (1) Eligible Costs.** (a) The department may provide cost sharing under s. NR 153.26 for local assistance activities conducted during the grant period in large-scale TMDL implementation projects and large-scale non-TMDL control projects.

**Note:** Small-scale TMDL projects, small-scale non-TMDL control projects and notice of discharge projects are not eligible for local assistance grants. However, design and construction services costs in small-scale and notice of discharge projects may be included in the cost of construction for reimbursement purposes.

(b) The cost-share rate for local assistance activities may not exceed 70 percent of the eligible costs identified in this section.

(c) The following activities are eligible for local assistance funding when conducted in the project area.

1. Identifying high priority nonpoint pollution sources for control
2. Contacting and informing landowners and land operators of conservation program opportunities and requirements, including those relating to state performance standards and prohibitions.
3. Determining and documenting compliance of cropland practices and livestock facilities with performance standards and prohibitions
4. Identifying site-specific best management practices needed to achieve compliance with performance standards and prohibitions or to otherwise control nonpoint pollution sources.
5. Developing and reviewing cost-share agreements with the cost-share recipient.
6. Providing assistance to the department in developing and issuing notices under ss. NR 151.09 and 151.095 and developing and issuing comparable notices under local ordinances.
7. Best management practice construction services, including construction management and verification of best management practices installation.

8. Reviewing best management practice operation and maintenance during the grant period.

9. Developing and transmitting to the department information that identifies landowners and operators that do not comply with performance standards or prohibitions.

10. Administration of property acquisition in accordance with s. NR 153.25.

11. Fiscal management.

14. Development of informational materials, including videos or brochures.

15. Project evaluation activities identified in the project application and required by the runoff management grant agreement, including monitoring.

16. Other activities approved by the department as being necessary to implement the project.

(d) The following staff support costs are eligible for cost sharing:

1. The cost of testing materials for use in best management practice design and installation.

2. Travel expenses including personal vehicle mileage charges, meals, lodging and other reasonable travel expenses necessary to the project.

3. The cost of recording the cost-share agreement with the county register of deeds.

4. Field equipment necessary to conduct or evaluate the project.

5. Other direct costs necessary for the project and approved by the department.

(2) **INELIGIBLE COSTS.** The following costs are not eligible for local assistance funding under this section:

(a) Activities for which WPDES permit coverage is required.

(b) Direct costs for other items not listed in this section, including best management practice design, staff training, ordinance development and administration, promotional items except when used for educational purposes and the purchase or lease of motor vehicles.

(c) Indirect project costs.

**NR 153.17 Targeted runoff management project application. (1) APPLICABILITY.**  
This section applies only to targeted runoff management projects.

(2) APPLICATION PROCESS. (a) Subject to the availability of funds, the department shall do the following:

1. Solicit applications for projects to be funded under this chapter by providing the public with information that application materials are available upon request.

a. The department shall solicit applications for small-scale projects on an annual basis provided there is adequate funding available.

b. The department may solicit applications for large-scale projects on an annual or biennial basis depending on the availability of funds.

2. Distribute to any potential applicant that requests it a copy of the appropriate application, instructions for completing the application and guidelines that the department will use to score project applications.

(b) All applicants for funding shall submit project applications on forms provided by the department. A governmental unit may request funding under this chapter for one or more projects by submitting the appropriate applications to the department.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(c) A state agency, including the department, may request funding under this chapter for a project that is on land under state ownership or control and is in a priority watershed or priority lake area by submitting the appropriate application to the department.

(d) The department may request funding for the purchase of eligible easements located in a priority watershed project area by submitting the appropriate application to the department.

(e) Applicants shall submit completed project applications to the department in order to be considered for funding in the following calendar year. Applications shall be delivered or post-marked by midnight, April 15.

(3) REQUIRED ADMINISTRATIVE INFORMATION (a) An applicant for any targeted runoff management project shall submit the administrative information required by this subsection to be considered for funding

1. Applicant name.

2. Name and title of authorized representative.

3. Contact name and telephone number.
4. Type of governmental unit and applicant address.
5. Signature of authorized representative.
6. Project name and scope.
7. Other administrative information that the department determines necessary to process the application.

**(4) REQUIRED SCREENING INFORMATION.** (a) An applicant for any targeted runoff management project shall submit the screening information required by this subsection to be considered for funding.

1. Certification that the project meets the applicable eligibility requirements of s. NR 153.14.
2. A map of the project area showing the watershed, subwatershed or specific site to be served by the project. The map shall be accompanied by information the applicant is aware of that concerns environmental contamination, endangered, threatened or wetland resources, historic properties or historic places contained in the project area and potentially impacted by the project.
3. A list of the best management practices for which funding is requested, including property acquisition associated with any of these practices, and identification of practice eligibility under s. NR 153.15. For land acquisition, certification that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period is required.
4. A list of local assistance and design activities for which funding is requested and an identification of eligibility under s. NR 153.16.

**Note:** Local assistance activities eligible for reimbursement are identified in s. NR 153.16. Reimbursement may also be sought for design and construction services work under s. NR 153.15 (1) (a).

5. Certification that the activities listed on the application are scheduled for completion within the allowable time period specified by the department in the application materials.
6. Certification that the applicant has made arrangements to provide the staff necessary to implement the project.
7. Certification that staff and contractors designated for the project have adequate training, knowledge and experience to implement the proposed project.

8. Evidence that the proposed project does not conflict with statewide and targeted nonpoint source performance standards and prohibitions.

9. For agricultural projects, documentation that the county has a qualifying strategy to implement state agricultural performance standards and prohibitions contained in subch. II of ch. NR 151. To qualify, the strategy shall address the following key actions:

- a. Inform and educate landowners and land operators required to comply with performance standards.
- b. Conduct compliance status inventories based on records reviews and on-site visits
- c. Document inventory results and maintain compliance status records
- d. Report inventory results and continuing compliance maintenance requirements to landowners and operators.
- e. Identify best management practices to achieve compliance.
- f. Apply for grants from the department, or work to secure grants from other state, federal or local sources to provide cost sharing to landowners and land operators to achieve compliance with performance standards
- g. Develop cost-share agreements and provide for technical assistance to landowners and land operators to achieve compliance with performance standards.
- h. Assist the department at its request in drafting NR 151 notices to landowners and land operators.
- i. Fulfill annual program reporting requirements.

10. Other information that the department may require to screen the application for compliance with minimum program and statutory requirements.

**(5) REQUIRED SCORING INFORMATION FOR LARGE SCALE PROJECTS.** (a) An applicant for any large scale TMDL project or large scale nonpoint source project shall submit the information required by this subsection to be considered for funding under this chapter. The department shall use this information to score and rank projects for funding.

(b) Receiving water quality need, including impairment or threats to water quality caused or contributed to by nonpoint pollution sources that will be addressed by the project.

(c) Expected reduction in pollutant loading attributed to the project.

(d) Potential for the desired water quality response to implementation of best management practices.

(e) Justification for geographic extent of the proposed project area

(f) Information regarding specific nonpoint pollution sources in the project area and the need and strategy for collecting and evaluating additional inventory information.

(g) Proposed nonpoint pollution control strategy for the project area, including contacting and educating landowners and operators, conducting farm evaluations, identifying and targeting high priority nonpoint pollution sources such as sites failing to meet state standards and prohibitions, selecting cost-effective best management practices, delivering cost sharing and technical assistance, using local and state regulatory tools to facilitate attainment and continuing maintenance of state performance standards and prohibitions.

(h) Evidence of local support and involvement including support from governmental units, interest groups, landowners and land operators. The department may also request information concerning a governmental unit's continuous decision-making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy and sustainable environment regardless of race, national origin or income.

(i) Consistency of the proposed project with other local land and water resource management plans, including the county land and water resources management plan

(j) Project budget and cost-effectiveness

(k) Partnerships in the project area, including the extent to which available federal funding and other staffing and financial resources will be used

(L) Strategy for evaluating changes in pollution potential, pollutant loading and receiving water response after implementation of the project.

(m) The extent of local authority to enforce performance standards and prohibitions, including information required to determine the project score enforcement multiplier under s. NR 153.19 (4).

(n) If applicable, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216 for the city of Racine.

**(6) REQUIRED SCORING INFORMATION FOR SMALL SCALE PROJECTS.** (a) An applicant for any small scale TMDL project or small scale non-TMDL project shall submit the scoring information required by this subsection to be considered for funding. The department shall use this information to score and rank projects for funding.

(b) Receiving water quality need, including impairment or threats to water quality caused or contributed to by nonpoint pollution sources that will be addressed by the project.

- (c) Expected reduction in pollutant loading or pollution potential attributed to the project.
- (d) Extent to which performance standards and prohibitions will be implemented.
- (e) Potential for the desired water quality response to implementation of best management practices.
- (f) Evidence of local support and involvement including support from governmental units, interest groups, landowners and land operators. The department may also request information concerning a governmental unit's continuous decision-making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy and sustainable environment regardless of race, national origin or income.
- (g) Consistency between the project and other state and local resource management plans
- (h) Project budget and cost effectiveness
- (i) Use of other funding sources to supplement or reduce the state cost share provided under this chapter
- (j) Strategy for evaluating changes in pollution potential, pollutant loading and receiving water response after implementation of the project.
- (k) Extent of local authority to enforce performance standards and prohibitions, including information required to determine the project score enforcement multiplier under s. NR 153.19(4).
- (L) If applicable, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216 for the city of Racine.

SECTION 76. NR 153.18 is amended to read:

**NR 153.18 Targeted runoff management project screening.** This section applies only to targeted runoff management projects.

(1) The department may deny consideration of applications that are incomplete by the submittal deadline. The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources and laws for managing environmental hazards due to site contamination.

(2) The department shall screen each completed project application to determine if the project meets basic eligibility criteria for funding under this chapter. The department shall use the information required in ~~s. NR 153.17 (2)(b)~~ s. NR 153.17 (4) to make this determination. The department shall remove from further consideration applications that fail to satisfy screening requirements and inform the applicant.

~~(3) Notwithstanding sub. (1), the department may provide funding for projects or activities that meet all of the following:~~

~~(a) The project or activity existed on a priority watershed project grant prior to January 1, 2000.~~

~~(b) The department has a remaining contractual obligation to fund the project or activity.~~

SECTION 77. NR 153.19 and 153.20 are repealed and recreated to read:

**NR 153.19 Targeted runoff management project scoring. (1) APPLICABILITY.** This section applies only to targeted runoff management projects.

(2) **SCORING PROCEDURE FOR SMALL SCALE PROJECTS.** The department shall use the procedure in this subsection to score each small scale project that passes the eligibility screening under s. NR 153.18.

**Note:** The department will develop and maintain guidelines consistent with this subsection to assure consistent and fair scoring of project applications.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (6) and detailed scoring guidelines developed by the department.

1. The department shall assign a sub-score to each of the application elements identified under s. NR 153.17 (6). The initial project score shall be the sum of the sub-scores.

2. In determining the initial project score for small scale projects, the department shall give greatest weight to water quality need, extent of pollution control and cost-effectiveness.

3. The department may establish minimum score requirements to identify projects that should be removed from further consideration.

(b) The department shall multiply the initial project score by a factor based on local enforcement authority to determine the final project score. The department shall determine the local enforcement factor in accordance with sub. (4).

**(3) SCORING PROCEDURE FOR LARGE SCALE PROJECTS** The department shall use the procedure in this subsection to score each large scale project that passes the eligibility screening under s. NR 153.18. The department shall develop and maintain guidelines consistent with this subsection to assure consistent and fair scoring of project applications.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (5).

(b) The department shall multiply the initial project score by a factor based on local enforcement authority to determine the final project score. The department shall determine the local enforcement factor in accordance with sub. (4).

**(4) MULTIPLIERS FOR LOCAL ENFORCEMENT AUTHORITY.** (a) The department shall increase the initial project score in accordance with this subsection if there are local regulations adopted prior to application submittal that give local authority to enforce state performance standards and prohibitions. The result shall be the final project score.

(b) The department shall increase the initial project score in accordance with the following for projects that are agricultural in nature.

1. The department shall multiply the initial project score by a factor of 1.15 if the applicant certifies to the department that it has local authority to enforce all state agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state agricultural performance standards and prohibitions apply.

2. The department shall adjust the enforcement multiplier based on the scope of the local ordinance coverage. Adjustments under this subdivision shall be made so that the multiplier is greater than 1.0 but less than 1.15 for instances where the local regulations cover some, but not all, of the state agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available to the department for review in determining the enforcement multiplier.

3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with the state agricultural performance standards or prohibitions, or both.

4. If no multiplier is earned, the interim score shall be the final project score.

(c) The department shall increase the initial project score in accordance with the following for projects that are urban in nature:

1. The department shall multiply the initial project score by a factor of 1.15 if the applicant certifies to the department that it has local authority to enforce all state non-agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state non-agricultural performance standards and prohibitions apply.

2. The department shall adjust the enforcement multiplier based on the scope of the local ordinance coverage. Adjustments under this subdivision shall be made so that the multiplier is greater than 1.0 but less than 1.15 for instances where the local regulations cover some, but not all, of the state non-agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state non-agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available to the department for review in determining the enforcement multiplier.

3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with performance standards.

4. If no multiplier is earned, the interim score shall be the final project score.

(d) If the department is required to assign a multiplier pursuant to this section and the project is not clearly rural or urban in nature, the department, in consultation with the applicant, shall choose and apply one of the multipliers in accordance with par. (b) or (c).

**NR 153.20 Targeted runoff management project selection and funding. (1)**  
APPLICABILITY. This section applies only to targeted runoff management projects.

**(2) SELECTION** (a) The department shall assign each project application to one of the four project categories identified in s. NR 153.14 (2).

(b) From the total budget available to fund targeted runoff management projects, the department shall create annual budget sub-allocations for each of the project categories the department intends to fund in the application cycle. Sub-allocations may change from year to year. The amount in each sub-allocation shall be based on the department's water quality goals and the quality of applications submitted.

(c) Projects compete for funding only against other projects in the same category.

(d) Within each category, the department shall place the projects on a statewide selection list.

1. For each small scale project category, the department shall use the following procedure to create the statewide selection lists:

a. Identify the highest scoring project in each department region. Provided that the highest regional project score is equal to or greater than the median score for all qualifying applications submitted statewide, place the project with the highest regional score at the top of the statewide selection list. If the highest scoring project in the department region is less than the median for all qualifying applications, the project may not be moved to the top of the statewide selection list and shall be ranked with other projects in accordance with subdivision paragraph b.

**Note:** This will increase the likelihood that at least one project from each DNR region will be at the top of the statewide selection lists for each small scale project category.

b. Following projects with the highest regional score, the department shall place all remaining eligible projects on the statewide selection list, in rank order from highest to lowest score.

c. Projects shall be selected in order from the top to the bottom of the statewide selection lists until available funds have been allocated.

2. For each large scale project category, the department shall use the following procedure to create the statewide selection lists:

a. the department shall place all eligible projects on the statewide selection list, in rank order from highest to lowest score. There shall be no regional adjustments in the ranking for large-scale projects.

b. Projects shall be selected in order from the top to the bottom of the statewide selection lists until available funds have been allocated.

3. Notwithstanding subs. 1. and 2., the department may do the following when selecting any small or large scale project for funding:

a. Not select a higher scoring project in favor of funding a lower scoring project if federal funds are being allocated, the higher scoring project is ineligible to receive the federal funds, and the lower scoring project is eligible to receive the federal funds.

b. Establish a maximum total amount of funding that a grantee may receive in multiple grant awards in any one year. This amount may not exceed 20 percent of the grant funds available in the funding category or the maximum allowable funding amount allowed for a single project, whichever is greater. Projects on the ranked list whose selection for funding would exceed the allowable grantee total will be moved to the bottom of the list and funded only after all other eligible projects have been funded.

c. The department may establish a maximum grant award that any single project can receive based on the amount of funding available and the funding demand in any year. For purposes of administering this subdivision paragraph for small scale projects, all management practices proposed on contiguous property shall be considered part of a single project regardless of whether the management practices are submitted on the same or separate project applications. In this subdivision paragraph, "contiguous" means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way which separates any part of the parcel from any other part does not render the parcel of land non-contiguous.

d. The department may offer reduced grants for projects that do not require minimum cost-sharing to meet the requirements of s. 281.16 (3) (e), Stats. Reduced grant offers may be based on a reduction in the cost share rate or a reduction in the maximum project grant award amount.

**Note:** This includes projects that are not being implemented to meet required state performance standards or prohibitions under ch. NR 151.

e. The department shall offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if the partial funding is accepted.

(e) The department shall notify the land and water conservation board of project scores and ranks no later than September 1 of each year.

(f) Before November 1 of each year, the department shall also notify the land and water conservation board of the budget sub-allocations determined in accordance with par. (b) and the projects that it has identified and proposes to select for funding in the following calendar year.

(g) After selecting projects for funding, the department shall notify applicants in writing of its intent to offer grant agreements for the selected projects. The department shall inform applicants if the location of the project indicates measures may be needed to address

environmental contamination, potential negative impacts of the project on navigable waters, endangered, threatened or wetland resources, historic properties or historic places.

**(3) FUNDING.** (a) The department shall, where practicable, issue grants to successful applicants by December 31 of each year for work that begins in the following calendar year. The department shall consider the factors in pars. (b) to (e) when determining final grant awards.

(b) The department shall make adjustments to the requested grant amount if necessary to correct errors made by the applicant concerning eligibility of items for cost sharing and errors in cost-share rates used in developing the application.

(c) For a large scale project, the department may make a partial grant award. The department shall complete the grant award based on availability of funds and project performance as defined under s. NR 153.21 (5) (h) 2.

(d) The department may offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if partial funding is accepted.

(e) If the department determines, following scoring, that a project may have unacceptable impacts on endangered, threatened or wetland resources, historic places or historic properties, or that it may expose environmental hazards at the project location, it may do any of the following:

1. Decide not to provide a grant for the project.
2. Place a condition on a grant requiring that the grantee take specific actions or develop a plan to reduce or eliminate the impacts of the project.

**Note:** In addition, s. NR 154.04 (2) (k) states that all required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

(f) The department may fund in a grant activities needed to identify impacts on navigable waters, endangered, threatened or wetland resources, historic places or historic properties and actions needed to reduce or eliminate the impacts.

**(4) JOINT ALLOCATION PLAN.** The department shall provide information to the department of agriculture, trade and consumer protection about grant decisions it has made under this section for incorporation into the joint allocation plan required under ss. 281.65 (4) (pm) and 92.14 (14), Stats.

**Note:** The joint allocation plan is distributed to counties for review and comment and is submitted to the Wisconsin land and water conservation board which may make recommendations to the department of agriculture, trade and consumer protection on approval, modification or disapproval. This process affords the affected public and the board an opportunity to make recommendations on items such as budget sub-allocations and project selections determined in accordance with the procedures set forth in the section.

**(5) PROJECT SUBSTITUTION.** (a) A grantee may request a substitution to a project selected under this section. The request may be to change best management practices or install the best management practices at an alternative location.

(b) The grantee shall submit the request to the department prior to the end of the grant period. The grantee shall submit the substitution request on a form provided by the department.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(c) The department shall consider the substitution request and inform the grantee of its decision. The department may approve the substitution request only if all of the following criteria are met:

1. The grantee provides a description and rationale for the substitution,
2. The altered project meets project screening, minimum scoring and local share requirements of this chapter,
3. The altered project is cost-effective, will not increase the original grant award and will achieve results substantially similar to those anticipated through the original project proposal.
4. The altered project will affect the same hydrologic unit and water resources identified in the original application.
5. There is sufficient time remaining to complete the revised project.
6. The substitution will not negatively affect cost share requirements of a ch. NR 151 notice.

SECTION 78. NR 153.205 is created to read:

**NR 153.205 Notice of discharge project application, selection and funding. (1)**  
APPLICABILITY. This section applies only to notice of discharge projects.

**(2) APPLICATION PERIOD and CONTENT.** (a) The department may accept notice of discharge project applications from governmental units on a continuous basis. Applications shall remain active for one year unless terminated by the applicant. After one year, the governmental unit shall resubmit the application in order for the application to remain active for the department's funding consideration.

(b) The department shall require that applications be submitted on forms provided by the department.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(c) The application information shall include:

1. Name and address of the prospective cost-share recipient and project location
2. Site map
3. Size of livestock operation, in animal units
4. Site history, description of discharge and method of problem determination
5. Extent and severity of the threat or impact to waters of the state and urgency of installing management measures
6. Proposed management practices, estimated costs and implementation timeline
7. Concurrence from the department of natural resources that the site has been issued, or will be issued concurrent with the runoff management agreement, a notice under s. NR 243.24.

**(3) PROJECT SELECTION AND FUNDING.** (a) Each year, the department shall identify up to four specific periods when active applications will be considered for funding. Applications considered for funding during each period include the active, unfunded applications from the prior period plus any new applications received prior to the end of the subsequent period. The department shall determine what portion of the available funds will be made available to fund projects being considered in each selection period.

(b) The department shall consider the information submitted under sub. (2) and make a decision whether to award funding for the project based on the merits of the proposed project, the amount of funding available for project selection, availability of other funding sources, farm viability and state cost-share requirements under ch. NR 243.

1. If grant funds are awarded under this subsection for a landowner or operator to comply with a notice issued by the department for a Category II unacceptable practice under s. NR 243.24 (1) (b), the department's grant award shall, alone or in combination with other sources, meet the state cost-share requirements under s. 281.16 (3) (e), Stats. Requests for economic hardship shall be administered in accordance with s. NR 153.03 (3).

2. If grant funds are awarded under this subsection for a landowner or operator to comply with a notice issued by the department for a category I unacceptable practice under s. NR 243.24 (1) (a) or category III unacceptable practice under s. NR 243.24 (1) (c), the department may do any of the following:

- a. Limit the grant award to less than 70% of eligible costs
- b. Establish a maximum dollar amount that may be awarded. under the grant for the project.
- c. Offer additional cost sharing for economic hardship cases. Requests for economic hardship shall be administered in accordance with s. NR 120.18 (4).

**Note:** The department may require compliance with a notice issued for a category I or category III unacceptable practice regardless of cost sharing. Consequently, the department may provide limited or no cost-share assistance for these situations.

**Note:** Prior to making a funding decision, the department intends to consult with the department of agriculture, trade and consumer protection concerning the availability and suitability of alternative funding sources available through the soil and water resources management grant program administered under ch. ATCP 50.

(c) The department shall enter into a runoff management grant agreement with a governmental unit only after a notice has been issued pursuant to s. NR 243.24.

**(4) JOINT ALLOCATION PLAN.** The department shall establish a budget reserve for notice of discharge projects in the annual joint allocation plan required under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

**Note:** The department intends to transfer funds from the reserve to governmental units by entering into runoff management agreements.

SECTION 79. NR 153.21 is repealed and recreated to read:

**NR 153.21 Runoff management grant agreement. (1) PURPOSE.** (a) The department shall use the runoff management grant agreement to commit funds to a governmental unit or state agency for the purpose of implementing best management practices for a project selected under s. NR 153.20 or 153.205.

(b) The department may use the runoff management grant agreement in lieu of a cost-share agreement required under s. NR 153.22 with a governmental unit or state agency for the installation of a best management practice on land the governmental unit or state agency owns or operates.

**(2) GRANT PERIOD LENGTH.** (a) For a large scale project, the department may set the grant period for one to 3 years. The department may approve an extension to 4 years.

(b) For a small scale project, the department may set the grant period for one to 2 years. The department may approve an extension to 3 years.

(c) For notice of discharge project, the department shall establish, and extend if necessary, the grant period for a length of time sufficient to accommodate the compliance period authorized under s. NR 243.24 (4) (b) 5.

(d) For a targeted runoff management project, the department shall require that a grantee submit a written request in order to consider a project extension. The request shall:

1. Justify the extension request by identifying reasons for the project delay that were beyond the control of the grantee.
2. Be received by the department prior to the expiration of the grant period.
3. Identify how the additional time will result in a significant reduction in the pollutant loading from the project area or otherwise further the intent of the project.

(e) For a notice of discharge project, the grantee shall submit the extension request to the department prior to the expiration of the grant period. The extension request shall include documentation that the provisions of s. NR 243.24 (4) (b) 5. c. have been satisfied.

**(3) LOCAL GOVERNMENT RESPONSIBILITIES AS A RUNOFF MANAGEMENT GRANTEE AND COST-SHARE PROVIDER.** The governmental unit shall do all of the following as conditions of receiving a runoff management grant:

(a) Execute a runoff management grant agreement with the department for grant funds necessary to administer cost-share agreements with eligible landowners and land operators. This requirement may be waived if the department and the governmental unit agree to delegate these responsibilities to another governmental unit with jurisdiction sufficient to meet all the conditions of the grant.

(b) Enter into cost-share agreements with eligible cost-share recipients located within the project area. This requirement may be waived if the department and the governmental unit agree to delegate this responsibility to another governmental unit with jurisdiction sufficient to enforce all the conditions of the cost-share agreement.

(c) Be fiscally responsible for the use of cost-share funds provided to cost-share recipients under the runoff management grant agreement. This includes preparing and maintaining adequate fiscal management and technical assistance files as described in s. NR 153.29. This requirement may be waived if the department and the governmental unit agree to delegate these responsibilities to another governmental unit with adequate jurisdiction.

(d) Provide the department with verification of proper installation, operation and maintenance of best management practices for cost-share agreements for which it is the cost-share provider.

(e) Provide technical design and installation assistance for all best management practices in cost-share agreements within its jurisdiction. The governmental unit may assign this requirement to another governmental unit if approved by the department.

(f) Contact all landowners and land operators of lands within the project area that are the target of technical assistance and cost sharing under the grant.

(g) Participate with the department in project reviews.

(h) Enforce the terms and conditions of the cost-share agreement as described in s. NR 153.22.

(i) Arrange funding for staff support necessary to complete the project.

(j) For targeted runoff management projects, conduct the following activities in addition to technical and financial assistance to implement agricultural performance standards and prohibitions contained in ch. NR 151 for cropland practices and livestock facilities in the project area.

1. Inform landowners and land operators of performance standards and prohibitions.

2. Through records reviews and on-site assessments, evaluate and document the compliance status of cropland practices and livestock facilities with agricultural performance standards and prohibitions on all properties of the farm operation owned or operated by the grantee. If the cost-share is offered as part of a notice issued under s. NR 151.09 or 151.095 or a

local regulation, the governmental unit may with prior department approval limit the on-site assessments to parcels identified in the notice.

3. Document and convey the results to landowners of the compliance status evaluation for the whole farm, by field or parcel.

4. Document and keep office records of changes in compliance status of cropland practices and livestock facilities by parcel for recipients of cost sharing provided under this chapter.

5. Inform landowners in writing of requirements for continuing compliance maintenance of cropland practices and livestock facilities that meet state standards and prohibitions

6. Conduct enforcement activities consistent with the local authority identified as part of the application materials for which the grant was awarded.

7. Provide assistance to the department as requested to develop and issue notices under ss. NR 151.09 and 151.095 and to develop and issue letters explaining that the notice has been satisfied.

(k) For notice of discharge projects, conduct the following activities in addition to technical and financial assistance:

1. For all notice of discharge categories:

a. Inform landowners and land operators of performance standards and prohibitions

b. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

2. For notices of discharge issued for category II unacceptable practices identified in accordance with s. NR 243.24 (1) (b):

a. Inform landowners and land operators of performance standards and prohibitions.

b. Document and keep office records of changes in compliance status of livestock facilities by parcel for recipients of cost sharing provided under this chapter.

c. Inform landowners in writing of requirements for continuing compliance maintenance of livestock facilities that meet state standards and prohibitions

d. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

**(4) LOCAL GOVERNMENT AND STATE AGENCY RESPONSIBILITIES AS A COST-SHARE RECIPIENT.** The governmental unit or state agency shall do all of the following as conditions of receiving a runoff management grant to perform work on lands the governmental unit or state agency owns or operates.

(a) Arrange funding for the local share of any best management practice the governmental unit installs on property it owns or controls.

(b) Provide the department with verification of proper installation, operation and maintenance of best management practices for which it is the cost-share recipient.

(c) Prepare and maintain adequate fiscal management and technical assistance files as described in s. NR 153.29.

(d) Obtain prior written approval from the department for use of runoff management grant funds for best management practices installed on land owned or operated by the grantee.

(e) When installing best management practices, the grantee shall do all of the following:

1. Submit to the department estimates of all practice costs, eligible costs, ineligible costs, cost-share rates and estimated total cost-share amount.

2. Submit to the department a schedule of installation and maintenance for the practices.

3. Submit to the department copies of all professional service contracts, construction contracts, bid tabulations, force account proposals, proposals and other related information requested by the department.

a. Professional service contracts and construction contracts shall be submitted to the department for approval before execution.

b. Force account proposals shall be submitted to the department for approval prior to the initiation of construction.

4. Repay the department the full amount of funds received if the governmental unit fails to fulfill any terms of the agreement, including failing to install, operate and properly maintain the practices included in the runoff management grant agreement or failure to evaluate or monitor the project in accordance with the provisions of the runoff management grant agreement.

5. Submit a maintenance strategy for the practices.

6. Agree not to adopt any land use or practice that reduces the effectiveness or defeats the purposes of the best management practices.

7. Comply with the requirements for cost-share agreements specified in s. NR 153.22.

8. Provide financial support towards the implementation of a project including:

a. Arrange funding for staff support necessary to complete the project.

b. Arrange funding for the local share of any best management practice the governmental unit installs on property it owns or controls.

**(5) OTHER GRANT PROVISIONS.** (a) The period in which cost-share agreements may be signed through the runoff management grant agreement may not extend beyond the runoff management grant period. For best management practices to be eligible for cost sharing, the runoff management grant agreement shall be signed prior to entering into a cost-share agreement.

(b) The grantee may use runoff management grant funds to cover reasonable expenses necessary to secure refunds, rebates or credits described in s. NR 153.28 (3) when approved by the department.

(c) The grantee may use runoff management grant funds to acquire property as provided for in s. NR 153.25.

(e) If the purpose of the project for which the runoff management grant is provided is to require a landowner to comply with performance standards or prohibitions under ch. NR 151, the governmental unit shall assure that funding under the grant is used to make a cost share offer that meets the requirements of s. 281.16 (3) (e) and (4), Stats.

(f) The department may unilaterally reduce the runoff management grant award for any of the following reasons, but may not reduce the grant below the amount the grantee has committed in signed cost-share agreements and contracts. The grantee shall provide an estimate of unexpended grant funds at the request of the department.

1. The reduction is necessary to meet budgetary limitations.

2. The grantee has not met all conditions of the grant.

3. The grantee fails to meet a schedule included in the grant for interim work products.

(g) For targeted runoff management projects, if a grantee successfully meets the nonpoint source pollution reduction goals in the project area without fully using the cost share award, the grantee may with prior department approval use the remaining funds to control additional nonpoint pollution sources in the project area.

(h) If the department has made a partial grant award under s. NR 153.20 (3) (c), it shall consider the following in determining whether to complete the grant award:

1. The availability of funds to complete the grant award.

**Note:** Large-scale projects may require funds from more than one state budget. In such cases, the department must await subsequent budgets before completing the grant awards for on-going projects.

2. Project performance. The department may terminate the grant if sufficient progress has not been made. Factors to be included in considering project performance include commitment of cost share resources, installation of best management practices and reduction in nonpoint source pollutant loads.

**Note:** Cost-share resources are committed by signing cost share agreements, issuing offers of cost share under ss. NR 151.09 and 151.095, and making reimbursements for installed practices. Pollutant load reduction can be credited for installed best management practices regardless of whether the practice installation is cost shared using state funds as may have been originally intended.

SECTION 80. NR 153.22 (1) (a) and (3) (d), (f) and (j) are amended to read:

**NR 153.22 (1) (a)** The cost-share agreement is an agreement listing the best management practices and establishing the conditions and considerations under which a cost-share recipient agrees to install the practices listed. The cost-share agreement may be used as an offer of cost sharing in accordance with ss. NR 151.09 ~~and~~ 151.095 and 243.24 (4) (b) 4.

**(3) (d)** The installation schedule for applying the cost-shared practices. The cost-share agreement shall also require that the cost-share recipient comply with all state performance standards and prohibitions for existing cropland practices and livestock facilities that do not require cost sharing under s. NR 151.09 or 151.095.

(f) A prohibition against adopting any land use or practice which defeats the purposes of the best management practices, the cost-share agreement or the runoff management grant agreement. This includes a prohibition against any change in land use or management of a cropland practice or livestock facility that leads to non-compliance with state performance standards and prohibitions of a previously complying parcel. This also requires meeting performance standards and prohibitions, without regard to cost sharing, for all new cropland practices and livestock facilities. If such a change in land use or management occurs, the

landowner or land operator shall control the source at the landowner or land operator's own expense or return any cost-sharing funds awarded through the cost-share agreement to the provider.

(j) The location of the land on which the cost-shared practice is to be installed, and a specific legal description of the land if ~~cost-share payments may exceed \$10,000~~ recording of the cost-share agreement is required under sub. 10.

SECTION 81. NR 153.22 (3) (k) is repealed.

SECTION 82. NR 153.22 (3) (m) and (n) are amended to read:

**NR 153.22 (3) (m)** A statement that any loss of cost sharing that results from a cost-share recipient's failure to abide by the conditions of the cost-share agreement does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

(n) A statement that partial or full release from the cost-share agreement in accordance with this section does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

SECTION 83. NR 153.22 (3) (o) and (p) are created to read:

**NR 153.22 (3) (o)** A statement that the cost-share recipient agrees to provide information related to cost sharing and work performed under other federal, state and local grant programs, if required by the cost share provider to meet the reporting requirements of this chapter.

(p) The cost-share recipient shall allow the governmental unit to conduct a full-farm inventory for compliance with state performance standards and prohibitions as a condition of cost-share eligibility.

SECTION 84. NR 153.22 (6) (b) 1. and 2. and (7), (8), (9) and (11) are amended to read:

**NR 153.22 (6) (b) 1.** Except if required as a component of another practice, the following practices are ~~exempt from the multi-year operation and~~ required under the cost-share agreement to meet the maintenance period requirement and only need to be maintained during the years for which cost sharing is received:

- a. High residue management systems.
- b. Nutrient management.

- c. Pesticide management.
- d. Cropland protection cover or green manure.

2. If a practice in subd. 1. is required as a component of another practice in ch. NR 154, the operation and maintenance period for the component practice shall be the same as the operation and maintenance period for the practice for which it is required.

**Note:** ~~In many situations, best management practices will need to be maintained in perpetuity to comply with performance standards in ch. NR 151.~~ Cost-share agreement operation and maintenance periods are conditions of cost-sharing. Violation of operation and maintenance requirements of cost-share agreements may result in recovery of cost-share payments received by the cost-share recipient. There is a separate requirement under ch. NR 151 that once a cropland practice or livestock facility is brought into compliance with performance standards and prohibitions, compliance must be maintained in perpetuity.

(7) FAILURE TO FULFILL AGREEMENT. If the cost-share recipient fails to fulfill any terms of the cost-share agreement, including failing to install, operate and properly maintain the practices of the agreement, ~~the full amount of~~ cost-shared funds received by the cost-share recipient shall be repaid to the governmental unit which is the provider of the agreement. The provider shall forward the repayment to the department.

**Note:** Under s. NR 153.22 (3) (m), loss of cost sharing that results from failure to fulfill the agreement does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

(8) INEFFECTIVE PRACTICES. (a) ~~If the practice becomes ineffective either during or beyond the grant period of the runoff management grant agreement~~ or during the operation and maintenance period for the project, and the reason for the practice becoming ineffective is beyond the control of the cost-share recipient, the department may award a new grant agreement or amend and extend the existing runoff management grant agreement to cost share the replacement of the practice.

~~(a) The department may not provide cost sharing for the replacement of a practice more than once.~~

(b) An appropriate operation and maintenance period for the replacement practice shall be identified in the cost-share agreement.

**(9) CHANGE IN OWNERSHIP.** If a change in ownership occurs during the cost-share agreement period or during the practice operation and maintenance period, the new landowner shall be responsible for fulfilling all conditions of the cost-share agreement. Upon receiving written approval from the respective local governmental unit, the new landowner may implement alternative approved best management practices provided that an equal or greater level of pollution control is achieved.

**(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS.** At the request of the cost-share recipient, a governmental unit may fully or partially release a property from the obligations of the cost-share agreement provided that the governmental unit has determined that the best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the grant application. If state dollars in excess of ~~\$10,000~~ the amounts enumerated in sub. (10) (a) have been expended for best management practices that are located on the property to be released, the governmental unit shall obtain written approval from the department before ~~the property may be released~~ releasing the property from the obligations of the cost-share agreement. The release form shall be obtained from the department and filed with the cost-share agreement.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

**Note:** Under s. NR 153.22 (3) (n), any release granted under this subsection does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

SECTION 85. NR 153.22 (12) is created to read:

**NR 153.22 (12) SATISFACTION OF COST-SHARE AGREEMENTS.** At the request of the cost-share recipient, the governmental unit may issue a certificate of satisfaction provided the governmental unit has determined that cost-share recipient has met all of the obligations of the cost-share agreement, including the operation and maintenance period. The satisfaction shall be documented on a form provided by the department and filed with the cost-share agreement. For cost-share agreements recorded with the register of deeds under sub. (10), the satisfaction form shall be recorded in the office of the register of deeds for each county in which the property is located.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

SECTION 86. NR 153.23 (1) (c) and (e) are amended to read:

**NR 153.23 (1) (c) *Competitive bidding.*** A governmental unit requires the landowner or land operator to request bids from contractors for the installation of a best management practice. The cost-share payment shall be calculated based on the lowest bid meeting acceptable qualifications. The governmental unit shall identify criteria for determining acceptable qualifications. The landowner or land operator may select a qualified contractor other than the low qualified bidder, but shall contribute 100 percent of the difference between the bids.

~~**Note:** The department suggests the following bidding procedures:~~

- ~~• The governmental unit shows the proposed construction site to all prospective bidders on the same day and at the same time.~~
- ~~• There are at least 3 qualified bidders.~~
- ~~• All bids are sealed and delivered by a bid deadline to a location specified by the governmental unit.~~
- ~~• Bids are opened within 2 weeks after the bid deadline.~~
- ~~• The amount of the cost share grant is based on the lowest qualified bid.~~
- ~~• The landowner or land operator selects a higher bidding contractor only if the landowner or land operator agrees to pay the difference.~~
- ~~• The landowner or land operator may not select a contractor who did not bid.~~

(e) (title) ~~*Municipal work group Force Account.*~~ A governmental unit hires or assigns its employees to install a best management practice for landowners and land operators if the employees are able to perform the work at a cost lower than the private sector.

SECTION 87. NR 153.23 (1) (f) and 153.24 are repealed.

SECTION 88. NR 153.25 is repealed and recreated to read:

**NR 153.25 Property acquisition. (1) ELIGIBLE ACTIVITIES.** The department may authorize a governmental unit holding a runoff management grant agreement under s. NR 153.21 to perform any of the following activities:

(a) Acquire land in fee or an easement identified in the grant application for the construction of a structural urban best management practice.

(b) Acquire land in fee or an easement identified in the grant application for land which is contributing or will contribute nonpoint source pollution. This includes property acquisition to support best management practices such as critical area stabilization, riparian buffers, wetland restoration and the abandonment or relocation of livestock and livestock facilities.

(c) Acquire land in fee or an easement to abandon or relocate livestock or livestock facilities provided:

1. The acquisition is an eligible best management practice.

2. If the acquisition amount is greater than the amount of funding required to install best management practices at the site, the acquisition may be selected as the cost-effective BMP if the department concurs that the acquisition is justified based on the additional degree of water quality protection.

3. If the acquisition amount is less than the amount required to install best management practices and the landowner is unwilling to sell the property right, the department may use the acquisition amount as a cost-share ceiling on the cost of installing the best management practice.

**(2) MUTUAL AGREEMENT AND DURATION.** The landowner and the department shall mutually agree to the conducting of an appraisal. Easements, including donated conservation easements, shall be acquired for perpetuity.

**(3) DONATED EASEMENTS.** The department may authorize, in writing, any governmental unit, qualified non-profit organization or person to enter into easements or accept a donated conservation easement consistent with the eligibility provision of the approved grant application and runoff management grant. Upon acceptance of a donated easement under s. NR 154.03 (2) (c), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

**(4) GRANTS TO DNR FOR EASEMENT PURCHASE.** The department may distribute grants and aids to itself for the purchase of easements in a priority watershed area. For purposes of this sub-section, a priority watershed or priority lake project is considered to retain its project status

through the end of the tenth year beyond the expiration date of the nonpoint source grant agreement entered into under s. NR 120.12.

**(5) ACQUISITION PROPOSALS.** (a) A governmental unit requesting runoff management grant funds under this section for the acquisition of property in fee or an easement shall submit an acquisition proposal to the department for its review and approval. The acquisition proposal shall be submitted with the runoff management grant application or grant amendment request.

(b) The acquisition proposal for fee title or easement shall include all of the following:

1. A description of the purpose for acquiring the land and how the acquisition will meet applicable goals of the project for which the grant is applied.

2. A copy of the appropriate county, township, topographic and local land use planning maps showing the proposed acquisition.

3. A description of how the proposed acquisition complements other nonpoint source pollution abatement program efforts.

4. Other information the department may request.

(c) For fee title acquisition, the following additional information is required as part of the acquisition proposal:

1. A description of the land management plan for the property including a list of any owner-occupants or tenants that occupy the buildings or land to be acquired, a general time frame for project completion, and a description of how long-term management will be provided. Identification of other governmental units that will be involved in management and their respective roles shall also be included.

2. An estimate of overall acquisition and annual maintenance costs, including the number of parcels and acres to be acquired which notes the number of improved parcels involved.

**(6) GENERAL PROVISIONS.** (a) Governmental units shall acquire and manage property acquired with a runoff management grant in accordance with all applicable local, state and federal laws and regulations.

(b) After approval of the acquisition proposal and receipt of a grant from the department, a governmental unit shall obtain an appraisal for each property.

1. All appraisals shall be subject to department review and approval.

2. After it has received approval from the department, the governmental unit may act on the appraisal.

3. All appraisals shall be conducted by a certified or licensed appraiser as described in ch. 458, Stats., and chs. RL 80 to 86.

4. All acquisitions with a fair market value of more than \$350,000 shall require 2 appraisals. The department may require a second appraisal for property valued under \$350,000 if the department finds that the property presents a difficult appraisal problem or if the first appraisal is unacceptable.

(c) Property may be purchased only from willing sellers. The governmental unit shall provide the seller with a just compensation statement, which identifies the fair market value of the property, as determined by an appraiser meeting the requirements listed in par. (b) 3. and which describes the benefits due to the seller in exchange for the transfer of the seller's property.

(d) If applicable, relocation plans shall be developed in accordance with ch. COMM 202.

(e) Property acquired with a runoff management grant shall be maintained and managed in accordance with the provisions, conditions and scope description in the grant contract.

(f) A governmental unit may be allowed to acquire property prior to entering into a runoff management grant agreement, provided that the governmental unit has received written approval from the department prior to purchasing the targeted property. The governmental unit shall submit a written statement to the department, which explains the special circumstances justifying the need to acquire the property at that time. Prior to runoff management grant reimbursement for the acquisition, the governmental unit shall establish the value of the property in accordance with par. (b).

(g) The governmental unit shall record in the office of the register of deeds for each county in which property is located the deed which vests title or a property interest in the governmental unit and which references the interest of the state of Wisconsin in the property under the terms of the grant contract.

**(7) STATE COST-SHARE RATE.** (a) The maximum allowable state cost-share rate for the acquisition of property under this chapter is 70 percent, except that the maximum allowable state cost-share shall be 50 percent when the purpose of the acquisition is to support a structural urban best management practice.

(b) The cost share rate shall be applied to the lesser of the following 2 amounts:

1. The acquisition cost of the property.

2. The certified appraisal value as determined by the department and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. Reasonable costs do not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subdivision.

(c) The department may not reimburse acquisition costs related to purchase of the property until the property acquisition has been completed.

**(8) CRITERIA.** The department shall consider the following criteria when determining whether to provide funding for the proposed acquisition:

(a) The degree to which the acquisition of the property would provide for the protection or improvement of water quality.

(b) The degree to which the acquisition of the property would provide for protection or improvement of other aspects of the natural ecosystem such as fish, wildlife, wetlands or natural beauty.

(c) The degree to which the acquisition of the property would complement other watershed management efforts.

**SECTION 89.** NR 153.26 (1), (5) and (7) and 153.27 (3) (b) and (4) (a) are amended to read:

**NR 153.26 (1)** The local assistance grant agreement is an agreement between the department and a state agency or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this chapter. A local assistance grant awarded under this section may be used for local project administration and management activities ~~or other activities~~ determined by the department to satisfy the requirements of s. 281.65 (4) (f), Stats.

**(5)** ~~No local assistance grant may be made for a project under this chapter before the project has been selected by the department.~~ The department shall only award a local assistance grant for the purpose of implementing a runoff management agreement under s. NR 153.21.

(7) If a governmental unit contracts with a government agency or person to provide field, administrative, planning or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department. ~~Contracts greater than \$10,000 shall be submitted~~ for review and approval prior to signing.

**NR 153.27 (3)** (b) In the form of a bilaterally executed written agreement for any professional services or construction activities ~~in excess of \$10,000~~.

(4) (a) A governmental unit shall secure prior written approval from the department for use of the force account method in lieu of contracts for any professional services or construction activities ~~in excess of \$35,000~~.

SECTION 90. NR 153.27 (4) (c) is created to read:

**NR 153.27 (4)** (c) The force account reimbursement for design and construction services shall be based on the actual cost of services provided and may not exceed 5 percent of the total project reimbursement when bond-sourced funds are used.

SECTION 91. NR 153.27 (5) is repealed.

SECTION 92. NR 153.28 (1) (b) 1., 2. b., 3. and 5. are amended to read:

**NR 153.28 (1)** (b) 1. Reimbursement requests shall be submitted on forms provided by the department. When reimbursement is for a best management practice installed to meet a performance standard or prohibition, a statement of ch. NR 151 compliance shall be provided to the landowner or operator and a copy shall be attached to the reimbursement request.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

2. b. The grantee may submit a reimbursement request for a partially installed best management practice with approval from the department. In making its reimbursement decision, the department shall consider the level of pollution control provided by the completed component and the component's structural and functional relationship to other components of the best management practice. A grantee may submit a request for reimbursement of up-front payments made to a cost-share recipient for multi-year cropping practices, including high residue management, cropland protection cover, nutrient management and pesticide management, without

prior approval from the department provided that the cost-share recipient completes the first full year of implementation in accordance with program requirements.

3. Progress reports required by the department shall accompany each reimbursement request. A final report shall be submitted on forms provided by the department as part of the final reimbursement request.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

5. Reimbursement may not be made in any amount that results in the combined state share under s. 92.14, Stats., and this chapter exceeding the cost share rate required under s. 281.16 (3) (e) or (4), Stats.

SECTION 93. NR 153.29 (1) (e) 3. g. is created to read:

**NR 153.29 (1) (e) 3. g.** Change in compliance status, by parcel, with agricultural performance standards and prohibitions of cropland practices and livestock facilities owned or operated by the cost-share recipient.

SECTION 94. NR 155.12 (7), 155.13 (1) (intro.) and 155.14 (3) and 155.15 (1) (a) and (e) are amended to read:

**NR 155.12 (7)** "Force account work" means the use of the governmental unit's or board of regent's own employees and equipment for project planning, design, construction, construction related activities, ~~or inspections,~~ repair or improvement to a an urban best management practice.

**NR 155.13 (1)** A governmental unit and a federally recognized tribal governing body is eligible to apply for and receive a runoff management grant and local assistance grant administered under this chapter if at least one of the following conditions is met:

**NR 155.14 (3)** The department may award a local assistance grant in accordance with s. NR 155.16 (1) or 155.26 for an urban runoff project in an urban area and for projects in areas that are expected to become an urban area within 20 years.

(a) For purposes of administering this subsection, the department shall use the criteria under s. NR 155.17 (2) (b) 3. to determine whether an area is, or will become, urban based on population density, ~~and the~~ The criteria under s. NR 155.15 (1) (b) 3. to 6. shall be used to

determine if an area is an eligible commercial or industrial land use. The department may waive the requirement that the project be in an urban area, or an area projected to become an urban area, for grants made to the board of regents.

(b) To be eligible for reimbursement, a storm water management planning project funded under this paragraph shall meet the planning standards and guidance established by the department for municipalities that are subject to the municipal storm water permit requirements of subch. I of ch. NR 216.

**Note:** This requirement applies to all planning products regardless of whether the municipality is subject to ch. NR 216. Department guidance and planning standards can be found at <http://dnr.wi.gov/runoff/stormwater.htm>.

**NR 155.15 (1)** (a) The department may provide cost sharing for the construction of urban best management practices to abate urban runoff. Design and construction services are included as eligible components of the construction or implementation of the urban best management practice. State and local administrative permit fees are not reimbursable as part of the construction cost.

**Note:** Although local administrative fees are not reimbursable, the department may reimburse governmental units for design and construction services subject to the limitations of s. NR 155.27 (4).

(e) An urban best management practice shall be constructed in accordance with applicable technical standards and conditions identified in this chapter, ch. NR 154, in a document identified or developed by a state agency in accordance with subch. V of ch. NR 151 or a runoff management grant agreement in order to be considered eligible for cost sharing under this chapter.

**Note:** Standards developed by the department are available for viewing at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>

SECTION 95. NR 155.15 (2) (g) is repealed and recreated to read:

**NR 155.15 (2)** (g) Urban best management practices associated with new construction or new development, including the following. In this subdivision, “new development” means development initiated after October 1, 2004 or development for which a notice of intent was received by the department or the department of commerce after October 1, 2004.

1. Construction site erosion control measures subject to the requirements of s. NR 151.11, except those required by this chapter to control erosion during construction of a best management practice needed during building and utility construction.

2. Post-construction storm water management practices for new development subject to the requirements of ss. NR 151.121 to 151.129.

3. The department may consider redevelopment of an existing urban land use or infill development to be either existing development or new development for purposes of this paragraph. In making its determination, the department shall consider the type of land cover within and adjacent to the development and the areal extent of the development.

SECTION 96. NR 155.16 (1) (b) and (c) (intro) and 1. a. are amended to read:

**NR 155.16 (1) (b)** The cost-share rates for eligible activities in par. (c) may not exceed 70 percent of the cost of the activities for which the grant is provided.

(c) The activities identified in this paragraph are eligible for cost sharing ~~if additional staff are hired or retained under contract to perform the project activities, or if a professional services contract is developed and implemented to complete the activities.~~

1. a. Developing comprehensive urban runoff control plans for existing development, new development and redevelopment including planning, pre-design and general engineering feasibility studies. ~~Plans for existing development include urban runoff control planning for urban areas, plans for illicit discharge detection, pollution prevention and good housekeeping for municipal, university or facility operations.~~ Planning includes activities necessary to develop a storm water management program consistent with the program elements identified under s. NR 216.07. Urban storm water planning activities for industrial sites subject to subch. II of ch. NR 216 are not eligible for reimbursement under this chapter except for facilities owned or operated by a governmental unit.

SECTION 97. NR 155.16 (1) (c) 2. a. is repealed.

SECTION 98. NR 155.16 (1) (c) 2. c. is amended to read.

**NR 155.16 (1) (c) 2. c.** Conducting detailed engineering designs and detailed site engineering feasibility studies for projects in existing urban areas and areas of urban redevelopment. The department may ~~include~~ also provide reimbursement for detailed engineering

designs and detailed engineering feasibility studies for projects in new development ~~for~~ where the practices are to be owned and operated by a governmental unit or the board of regents.

SECTION 99. NR 155.16 (1) (c) 2. d., e. and f. and 3. and (d) 3., 6., 7. and 9. are repealed.

SECTION 100. NR 155.16 (1) (e) is amended to read:

**NR 155.16 (1) (e)** The participating governmental unit and board of regents shall provide to the department an accounting of hours spent on the project by staff ~~complete time sheets which shall track hours spent on the project by all staff hired to conduct the project. Hours of staff retained under contract shall be accounted for as specified under the terms of the contract.~~

SECTION 101. NR 155.16 (1) (f) is repealed.

SECTION 102. NR 155.17 (2) (b) 2. is amended to read:

**NR 155.17 (2) (b) 2.** A map of the project area showing the watershed, subwatershed or specific site to be served by the project. The map shall be accompanied by information the applicant is aware of that concerns environmental contamination, endangered, threatened or wetland resources, historic properties or historic places contained in the project area and potentially impacted by the project.

SECTION 103. NR 155.17 (2) (b) 13. and 14. are created to read:

**NR 155.17 (2) (b) 13.** Certification that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period.

**14.** Written confirmation that the applicant's prior urban nonpoint construction grant projects will be completed within the applicable grant period(s).

SECTION 104. NR 155.17 (2) (d) is repealed.

SECTION 105. NR 155.18 (2) is amended to read:

**NR 155.18 (2)** The department shall screen each completed project application to determine if the project meets basic eligibility criteria for funding under this chapter. The department shall use the information required in s. NR 155.17 (2) (b) to make this determination.

The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources and laws for managing environmental hazards due to site contamination.

SECTION 106. NR 155.18 (3) is repealed.

SECTION 107. NR 155.19 (3) (a) and (b) are amended to read as follows:

**NR 155.19 (3)** (a) The department ~~shall~~ may identify minimum qualifying component sub-score requirements to determine viable projects for further consideration.

(b) The department ~~shall~~ may consider minimum qualifying component sub-score requirements for the following project components:

SECTION 108. NR 155.19 (4) (d) is repealed.

SECTION 109. NR 155.20 is repealed and recreated to read:

**NR 155.20 Project selection and funding.** (1) SELECTION. (a) The department shall place all of the projects scored in accordance with s. NR 155.19 on a statewide list in descending rank order according to the final project score. The department shall use the statewide ranked list, available budget and funding considerations in sub. (2) to select projects for funding.

(b) The projects shall be identified for funding by starting with the highest ranked projects on the statewide list and proceeding down the ranked list until available project funds have been allocated.

(c) Before November 1, the department shall select based projects, based on the final project scores, for funding under this chapter for the following calendar year.

(d) After selecting projects for funding, the department shall notify applicants in writing of its intent to prepare grant documents for the selected projects.

(2) FUNDING. (a) The department shall, where practicable, issue grants to grantees by December 31 for work in the following calendar year. The department may limit grant awards

based on the amount of funding available, the funding demand in any year and the factors in pars. (b) to (i).

(b) If the statewide application demand exceeds available funding, the department shall establish a maximum total amount of funding which a grantee may receive in multiple grant awards for the application year. This amount may not exceed 20 percent of the grant funds available in the grant year for projects funded under this chapter, or the amount established by the department under par. (d) for that grant year, whichever is greater.

(c) The department may establish a maximum grant award amount that any single project can receive in grant awards based upon the amount of funding available in that category of grants for that grant cycle and the amount of funding demand for that period.

(e) The department shall make adjustments to the requested grant amount if necessary to correct errors made by the applicant concerning eligibility of items for cost-sharing and errors in cost-share rates used in developing the application.

(f) The department may offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if funds are accepted.

(g) Prior to issuing a grant, the department may require submittal of an environmental hazards site assessment for projects involving excavation. The assessment shall be submitted on a form provided by the department.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(h) If the department determines, following scoring, that a project may have unacceptable impacts on endangered, threatened or wetland resources, historic places or historic properties, or that it may expose environmental hazards at the project location, it may do any of the following:

1. Decide not to provide a grant for the project.
2. Place a condition on a grant requiring that the grantee take specific actions or develop a plan to reduce or eliminate the impacts of the project.

(i) The department may deny a grant for a project that otherwise scores well enough to be funded if the applicant is delinquent in meeting grant commitments for previously funded projects.

**Note:** In addition, s. NR 154.04 (2) (k) states that all required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

SECTION 110. NR 155.21 (2) and (4) (d) 3., 155.22 (3) (i), (4), (10) and (11), and 155.23 (1) (c) are amended to read:

**NR 155.21 (2) GRANT PERIOD LENGTH.** (a) The department may set the grant period for ~~one up~~ to 2 years ~~from the date the department transmits the agreement to the grantee~~, except that the department may approve an extension for one year.

(b) ~~The department shall require that~~ To receive an extension, a grantee shall submit a written request ~~in order to consider a project extension to the department~~. The request shall meet all the following requirements:

1. Be received by the department prior to the expiration of the grant period.
2. Identify how the additional time will result in a significant reduction in the pollutant loading from the project area or otherwise further the intent of the project.
3. Specify the reasons which necessitate the grant extension which were beyond the control of the grantee.

**(4) (d) 3.** Submit to the department copies of all professional service contracts, construction contracts, bid tabulations, force account proposals, designs, proposals and other related information requested by the department.

~~a. Professional services contracts exceeding \$10,000 and construction contracts exceeding \$35,000 shall be submitted to the department for approval before execution.~~

~~b. Force account proposals exceeding \$35,000 shall be submitted to the department for approval prior to the initiation of construction.~~

**NR 155.22 (3) (i)** The location of the land on which the cost-shared practice is to be installed, and a specific legal description of the land ~~if cost share payments may exceed \$10,000.~~

**(4) DEPARTMENT APPROVAL.** The governmental unit shall obtain prior department approval of the cost share agreement ~~when the cost of a single practice exceeds \$35,000 in state share or when the total cost share agreement amount exceeds \$50,000 in state share~~. The department shall consider the cost-effectiveness of the urban best management practices and eligibility for cost sharing under this chapter in making its decision whether to grant approval.

**(10) RECORDING OF COST-SHARE AGREEMENTS WITH REGISTER OF DEEDS.**

(a) The governmental unit shall record the cost-share agreement and its amendments in the office of the register of deeds for each county in which the property is located ~~if the cost-share agreement includes a riparian buffer, or payments under s. NR 154.03(1)(i)3., or if the total cost-share agreement amount exceeds the following:~~

- ~~1. \$10,000 prior to January 1, 2005.~~
- ~~2. \$12,000 after December 31, 2004 and prior to January 1, 2010.~~
- ~~3. \$14,000 after December 31, 2009.~~

(b) The governmental unit shall record these documents prior to making reimbursements to the landowner or land operator.

**(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE**

**AGREEMENTS.** At the request of the cost-share recipient, a governmental unit may fully or partially release a property from the obligations of the cost-share agreement provided that the governmental unit has determined that the urban best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the grant application. ~~If state dollars in excess of \$10,000 have been expended for urban best management practices that are located on the property to be released, the~~ The governmental unit shall obtain written approval from the department before the property may be released. The release form shall be obtained from the department and filed with the cost-share agreement.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

**NR 155.23 (1) (c) *Competitive bidding.*** A governmental unit requires the landowner or land operator to request bids from contractors for the installation of an urban best management practice. The cost-share payment shall be calculated based on the lowest bid meeting acceptable qualifications. The governmental unit shall identify criteria for determining acceptable qualifications. The landowner or land operator may select a qualified contractor other than the low qualified bidder, but shall contribute 100 percent of the difference between the bids.

**Note:** The department suggests the ~~following~~ bidding procedures: set forth in the *Procurement Guide for Local Governments Receiving Grants from the Wisconsin Dept. of Natural Resources*, available from the department.

- ~~The governmental unit shows the proposed construction site to all prospective bidders on the same day and at the same time.~~
- ~~There are at least 3 qualified bidders.~~
- ~~All bids are sealed and delivered by a bid deadline to a location specified by the governmental unit.~~
- ~~Bids are opened within 2 weeks after the bid deadline.~~
- ~~The amount of the cost share grant is based on the lowest qualified bid.~~
- ~~The landowner or land operator selects a higher bidding contractor only if the landowner or land operator agrees to pay the difference.~~
- ~~The landowner or land operator may not select a contractor who did not bid.~~

SECTION 111. NR 155.23 (1) (f) is repealed.

SECTION 112. NR 155.23 (3) and 155.23 (4) are created to read:

**NR 155.23 (3)** Governmental units installing best management practices under a department cost-share grant shall follow the bidding and advertising provisions of their respective municipal statutes. All contracts shall be subject to approval by the departmental project manager, with respect to reimbursement eligibility, technical standards, and storm water permitting requirements.

**Note:** Relevant municipal statutes include ss. 59.52, 60.47, 61.55 and 62.15, Stats.

**(4)** Governmental units that contract with an outside consultant to perform services under a local assistance grant shall, at a minimum, use a quality-based selection approach and interview firms with proven experience in the field of storm water planning. All contracts shall be subject to approval by the departmental project manager, with respect to reimbursement eligibility, technical standards, and storm water permitting requirements.

SECTION 113. NR 155.24 is repealed.

SECTION 114. NR 155.25 is repealed and recreated to read:

**NR 155.25 Property acquisition. (1) ELIGIBLE ACTIVITIES.** The department may authorize a governmental unit holding a runoff management grant agreement under s. NR 155.21 to perform any of the following activities:

(a) Acquire land in fee or an easement identified in the grant application for the construction of a structural urban best management practice.

(b) Acquire land in fee or an easement identified in the grant application for land which is contributing or will contribute nonpoint source pollution. This includes property acquisition to support best management practices such as critical area stabilization, riparian buffers, wetland restoration and the abandonment or relocation of livestock and livestock facilities.

**(2) MUTUAL AGREEMENT AND DURATION.** The landowner and the department must mutually agree to the conducting of an appraisal. Easements, including donated conservation easements, shall be acquired for perpetuity.

**(3) DONATED EASEMENTS.** The department may authorize, in writing, any governmental unit, qualified non-profit organization or person to enter into easements or accept a donated conservation easement consistent with the eligibility provision of the approved grant application and runoff management grant. Upon acceptance of a donated easement under s. NR 154.03 (2) (c), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

**(4) ACQUISITION PROPOSALS.** (a) A governmental unit requesting runoff management grant funds under this section for the acquisition of property in fee or an easement shall submit an acquisition proposal to the department for its review and approval. The acquisition proposal shall be submitted with the runoff management grant application or grant amendment request.

(b) The acquisition proposal for fee title or easement shall include all of the following:

1. A description of the purpose for acquiring the land and how the acquisition will meet applicable goals of the project for which the grant is applied.

2. A copy of the appropriate county, township, topographic and local land use planning maps showing the proposed acquisition.

3. A description of how the proposed acquisition complements other nonpoint source pollution abatement program efforts.

4. Other information the department may request.

(c) For fee title acquisition, the following additional information is required as part of the acquisition proposal:

1. A description of the land management plan for the property including a list of any owner-occupants or tenants that occupy the buildings or land to be acquired, a general time frame for project completion, and a description of how long-term management will be provided. Identification of other governmental units that will be involved in management and their respective roles shall also be included.

2. An estimate of overall acquisition and annual maintenance costs, including the number of parcels and acres to be acquired which notes the number of improved parcels involved.

**(5) GENERAL PROVISIONS.** (a) Governmental units shall acquire and manage property acquired with a runoff management grant in accordance with all applicable local, state and federal laws and regulations.

(b) After approval of the acquisition proposal and receipt of a grant from the department, a governmental unit shall obtain an appraisal for each property.

1. All appraisals shall be subject to department review and approval.

2. After it has received approval from the department, the governmental unit may act on the appraisal.

3. All appraisals shall be conducted by a certified or licensed appraiser as described in ch. 458, Stats., and chs. RL 80 to 86.

4. All acquisitions with a fair market value of more than \$350,000 shall require 2 appraisals. The department may require a second appraisal for property valued under \$350,000 if the department finds that the property presents a difficult appraisal problem or if the first appraisal is unacceptable.

(c) Property may be purchased only from willing sellers. The governmental unit shall provide the seller with a just compensation statement, which identifies the fair market value of the property, as determined by an appraiser meeting the requirements listed in par. (b) 3. and which describes the benefits due to the seller in exchange for the transfer of the seller's property.

(d) If applicable, relocation plans shall be developed in accordance with ch. COMM 202.

(e) Property acquired with a runoff management grant shall be maintained and managed in accordance with the provisions, conditions and scope description in the grant contract.

(f) A governmental unit may be allowed to acquire property prior to entering into a runoff management grant agreement, provided that the governmental unit has received written approval from the department prior to purchasing the targeted property. The governmental unit shall submit a written statement to the department, which explains the special circumstances justifying the need to acquire the property at that time. Prior to runoff management grant reimbursement for the acquisition, the governmental unit shall establish the value of the property in accordance with par. (b).

(g) The governmental unit shall record in the office of the register of deeds for each county in which property is located the deed which vests title or a property interest in the governmental unit and which references the interest of the state of Wisconsin in the property under the terms of the grant contract.

**(6) STATE COST-SHARE RATE.** (a) The maximum allowable state cost-share rate for the acquisition of property under this chapter is 50 percent.

(b) The cost share rate shall be applied to the lesser of the following 2 amounts:

1. The acquisition cost of the property.

2. The certified appraisal value as determined by the department and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. Reasonable costs do not include attorney's fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subdivision.

(c) The department may not reimburse acquisition costs related to purchase of the property until the property acquisition has been completed.

**(7) CRITERIA.** The department shall consider the following criteria when determining whether to provide funding for the proposed acquisition:

(a) The degree to which the acquisition of the property would provide for the protection or improvement of water quality.

(b) The degree to which the acquisition of the property would provide for protection or improvement of other aspects of the natural ecosystem such as fish, wildlife, wetlands or natural beauty.

(c) The degree to which the acquisition of the property would complement other watershed management efforts.

(d) In cases where the acquisition will prevent further degradation of water quality, that acquisition is cost-effective relative to the degree of threat of further degradation to the site.

SECTION 115. NR 155.26 (1) and (6) and 155.27 (3) (b) are amended to read:

**NR 155.26 Local assistance grant agreement. (1)** The local assistance grant agreement is an agreement between the department and the board of regents or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this ~~section~~ chapter. A local assistance grant awarded under this section may be used for local project ~~administration and management activities, easement or property appraisals or other~~ activities determined by the department to satisfy the requirements of s. 281.66, Stats.

**(6)** If a governmental unit or the board of regents contracts with a government agency or person to provide field, administrative, planning or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department. ~~Contracts greater than \$10,000 shall be submitted~~ for review and approval prior to signing.

**NR 155.27 (3) (b)** In the form of a bilaterally executed written agreement for any professional services or construction activities ~~in excess of \$10,000~~.

SECTION 116. NR 155.27 (4) is repealed and recreated to read:

**NR 155.27 (4) FORCE ACCOUNT WORK.** (a) A governmental unit or the board of regents shall secure prior written approval from the department for use of the force account method in lieu of contracts for any professional services or construction activities.

(b) The department shall approve the use of force account work if the governmental unit or board of regents demonstrates to the department's satisfaction that the governmental unit or board of regents has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of the force account method.

(c) The force account reimbursement for design and construction services shall be based on the actual cost of services provided and departmental reimbursement for such costs may not exceed 5 percent of the total project reimbursement when bond-sourced funds are used.

SECTION 117. NR 155.27 (5) is repealed.

SECTION 118. NR 155.28 (1) (b) 3. is amended to read:

**NR 155.28 (1) (b) 3.** Progress reports required by the department shall accompany each reimbursement request. A project final report shall be submitted on forms provided by the department and shall accompany the final reimbursement request.

**Note:** Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

SECTION 119. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 120. BOARD ADOPTION. The forgoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_.

Matthew J. Frank, Secretary

(SEAL)